

**Judge Mosbarger – Law & Motion – Wednesday, December 18, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1-3. 21CV02434 KITCHEN, IVANELL ET AL V. WINDSOR CHICO CREEK CARE AND REHABILITATION CENTER, LLC ET AL

EVENTS:(1) Defendant Windsor Chico Creek Care and Rehabilitation Center, LLC's Motion for Relief Pursuant to CCP 473 for Untimely Service of Discovery Responses

(2) Plaintiff's Motion to Compel Further Responses to Discovery with Requests for Sanctions Due to Discovery Misuses & Failure to Comply with Court Orders – Appointment of Discovery Referee

(3) Defendant Windsor Chico Creek Care and Rehabilitation Center, LLC's Motion for Protective Order

The Court has reviewed both Plaintiffs and Defendants' nominees for discovery referee and the Court hereby appoints Patricia Savage to act as discovery referee for the purpose of resolving the issues raised in Plaintiff's Motion to Compel Further Responses to Discovery with Requests for Sanctions Due to Discovery Misuses & Failure to Comply with Court Orders. The Court further finds that the two additional pending discovery motions: (1) Defendant Windsor Chico Creek Care and Rehabilitation Center, LLC's Motion for Relief Pursuant to CCP 473 for Untimely Service of Discovery Responses; and (2) Defendant Windsor Chico Creek Care and Rehabilitation Center, LLC's Motion for Protective Order, both relate to the same production at issue in the prior Motion and the Court finds good cause to have the same discovery referee, pursuant to Code of Civil Procedure §§638-645.1, as well as the California Rules of Court 3.900-3.932, resolve these related Motions as well. Plaintiffs and Defendants shall share the cost of the discovery referee equally (50% paid by each). Counsel for the Plaintiffs shall prepare and submit a form of order consistent with this ruling within two weeks.

4. 22CV00400 ALFARO, TIFFANY V. ENLOE MEDICAL CENTER ET AL

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.

5. 22CV01054 SMITH, JOHN L ET AL V. DUCCINI, DEANNA ET AL

EVENT: Motion to Modify, Reform, and Enforce Settlement Agreement, or, in the Alternative, Motion to Rescind Settlement Agreement

The Motion is unopposed and is granted. The Mediation Settlement Agreement shall be reformed at Paragraph 3 to provide that in lieu of a lot line adjustment, Defendant Deanna Duccini shall grant an exclusive easement for the portion of the property as described below:

REAL PROPERTY LOCATED IN COUNTY OF BUTTE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT CERTAIN GRANT DEED TO A REVOCABLE TRUST TO DEANNA L. DUCCINI AS TRUSTEE OF THE DEANNA LOUISE SMITH FAMILY TRUST, RECORDED NOVEMBER 16, 2021 UNDER RECORD SERIAL NO. 2021-0050066, BUTTE COUNTY OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH WEST CORNER OF SAID GRANT DEED; THENCE FROM SAID POINT OF BEGINNING ALONG THE PERIMETER OF SAID GRANT DEED THE FOLLOWING FOUR (4) COURSES AND DISTANCES:

1. SOUTH 00°11'26" EAST 105.00 FEET;
2. SOUTH 27°21'00" EAST 97.29 FEET;
3. SOUTH 00°11'26" EAST 275.00 FEET TO THE SOUTH WEST CORNER OF SAID GRANT DEED;
4. ALONG THE SOUTHERLY LINE OF SAID GRANT DEED NORTH 57°23'06" EAST 119.76 FEET;

THENCE LEAVING SAID SOUTHERLY LINE NORTH 21°54'32" WEST 131.73 FEET; THENCE NORTH 16°12'26" WEST 196.11 FEET; THENCE NORTH 10°57'48" WEST 92.34 FEET TO THE NORTH LINE OF SAID GRANT DEED. THENCE ALONG SAID NORTH LINE SOUTH 89°48'34" WEST 26.50 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION.

