

**Judge Mosbarger – Law & Motion – Wednesday, February 19, 2025 @ 9:00 AM
TENTATIVE RULINGS**

1. 22CV01195 HASKINS, ROBERT ET AL V. WILSON, KERRY ET AL

EVENT: Plaintiffs' Motion for Order Compelling Responses to 1) Supplemental Request for Production of Documents to Defendant, Kerry Wilson, Set Two; 2) Supplemental Request for Production of Documents to Defendant, Kerry Wilson dba Kerry Wilson Floors, Set Two; 3) Supplemental Interrogatory to Defendant, Kerry Wilson, Set Two; 4) Supplemental Interrogatory to Defendant, Kelly Wilson dba Kerry Wilson Floors, Set Two; and Request for Sanctions

The Motion is granted. Defendants Kerry Wilson; and Kerry Wilson dba KW Floors Inc. are 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 \$1,000 against Defendants, which are to be paid within 30 days' notice of this order. The Court will sign the form of order submitted by counsel.

2-3. 22CV02114 BANEGAS, KIMBERLY V. WITTEMEIER, INC ET AL

EVENTS: (1) Defendants' Motion for New Trial

(2) Defendant's Motion for Judgment Notwithstanding the Verdict

The filing requirements for notice of intention to move for new trial are mandatory and jurisdictional. CCP§659; *Simplon Ballpark, LLC v Scull* (2015) 235 Cal.App.4th 660, 663. Here, the deadline to file and serve a motion for new trial was December 27, 2024. See, CCP §§659, 1010.6(a)(30(B)). However, the instant motion was not filed and served until December 30, 2024. Thus, the motion is untimely, the Court lacks jurisdiction, and the motion for new trial is denied on that basis.

Likewise, the deadlines and procedures that apply to new trial motions apply to motions for judgment notwithstanding the verdict. CCP §§629(b), 659, 659a, 660. Thus, the same deadlines apply here and because the instant motion was not filed and served until December 30, 2024, the motion is similarly untimely, the Court lacks jurisdiction, and the motion for judgment notwithstanding the verdict is denied on that basis.

4-6. 23CV02012 JOHNSON, ABIGAIL V. SUNWEST MILLING, INC ET AL

EVENTS: (1) Motion for Final Approval of Class Action Settlement

(2) Motion for Attorneys' Fees, Costs, and Class Representative Service Payment

(3) Status Conference – Final Settlement Approval

Plaintiff's Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Service Payment are granted. A compliance hearing is scheduled for August 20, 2025 at 10:30 a.m. The Court will sign the proposed

Order and Judgment Granting Final Approval of Class Action Settlement and Attorney's Fees, Costs, and Class Representative Service Payment.

7. 24CV01881 DUTRO, MARK V. DUTRO, LAWRENCE ET AL

EVENT: Defendants' Motion for Attorneys' Fees Pursuant to CCP 425.16

The Motion is granted. However, the Court finds that the requested fee amount is miscalculated and awards fees of \$53,940, rather than the \$55,739.70 as requested in the Reply, and costs of \$1,853.70. The Court will sign the form of order submitted by the Defendants with the noted modification.

8-9. 24CV02343 LOZADA, RACHEL ROMERO V. KEPLEY, DON ET AL

EVENTS: (1) Defendants' Motion to Quash

(2) Plaintiff's Motion for Judgment on the Pleadings

In relation to Defendants' Motion to Quash, the Court notes that there is no proof of service in the Court's file to determine whether notice complies with CCP §1005. However, based upon the filing of a timely and substantive Opposition by the Plaintiff, the Court in its discretion, has considered the merits of the Motion. The requested relief is not the proper subject of a motion to quash, and the Motion is denied. Plaintiff's request for sanctions is denied. Counsel for the Plaintiff shall submit a form of order within two weeks.

In relation to Plaintiff's Motion to Compel Further Discovery Responses [erroneously originally titled Motion for Judgment on the Pleadings], the Court notes that Defendant Susan Kepley has not filed an Opposition to the Motion and as such Plaintiff's Motion to Compel Further Discovery Responses is granted in its entirety as to Defendant Susan Kepley. Defendant Susan Kepley shall provide further verified responses without objection within 20 days' notice of this order.

