

**Judge Benson – Law & Motion – Wednesday, June 5, 2024 @ 9:00 AM  
TENTATIVE RULINGS**

**1. 21CV00181 Jumper, Rochelle et al v. Bullet Express Line, Inc et al.**

*EVENT: Defendant HSD Trucking's Motion for Good Faith Settlement*

Defendant HSD Trucking's Motion for Good Faith Settlement is GRANTED and is unopposed. The Court will sign the proposed order.

**2. 21CV02497 Knoefler, Michael et al v. Knoefler, Wayne**

*EVENT: Defendant Wayne Knoefler Motion for Summary Judgment Against Plaintiffs and Each of Them*

Defendant Wayne Knoefler's Motion for Summary Judgment Against Plaintiffs and Each of Them is GRANTED. The Court takes judicial notice of the orders dated January 10, 2024 deeming requests for admissions admitted. In light of the admissions, no triable issue of fact exists that Defendant was not negligent and that Plaintiffs suffered no harm.

Judicial admissions are conclusive concessions of the truth of those matters, are effectively removed as issues from the litigation, and may not be contradicted, by the party whose pleadings are used against him or her. (*Barsegian v. Kessler & Kessler*, (2013) 215 Cal. App. 4th 446, 451) A judicial admission is a waiver of proof of a fact by conceding its truth, and it has the effect of removing the matter from the issues. (*Id* at p. 452)

The Court is in receipt of the oppositions filed by Plaintiffs but notes there is no indication that Defendant was served. In any event, because the admissions are conclusive, no evidence submitted in the opposition can establish a triable issue of fact.

Plaintiff Matthew Knoefler appears to argue that he has not received notice as he contends his mailing address differs from the mailing address on the Court file. However, according to the motion to be relieved filed in the summer of 2023, Matthew was personally served with said motion, and said motion indicated the P.O. Box 251 address. Thus, it was Michael's responsibility to notify opposing counsel and the Court of any address change.

The Court will sign the proposed order and judgment. The Case Management Conference scheduled for July 10, 2024 at 10:30am is vacated.

3. **23CV02925 Bank of America, NA v. Breeden, Robert Beau**

*EVENT: Plaintiff's Motion for Order That Matters in Request for Admission of Truth of Facts Be Admitted*

Plaintiff's Motion for Order That Matters in Request for Admission of Truth of Facts Be Admitted is GRANTED. The Court will sign the proposed order.

4. **24CV01175 In re: Woods, Juanita June**

*EVENT: Change of name (Adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

5. 23CV00528 Rosinski, Melinda et al v. Piercey, Matthew et al.

*EVENT: (1) Defendant Rodney H. Piercey's Demurrer to Plaintiff's Complaint*

*(2) Defendant Rodney H. Piercey's Motion to Strike Plaintiff's Request for Punitive Damages*

Defendant's Request for Judicial Notice is GRANTED.

Plaintiffs' Request for Judicial Notice is denied as to the deposition transcript and the marketing materials. Neither constitutes a court record. The remainder of the request is granted, however, the Court cannot consider the truth of the contents of these documents in the context of judicial notice.

We treat the demurrer as admitting all material facts properly plead. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) While the matters relating to the request for judicial notice may demonstrate a basis for amending the complaint, the Court cannot consider the matters as a basis for overruling the demurrer or denying the motion to strike. Said another way, judicially noticeable matters cannot simply be incorporated in to the pleading without amendment. We are confined to the operative pleading before us.

DEMURRER

*CCP § 340.6 is Not a Basis For Sustaining the Demurrer*

The gravamen of this case appears to be securities fraud and misappropriation of assets. At best, there could be differing interpretations whether Defendant is being sued in his capacity as an attorney. On demurrer, reasonable inferences are drawn in favor of the complaint. (*Kruss v. Booth*, (2010)185 Cal. App. 4th 699, 727)

*Civil Code § 1714.10 is Inapplicable*

Plaintiffs contend Civil Code § 1714.10 does not apply because Defendant is not a licensed attorney in this state. Plaintiffs do not cite any legal authority supporting this proposition, and the Court has found no such authority.