SAID LAND CONSISTS OF 23,567 SQUARE FEET, OR 0.54 ACRES, MORE OR LESS.

END OF DESCRIPTION.

Counsel for the Plaintiff shall submit a form of order within two weeks.

6. 22CV01821 CHAMBERS, PATRICIA V. NEWBERN, MICHAEL ET AL

EVENT: Plaintiff Patricia Chambers' Motion to Strike and Tax Costs

The Motion is unopposed and is granted, in part. The only amount the Court can substantiate for recoverable filing and motion fees is the \$435 paid on November 16, 2022 in relation to Defendant's Answer. Thus, the Court allows \$435 in recoverable costs in this category but strikes the balance of \$1,560. The only award of attorney's fees permitted in a Memorandum of Costs are those "contractual or statutory fees [] fixed without necessity of a court determination; otherwise a noticed motion is required." The Court finds that to obtain an award of attorney fees in this action, a noticed motion is required and therefore the Court strikes the amount of \$845.25. In regard to the \$228.00 for "Other" costs, Defendant did not provide any breakdown or explanation as to what costs are included in this category, and therefore, the request is wholly unsubstantiated

and is taxed in its entirety. The Court awards costs to Defendant in the total amount of \$435. Plaintiff shall submit a form of order within two weeks.

7. 22CV02187 A, C V. COUNTY OF BUTTE

EVENT: Motion to be Relieved as Counsel

There is no proof of service in the Court's file evidencing notice has been provided to opposing counsel, therefore the Court cannot confirm whether notice complies with Cal Rules of Ct 3.1362(d) or Code of Civil Procedure §1005. The Motion is denied.

8. 23CV00614 JOHNSON, GILL ET AL V. MONSANTO COMPANY ET AL

EVENT: Application to Appear as Counsel Pro Hac Vice (Adam Porter)

The application to be admitted pro hac vice is granted. Adam Porter is permitted to appear as counsel pro hac vice on behalf of Defendant Monsanto Company in this matter. The Court will sign the form of order submitted by counsel.

9. 23CV02730 FERGUSON, JANET V. ROSE, PETER JIM ET AL

EVENT: Defendants' Motion for Judgment on the Pleadings

Defendants' Motion for Judgment on the Pleadings is granted, the Court finding that Plaintiff has failed to sufficiently state a cause of action for intentional tort. The Court grants leave to amend. Any amended Complaint shall be filed within 20 days' notice of this Order. The Court will sign the form of Order submitted by Defendants.

10. 24CV00765 HATZIS, MORGAN RAE V. PRIETO, MARIA NERISSA ET AL

EVENT: Plaintiff Morgan Rae Hatzis' Motion for Summary Judgment or, in the Alternative, Summary Adjudication as to the First, Second, and Third Causes of Action of the Verified Complaint

Plaintiff's Motion contains numerous substantive and procedural deficiencies. Most concerning is that the Motion contains an insufficient Memorandum of Points and Authorities, that fails to include argument supported by citations to authority and evidence. Plaintiff made no effort to explain why she is entitled to summary judgment on any of her claims. The closest she comes is declaring in a conclusory fashion that "there are no triable issues as to any material fact as to Plaintiff's First Cause of Action for Involuntary Dissolution, Second Cause of Action for Breach of Fiduciary Duty, and Third Cause of Action for Violation of Shareholders and Director's Right to Access Records." But this is simply a restatement of *Code of Civil Procedure* §437c's standard, not a showing that the standard has been met. Although Plaintiff points to her Separate Statement and argues that it is there that she "meticulously ties each material fact to

supporting evidence, including declarations and exhibits, to demonstrate the absence of triable issues of material fact”, it remains that Plaintiff has failed to provide any legal reasoning or analysis, and has wholly failed to satisfy her burden. Again, Plaintiff’s Motion contains no legal argument whatsoever and it is not the Court’s responsibility to remedy this defect. The Motion is denied.