



# Superior Court of California County of San Benito

## Tentative Decisions for March 10, 2025

**Courtroom #1: Judge J. Omar Rodriguez**

**CU-20-00189 Rocket Restrooms & Fencing, Inc vs. Leal**

Defendants' Motion for Summary Judgment or, in the alternative, Motion for Summary Adjudication ("Motion") is DENIED without prejudice.

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Cal. Code Civ. Proc. § 437c, subd. (c).) A defendant carries the initial burden of showing that a cause of action has no merit by demonstrating that one or more elements of the cause of action cannot be established or a complete defense to it exists. (Cal. Code Civ. Proc. § 437c, subd. (p)(2).) Once the defendant has met that burden, the burden shifts to the plaintiff to show a triable issue exists. (*Ibid.*) The evidence in favor of the party opposing the motion must be liberally construed, and all doubts concerning the evidence must be resolved in favor of that party. (*Fisherman's Wharf Bay Cruise Corp. v. Superior Court* (2003) 114 Cal.App.4th 309, 320–321.) A motion for summary adjudication follows the same basic legal principles and requirements, except that it need not resolve the case entirely, but may eliminate certain causes of action.

First, "a summary judgment is a drastic measure which deprives the losing party of trial on the merits." (*Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 395.) "To mitigate summary judgment's harshness, the statute's drafters included a provision making continuances—which are normally a matter within the broad discretion of trial courts—virtually

Page 1 of 3

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mandated...." (*Ibid.*; Cal. Code Civ. Proc. §437c, subd. (h).) Where the opposing party submits an adequate affidavit showing that essential facts may exist but cannot be presented timely, the court must either deny summary judgment or grant continuance. (*Dee v. Vintage Petroleum, Inc.* (2003) 106 Cal.App.4th 30, 34-35; *Frazer v. Seely* (2002) 95 Cal.App.4th 627, 633.)

Here, despite being twice ordered to sit for his deposition, Defendant Popsecu refused to be deposed. (See Declaration of Nicholas S. Seliger, ¶ 5.) Plaintiff has been diligent in attempting to obtain the necessary discovery to adequately oppose the motion. This Court previously determined that Mr. Popescu's testimony would be probative. Ultimately, Plaintiff is prejudiced in opposing Defendant's Motion without the benefit of the court-ordered Deposition of Ovidiu Popsecu. As a result, the Motion is DENIED.

Secondly, a trial court may in its discretion deny a motion for summary judgment or adjudication on procedural grounds for failing to comply with the requirements of the California Rules of Court, rule 3.1350. (*Truong v. Glasser* (2009) 181 Cal.App.4th 102, 118.) California Rules of Court, Rule 3.1350(b) requires "(i)f summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts."

Here, Defendants failed to comply with this rule because the specific grounds for summary adjudication in Defendants' Notice of this Motion as to Issue No. 1 are not repeated, verbatim, in the separate statement of undisputed material facts. In their Amended Notice of motion, Defendants state that they seek summary adjudication on Issue No. 1 as follows:

"Issue No. 1: No triable issue of fact exists as to Plaintiff's First Cause of Action for Breach of Contract because Plaintiff *cannot establish mutual assent to the alleged express written contracts.*"

However, in Defendants' Separate Statement, Defendants state the following:

"ISSUE NO. 1: No triable issue of fact exists as to Plaintiff's First Cause of Action for Breach of Contract because Plaintiff does not have and cannot *obtain evidence demonstrating the formation of any of the alleged express contracts.*"

The same problem exists with Issue No. 2 and Issue No. 3 in the specific grounds for summary adjudication of these issues are not repeated verbatim in both Defendants' Notice of this Motion and its separate statement filed concurrently herewith. The issues to be resolved in Defendants' Notice are substantially different than the Separate Statement. For example, in the Notice, the issue is whether there was mutual assent, but in the Separate Statement, the issue is whether there was contract formation.

As a result of the procedural defects mentioned above, the Court DENIES the Motion WITHOUT PREJUDICE.

**CU-24-00205            Watson vs. Bright Future Recovery, Inc. et al**

The Case Management Conference is continued to April 7, 2025 at 10:30 a.m., when the Motion to Compel will be heard.

**CU-24-00310            In the matter of Mildred Lizeth Villalobos**

The Matter is continued to allow for the receipt of the CLETS background information.

**CU-24-00312            In the matter of Emiliano Joaquin Van Nada Villalobos**

The Matter is continued to allow for the receipt of the CLETS background information.

**PR-23-00098            In the Matter of Federico Acosta**

In light of the Status Report submitted by Petitioner, the matter is continued to July 14, 2025 at 10:30 a.m.

**END OF TENTATIVE DECISIONS**