In regard to Defendant Don Kepley, the Court finds that Defendant Don Kepley's Responses to Request for Production Nos. 1, 4 and 6 are sufficient and the Motion is denied in regard thereto. Defendant Don Kepley's Responses to Request for Production Nos. 2, 3 and 5, seemingly indicate that responsive documents do not exist, but fail to provide a code compliant affirmation of diligence per Code of Civil Procedure §2031.230. The Court orders further responses to Request for Production Nos. 2, 3 and 5 to include an affirmation that a diligent search and a reasonable inquiry has been made in an effort to comply with the demand. Further, the Court finds that Defendant Don Kepley has failed to provide a response to Request for Production Nos. 7 and 8. The Court orders further responses to Request for Production Nos. 7 and 8. The Court further finds that Defendant Don Kepley's Responses to Form Interrogatory Nos. 1.1, 7.1, 7.2, 7.3, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 14.1, 14.2, 15.1, and 17.1 are insufficient and the Motion is

granted. Defendant Don Kepley is instructed to provide further responses utilizing the definition of "INCIDENT" as set forth in Section 4.(a) of the Form Interrogatories.

The Court finds that Defendant Don Kepley's Responses to Form Interrogatory Nos. 2.2, 2.3, 2.4, 2.11, 2.12, 2.13, 50.1, 50.2, 50.3, 50.4, 50.5 and 50.6, are sufficient, given that the information requested therein is irrelevant and not likely to lead to the discovery of admissible evidence. The Motion is therefore denied as to Form Interrogatory Nos. 2.2, 2.3, 2.4, 2.11, 2.12, 2.13, 50.1, 50.2, 50.3, 50.4, 50.5 and 50.6.

Defendant Don Kepley shall provide further verified responses without objection to Request for Production Nos. 2, 3, 5, 7 and 8, and Form Interrogatory Nos. 1.1, 7.1, 7.2, 7.3, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 14.1, 14.2, 15.1, and 17.1 within 20 days' notice of this order.

Plaintiff is awarded sanctions against Defendants Susan Kepley and Don Kepley in the amount of \$2,000, which is to be paid within 30 days. Counsel for the Plaintiff shall prepare and submit a revised form of order consistent with this ruling within two weeks.

10. 24CV02514 JANE CDE DOE ET AL V. CHICO UNIFIED SCHOOL DISTRICT ET AL

EVENT: Defendant Felix DeLuna's Motion for Summary Judgment/Adjudication

On the Court's own motion, this matter is continued to February 26, 2025 at 9:00 a.m., the Court finding good cause to excuse the requirement that the motion be heard no later than 30 days before trial. CCP §437c(a)(3).

11. 24CV02590 GOODLIN, SCOTT ET AL V. WILLIAMS AG SERVICES, INC ET AL

EVENT: Defendants' Demurrer to First Amended Complaint

Defendants' Request for Judicial Notice is granted.

The Court concludes that the First Amended Complaint ("FAC" herein) properly alleges necessary elements to establish alter ego. Fundamentally, there are two elements that the alter ego plaintiff must prove (*Automotriz del Golfo v Resnick* (1957) 47 Cal.2d 792, 796; *Sonora Diamond Corp. v Superior Court* (2000) 83 Cal.App.4th 523, 528): (1) That "there is such a unity of interest between the corporation and another person or entity that they have no separate existence"; and (2) That an inequitable result would follow if the corporation alone is held liable for the contract or tort. Ultimately, a complaint must set forth the facts with sufficient precision to put the defendant on notice about what the plaintiff is complaining and what remedies are being sought. *Leek v. Cooper* (2011) 194 Cal.App.4th 399 citing *Signal Hill Aviation Co. v. Stroppe* (1979) 96 Cal.App.3d 627, 636.) To recover on an alter ego theory, a plaintiff need not use the words "alter ego," but must allege sufficient facts to show a unity of interest and ownership, and an unjust result if the corporation is treated as the sole actor. *Id.* citing *Vasey v. California Dance Co.* (1977) 70 Cal.App.3d 742, 749. Here, the Court finds that the FAC alleges sufficient

facts to pursue an alter ego theory. [FAC ¶¶12-16.] The Demurrer is overruled on this basis.

Specifically, as to the First Cause of Action – Negligent Hiring and Retention, the Court finds that because California law allows Plaintiffs to assert a civil action along with a worker's compensation claim, there is no preemption based on worker's compensation laws, and the Demurrer to the First Cause of Action is overruled.

