

Judge Benson – Law & Motion – Wednesday, June 26, 2024 @ 9:00 AM
TENTATIVE RULINGS

1. 20CV01510 Ortega, Ruben et al. v. Puig-Palomar, Miguel, MD et al.

EVENT: Plaintiffs' Motion to Compel Further Answers to Interrogatories; and For Sanctions

Plaintiffs' Motion to Compel Further Answers to Interrogatories; and For Sanctions is GRANTED in PART and DENIED in PART. To the extent the motion is granted, Defendant shall provide further responses within 20 days of this order. Sanctions are awarded in the amount of \$3,150.00.

Form Interrogatory 15.1

The motion is granted. The response fails to comply with CCP § 2030.220(c). If Defendant lacks personal knowledge concerning the facts supporting the affirmative defense, he must explicitly so state. Also, subdivision (c) requires a statement that a good faith effort has been made.

Form Interrogatory 17.1

Defendant has failed to substantiate his vague objection. The term "immediate treatment" is not vague. The objection shall be removed.

As to the premature disclosure of expert witnesses (and their opinions) this objection has partial merit. To the extent the request seeks identification of Dr. Poa's expert witnesses and their opinions, Defendant is not required to disclose that information at this time. However, as *Schreiber v. Estate of Kiser*, (1999) 22 Cal. 4th 31 provides, the treating physician is not an expert for purposes of the discovery statutes. There is no premature disclosure objection as it pertains to his opinion.

A further substantive response is required, however Defendant is not required to provide a substantive response that identifies expert witnesses or their opinions. If Dr. Poa himself has his own opinion, he must provide a response. If he doesn't have an opinion or the opinion is beyond his personal knowledge, he should so state.

Special Interrogatory 1

The motion is denied. The Court fails to see how any case in which Defendant was a named plaintiff could lead to admissible evidence.

Special Interrogatory 2

The motion is granted. The privacy objection is unsubstantiated. The Court finds cases in which Defendant was a named defendant could lead to admissible evidence.

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

2. **21CV01932 Gonzalez, Veronica v. Sierra Health and Wellness Centers. LLC**

EVENT: Compliance Hearing (Continued from May 8, 2024)

Per CCP § 384, a further compliance hearing is hereby scheduled for December 18, 2024 at 9:00am. An updated compliance statement shall be filed no later than December 2, 2024.

3. **20CV02267 Alvarez, Jessica v. Abel, Jeff et al.**

EVENT: Defendant/Cross-Complainant Jeff Abel DBA Abel Fire Equipment's Motion for Leave to File a Cross-Complaint Against Newly Named Defendant GFP Enterprises, LLC DBA GFP Response

Defendant/Cross-Complainant Jeff Abel DBA Abel Fire Equipment's Motion for Leave to File a Cross-Complaint Against Newly Named Defendant GFP Enterprises, LLC DBA GFP Response is GRANTED. The Court will sign the proposed order.

4. **22CV02682 Long, Mary L. v. Christine A McCasland as Trustee of the McCasland 1997 Trust, et al.**

EVENT: Case Management Conference

The Court will conduct a hearing.

5. 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 (Continued from 6/5/24)

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.

6. 23CV03209 Roles, Danny et al v. Hughes, Joseph B et al.

EVENT: Demurrer to Complaint (Continued from May 8 and May 22)

The demurrer is sustained with leave to amend as to all causes of action.

On demurrer we are required to liberally construe the complaint, with all reasonable inferences favorable to Plaintiff. (See *Perez v. Golden Empire Transit Dist.*, (2012) 209 Cal. App. 4th 1228, 1239) In reviewing the Complaint as a whole, the Court infers the Complaint to allege Defendant increased a risk, specifically the risk that decedent was suicidal.

