

**Judge Benson – Law & Motion – Wednesday, July 10, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1. 23CV03115 Dryden, Donna et al. v. Tri Counties Bank

EVENT: Plaintiffs' Motion to Consolidate and Appoint Interim Class Counsel

Plaintiffs' Motion to Consolidate and Appoint Interim Class Counsel is GRANTED. Defendant shall file a responsive pleading within 60 days of the date of this order. The Court will sign the proposed order with the noted modification.

2. 24CV00043 TD Bank USA, NA v. Touch, KC

EVENT: Plaintiff's Motion to Deem Matters Admitted

Plaintiff's Motion to Deem Matters Admitted is GRANTED. The Court will sign the proposed order.

3-4. 24CV00299 Armatis, Katrina v. Goldstein, Rachel Lynn

EVENT: (1) Defendant AirBNB Inc.'s Motion to Compel Arbitration and For Stay of Proceedings Pending Disposition of this Motion and Arbitration

(2) Case Management Conference

Defendant Airbnb Inc.'s Motion to Compel Arbitration and Stay Proceedings is GRANTED. This case is stayed in its entirety pending arbitration. A Case Management Conference is hereby scheduled for December 11, 2024 at 10:30am.

5. 24CV00970 In re: MacNeil, Kaci

EVENT: Change of Name (minor) (Continued from 5/22/24)

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

6-7. 22CV02404 Guinn, Lisa v. Graham Solar Systems, Inc. et al.

EVENT: (1) Motion to Be Relieved as Counsel (Defendant Nicholas Graham)

(2) Motion to Be Relieved as Counsel (Defendant Graham Solar Systems Inc.)

(Continued from 6/12/24)

Both motions to be relieved as counsel are granted. The court will sign the proposed orders. The orders will become effective upon the filing of the proof of service indicating Defendants were served with the order.

8-10. 19CV01226 Randolph, Teresa v. Trustees of the California State University et al.

EVENT: (1) Defendant Board of Trustees of the California State University's Motion to Compel Further Responses to Requests for Admissions and for Sanctions;

(2) Defendant Board of Trustees of the California State University's Motion to Compel Responses to Requests for Production of Documents and for Sanctions;

(3) Defendant Board of Trustees of the California State University's Motion to Compel Responses to Interrogatories and for Sanctions

Continued from 6/26/24

These discovery motions are unopposed.

Defendants' Motions are granted in their entirety to the extent Plaintiff's verifications do not comply with the Code of Civil Procedure as they are not under penalty of perjury. Plaintiff is ordered to provide further code complaint verifications within 10 days of notice of this order.

As to other issues, the Court rules as follows.

Production of Documents

Request No. 103 – As it appears Plaintiff has failed to follow through with her promise to produce documents, Plaintiff is ordered to produce responsive documents within 10 days of notice of this order.

Request No. 105 – The objections are untimely and must be removed. As to the adequacy of the response, the response seems to indicate Plaintiff cannot comply, but the response includes the qualifier “nearly all” documents were destroyed. Thus, it is unclear whether Plaintiff has any responsive documents. Further response is required.

Request No. 107 - The objections are untimely and must be removed. As to the adequacy of the response, the response seems to indicate Plaintiff cannot comply, but the response includes the qualifier “nearly all” documents were destroyed. Thus, it is unclear whether Plaintiff has any responsive documents. Further response is required.

Special Interrogatories, Set Two

Interrogatory No. 26 – Although Plaintiff's alleged inconsistent statements might potentially be considered in other contexts, the Court finds the response to this question is sufficient for purposes of the discovery statutes.

Interrogatory No. 27 – Unlike Interrogatory No. 26, this response is evasive considering it asks whether Plaintiff attempted to contact Ms McRae. A response of “unknown” to that request is

evasive. It is within her personal knowledge, and she either attempted to contact her, or she didn't. Further response is required.

Form Interrogatories

Interrogatory No. 217.1 – To the extent Plaintiff seeks to respond by employing CCP section 2030.230 by referring to other documents, the Court finds the subject requests are not the type of requests necessitating a summary. Even if they were, simply making a general referral to deposition transcript is not a sufficiently specific response for purposes of section 2030.230.

Special Interrogatories, Set Three

Interrogatory No. 36 - Similar to interrogatory 217.1, general reference to deposition transcripts and documents produced is simply not specific enough.

Plaintiff is ordered to provide further substantive responses as discussed within 10 days of notice of this order. Defendant is awarded sanctions in the amount of \$ 2,950.00.

11. 24CV01429 In re: the Petition of DV

EVENT: Petition for Approval of Transfer of Structured Settlement

(Continued from 6/26/24)

The Court will conduct a hearing. The Court was under the impression that counsel was going to dismiss this petition.

12. 24CV01502 In re: the Petition of DV

EVENT: Petition for Approval of Transfer of Structured Settlement

(Continued from 6/26/24)

The Court will conduct a hearing.

13. 23CV03209 Roles, Danny et al v. Hughes, Joseph B et al.

EVENT: Demurrer to Complaint (Continued from May 8, May 22, and June 26)

Demurrer to Complaint is OVERRULED. Defendant shall file and serve an answer within 20 days of this order.

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 created a risk of harm by leaving a firearm unsecured despite allegedly knowing decedent was suicidal and having permission to be on the premises.

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 or created an unreasonable risk of injury. 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.

Under general negligence principles, of course, a person ordinarily is obligated to exercise due care in his or her own actions so as not to create an unreasonable risk of injury to others, and this legal duty generally is owed to the class of persons who it is reasonably foreseeable may be injured as the result of the actor's conduct. (*Lugtu v. California Highway Patrol* (2001) 26 Cal.4th 703, 716) [Emphasis Added]

The complaint has alleged sufficient facts under general negligence principles. Allegedly, Defendant created an unreasonable risk by leaving a firearm unsecured despite knowing decedent was suicidal. Additionally, upon further review, the Complaint alleges decedent was on the property with permission. Thus, it is arguably reasonably foreseeable that

decedent, who was allegedly known to Defendant as suicidal and was on the property with permission, could harm himself if a firearm was left unsecured.

Plaintiff shall prepare and submit the form of order consistent with this ruling within 2 weeks.