

TENTATIVE RULINGS

*** If you are requesting oral argument, please call 530-532-7125***

1-2. 22CV03060 D.N. v. DOE 1 et al.

EVENT: (1) Defendant County of Butte’s Demurrer to Plaintiff D.N.’s Complaint, Or, In the Alternative, Motion to Stay Action

(2) Defendant County of Butte’s Motion to Strike Portions of Plaintiff D.N.’s Complaint

Demurrer

Defendant’s Request for Judicial Notice is GRANTED.

Preliminarily, the Court takes judicial notice of the recently published First Appellate District decision *West Contra Costa Unified School Dist. V. Superior Court* (2024) 103 Cal.App.5th 1243. In the opinion, the First District rejected the argument that AB 218 constitutes an unconstitutional gift of public funds. (*Id at p. 1252*) Pursuant to *West Contra Costa Unified School District*, Defendant’s demurrer on that ground is overruled.

Regarding Defendant’s objection pursuant to CRC 3.1113, the Court notes Defendant raised a complex issue (Constitutionality of AB 218) which was, at the time the opposition was filed, a matter of first impression with no published decision then on point. Therefore, it is not surprising Plaintiff extensively analyzed the issue in the opposition. Further, the page limit was only exceeded by two pages. The Court notes Defendant’s objection, however, the objection is overruled.

Fourth Cause of Action – Negligent Hiring Supervision and Retention

The demurrer is OVERRULED.

As Plaintiff noted, *C.A. v. William S. Hart Union High School Dist.*, (2012) 53 Cal. 4th 861 provides a basis for vicarious liability for negligent hiring, retention and supervision. Regarding Defendant’s duplication argument, while there may be some overlap between the fourth and sixth cause of actions, the causes of action do not appear to be duplicative.

Regarding Defendant’s argument that the cause of action fails to allege sufficient facts, the moving papers did not raise this issue in the points and authorities. We will not ordinarily consider issues raised for the first time in a reply brief. (*United Grand Corp. v. Malibu Hillbillies, LLC*, (2019) 36 Cal. App. 5th 142, 158) Because the issue was not properly raised in the moving papers, the Court is not considering the issue at this time.

Fifth Cause of Action

The demurrer is sustained with leave to amend for Plaintiff to specifically allege Penal Code Section 11166.

As an aside, the Court disagrees with Defendant's contention that Penal Code Section 11166 does not create a private right of action. Defendant cites a Federal District Court case, *A. H. v. W. Contra Costa Unified Sch. Dist.* (N.D. Cal. 2023) 2023 WL 6390621, in support of its contention. In finding that violation of a criminal statute, *A.H.* relies on the Federal Supreme Court decision in *Chrysler Corp. v. Brown*, (1979) 441 U.S. 281. However, it is important to note in *Chrysler*, the underlying criminal statute was a federal criminal statute. This is important because, ordinarily, state courts have the last word on interpretation and application of state law.

Viking River Cruises, Inc. v. Moriana, (2022) 596 U.S. 639, 664

Thus, the Court reasons, based on available guidance from California courts, that *Moriana* lacks "statutory standing" under PAGA to litigate her "non-individual" claims separately in state court. *Ibid.* Of course, if this Court's understanding of state law is wrong, California courts, in an appropriate case, will have the last word.

[Emphasis Added]

It appears California Courts take a more expansive view in implying a private right of action for violation of a criminal statute. Violation of a criminal statute embodying a public policy is generally actionable even though no specific civil remedy is provided in the criminal statute. (*Angie M. v. Superior Court*, (1995) 37 Cal. App. 4th 1217, 1224) Because the question involves state law, the Federal rule is superseded by California Court case law.

Motion to Strike

Defendant's Request for Judicial Notice is GRANTED.

Defendant's Motion to Strike is Granted in Part. The motion is granted as to all references to WIC sections 16001.9, 16501.5, and CDSS Regulations Nos. 31-125.1, 31-205, 31-310, 31-320, and 31-520.

Regarding WIC § 16501.1, the motion is DENIED. The Court finds WIC § 16501.1 distinguishable from the statute analyzed in *Creason v. Department of Health Services* (1998) 18 Cal.4th 623. The statute in *Creason* provided discretion in formulating "appropriate testing standards." Conversely, WIC § 16501.1(c) actually provides standards.

