



Superior Court of California County of San Benito

Tentative Decisions for October 30, 2024

Courtroom #1: Judge J. Omar Rodriguez

10:30 a.m.

CU-19-00212 – Y.S., a minor v. Hollister Unified School District, et al.

The Motion to Compel Mental Health Examination of Plaintiff filed by Defendant A.G.E.S. Learning Solutions, Inc. (“AGES”) is DENIED.

In order to obtain a mental examination, the examining party must first obtain an order authorizing it. (See Cal. Civ. Proc. § 2032.310 (“If any party desires to obtain discovery by . . . a mental examination, the party shall obtain leave of court.”) Only if such ordered is disobeyed, the party may file a Motion to Compel Under Code of Civil Procedure section 2032.410. Physical examinations may be arranged and carried out under a written agreement. (See Cal. Civ. Proc. §2016.030.)

The parties never entered into a written stipulation, nor did defendants obtain a court order for a mental examination. As a result, Defendant’s motion is denied.

CU-21-00204 – Western Legal Center v. County of San Benito

The Motion to Quash filed by Anthony Botelho is GRANTED. The Case Management Conference is continued to November 13, 2024 at 10:30 a.m.

“(A)ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any

motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.” (Code Civ. Proc., § 2017.010.) “Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, electronically stored information, tangible thing, or land or other property.” (*Ibid.*) But in actions to enforce the Public Records Act, the requesting party may not use the Civil Discovery Act to preempt adjudication on the merits by reframing its public records request as a discovery request unconstrained by the narrow enforcement issue of whether the Public Records Act requires the public agency to disclose the underlying records requested. (*County of San Benito v Superior Court* (2023) 96 CA5th 243, 260.) “When a party does seek to compel discovery (or seeks a protective order from a discovery request), the trial court must determine whether the discovery sought is necessary to resolve whether the agency has a duty to disclose, and to additionally consider whether the request is justified given the need for an expeditious resolution.” (*City of Los Angeles v. Superior Court* (2017) 9 Cal.App.5th 272, 290.)

Here, the Court does not find that the discovery sought is *necessary* to resolve whether the agency has a duty to disclose. A County employee searched Mr. Botelho’s personal devices and accounts for responsive records and not information was gained. There is no indication that the County employee conducted the search in such a manner that would necessitate the deposition of Mr. Botelho to confirm or refute the method of the search. Instead, Western Resources alleges that Mr. Botelho’s deposition is necessary because the County has failed to respond to discovery. However, a party’s refusal to provide discovery responses, without more, does not mean that the discovery at issue in this motion is necessary to resolve whether the County had a duty to disclose.

Additionally, “where a party seeks to depose a high government official, and the official moves for a protective order, the burden is on the deposing party to show that compelling reasons exist for permitting the deposition.” (*Ross v. Superior Court* (2022) 77 Cal.App.5th 667, 680.) An exception will be made to this rule only when the deposing party shows that the government official has direct personal factual, as opposed to legal, information pertaining to material issues in the action and that the information to be gained

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from the deposition is not available through any other source. (*Ross v. Superior Court* (2022) 77 Cal.App.5th 667, 680.)

Here, Western Resources failed to make a showing as to Mr. Botelho, who is a former supervisor, that the information to be gained from a deposition is not available through any other source. Western Resources argues that the County has refused to provide complete responses to discovery requests and, therefore, is entitled to depose a former supervisor. However, the refusal to provide discovery responses does not mean that the information to be gained is not available through another source.

CU-24-00059 Mitchell & Danoff Law Firm, Inc. v. Hoffman

Plaintiff's Motion to Compel is GRANTED. Defendant failed to produce any responses to the Request for Production of Documents. Defendant is ordered to provide verified responses and serve responsive documents without objection to Plaintiff no later than December 8, 2024. Defendant is ordered to pay Plaintiff \$1,422.83 in monetary sanctions for this motion no later than January 30, 2025.

Defendant's Motion for Protective Order Against Disability Abuse is DENIED. Defendant does not cite any legal authority to issue such a protective order.

The case management conference is continued to November 20, 2024 at 3:30 p.m.

CU-24-00119 - Marquez v. Scally

Plaintiff's Motion for Summons by Publication is DENIED. The Case Management Conference is continued to February 10, 2025 at 10:30 a.m. Plaintiff to provide notice. "A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified." (Cal. Civ. Proc. Section 415.50.) Here, Plaintiff attempted to use the last known address of Defendant and attempted a single time to serve Defendant at that address. The process server was notified by a person at the residence that Defendant had moved out a year prior. There is no indication that attempts were made to verify whether the person at the last known residence of Defendant was telling the truth nor were there any other attempts made to locate a newer address even through an online search.

