



Superior Court of California County of San Benito

Tentative Decisions for September 18, 2024

Courtroom #1: Judge J. Omar Rodriguez

10:30 a.m.

CU-22-00247 Center for Biological Diversity and Protect San Benito County v. County of San Benito, et al.

The matter is continued to January 29, 2024 at 10:30 a.m.

CU-23-000282 - In re Matter of Ingrid Sywak, et al. v City of Hollister, et al.

Absent a copy of the administrative record this matter is not ready to proceed as all the necessary materials are presently not available. The hearing on September 18, 2024 will proceed as a case management conference.

3:30 p.m.

CU-24-00002 Petition of Olga Cordova Alderete

The Petition is DENIED without prejudice. Petitioner failed to submit proof of publication.

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

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

Defendant Hoffman's Motion to Strike

Defendant Hoffman's second Motion to Strike is DENIED as it is was already adjudicated and there are no new facts or legal arguments presented that would warrant reconsideration of the prior decision denying Defendant's first Motion to Strike. On August 9, 2024, Defendant Hoffman filed and answer to the Complaint and a Cross Complaint as a single unified document. On August 16, 2024, Defendant filed an Amended Answer and amended (Cross) Complaint. Plaintiff's Motion to Strike Defendant's Motion to Quash is thus moot, and the court denies the request for attorneys' fees.

Defendant's Objection to Plaintiff's Application to File Under Seal was filed and failed to cite any legal authority and is DENIED.

Plaintiff's Motion to Strike Defendant's Answer and Cross-Complaint

Plaintiff's motion to Strike Defendant's Answer and Cross Complaint is DENIED. The court may, upon a motion, or at any time in its discretion, and upon terms it deems proper, strike any irrelevant, false, or improper matter inserted in any pleading. (Cal. Civ. Proc. §436(a).) The court may also strike all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (*Id.*, § 436(b).) The grounds for a motion to strike are that the pleading has irrelevant, false or improper matter, or has not been drawn or filed in conformity with laws. (*Ibid.*) The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice. (Cal. Code Civ. Proc. §437.) "When the defect which justifies striking a complaint is capable of cure, the court should allow leave to amend." (*Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761, 768.) A motion to strike can be used where the complaint or other pleading has not been drawn or filed in conformity with applicable rules or court orders. (Cal. Code Civ. Proc., § 436(b).) This provision is for "the striking of a pleading due to improprieties in its form or in the procedures pursuant to which it was filed." (*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528.)

Plaintiff moved to strike the Answer and Cross Complaint as being untimely pursuant to Code of Civil Procedure section 412.20 (a)(3). Defendant had 30 days to file their answer after they were served. (Cal. Code Civ. Proc. §412.20(a)(3).) A party may move to strike an entire pleading if it is untimely filed or otherwise in violation of a court order. (Cal. Code Civ. Proc. §436(b); Cal. Rules of Court Rule 3.1320(i).) A defendant against whom default is entered is not entitled to file a pleading. (*Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1301-1302.) Here, however, no default was taken. Having filed an answer, Defendant is not in default. It is generally recognized that an untimely pleading is not a nullity. (*Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 141.) Nor has Defendant intentionally waived her right to raise affirmative defenses by filing an untimely answer. (*Vitkievich v. Valverde* (2012) 202 Cal.App.4th 1306, 1314.)

Plaintiff's Motion for Judgment on the Pleadings

Plaintiff's motion for Judgment on the Pleadings, which is based on the basis that Defendant had not filed any Responsive Pleading, is DENIED as Defendant has filed an answer which survived Plaintiff's Motion to Strike the Answer and Cross Complaint.

A motion for judgment on the pleadings has the same purpose and effect as a general demurrer: the court is asked to determine whether the complaint raises issues that can be resolved as a matter of law. (*Westly v. Board of Admin.* (2003) 105 Cal.App.4th 1095, 1114.) A plaintiff may move for judgment on the pleadings on the basis that the complaint states fact sufficient to state a cause of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint. (Cal. Civ. Proc. §438(c)(1)(A).)

Here, Defendant filed an answer after the current motion was filed. In the answer it appears Defendant is making arguments about the interpretation of the underlying Agreement with regard to whether her performance is excused because the agreement is not conscionable, and whether her performance is excused by what she asserts is Plaintiff's nonperformance. Since Plaintiff is arguing that no answer or defense has been made as the premise of his motion and it appears one is now filed, the court denies the motion for Judgment on the Pleadings.

Plaintiff's Motion for Order that Requests for Admission be Deemed Admitted

The unopposed Motion for Matters be Deemed Admitted is GRANTED. The Requests one (1) through and including 13 are deemed admitted and Defendant is ordered to pay \$2,322.83 (\$2,250 in attorney's fees and \$72.83 in costs) as sanctions to be paid to Plaintiff by no later than close of business (5:00 p.m. PST) on December 31, 2024.

A party served with requests for admission must serve a response within 30 days after service. (Cal. Civ. Proc. §2033.250.) If the respondent fails to serve a timely response, the matters covered by the requests for admission are deemed admitted on the propounding party's motion to have the matters deemed admitted. (Cal. Civ. Proc. §2033.280 (b); *Stover v. Bruntz* (2017) 12 Cal. App. 5th 19, 30-32.) The motion may also request monetary sanctions (*Ibid.*) No meet and confer is required for a motion to deem admitted. (Cal. Civ. Proc. §2033.280.)

Here, Plaintiff served Requests for Admissions ("RFA") on Defendant on July 22, 2024. There has been no response to the RFA, nor has any extension of time to answer been requested or granted. Plaintiff submitted a declaration seeking reasonable attorneys' fees of \$2,250.00 and a filing fee of \$72.83.

Plaintiff's Motion for an Order Compelling a Response to Plaintiff's Interrogatories

Plaintiff's unopposed Motion for Order Compelling Defendant's Response to Plaintiff's Special Interrogatories, Set One, is GRANTED. Defendant shall provide verified answers without objection to each Interrogatory propounded in Set one and serve those answers on the Plaintiff by no later than October 17, 2024. The court grants Plaintiff's request for monetary sanctions in the amount of \$1,422.83 to be paid no later than December 31, 2024.

If a party has failed to timely serve interrogatory responses, the propounding party may move to compel responses under California Code of Civil Procedure section 2030.290(b), and the court may hear a motion for mandatory sanctions, regardless of whether the other party subsequently serves responses. (*Sinaiko Healthcare Consulting, Inc. V. Pacific Healthcare Consultants* (2007)148 Cal.App.4th 390, 408-412.) If no responses have been received there need be no declaration that the parties have met and conferred, nor is a separate

statement required. Moreover, the failure to serve a timely response waives all objections of the interrogatories, including an objection based on privilege or work product protection, unless the judge grants a motion relieving the responding party from that waiver. (Cal. Civ. Proc. §2030.290 sub (b).)

Plaintiff served their first set of Specially Prepared Interrogatories on Defendant on July 24, 2024. There has been no response. The time to respond to the Interrogatories has elapsed without any response, nor any request to extend time being offered, made, or granted. Pursuant to California Code of Civil Procedure section 2030.290 if a party on whom interrogatories have been propounded fails to timely serve a response, the Propounding party may move to compel response. Plaintiff claims it incurred a total cost of \$1,422.83 for having to bring this motion.

END OF TENTATIVE DECISIONS