The Court finds the standards articulated in WIC § 16501.1(c) include both purely discretionary standards ("most appropriate setting") and standards which implicate a minimal level of mandatory obligation ("least restrictive" and familylike"). If the decision maker were to testify that he/she simply picked a family for placement without applying the standards set forth in (c), depending on the facts it is possible he/she failed to comply with the mandatory component of the statute. While the chances of that may be remote, we cannot adjudicate the possibility at the pleading stage. As Plaintiff noted whether an employee normally engages in discretionary activity is irrelevant if, in a given case, the employee did not render a considered decision.

Plaintiff shall amend within 20 days of notice of this order.

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

3. 23CV00238 State Farm Automobile Insurance Company v. Jacobs, Janae

EVENT: Motion to Enforce Settlement

Motion to Enforce Settlement is DENIED.

CCP § 664.6. Judgment pursuant to terms of settlement

(a) If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

[Emphasis Added]

Defendant's motion must be denied for at least (2) reasons. First, the agreement does not include any language stating that the court has retained jurisdiction over the agreement. Secondly, according to Plaintiff, there was no pending litigation at the time the agreement was entered into. The agreement was entered into in May 2022 and this case was filed in January 2023. Consequently, under these circumstances the Court has no authority to enforce the agreement under CCP § 664.6.

Plaintiff shall prepare a form of order consistent with this ruling within 2 weeks.

4. 24CV01992 In re: Mojica, Stacey Rangel

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.

5-6. 23CV01923 Greenberg, Stuart et al v. Jacques, Michael et al.

EVENT: (1) Plaintiffs' Second Request for Preliminary Injunction

(2) Plaintiffs' Motion to Compel Further Responses to Request for Admissions (Michael Jacques); Request for Admissions (AOIS); Special Interrogatories (Michael Jacques); Special Interrogatories (AOIS); Form Interrogatories (Michael Jacques); Form Interrogatories (AOIS); Production of Documents, Set One (Michael Jacques); Production of Documents (AOIS); and Production of Documents, Set Two (Michael Jacques)

Preliminary Injunction

Plaintiffs' request for a mandatory preliminary injunction is GRANTED.

Plaintiffs' Request for Judicial Notice is GRANTED.

The Court rules on evidentiary objections as follows.

Objections to Plaintiffs' Counsel's Declaration

Overruled: 1,5, and 6

Sustained: 2,3, and 4

Objections to Stuart Greenberg's Declaration

Overruled: 1,2,4,5

Sustained: 3 (As to Mr. Murray's statement – the remainder is overruled)

Objections to Johnny Matthews' Declaration

Overruled: 1,2,3,5

Sustained: 4

Objections to Stephen Murray's Declaration

Overruled: 3

Sustained: 1,2

Plaintiffs Evidentiary Objection - Sustained as to the sentence in bold.

The Court's previous order noted that the burden on the moving party seeking a mandatory injunction is substantial and further noted it is reticent to involve itself in a dispute involving business decisions in the context of a mandatory injunction.

However, the Court finds several circumstances in the case compelling. The Defendants acknowledge the LLC is out of money, yet they fail to explain why the Graystone property has not been sold. Defendants do not dispute that the Graystone property has been ready for sale since 2021, yet Defendants have sat on their hands.

The Court finds Defendants' failure to act egregious in light of the LLC's dire financial condition. Although the Court is reticent to involve itself in business decisions, failing to pursue the sale of an asset such as Graystone while the financial condition of the business is deteriorating goes beyond business judgment. There is no plausible defense for Defendants' failure to act. The situation is further exacerbated by the fact that Plaintiff drew this issue to Defendants' attention when Plaintiffs filed and served the initial motion of preliminary injunction back at the beginning of the year. Ostensibly, Defendants despite being put on notice, have still elected not to proceed with the Graystone property.

Similarly, Defendants have failed to act regarding the Pentz property despite it being ready for sale (other than needing carpet installed) since March 2023.

Defendant does not dispute the mounting creditor claims against the LLC, but has done nothing with respect to the Graystone and Pentz properties. This is substantial evidence of Defendants' abandonment of their duties as managing shareholder. The Court finds this evidence demonstrates a likelihood Plaintiff will succeed in his claim to disassociate Defendant AOIS pursuant to Corp. Code § 17706.02(e)(1), (2), and (3).