“Certainly such a search is one reasonable step to be taken but it does not exhaust the myriad of other avenues, such as city directories and tax rolls, to name two, for locating persons.” (*Donel, Inc. v. Badalian* (1978) 87 Cal.App.3d 327, 333.) As a result, the Court cannot find that the moving party exercised due diligence to serve Defendant.

CU-24-00150 - Mosqueda v. K. Hovnanian at Ladd Ranch, LLC

The Case Management Conference is continued to February 3, 2025 at 10:30 a.m. Plaintiff to provide notice.

CU-24-00156 - Gomonet v. Pacific Scientific Energetics Materials Company, LLC.

The Case Management Conference is continued to November 6, 2024 at 10:30 a.m.

PR-17-00009 - In re Estate of William Ollie Stone

The unopposed Motion to Enforce Settlement Agreement is GRANTED. To enforce a settlement agreement under CCCP § 664.6, the following elements must be met: (1) the parties must have come to a meeting of the minds on all material points; (2) there must be a writing that contains the material terms of the agreement; and (3) the writing must be signed by the parties. (*In re Marriage of Assemi* (1994) 7 Cal.4th 896.) Here, a written settlement, that was signed by all parties, was reached that clearly outlined the material terms, including a payment of \$205,000 in settlement to Jill Cook and Patricia Sherwood (“Petitioners”).

As a result, Jose Orozco, as executor of the Estate of William Ollie Stone, shall make a payment in the amount of \$205,000 in total to Jill Cook, Patricia Sherwood, and Christopher Stone, as the Successor-In-Interest to Edwin Stone. Payment of this amount shall be made to Jill Cook, Patricia Sherwood and Christopher Stone c/o the Johnson, Fantle, & Aulenta LLP Client Trust. Payment shall be made no later than November 9, 2024.

The Review Hearing is vacated.

PR-24-00088 Guardianship of Ludewig

The hearing is continued to November 11, 2024 at 10:30 a.m. Temporary orders will remain in place until that date.

3:30 p.m.

CU-22-00233 – Trinity Financial Services LLC v. Gutierrez, et al.

The unopposed Motion for Leave to File a Third Amended Cross-Complaint is GRANTED as requested.

CU-24-00110 – California Mutual Insurance Company v. State Farm General Insurance Company

Defendant’s Demurrer to the First and Second Causes of Action is SUSTAINED with leave to amend. Plaintiff may file its amended complaint no later than November 15, 2024. The Case Management Conference is continued to January 13, 2025 at 10:30 a.m.

In ruling on a demurrer, the complaint is liberally construed in the interest of substantial justice. (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1132.) If it appears that the plaintiff is entitled to any relief, demurrer must be overruled, even though the facts may not be clearly stated, or although plaintiff may demand relief to which it is not entitled under the acts stated. A plaintiff need only plead facts showing it may be entitled to some relief. (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572.) On demurrer, the court must accept all facts alleged in the complaint as true, and draw all reasonable inferences from those facts in favor of the plaintiff. (*Kruss v. Booth* (2010) 185 Cal.App.4th 699, 713.)

“It is elementary that a party asserting a claim must have standing to do so. ... [T]his generally requires the party to be a signatory to the contract, or to be an intended third party beneficiary.” (*Berclain America Latina v. Baan Co.* (1999) 74 Cal.App.4th 401, 405.) This rule exists because strangers to a contract are not permitted to enforce covenants not made for their benefit. (*Seretti v. Superior Nat. Ins. Co.* (1999) 71 Cal.App.4th 920, 929.) When a party wishes to bring forth a claim for damages on an insurance policy or claim, that party must be able to show the existence of an underlying contractual relationship. (*Austero v. National Casualty Company* (1976) 62

Cal.App.3d 511, 516.) 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.)

Plaintiff's suit is based on Defendant's conduct against their mutual insured and on its role "as Mission Village's excess insurer and subrogee..." (Complaint ¶8:5-6.) Although the insured may assign certain causes of action, the facts as alleged do not provide Plaintiff with the ability to bring a cause of action as if it were the insured.

CU-24-00201 Petition of Akhil Kamboj

The hearing is continued to December 11, 2024 at 10:30 a.m. to allow the court additional time to complete the CLETS review.

CU-24-00204 Petition of Brianna Ross Chong

The Petition is GRANTED as requested.

CU-24-00213 Petition of Mayra Clemente

The Petition is GRANTED as requested.

CU-24-00249 – Figueroa v. Thomas, et al.

The Petition for Final Approval of Compromise is GRANTED as requested.

CU-24-00250 – Figueroa v. Thomas, et al.

The Petition for Final Approval of Compromise is GRANTED as requested.

PR-22-00081 Guardianship of Madera

The matter is continued to December 11, 2024 at 10:30 a.m. to allow for the service of status review forms.

END OF TENTATIVE DECISIONS