

**Judge Mosbarger – Law & Motion – Wednesday, January 8, 2025 @ 9:00 AM
TENTATIVE RULINGS**

1. 22CV00400 ALFARO, TIFFANY V. ENLOE MEDICAL CENTER ET AL

EVENT: Defendant Jessica R. Babare, D.O's Motion for Summary Judgment, or in the Alternative, Summary Adjudication

The Motion for Summary Judgment being unopposed, and Defendant having made a prima facie showing that there is no liability with respect to Defendant Jessica R. Babare, D.O, the Motion for Summary Judgment is granted. Defendant shall submit a form of order within two weeks.

2. 23CV00614 JOHNSON, GILL ET AL V. MONSANTO COMPANY

EVENT: Defendants' Motion to Preclude Use of McKivison Trial Testimony

On the Court's own motion, this matter is continued to January 9, 2025 at 8:30 a.m. to be heard at the Trial Readiness Conference with the other pre-trial motions, and any oral argument will be heard on January 9, 2025. The Court is inclined to grant the motion at that time.

3. 23CV01194 WILSON, SHANE C V. MABEE, RAYMOND JOHN III

EVENT: Motion to be Relieved as Counsel

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

4. 23PR00432 CONSERVATORSHIP OF NOLTA, MADELEINE U

EVENT: Petitioner's Motion for Attorney's Fees & Expenses Incurred to Expunge Liens

Petitioner's Requests for Judicial Notice are granted. Petitioner's Motion for Attorney's Fees & Expenses Incurred to Expunge Liens is denied, the Court finding that the actions of counsel were not undertaken unnecessarily or for the sole purpose of harassing the moving parties, and counsel acted within his statutory authority. Counsel for the proposed Conservatee shall submit a form of order within two weeks.

5. 24CV00795 STIEFVATER, RYAN J ET AL V. STIEFVATER, GARY G ET AL

EVENT: Defendant Stiefvater Orchards, LP's Motion for Relief From Waiver of Objections Due to Service Ninety-Seven Minutes Late

The Court finds that Defendant is entitled to a hearing on the instant Motion and has considered the Motion on its merits. The Court finds that a party may be granted relief from their waiver of objections if that party can demonstrate that both of the following

conditions are satisfied: (1) The party has subsequently served a response that is in substantial compliance with the Code of Civil Procedure, and (2) the party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect. See, Code of Civil Procedure §§2030.290, 2031.300, 2033.280. Here, Defendant has met both of these prerequisites, and the Motion is granted. Counsel for the Defendant shall submit a form of order within two weeks. The Court no longer requires counsel to comply with Butte County Local Rule 2.14(b) [PreTrial Discovery Conference] prior to filing a discovery motion in this case.

6. 24CV00889 CLIFTON, ANGELA V. SAYALATH, PAUL

EVENT: Defendant Paul Sayalath's Demurrer to Complaint

A copy of the alleged Agreement is not included with the Complaint, nor does the Plaintiff set forth the terms of the Agreement in any specifics. Rather, Plaintiff alleges only general allegations relating to the terms which the Court deems insufficient. The Demurrer to the First Cause of Action for Breach of Contract is sustained, with leave to amend. The Court finds that the Complaint sufficiently alleges fraud [Complaint at ¶¶11-12, 22-30] and negligent misrepresentation [Complaint at ¶¶31-39] and therefore, the Demurrer to the Second Cause of Action for Fraud and Third Cause of Action for Negligent Misrepresentation is overruled. In regard to the claim for injunctive relief, the Court concludes that an injunction is "a remedy, not a cause of action." See, *Marlin v. Aimco Venezia, LLC* (2007) 154 Cal.App.4th 154. The Demurrer to the Fourth Cause of Action for Injunctive Relief is sustained without leave to amend. Finally, the relief requested in relation to the declaratory relief cause of action is properly sought by a motion to strike, not demurrer. The Court finds that the sufficiently pleads a cause of action for declaratory relief [Complaint at ¶¶49-54] and therefore the Demurrer to the Fifth Cause of Action – Declaratory Relief is overruled. Any amended Complaint shall be filed and served within 20 days' notice of this ruling. Counsel for the Defendant shall submit a form of order consistent with this ruling within two weeks.

7. 24CV03135 ENDICOTT TRUCKING, INC V. COLEMAN ENVIRONMENTAL ENGINEERING, INC ET AL

EVENT: Defendants' Demurrer to Complaint and Request for Judicial Notice

The Court finds that the meet and confer efforts are sufficient pursuant to Code of Civil Procedure §430.41. [See Declaration of Christopher Gonzalez at ¶2]. The objection to the Declaration of Christopher Gonzalez is sustained and the Court will not consider either the statements, or the exhibits attached thereto as Exhibit A, as they lack foundation, are not subject to judicial notice, and are outside the scope of what the Court may properly consider on demurrer. The Court finds that Plaintiff's Complaint fails to plead whether the contract was oral or written, there is no date, no terms, and ultimately the Court finds that the Complaint lacks the required specificity to support the breach of contract claim. The Demurrer is sustained as to the First Cause of Action for Breach of

Contract, with leave to amend. The cause of action for [common count] account stated has been sufficiently pled [Complaint at ¶¶10-12, 17-22] and the Demurrer is overruled as to the Second Cause of Action for Account Stated/Services Rendered. As it relates to the allegations against Defendant Jacob Morrow, the Court finds that the Complaint sufficiently alleges liability as to Defendant Jacob Morrow and the Demurrer is overruled on that basis. Any amended Complaint shall be filed and served within 20 days' notice of this ruling. Counsel for the Defendants shall submit a form of order consistent with this ruling within two weeks.

8. 24CV03465 IN RE: JACKS, CYNTHIA

EVENT: Petition for Change of Name

The Petition is denied without prejudice in light of the ongoing custody dispute.