As to the Second Cause of Action Negligence – Respondeat Superior, the Court acknowledges that while it is true that an employee's sexual misconduct is generally not within the scope of their employment, here there are allegations here that the sexual misconduct arose out of, and was purposefully contemplated, conducted, and organized in connection to the employment with Defendant, sufficient to withstand demurrer. [FAC ¶¶25-28, 49-57]. The Demurrer to the Second Cause of Action is overruled.

As to the Third Cause of Action – Breach of Contract, the Court finds that the FAC states facts sufficient to constitute a cause of action against the individually named defendants Clarence Williams and Karen Williams. In an opinion by the Third District Court of Appeal — *Westwood Homes, Inc. v. AGCPII Villa Salerno Member, LLC* (2021) 65 Cal. App. 5th 922 —, the issue before the Court was an award of attorney's fees; however, their discussion presumed and confirmed that an alter ego could be sued as a non-signatory to a breach of contract cause of action. *Id* at 923 [“A procedural option available to parties asserting alter ego liability is to sue the alter ego directly in an action for breach of contract.”] The Demurrer to the Third Cause of Action is overruled.

As to the Fourth Cause of Action – Wrongful Discharge in Violation of Public Policy – Sexual Harassment; Fifth Cause of Action – Wrongful Discharge in Violation of Public Policy - Discrimination in Violations of Government Code §12940 and FEHA; and Sixth Cause of Action – Wrongful Discharge in Violation of Public Policy - Whistle Blower Retaliation; although Defendants cite to *Khajavi v. Feather River Anesthesia Medical Group* (2000) 84 Cal.App.4th 32, that case does not discuss alter ego or respondeat superior. The portion of the case referenced by Defendants states that “[o]nly an employer can be liable for the tort of wrongful discharge of an employee, and a third party who is not and never has been the plaintiff's employer cannot be bootstrapped by conspiracy into tort liability for a wrong he is legally incapable of committing.” *Id.* at 38. The sentence immediately preceding states however, that “[n]onsuit was nonetheless properly granted in favor of defendant Robert Del Pero. He could not be liable for wrongfully terminating, or conspiring to terminate, Khajavi's employment in violation of section 2056 because he had no employment relationship with Khajavi and thus had no legal power to discharge him.” Robert Del Pero was a surgeon at the hospital that fired Khajavi, and did not have an employer/employee relationship with Khajavi. This case is factually distinguishable from the instant case and is not persuasive here. The Court finds that the allegations of the FAC in relation to the alter ego theory of liability are sufficient as it relates to these causes of action, and the Demurrer to the Fourth, Fifth, and Sixth Causes of Action are overruled.

As to the Seventh Cause of Action – Negligent Misrepresentation, the Court finds that FAC includes all the required allegations for a claim of negligent misrepresentation [FAC ¶¶102-104]. The Demurrer to the Seventh Cause of Action is overruled.

As to the Eighth Cause of Action – Intentional [or Negligent] Infliction of Emotional Distress, the Court notes that the function of a demurrer is to test the sufficiency of the pleading; it is not to try the case. Furthermore, whether conduct is outrageous is usually a question of fact. *Smith v. BP Lubricants USA Inc.* (2021) 64 Cal.App.5th 138, 140. Where reasonable people may differ, it is for the jury, subject to the control of the court, to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability for intentional infliction of emotional distress. *Id.* at 138. Here, the Court finds that the allegations in the FAC are sufficient to withstand demurrer [FAC ¶¶44, 56, 63, 114-119, 126] , and the Demurrer to the Eighth Cause of Action is overruled.

Finally, as to the Ninth Cause of Action – Loss Of Consortium, the Court finds that pursuant to *Mealy v. B-Mobile, Inc.* (2011) 195 Cal.App.4th 1218, a claim for partial loss of consortium is compensable, and the facts presently plead in the FAC of partial loss of consortium are sufficient to withstand demurrer [FAC 130-131]. The Demurrer to the Ninth Cause of Action is overruled.

The Demurrer is overruled in its entirety. Defendants shall file and serve a responsive pleading within 20 days' notice of this ruling. Plaintiffs shall submit a form of order within two weeks.

12. 24CV04360 IN RE: ALEJO, MELINA

EVENT: Petition for Change of Name

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