



# Superior Court of California County of San Benito

## Tentative Decisions for May 8, 2024

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

**10:30 a.m.**

**CU-23-00049 DeCarlo v. Envirosiences LLC, et al.**

The court grants the Defendant's request for an Order to Show Cause re Contempt, and the Order to Show Cause will be granted. Mr. DeCarlo is ordered to appear in Court on May 29, 2024 at 3:30 p.m. in Department 1 to show cause why he should not be held in contempt and punished for contempt.

The Case Management Conference is continued to May 29, 2024 at 3:30p.m.

**CU-23-00282 In the Matter of Ingrid S. Sywak**

In light of the Anti-SLAPP motion, the underlying request for ruling on the writ petition is continued to July 10, 2024 at 10:30a.m.

**CU-24-00004 Martinez v. Infinity Staffing Services, Inc., et al.**

The case management conference is continued to July 24, 2023 at 10:30a.m.

**PR-24-00033 In re the Taliaferro Trust, as Amended and Restated, u/d/t dates November 16, 2011**

The unopposed, verified Petition for Order Confirming Trust Assets is APPROVED as requested. Notice was provided as required by law.

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**\*\*Please contact Judicial Courtroom Assistant, Wendy Guerrero, at  
(831) 636-4057 x129 or [wguerrero@sanbenitocourt.org](mailto:wguerrero@sanbenitocourt.org) with  
any objections or concerns.**

**3:30 p.m.**

**CU-23-00241 Estate of Jason Charles Manning, et al. v. State of California**

The Demurrer filed by Defendant State of California by and through the Department of Transportation (“the Department”) is SUSTAINED with leave to amend. Plaintiff will file their amended Complaint within 20 calendar days of this Court’s ruling.

A demurrer generally serves to test the legal sufficiency of the complaint’s factual allegations. (*Genis v. Schainbaum* (2021) 66 Cal. App. 5th 1007, 1014.) It does not test the factual accuracy or truth of the facts alleged. The court must assume the truth of all properly pled allegations. The process of a demurrer does not serve to test the merits of the Plaintiff’s case. (*Tenet Health System Desert Inc. v. Blue Cross of CA.* (2016) 245 Cal. App 4th 821, 834.) Because a demurrer only challenges the defects on the face of the complaint, it can only refer to matters outside the pleadings which are subject to judicial notice. (*Tenet, supra*, at 831.) When any ground for objection to a complaint...appears on the face thereof, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by a demurrer to the pleading.” (Cal. Code Civ. Proc. §430.30 sub (a); *Levy v. Nielson* (2000) 83 Cal. App. 4th 1061, 1063.) For the purpose of demurrer, a judge must treat the demurrer as an admission of all material facts properly pled in the challenged pleading or that reasonably rise by implication, however improbable they are. (*Collins v. Thurmond* (2019) 41 Cal. App 5th 879, 894.) For the purpose of testing the sufficiency of a cause of action, contentions, deductions, or conclusions of law are not admitted as true, and must be ignored. (*Aubry v. Tri-City Hosp Dist.* (1992) 2 Cal. 4th 962, 966-67.)

When suing a government entity, “(s)ince all California governmental tort liability flows from the California Tort Claims Act [citations], the plaintiff must plead facts sufficient to show his cause of action lies outside the breadth of any applicable statutory immunity. He must plead ‘with particularity’, ‘(e)very fact essential to the existence of statutory liability.’ (T)he intent of the act is not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances: immunity is waived only if the various requirements of the act are satisfied.” (*Keyes v. Santa Clara Valley Water Dist.* (1982) 128 Cal. App. 3rd 882, 885-886 (internal citations omitted].)

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Pursuant to Government Claims Act, there is no common law tort liability for public entities in California. Rather, such liability must be based on statute. (Gov't Code §815(a).) A cause of action for breach of a mandatory duty must specifically allege the particular enactment that creates the mandatory duty. (See *Cerna v City of Oakland* (2008) 161 Cal.App.4th 1340, 1349 (mention in complaint of Veh C §21368 without specific allegation of mandatory duty was insufficient.) California Government Code Section 815.6 states that “(w)here a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.” The enactment at issue must be obligatory rather than merely discretionary or permissive in its directions to the entity. (*Guzman v. County of Monterey* (2009) 46 Cal. 4th 887, 898.) Additionally, Courts have found that a mandatory duty exists only if the enactment “affirmatively imposes the duty and provides implementing guidelines.” (*Ibid.*) Second, but equally important, section 815.6 requires that the mandatory duty be “designed” to protect against the particular kind of injury suffered by the plaintiff. The plaintiff must show that the injury suffered is one of the consequences the enacting body sought to prevent through the imposition of the mandatory duty.

Here Plaintiff has failed to set forth any enactment that would create a mandatory duty as it relates to the Department. Accordingly, Plaintiff failed to state facts sufficient to constitute a cause of action and the Demurrer is SUSTAINED as to the First Cause of Action.

Plaintiffs stipulated to amend the pleadings as it relates to the Fourth and Fifth Causes of Action. Therefore, the Demurrer is moot as to those causes of action.

The Case Management Conference is continued to July 3, 2014 at 10:30a.m.

**PR-23-00075 Estate of Timothy Lynn Harlan**

The Petition is APPROVED as requested.

**PR-24-00021 In the Matter of Marilyn F. McDonald**

The Motion for Order Disqualifying Opposing Counsel is GRANTED.

A trial court's authority to disqualify an attorney derives from the power inherent in every court "[t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto." (*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145, citing Code Civ. Proc., § 128, subd. (a)(5).) Rule 1.10(b) of the Rules of Professional Conduct states,“(w)hen a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless: (1) the matter is the same or substantially related to that in which the formerly associate lawyer represented the client; and (2) any lawyer remaining in the firm has information protected by Business and Professions Code section 6068, subdivision (3) and rules 1.6 and 1.9(c) that is material to the matter.” “Where a substantial legal and factual relationship exists between a former representation and the attorney's current position, a presumption arises that the attorney possesses confidential information about the former client which would be compromised if an attorney were allowed to take an adverse position after the representation ended.” (*Styles v. Mumbert* (2008) 164 Cal.App.4th 1163, 1167.) Additionally, Rule 1.10(a) states, “While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9...”

Here, Attorney Pipal is a former member of Pipal, Spurzem & Liem LLP where he represented Ms. Marilyn McDonald for numerous years and worked on the establishment of the L&M McDonald Family Trust dated July 10, 1992, which is substantially related to the present litigation. She is a beneficiary of the trust and is now asking for an accounting and alleges that Respondent Roger McDonald has failed to render any accounts to Petitioner since 2015. Pipal, Spurzem & Liem LLP was in possession of Ms. McDonald’s file until February 17, 2022. Mr. Pipal retired in 2022 and in 2023 Mr. Liem and Mr. Spurzem remained and established Spurzem & Liem LLP. During a period of time when Mr. Pipal represented Ms. McDonald, Mr. Liem and Mr. Spurzem were associated with the same firm as Mr. Pipal and

were also prohibited from representing Ms. McDonald. Based on this set of facts, the Motion is granted and Mr. Liem and Spurzem & Liem are disqualified from representing the successor co-trustee Roger A. McDonald in this action.

The status conference is continued to May 22, 2024 at 3:30p.m.

**END OF TENTATIVE DECISIONS**