

**Judge Mosbarger – Law & Motion – Wednesday, July 3, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1. 19CV00001 CHILDS, WILLIAM V. CHILDS, AMBER

EVENT: Motion to be Relieved as Counsel

The Motion to be Relieved as Counsel is granted and the Court will sign the form of order submitted by counsel.

2. 20CV00991 MYERS, JESSE V. HOWELL, JAMIE ET AL

EVENT: Motion to be Relieved as Counsel

There is no proof of service in the Court's file evidencing service on the client that moving counsel currently represents – Gold Country Transportation, Inc., and as such, notice does not comply with Cal Rules of Ct 3.1362(d) or Code of Civil Procedure §1005. The Motion is denied.

3. 21CV02434 KITCHEN, IVANELL ET AL V. WINDSOR CHICO CREEK CARE AND REHABILITATION CENTER, LLC ET AL

EVENT: Motion for Order Granting Leave to Amend Complaint to Add Fictitiously Named Party

The Court finds that Plaintiffs, upon the discovery of information revealing facts supporting probable liability, timely seek leave to amend to name a previously fictitiously named Defendant as required by Code of Civil Procedure §474. The Court further finds that the Defendants have failed to show actual prejudice resulting from any purported delay in naming the doe defendant, and the Court is unpersuaded by Defendants' argument that the additional defendant is irrelevant. Plaintiff's Motion for Leave to Amend Complaint is GRANTED. Plaintiffs shall submit a form of order and the Amended Complaint shall be filed and served within ten days' notice of this ruling.

4. 22CV00073 DUBUG NO 7, INC, A CALIFORNIA CORPORATION V. SODERLING, JAY ET AL

EVENT: Motion to Compel Arbitration and Stay Action

The party seeking to compel arbitration bears the burden of proving by a preponderance of the evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. *Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 218-219. The Court finds that Cross-Defendants Jay Soderling and Aurora Ridge Homes, Inc (collectively "Cross-Defendants" herein) have failed to satisfy this burden. Specifically, the Court finds that Cross-Defendants have failed to establish preemption of the Federal Arbitration Act (FAA) and therefore the motion to compel arbitration is barred as a matter of law because the contract violates *Business &*

Professions Code §7191(a) relating to the required typography of the arbitration provision. See, *Woolfs v Superior Court* (2005) 127 Cal.App.4th 197. The Motion to Compel Arbitration is DENIED. Counsel for the Cross-Complainant shall submit a form of order consistent with this ruling within two weeks.

5. 23CV01182 ZAZUETA, DANIELA V. EMERY, BRIAN

EVENT: Motion to be Relieved as Counsel

The Motion to be Relieved as Counsel is granted, effective upon the filing of the proof of service of the signed order upon the client. The Court will sign the form of order submitted by counsel with modification to Paragraph 5.a. to reflect the effective date of the order. The Court advances the Case Management Conference set for July 17, 2024, and continues the Case Management Conference to September 11, 2024 at 10:30 a.m.

6. 24CV00795 STIEFVATER, RYAN J ET AL V. STIEFVATER, GARY G ET AL

EVENT: Demurrers by Stiefvater Orchards, LP, et al. to the Second Through Ninth Causes of Action of the First Amended Complaint

The Demurrer is overruled in part and sustained in part.

While it does appear that the breach of covenant of good faith and fair dealing mostly mirrors the breach of contract cause of action, the Court declines to disregard the cause of action as superfluous at this time and the demurrer to the Second Cause of Action for Breach of Implied Covenant of Good Faith and Fair Dealing is OVERRULED.

The Court finds that the fact that the Contract at issue in this case does not contain an express term setting forth the manner in which the parties' negotiations were to occur does not mean the contract is not definite and the demurrer as to the Third Cause of Action for Specific Performance is OVERRULED.

Plaintiff has not alleged any future conduct but rather seeks a judicial determination concerning allegations as to the existence of an enforceable contract and leaves nothing for the Court to separately resolve by declaratory relief issues other than the alleged past wrongs. The demurrer as to the Fourth Cause of Action for Declaratory Relief is SUSTAINED WITHOUT LEAVE TO AMEND.

While promissory estoppel claims bear some similarities to breach of contract claims (e.g., they both involve promises – breach of contract claims involve a breach of a promise and promissory estoppel claims involve reliance on a promise), they are distinct and mutually exclusive theories of recovery because unlike breach of contract claims, promissory estoppel does not require that there be any formal agreement between the parties. See, *Copeland v. Baskin Robbins U.S.A.* (2002) 96 Cal.App.4th 1251; *Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230. The demurrer to the Fifth Cause of Action for Promissory Estoppel is OVERRULED.

The Court finds that the breach of fiduciary duty cause of action includes allegations that go beyond the breach of contract cause of action. Additionally, although a breach of fiduciary duty cause of action may be “merely duplicative of” the breach of contract cause of action, the two causes of action are not duplicative because each is based on a different theory of recovery. The demurrer to the Sixth Cause of Action for Breach of Fiduciary Duty is OVERRULED.

Plaintiff has pled facts sufficient to establish the how, when, where, to whom, and by what means the representations were tendered as it relates to the fraud cause of action [see First Amended Complaint at ¶¶13-15, 55-56], the demurrer to the Seventh Cause of Action for Fraud is OVERRULED.

The Court finds that Plaintiff has sufficiently pled causes of action for judicial dissolution and breach of the partnership agreement [See First Amended Complaint at ¶¶12, 43, 47, 52, 63, 67, and Exhibit A attached to the First Amended Complaint], including sufficiently identifying the Plaintiff in his alleged capacity as a real party in interest. The demurrer to the Eighth Cause of Action for Judicial Dissolution and demurrer to the Ninth Cause of Action for Breach of the Partnership Agreement are OVERRULED.

Defendants Stiefvater Orchards, LP, a California limited partnership; Gary G. Stiefvater; Debby J. Stiefvater; Gary G. Stiefvater as Trustee of the Stiefvater Family Trust of 2007; and Debby J. Stiefvater as Trustee of the Stiefvater Family Trust of 2007 shall file and serve their Answers to the First Amended Complaint within 10 days’ notice of this ruling. Counsel for the Plaintiff shall submit a form of order consistent with this ruling within two weeks.