Discovery Motions

Preliminarily, regarding the privacy concerns raised in connection with this motion, the parties are ordered to meet and confer regarding a protective order. If the parties cannot agree to the form of a protective order within 3 weeks, each party shall submit a proposed protective order to the Court and the Court will select one.

Plaintiffs' Request for Judicial Notice is GRANTED.

Request for Admissions – Truth of Facts – Michael Jacques

The motion is DENIED as to all requests. The law does not require a futile act. (*Crawford v. JPMorgan Chase Bank, N.A.* (2015) 242 Cal.App.4th 1265, 1274 citing *Sutherland v. Barclays American/Mortgage Corp.* (1997) 53 Cal.App.4th 299, 313) In his moving papers, Plaintiffs do not challenge the substantive responses, he only challenges the interposed objections. In this Court's opinion, such a motion is an exercise in futility. Plaintiffs' contention that the objections should be removed so that the response "can be relied on without attempts to withdraw it based on improper objections" is unpersuasive. The statute pertaining to withdrawal or amendment (CCP § 2033.300) relates to substantive modifications. The Court fails to see why Plaintiffs' request would have an effect one way or the other on a motion under CCP § 2033.300.

Request for Admissions – Truth of Facts –AOIS

Again, Plaintiffs are seeking only to challenge the objections, not the substantive responses. For the same reasons, the motion is DENIED as to all requests.

Request for Admissions – Genuineness of Documents – AOIS

Again, Plaintiffs are seeking only to challenge the objections, not the substantive responses. For the same reasons, the motion is DENIED as to all requests.

Special Interrogatories – Jacques

Regarding many of the Special Interrogatories, as with Request for Admissions, Plaintiffs are seeking only to challenge the objections, not the substantive responses. For the same reasons, the Motion is DENIED as to these requests, which are:

1,2,3,4,5,6,9,10, and 11.

The Court notes Defendant did not provide a substantive response for some of these requests. However, Plaintiffs have not, in his motion, asked the Court to compel a further substantive response. Rather plaintiffs ask to remove the objections so that “the response stands properly.” The Court declines to expand the scope of the motion beyond what was requested. Without the objections, there is no functional response. Consequently, the motion as to these requests is futile because there will be no change to the substantive response.

Plaintiffs have challenged the substantive responses of a few Special Interrogatories. Those requests are: 7,8, and 12.

Interrogatory no. 7: The term “significant” in the response is evasive. The request was not limited to “significant roles”. Defendant shall provide a further response identifying all roles, if any, after resignation. The Court finds the objections unsubstantiated and therefore must be removed in light of the deficiencies in the substantive response.

Interrogatory no. 8: The term “bulk” is evasive. The request seeks any and all business dealings/financial transactions. Defendant shall provide a further response clarifying any other matters outside Defendant’s real estate agent services. The Court finds the objections unsubstantiated and therefore must be removed in light of the deficiencies in the substantive response.

Interrogatory no. 12: The motion is DENIED. The Court finds the substantive response is complete and not evasive.

Special Interrogatories – AOIS

Regarding many of the Special Interrogatories, as with Request for Admissions, Plaintiffs are seeking only to challenge the objections, not the substantive responses. For the same reasons, the Motion is DENIED as to these requests, which are:

1,2,3,4,5,6,9

Plaintiffs have challenged the substantive responses of some of the Special Interrogatories. Those requests are: 7,8,10,11 and 12

Interrogatory no. 7: The term “significant” in the response is evasive. The request was not limited to “significant roles”. Defendant shall provide a further response identifying all roles, if any, after resignation. The Court finds the objections unsubstantiated and therefore must be removed in light of the deficiencies in the substantive response.

Interrogatory no. 8: The term “bulk” is evasive. The request seeks any and all business dealings/financial transactions. Defendant shall provide a further response clarifying any other matters outside Defendant’s real estate agent services. The Court finds the objections unsubstantiated and therefore must be removed in light of the deficiencies in the substantive response.

Interrogatory 10 -12: Defendant provides an objection only response. The Court finds the objections are unsubstantiated. Defendant shall provide a further substantive response and remove the objections.

