

Judge Benson – Law & Motion – Wednesday, March 12, 2025 @ 9:00 AM
TENTATIVE RULINGS

1. 22CV01168 O’Rear, Rick v. Masula, DC, Larry E. et al.

EVENT: Defendant Larry E. Masula, D.C. and Larry E. Masula Chiropractic, Inc.’s Motion For Summary Judgment

Defendant Larry E. Masula, D.C. and Larry E. Masula Chiropractic, Inc.’s Motion For Summary Judgment is GRANTED and is unopposed. Pursuant to the declaration of Wayne Whalen, D.C., Defendants have met their initial burden regarding the standard of care and causation elements.

The Court will sign the proposed order.

2. 23CV00172 Fletcher, Dustin v. Alvarez, Maria G

EVENT: Motion to be Relieved as Counsel (Plaintiff’s Counsel)

Motion to be Relieved as Counsel is GRANTED. The Court will sign the proposed order. The order will become effective upon the filing of a proof of service indicating Plaintiff was served with the order.

3. **23CV00827 Binion, Steven v. Pacific Gas & Electric Company**

EVENT: Defendant's Second Motion for Judgment on the Pleadings

Defendant's Second Motion for Judgment on the Pleadings is GRANTED and is unopposed. The Court takes judicial notice of the Court's January 15, 2025 order deeming request for admissions set two, admitted. Those admissions admit no retaliation occurred and no adverse employment action occurred.

A complaint's allegations may be disregarded when they conflict with judicially noticed discovery responses. (*Bockrath v. Aldrich Chemical Co.*, (1999) 21 Cal.4th 71, 83) The admissions preclude the remaining causes of action. The Court will sign the proposed order.

4. **23CV02654 Feng, Zhu v. Xie, John et al.**

EVENT: Motion to Be Relieved as Counsel

The Court will hear from counsel. The Judicial Council form requires counsel to *confirm* the last known address. One of the means authorized by the Judicial Council is mail, return receipt requested. Although the moving papers indicate the papers were mailed, they do not indicate the papers were mailed, return receipt requested.

5. **23CV02738 Hawks, Dixianne v. Bidwell Title and Escrow Company herein called Trustee of the Ida Robinson Revocable Trust Dated August 29, 1989 et al.**

EVENT: Lyle Don Robinson's Motion to Set Aside Default

Plaintiff's contention that the Court lacks jurisdiction to consider this motion is without merit. The previous order clearly indicated the motion was denied without prejudice.

Code of Civil Procedure § 473(b) requires the moving party file a proposed answer along with the moving papers. This motion is continued to April 30, 2025. Mr. Robinson shall file with the Court and serve Plaintiff with a proposed answer by April 1, 2025. The Court shall mail notice of the April 30 hearing to Plaintiff. The Court will prepare the order.

6. 24CV03972 Cummings-Violich, Inc v. Stefanelli, Ryan

EVENT: Motion for Judgment on the Pleadings

Motion for Judgment on the Pleadings is DENIED. Judgment on the pleadings must be denied where there are material factual issues that require evidentiary resolution. (*Schabarum v. California Legislature*, (1998) 60 Cal. App. 4th 1205, 1216) Although the Answer appears to admit many material allegations, it specifically denies damages, among other forms of requested relief. The Answer's denial of damages is a material factual issue that requires evidentiary resolution.

The standard for granting a motion for judgment on the pleadings is essentially the same as that applicable to a general demurrer. (*Schabarum, supra*, at p. 1216) When liberally construing a pleading, courts give its allegations an objectively reasonable interpretation, reading it as a whole and its parts in their context. (*Davis v. Fresno Unified School Dist.* (2020) 57 Cal.App.5th 911, 926)

Although it is technically true Defendant did not dispute paragraph 4, in reading the Answer as a whole, the reasonable interpretation is Defendant contests the amount of damages claimed.

Defendant shall prepare and submit a form of order within 2 weeks.

7. 25CV00075 In re: Funk, Anna Rose

EVENT: Change of name (adult)

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

8. 24CV01241 Butte Credit v. Ruiz Ramirez, Juan Orlando

EVENT: Opposition to Claim of Exemption

The Court will conduct a hearing. As of this writing, the Court notes it is missing page 2 of the claim of exemption.