However, Civil Code § 1714.10 appears to be inapplicable because the claims do not arise "from any attempt to contest or compromise a claim or dispute". Allegations concerning the misappropriation of assets are not within the scope of Civil Code § 1714.10, see *Stueve v. Berger Kahn* (2013) 222 Cal.App.4th 327, 331.

*First Cause of Action (Violation of Corp. Code §§ 25401 & 25501)*

The Demurer is SUSTAINED WITH LEAVE TO AMEND.

As Defendant correctly noted liability under Corp. Code § 25501 requires privity between plaintiff and defendant, see *Apollo Capital Fund LLC v. Roth Capital Partners, LLC*, (2007) 158 Cal. App. 4th 226, 253. Although the allegations in the complaint are complex; read as a whole, the complaint alleges plaintiffs invested their money with Family Wealth Legacy. (“FWL”)

The complaint makes some general allegations as to Defendant’s relationship with FWL. While the Court is aware of evidence previously presented by Plaintiffs in relation to the motion to quash, the operative complaint does not include many of those factual allegations. As discussed, the matters in the request for judicial notice cannot be considered in evaluating the operative pleading. Because we are limited to the pleading itself on demurrer, we cannot consider any of those extrinsic matters unless they are subsequently incorporated into the pleading.

The Complaint as currently constructed fails to allege sufficient facts demonstrating how Defendant was in privity with Plaintiffs when Plaintiffs invested in FWL.

*Second Cause of Action (Violation of Corp. Code § 25504)*

The Demurer is SUSTAINED WITH LEAVE TO AMEND.

The complaint does not allege sufficiently specific facts demonstrating how defendant’s conduct materially aided in the transaction, i.e. the investment of plaintiffs funds into FWL.

Nor does the Complaint sufficiently allege how Defendant qualifies as a “control person.” The Complaint simply alleges in conclusory fashion that Defendant is a control person without any supporting facts.

*Third Cause of Action (Violation of Corp. Code § 25504.1)*

The Demurrer is SUSTAINED WITH LEAVE TO AMEND.

As with the second cause of action, The complaint does not allege sufficiently specific facts demonstrating how defendant’s conduct materially aided in the transaction, i.e. the investment of plaintiffs funds into FWL.

*Fourth Cause of Action (Fraud)*

The Demurrer is SUSTAINED WITH LEAVE TO AMEND.

As defendant correctly noted, fraud is subject to a heightened pleading standard. The operative complaint does not allege specific facts rather it alleges conclusions. Again, on demurrer the court cannot consider extrinsic matters that have not been pled.]

*Fifth Cause of Action (Common Count – Money Had and Received)*

The Demurrer is SUSTAINED WITH LEAVE TO AMEND.

The complaint fails to allege facts demonstrating defendant received Plaintiffs' funds. Further, any amendments will need to address the statute of limitations issues raised in the demurrer.

*Sixth Cause of Action (Constructive Trust)*

The Demurrer is SUSTAINED WITH LEAVE TO AMEND.

Fundamentally, the constructive trust cause of action requires an allegation that defendant is in possession of the subject property, see *Calistoga Civic Club v. City of Calistoga*, (1983) 143 Cal. App. 3d 111, 116 [“the keeping of the property by the defendant would constitute unjust enrichment.”] It is axiomatic that a defendant is unjustly enriched only if he or she is still in possession of the property.

The complaint alleges in conclusory fashion that Defendant retained Plaintiffs' funds (see paragraph 127) but does not allege facts in support of this conclusion.

*Seventh Cause of Action (Breach of Fiduciary Duty)*

The Demurrer is SUSTAINED WITH LEAVE TO AMEND.