Special Interrogatories – AOIS – Set Two (Interrogatory 13 & 14)

The motion only seeks to remove objections and does not challenge the substantive response. The motion is denied for the aforementioned reasons.

Form Interrogatories - Jacques

The motion is granted in its entirety. Defendant has provided objection only responses to these requests. Plaintiffs (although he could have been clearer) are challenging the substance of the response (or lack thereof) in addition to the interposed objections. Defendant shall remove the objections (the Court finds they are unsubstantiated) and provide substantive responses.

Form Interrogatories - AOIS

Nos. 8.1,8.4,8.7,8.8,9.1, and 9.2

The motion is denied. Defendants have not filed a cross-complaint. There is no pleading on file indicating Defendants are seeking any type of financial remuneration. Although the

standard of relevance is low in discovery, these requests are simply not relevant based on the current pleadings. Further the term “INCIDENT” must be clearly defined. Ostensibly the facts surrounding this dispute spans years.

No. 17.1

The motion is granted. Defendant has provided objection only responses to these requests. Plaintiffs (although he could have been clearer) are challenging the substance of the response (or lack thereof) in addition to the interposed objections. The Court finds the objections are unsubstantiated. To the extent Defendant claims certain information is privileged, a privilege log is required. Defendant shall remove all objections (other than privilege) and provide a substantive response.

Nos. 50.1 -50.6

The motion is granted in its entirety. Defendant has provided objection only responses to these requests. Plaintiffs (although he could have been clearer) are challenging the substance of the response (or lack thereof) in addition to the interposed objections. Defendant shall remove the objections (the Court finds they are unsubstantiated) and provide substantive responses.

Production of Documents – Michael Jacques

No. 1 – The motion is granted, however the Court finds the request is overbroad as to time. The request is hereby limited in time to 2018-present. The remainder of Defendant’s objections are unsubstantiated and shall be removed. Defendant shall provide a further response providing all documents within his possession, custody and control consistent with CCP § 2031.220 and within the prescribed timeframe.

No. 2 – The motion is granted. The objections are unsubstantiated and shall be removed. Defendant shall provide a further substantive response providing all documents within his possession, custody and control consistent with CCP § 2031.220.

Nos. 3,4,5

The motions are granted. The objections are unsubstantiated and shall be removed. Defendant must provide further responses indicating whether there are any other documents in addition to QuickBooks that are responsive to the request in Defendant’s possession, custody, or control consistent with CCP § 2031.220.

No. 6

The motion is granted, however, the Court limits the time period from January 1, 2018 to present. The remaining The objections are unsubstantiated and shall be removed. Defendant must provide further responses indicating whether there are any other documents in addition to QuickBooks that are responsive to the request in Defendant’s possession, custody, or control consistent with CCP § 2031.220.

Nos. 7,8

The motion is denied. The responses are code compliant.

No. 9

The motion is granted. "... because Responding Party, as an individual, has not entered into loans or investments with GREENBERG" is unresponsive. The request is not limited to loans or investments with Greenberg.

The Court does find the request is overbroad as to time. I would limit it to 2018 – present. All other objections are unsubstantiated and shall be removed. Defendant shall provide a further substantive response providing all documents within his possession, custody and control consistent with CCP § 2031.220.

No. 10

The motion is denied. The request is essentially duplicative of no. 7.

Nos. 11 -15

The motions are denied.

Nos. 16 - 19

The motion is granted. The objections are unsubstantiated and shall be removed.

The Court again notes that a privilege log must be provided for any privilege assertion. Defendant shall provide a further substantive response providing all documents within his possession, custody and control consistent with CCP § 2031.220.

No. 20

The motion is granted. The objections are unsubstantiated and shall be removed. Defendant shall provide a further substantive response providing all documents within his possession, custody and control consistent with CCP § 2031.220.

No. 21

The motion is denied.

No. 22

The motion is granted. The objections are unsubstantiated and shall be removed. Defendant shall provide a further substantive response providing all documents within his possession, custody and control consistent with CCP § 2031.220.

Production of Documents – AOIS

No. 1 – The motion is granted, however the Court finds the request is overbroad as to time. The request is hereby limited in time to 2018-present. The remainder of Defendant's objections are unsubstantiated and shall be removed. Defendant shall provide a further response providing all documents within his possession, custody and control consistent with CCP § 2031.220 and within the prescribed timeframe.