On demurrer, we are required to assume the truth of all allegations properly plead. (*Perez*, supra at p. 1235) The allegation that Defendant knew decedent was suicidal is critical. Assuming for purposes of demurrer the allegation is true, Defendant increased this risk by allegedly failing to properly secure the firearm. (Again, on demurrer we must assume as true that Defendant failed to properly secure the firearm)

Although at first blush it appeared *Nally v. Grace Community Church*, (1988) 47 Cal. 3d 278 was dispositive, upon closer review there is an important distinction between *Nally* and this case – *Nally* did not involve allegations that the church and its pastors increased the risk of harm. Rather plaintiffs’ theory in *Nally* was that defendants owed a duty to prevent harm.

To the extent the Complaint in this case attempts to assert Defendant owed a duty to prevent harm, the Complaint fails to allege facts demonstrating a special relationship between decedent and Defendant. However, if there are sufficient facts pled or that can be inferred reasonably to state a cause of action under any theory, the demurrer must be overruled. (*Lin v. Coronado*, (2014) 232 Cal. App. 4th 696.

As the Court noted at the outset, the potentially viable theory is that Defendant increased the risk of harm by leaving the firearm unsecured.

Brown v. USA Taekwondo, (2021) 11 Cal. 5th 204, 214 – 216:

We have explained that the law imposes a general duty of care on a defendant only when it is the defendant who has “created a risk” of harm to the plaintiff, including when “the defendant is responsible for making the plaintiff’s position worse.”

...

The law does not impose the same duty on a defendant who did not contribute to the risk that the plaintiff would suffer the harm alleged. Generally, the “person who has not created a peril is not liable in tort merely for failure to take affirmative action to assist or protect another” from that peril.

...

Where the defendant has neither performed an act that increases the risk of injury to the plaintiff nor sits in a relation to the parties that creates an affirmative duty to protect the plaintiff from harm, however, our cases have uniformly held the defendant owes no legal duty to the plaintiff.

[Internal citations omitted]

The Court interprets *Brown* as outlining two *independent* duty theories: (1) a duty when defendant has increased the risk of harm; and (2) a duty to prevent harm when a special relationship exists between Defendant and decedent. Here, the Complaint appears to allege Defendant is “responsible for making plaintiff’s position worse” (*Brown*, supra) by failing to properly secure the firearm despite allegedly knowing decedent was suicidal. Under this theory, *Brown* does not appear to require a special relationship.

Although the Court finds *Brown* instructive as to viable duty theories, the facts in *Brown* are distinguishable and did not involve suicide. As Defendant noted, there appears to be no case law addressing the facts of this case. There is no case law addressing the alleged increase of risk in the context of suicide.

As a result, the Court must analyze the *Rowland* factors. The Court declines delving into the details of that analysis at this time. In applying the *Rowland* factors, the Court finds imposing liability under these alleged circumstances would be proper as a matter of public policy if

decedent had permission to be on the premises. The Complaint as currently constructed is silent as to whether decedent had permission to be on the property at the time of the incident. Consequently, the demurrer is sustained with leave to amend.

Plaintiff shall amend within 20 days of this order. Defendant shall prepare and submit the form of order.

7. **24CV01392 In re: Brown, Trace Whyatt**

EVENT: Change of name (Adult)

The Court is in receipt of the proof of publication and will sign the decree provided.

8. **24CV01400 In re: Wilkins, Andrea Livingood**

EVENT: Change of name (Adult)

The Court is in receipt of the proof of publication and will sign the decree provided.

9. **24CV01429 In Re: the Petition of DV**

EVENT: Petition for Approval of Transfer of Structured Settlement

The Court will hear from counsel. No further filings have been received since the last hearing.

10. 24CV01502 In Re: the Petition of DV

EVENT: Petition for Approval of Transfer of Structured Settlement

The Court will conduct a hearing.

11. 24CV01218 In re: Boxerbaum, Rione Renee

EVENT: Change of name (adult) (Continued from 6/12/24)

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

12. 23CV02805 Brooks, James R et al v. Schrader, Eugene L et al.

EVENT: Application Requesting an Expedited Prove-Up Hearing

Application Requesting an Expedited Prove-Up Hearing is hereby scheduled for the court trial calendar on July 22, 2024 at 8:30am. A Trial Readiness Conference is scheduled for July 17, 2024 at 10:00am.