

**Judge Mosbarger – Law & Motion – Wednesday, November 27, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1. 19CV02874 SCILIGO, JOSEPH V. IDENTITY SOURCE, INC ET AL

EVENT: Motion to Compel Responses to Supplemental Interrogatories and Supplemental Request for Production of Documents

The Motion is unopposed and is granted. Plaintiff is ordered to serve verified responses without objection to supplemental interrogatories, and supplemental request for production of documents, within 14 days' notice of this order. The Court also awards sanctions of \$460 against Plaintiff Joseph Sciligo, which are to be paid within 30 days' notice of this order. Counsel for the Defendants shall submit a form of order within two weeks.

2-3. 21CV02330 DECKER, MICHAEL P ET AL V. SIERRA PACIFIC LAND & TIMBER COMPANY ET AL

EVENT: Sierra Pacific's Motion for Summary Judgment Against the Kooreman Plaintiffs

On the Court's own motion, Sierra Pacific's Motion for Summary Judgment Against the Kooreman Plaintiffs on calendar November 27, 2024 and Plaintiff's Motion for Summary Judgment, or in the Alternative Summary Adjudication on calendar December 4, 2024 are continued and will be heard concurrently on December 11, 2024 at 9:00 a.m.

4. 23CV00614 JOHNSON, GILL ET AL V. MONSANTO COMPANY ET AL

EVENT: Application of Andrew Kirkendall to Appear as Counsel Pro Hac Vice

The application to be admitted pro hac vice is granted. Andrew F. Kirkendall is permitted to appear as counsel pro hac vice on behalf of Plaintiffs Gill Johnson and Denise Johnson in this matter. The Court will sign the form of order submitted by counsel.

5. 23PR00432 CONSERVATORSHIP OF NOLTA, MADELEINE U

EVENT: Petitioner Stephen B. Cowee's Motion for Protective Order and Request for Monetary Sanctions

The Court finds that judgment debtor discovery is in furtherance of an execution of judgment, falls under the purview of the enforcement of judgments laws statutes, and therefore pursuant to the Court's Ruling on Petitioner Stephen B. Cowee's Motion for a Stay of Judgment dated October 30, 2024, Petitioner Stephen B. Cowee's Motion for Protective Order and Request for Monetary Sanctions is moot and is denied on that basis. The parties' respective requests for sanctions are denied.

6. 24CV01277 13290 CONTRACTORS LANE, LLC V. WISHBONE RANCH, LLC ET AL

EVENT: Defendant Brian Howe's Demurrer and Motion to Strike

Demurrer

The Court notes that there is no proof of service in the Court's file to determine whether notice complies with CCP §1005. In the Opposition, the issue of improper service is raised by the Plaintiff and it is indicated that the demurrer was served via e-mail on November 4, 2024, which is only 16 Court days, an additional two Court days are required when service is by email, so notice is insufficient. However, given that a substantive opposition has been submitted, the Court in its discretion, has considered the merits of the Demurrer.

Plaintiff's Request for Judicial Notice is granted.

The Demurrer to the First Cause of Action for Breach of Contract is overruled as to the existence of a contract, as the Court finds that Plaintiff has sufficiently plead facts to establish that it is a third-party beneficiary entitled to bring a breach of contract claim in that capacity. See, Complaint at ¶¶1, 2, 16, 18, 20, 22-26. Civil Code §1559; *Goonewardene v ADP, LLC* (2019) 6 Cal.5th 817; *Prouty v Gores Technol. Group* (2004) 121 Cal.App.4th 1225, 1232; *Mercury Cas. Co. v Maloney* (2003) 113 Cal.App.4th 799, 802. However, the Demurrer to the First Cause of Action for Breach of Contract is sustained on the ground that Plaintiff has failed to state the date of the alleged breach of contract. Plaintiff is granted leave to amend.

Plaintiff concedes that as to this moving Defendant, the Second Cause of Action for Breach of Covenant of Good Faith and Fair Dealing should be stricken. Therefore, the Demurrer is sustained without leave to amend as to the Second Cause of Action for Breach of Covenant of Good Faith and Fair Dealing.

Although discussed at length in the Demurrer, the Third Cause of Action for Breach of Fiduciary Duty is not alleged against this moving Defendant. See, Complaint at Pg. 6:14- Pg. 7:18. Thus, the Demurrer to the Third Cause of Action for Breach of Fiduciary Duty is overruled.

Motion to Strike

The Motion to Strike is granted as to the breach of contract cause of action [Paragraphs 18-26], the Court finding that that although Plaintiff has sufficiently plead facts to establish that it is a third-party beneficiary entitled to bring a breach of contract claim in that capacity, Plaintiff has failed to state the date of the alleged breach of contract.

The Motion to Strike is granted as to the breach of covenant of good faith and fair dealing cause of action [Paragraphs 27-29], based upon Plaintiff's concession that as to this moving Defendant, the Second Cause of Action for Breach of Covenant of Good Faith and Fair Dealing should be stricken.

The Motion to Strike as is denied as to the fourth cause of action for an accounting [Paragraphs 40-41], the Court finding that the cause of action is not alleged against this moving Defendant.

Counsel for the Defendant shall submit a form of order consistent with this ruling within two weeks and any amended Complaint shall be filed within 20 days' notice of this Order.

7. 24CV03193 IN RE: BOCA BAY, LLC

EVENT: First Amended Petition for Approval for Transfer of Structured Settlement Payment Rights

The Petition is granted as it appears to the Court that the transfer complies with the requirements of Insurance Code Section 10137 and is in the best interests of the Payee. Petitioner shall submit a form of order within two weeks.

8. 24CV03594 SANDOVAL DE OROZCO, MARCELA V. GARCIA, SERGIO C ET AL

EVENT: Defendants' Demurrer

The Demurrer is sustained in part on the grounds that Plaintiff has failed to plead the Second Cause of Action for Promissory Estoppel with the required specificity (e.g., the date on which the alleged statement was made, the identity of the person(s) who made the allegedly false representation, the content of the alleged statement, the date of the final communication with Defendants). The Demurrer is overruled on the remainder of the grounds raised by Defendants, the Court finding that Plaintiff has sufficiently alleged injury [Complaint at ¶¶8, 12], duty [Complaint ¶10], and causation [Complaint at ¶¶8, 10, 11, 12]. As it relates to Defendants' argument in relation to Plaintiff's failure to sufficiently plead intent, the Court finds that such is not required to state a cause of action for promissory estoppel. See, e.g., *Toscano v. Greene Music* (2004) 124 Cal.App.4th 685, 692 ["The elements of promissory estoppel are (1) a clear promise, (2) reliance, (3) substantial detriment, and (4) damages "measured by the extent of the obligation assumed and not performed. (See 1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, §§ 249–250, p. 251."]. Counsel for the Defendants shall prepare and submit a revised form of order within two weeks. The Court grants leave to amend, and any amended Complaint shall be filed within 14 days' notice of this order.