No. 2 – The motion is granted. The objections are unsubstantiated and shall be removed. Defendant shall provide a further substantive response providing all documents within his possession, custody and control consistent with CCP § 2031.220.

Nos. 3,4,5

The motions are granted. The objections are unsubstantiated and shall be removed. Defendant must provide further responses indicating whether there are any other documents in addition to QuickBooks that are responsive to the request in Defendant's possession, custody, or control consistent with CCP § 2031.220.

No. 6

The motion is granted, however, the Court limits the time period from January 1, 2018 to present. The remaining The objections are unsubstantiated and shall be removed. Defendant must provide further responses indicating whether there are any other documents in addition to QuickBooks that are responsive to the request in Defendant's possession, custody, or control consistent with CCP § 2031.220.

No. 7

The motion is granted. Although Defendant provided QuickBooks, the request seeks "All Documents". Plaintiffs' contention that QuickBooks can be manipulated is well taken. The objections are unsubstantiated and shall be removed. Defendant must provide further responses indicating whether there are any other documents in addition to QuickBooks that are responsive to the request in Defendant's possession, custody, or control consistent with CCP § 2031.220.

No. 8

The motions are granted. The objections are unsubstantiated and shall be removed. Defendant must provide further responses indicating whether there are any other documents in addition to QuickBooks that are responsive to the request in Defendant's possession, custody, or control consistent with CCP § 2031.220.

No. 9

The motion is granted. The request is not limited to loans or investments with Greenberg. The Court does find the request is overbroad as to time. I would limit it to 2018 – present. All other objections are unsubstantiated and shall be removed. Defendant must provide further responses indicating whether there are any other documents in addition to QuickBooks that are responsive to the request in Defendant's possession, custody, or control consistent with CCP § 2031.220.

No. 10

The motion is denied. The request is essentially duplicative of no. 7.

Nos. 11,12, and 15

The motions are denied.

Nos. 16 - 19

The motions are granted. The objections are unsubstantiated and shall be removed. The Court again notes that a privilege log must be provided for any privilege assertion. Defendant shall provide a further substantive response providing all documents within his possession, custody and control consistent with CCP § 2031.220.

Nos. 20,21,22

The motions are denied.

No. 23

The motion is granted. The objections are unsubstantiated and shall be removed. Defendant shall provide a further substantive response providing all documents within his possession, custody and control consistent with CCP § 2031.220.

Production of Documents – Michael Jacques – Set Two

No. 1

The motion is granted, however the Court finds the request is overbroad as to the inclusion of “whereabouts”. The term “whereabouts” is stricken. The remainder of Defendant’s objections are unsubstantiated and shall be removed. Defendant shall provide a further response providing all documents within his possession, custody and control consistent with CCP § 2031.220 and within the prescribed timeframe.

No. 2

The motion is granted, however the Court finds the request is overbroad in several respects. As it pertains to vacation, information shall only be provided for vacations lasting four or more days. Regarding travel generally, only business travel that exceeds 100 miles round trip.

Defendants shall provide further amended responses consistent with this ruling within 20 days.

The request for sanctions is denied.

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

7. 23CV02820 Hurtado, Allix v. United States Bakery et al.

EVENT: Defendant United States Bakery’s Motion for Admitting Rachel Timmins to Appear Pro Hac Vice

Defendant United States Bakery’s Motion for Admitting Rachel Timmins to Appear Pro Hac Vice is continued to November 20, 2024 at 9:00am. According to the Court’s calculation, the moving papers were served 13 court days prior to the hearing. As a result,

notice does not comply with CCP § CCP 1005 et seq. Additionally, the proof of service does not demonstrate that the State Bar of California was served with the moving papers as required by CRC 9.40.

Defendant shall notify the parties of the new hearing date and shall file a proof of service indicating the State Bar has been served with the moving papers and the new hearing date.

8. 24CV02555 In re: Noland, Dana Michael Sweetpea Bluebird Redwood Wheat

EVENT: Change of name (Adult) (Continued from 10/2/24)

There is no proof of publication on file. If there is no proof of publication on file by the hearing and there are no appearances, the Petition will be dismissed without prejudice.