

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

**1. 21CV01931 HERRERA, ADESS ET AL V. ANDERSON, ROB ET AL**

*EVENT: Defendants Nationwide Insurance Company and Allied Property and Casualty Insurance Company's Motion for Summary Judgment or, Alternatively, Summary Adjudication*

The Court finds that there is no triable issue of material fact as to Plaintiffs' Second Cause of Action for Breach of Contract as Plaintiffs failed to oppose the Motion in this regard. See, Plaintiff's Memorandum of Points and Authorities in Support of the Opposition to Motion for Summary Judgment or Alternatively Summary Adjudication at Pg. 1, Lines 4-5 ["Plaintiffs do not contend that payment of the drastically underinsured properties was bad faith..."]; and see, Undisputed Material Fact Nos. 1-4. As such, the Motion for Summary Adjudication is GRANTED as to the Second Cause of Action for Breach of Contract.

Without a breach of contract, there can be no bad faith liability. See *Waller v. Truck Ins. Exch.* (1995) 11 Cal.4th 1, 36 [the covenant of good faith and fair dealing is "based upon" the contract and has no existence independent of such contract]; *Everett v. State Farm Gen. Ins. Co.* (2008) 162 Cal.App.4th 649, 663 ["Because there was no breach of contract, there was no breach of the implied covenant"; 823-24 [where homeowner claimed to be underinsured, but insurer paid full policy limits, there was no breach of contract and therefore no bad faith]; *Vulk v. State Farm Gen. Ins. Co.* (2021) 69 Cal.App.5th 243, 263 [underinsured homeowner had no bad faith claim where he was paid all benefits due under policy]; and see, Undisputed Material Fact Nos. 1-4. Based upon the Court's ruling as to the Second Cause of Action for Breach of Contract, the First Cause of Action for Bad Faith likewise fails and the Motion for Summary Adjudication is GRANTED as to the First Cause of Action for Bad Faith.

The evidence presented leads the Court to conclude that there is no triable issue of material fact in regard to the application of an exception to the general rule that an insurance agent has no duty to advise an insured on types of coverages or policy limits. *Fitzpatrick v. Hayes* (1997) 57 Cal.App.4th 916, 927; *Everett v. State Farm General Ins. Co.* (2008) 162 Cal.App.4th 649, 660; *Vulk v. State Farm Gen. Ins. Co.* (2021) 69 Cal.App.5th 243, 254-255; see also Undisputed Material Fact Nos. 24-47. The Motion for Summary Adjudication is GRANTED as to the Third Cause of Action for Negligence and Fourth Cause of Action for Negligent Misrepresentation.

Plaintiffs do not oppose the Motion as it relates to their punitive damages claim See, Plaintiff's Memorandum of Points and Authorities in Support of the Opposition to Motion for Summary Judgment or Alternatively Summary Adjudication at Pg. 1, Line 3 ["Plaintiffs withdraw the request for punitive damages."] As such, the Motion for Summary Adjudication is GRANTED as to the Plaintiffs' claim for punitive damages.

Counsel for the Defendants shall submit a form of order consistent with this ruling within two weeks.

**2. 22CV01639 C D V. COUNTY OF BUTTE ET AL**

*EVENT: Defendant County of Butte's Motion to Seal Defendant's Motion for Summary Judgment, or in the Alternative, Motion for Summary Adjudication, and Attached Exhibits*

The Motion is unopposed and is granted. The Court will sign the form of order submitted by counsel.

**3. 22CV03057 JAI SHRI RAM HOSPITALITY GROUP OF CHICO, LLC V. GREEN WORLD HUB ET AL**

*EVENT: Plaintiff's Motion to Compel Defendant Green World Hub's Discovery Responses and for Monetary Sanctions*

The Proof of Service shows that the Motion was served electronically on June 20, 2024, 13 Court days prior to the noticed hearing date. Pursuant to *Code of Civil Procedure* §1005(b) and 1010.6(a)(3)(B), 5 additional Court days' notice is required. Notice is therefore insufficient, and the Motion is continued to July 30, 2024 at 9:00 a.m. to allow for proper notice.

**4. 23CV01783 HAISH CONTRUCTION CO, INC. V. NATIONAL BUILDERS, INC ET AL**

*EVENT: Default Prove-Up Hearing*

The Court will execute the proposed Court Judgment by Default, submitted on June 7, 2024. No appearances are required.

**5. 24CV00765 HATZIS, MORGAN RAE V. PRIETO, MARIA NERISSA ET AL**

*EVENT: Defendants' Demurrer to Complaint*

Defendants Maria Nerissa Prieto and Privilege Medical, Inc. have failed to comply with the notice requirements of *Code of Civil Procedure* §1005. The Proof of Service filed on June 11, 2024, the same day as the Demurrer, includes the wrong clients, wrong party names, wrong case number, wrong documents/motion, and is missing name and address of person/party served. As such, notice is insufficient, and the Demurrer is overruled on that basis.

**6. 24CV01411 IN RE: CALDERON, ASHLEY ROSALES**

*EVENT: Petition for Change of Name*

The Court will hear from the parties.

7. **24CV01487 IN RE: BREWER, CINDY LEE**

*EVENT: Petition for Change of Name*

The Court will hear from the Petitioner.

8. **24CV01645 IN RE: REED, THOMAS MARCUS**

*EVENT: Petition for Change of Name*

If proper proof of publication is submitted at or before the hearing, the Petition will be granted.

9. **24CV01722 SILVESTRI, AURELIA VERONICA V. ATRIUM TRANSPORT**

*EVENT: Complaint for Involuntary Dissolution of a Corporation*

The Court is in receipt of Benjamin Lucas' Motion for Leave of Court to Intervene, which is set for hearing on July 24, 2024 at 9:00 a.m., and as such, the hearing on July 10, 2024 is vacated and no appearances are required.