The Complaint fails to allege sufficient facts demonstrating a confidential relationship between Plaintiffs and Defendant. As discussed, on demurrer the court is limited to the allegations in the pleading and cannot consider extrinsic matters unless they are subsequently incorporated into the pleading.

Plaintiffs shall, if they so choose, amend within 20 days of notice of this order.

## MOTION TO STRIKE

The Motion is GRANTED with Leave to Amend. Consistent with the Court's ruling on demurrer, the complaint fails to allege specific facts demonstrating malice, oppression, or fraud. Plaintiffs shall, if they so choose, amend within 20 days of notice of this order.

Defendant Rodney Piercey shall prepare and submit a form of order consistent with this ruling within 2 weeks.

### **6. 18CV03842 BH Financial Services, LLC v. Robles, Alfonso**

*EVENT: Opposition to Claim of Exemption*

The Court will conduct a hearing.

### **7. 139963 Hudson & Key SE, LLC v. Kenoyer, Kent B**

*EVENT: Application for Order for Sale of Dwelling*

Application for Order for Sale of Dwelling is GRANTED. The Court will sign the proposed order.

### **8-10. 24CV00370 Ramos, Ramiro et al. v. Palacios, Carlos Orlando**

*EVENT: (1) Petition to Compromise Claim of Minor (Andrea Ramos)*

*(2) Petition to Compromise Claim of Minor (Esmeralda Ramos)*

*(3) Petition to Compromise Claim of Minor (Maria Ramos)*

The Petitions to Approve the Minors Compromises of Andrea, Maria, and Esmeralda Ramos are all granted. The Court will sign the proposed orders.

**11. 24CV00928 In re: Mills, Edward Richard**

*EVENT: Change of name (adult) (Continued from 5/22/24)*

There is no proof of publication in file. Upon the filing of the proof of publication, the Court will sign the decree provided.

**12. 23CV00827 Binion, Steven v. Pacific Gas & Electric Company**

*EVENT: Defendant's Motion to Compel Further Sanctions For Counsel's Failure to Comply With Court Order*

Defendant's Motion to Compel Further Sanctions For Counsel's Failure to Comply With Court Order is DENIED.

On the Court's motion, the March 27, 2024 order is modified striking the word "counsel" on page 2 line 7. It was the Court's intent to direct the March 27, 2024 order to Plaintiff, not Plaintiff's counsel. It is this Court's practice to sanction the party, and not counsel when no discovery response is provided. Only in exceptional circumstances where the Court receives specific evidence of attorney misconduct would it consider sanctions against the attorney in the context of a motion to compel (as opposed to a motion to compel further responses).

Counsel seeking multiple extensions is not misconduct warranting sanctions against him/her in this Court's opinion. Neither is it the Court's practice to place the burden of providing responses on counsel instead of the offending party.

In sum, the March 27, 2024 order shall be construed as against Plaintiff, not Plaintiff's counsel.

The Court will prepare the order.

**13. 24CV00561 In re: Melendez, Tiffany**

*EVENT: Change of name (minor) (Continued from 5/29/24)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

**14. 24CV01687 Butte County Animal Control v. Patterson, David**

*EVENT: Petition to Determine if Dog is Vicious*

The Court will conduct a hearing.

**15. 24CV01689 Butte County Animal Control v. Patterson, David**

*EVENT: Petition to Determine if Dog is Vicious*

The Court will conduct a hearing.

**16. 24CV01709 Butte County Animal Control v. Patterson, David**

*EVENT: Petition to Determine if Dog is vicious*

The Court will conduct a hearing.



17. **158355 Butte County Credit Bureau v. Bryant, Dennis K. Jr.**

*EVENT: Opposition to Claim of Exemption*

The Court will conduct a hearing.

18. **23CV03447 Butte Credit v. Sena, Andrew S.**

*EVENT: Opposition to Claim of Exemption*

The Court will conduct a hearing.