

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

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

EVENT: Plaintiffs' Motion for Summary Adjudication of all of Defendant Li Poa M.D.'s Affirmative Defenses

Plaintiffs' Motion for Summary Adjudication of all of Defendant Li Poa M.D.'s Affirmative Defenses is GRANTED in PART and DENIED in PART.

Preliminarily, the reply attempts to introduce new evidence. The general rule is new evidence is not permitted in the reply papers, see *Jay v. Mahaffey*, (2013) 218 Cal. App. 4th 1522, 1537-1538. The inclusion of additional evidentiary matter within the reply should only be allowed in the exceptional case ... and if permitted, the other party should be given the opportunity to respond. (*Id*)

Considering the impending trial date, the Court declines considering the new evidence.

Defense nos. 1 & 2 (Comparative Fault)

The motion is DENIED.

A moving defendant may rely on factually devoid discovery responses to shift the burden of proof. (*Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 590) However, case law suggests an exception applies when the information is not within the personal knowledge or observation of the responding party. (See *Villa v. McFerren* (1995) 35 Cal.App.4th 733, 749)

As it pertains to comparative fault, and considering the circumstances of this case involving multiple defendants and events spanning over a decade, the reasonable conclusion is Defendant lacked personal knowledge concerning many of the other relevant events in this case. As a result, the Court finds Defendant's factually devoid discovery responses are not enough to shift the burden to Defendant.

Even if the burden shifted, Defendant has provided evidence from Plaintiffs' own expert suggesting other named Defendants in this case are at fault. Consequently, a triable issue of fact exists.

The *D'Amico* rule is inapplicable. The *D'Amico* rule only applies where there has been a clear and unequivocal admission. (*Mackey v. Trustees of California State University* (2019) 31 Cal.App. 640, 658.) Defendant's discovery responses do not amount to a clear and unequivocal admission. Rather, the responses include the qualification that Defendant lacks personal knowledge and information.

Defense no. 13 (Statute of Limitations)

The Motion is DENIED.

The personal knowledge exception consistent with *Villa, supra*, also applies to the Statute of Limitations defense. It is fair to say that the point in time in which Plaintiffs and/or decedent discovered their “injury” for purposes of CCP § 340.5 is a matter not within Dr. Poa’s personal knowledge, unless of course there was evidence that Dr. Poa had communicated to decedent or Plaintiffs and informed them of the injuries in question. Because there is no evidence of that, Defendant’s factually devoid discovery responses are not enough to shift the burden to Defendant.

Further, because the Court is not considering the evidence presented in the reply, there is no evidence before the Court demonstrating “the evidence is susceptible to only one reasonable conclusion.”

Defense no. 9 – Duty to Mitigate Damages

The motion is DENIED.

The Court agrees with Plaintiffs – this is an affirmative defense. However, for similar reasons previously discussed, this issue falls into the lack of personal knowledge exception. Therefore, Defendant’s factually devoid discovery response is not enough to shift the burden to Defendant.

Defense no. 17 – Business and Professions Code 2395, 2396, and 2397

The Motion is GRANTED. The Court agrees with Plaintiffs – this is an affirmative defense. Ostensibly, Dr. Poa would have personal knowledge of any emergency conditions in existence as it pertains to his conduct. Thus, the lack of personal knowledge exception is inapplicable, and his factually devoid discovery response is sufficient to shift the burden. As Defendant has provided no evidence demonstrating a triable issue of material fact, the motion is GRANTED.

Defense nos. 3,5,6,7 and 8

The Motion is GRANTED. The Court accepts Defendant’s withdrawal of these affirmative defenses.

Defense nos. 4,10,11,12,14,15 and 16

The Motion is DENIED. CCP §437c(f)(1) provides a motion for summary adjudication may concern causes of action, affirmative defenses, claims of damages, or one or more issues of duty. The reply contends these “affirmative defenses” are not actually affirmative defenses. However, Plaintiffs fail to identify any other applicable category under CCP §437c(f)(1) which could authorize summary adjudication of these matters. Consequently, to the extent any of

these “defenses” are improper (Plaintiffs have not specifically identified and argued how any of these defenses are improper), summary adjudication is not the appropriate procedure.

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

2. **22CV00822 Grimes, Emma v. Kennemer, Franklin R et al.**

EVENT: Order to Show Cause as to Liliuokalani Haslop for Failure to File a Judgment

The Court will conduct a hearing.

3. **20CV01781 Leland, Morrissey & Knowles, LLP v. Bailey, Catherine et al.**

EVENT: Motion for Terminating Sanctions or, in the Alternative, For Issue/Evidence Sanctions Due to Disobedience of Prior Court Order; and For Monetary Sanctions

The parties and counsel are ordered to appear.

4. **22CV01080 In re: Culver, David Joseph III**

EVENT: OSC re dismissal

The Court will hear from Petitioner. If there are no appearances, the Petition will be dismissed without prejudice.

5. **22CV02947 Mateo, Sandee Shannelle v. Deer Creek Surgery Center, LLC**

EVENT: Motion to Be Relieved as Counsel (Defense)

Motion to Be Relieved as Counsel (Defense) is GRANTED. Additionally, a status conference is hereby scheduled for April 30, 2025 at 10:30. Defendants are ordered to provide the Court with an update concerning their efforts to obtain new counsel. Defendants are hereby admonished that California law prohibits corporations and LLC's from participating in a case without counsel. If Defendants fail to appear at the status conference, an Order to Show Cause will be issued why entry of default should not be entered.

The Court will sign the proposed order with the foregoing additional language. The order will become effective upon the filing of a proof of service indicating Defendants were served with the order.

6. **24CV04508 In re: Feucht, Abigail Sandra**

EVENT: Change of name (Adult) (Continued from 2/19/25)

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

7. **25CV00416 Trevino, Manuel Tarango**

EVENT: Change of name (adult)

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

8. **25CV00422 In re: Peterson, Janine Ruth**

EVENT: Change of name (adult)

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

9. **25CV00476 In re: Werger, Chaia**

EVENT: Change of name (adult)

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

10. **25CV00515 In re: Campbell, Christine Lynnelle**

EVENT: Change of name (adult)

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

11. **23CV02654 Feng, Zhu v. Xie, John et al.**

EVENT: Plaintiff's Motion to Continue Trial

Plaintiff's Motion to Continue Trial is DENIED. The motion fails to include a proof of service demonstrating compliance with Code of Civil Procedure section 1005. The Court will prepare the order.

