

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

**\*\*\*\* For Judge Mosbarger’s March 19, 2025 Law & Motion calendar ONLY, if you wish to request oral argument, you must contact the Court at (530) 532-7153. \*\*\*\***

**1. 21CV00573 BRAZELL, ANDREA ET AL V. OROVILLE HOSPITAL**

*EVENT: Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement*

Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement is granted. The Case Management Conference on March 26, 2025 is vacated, and the matter is set for a hearing for final settlement approval on July 16, 2025 at 9:00 a.m. The Court will sign the form of Order submitted by counsel.

**2. 22CV02114 BANEGAS, KIMBERLY V. WITTMER, INC. ET AL**

*EVENT: Plaintiff’s Motion for Extension of Time to File Motion for Attorney’s Fees*

Pursuant to the California Rule of Court Rule 3.1702(d), the Court in its discretion finds good cause to grant the Motion. Plaintiff shall file and serve her Motion for Attorney’s Fees no later than March 28, 2025. Counsel for the Plaintiff shall submit a form of order consistent with this ruling within two weeks.

**3. 22CV02594 MOFFITT, DEREK C ET AL V. MOFFITT, TERESA L ET AL**

*EVENT: Plaintiffs Derek C. Moffitt and Sandi Moffitt’s Motion for Leave to File First Amended Complaint*

Defendants’ Request for Judicial Notice is granted. The Court finds that the Plaintiffs have sufficiently established the necessary elements of California Rules of Court, Rule 3.1324, including when the facts giving rise to the amended allegations were discovered and the reasons why the request for amendment was not made earlier. In addition, the Court finds that the facts alleged in the proposed Fourth Cause of Action are not “occurring-after” facts that would require a supplemental pleading, but rather a misunderstanding of the facts as they existed at the time of filing the original Complaint. Once Plaintiffs became aware of the factual misunderstanding, the request for amendment was timely made. In the Court’s discretion, and upon finding that a denial of the Motion would deprive Plaintiffs of the right to assert a meritorious cause of action and will not prejudice the opposing party, the Motion is granted. The Amended Complaint shall be filed and served within ten days’ notice of this ruling. Counsel for the Plaintiffs shall submit a form of order consistent with this ruling within two weeks.

**4-5. 24CV00628 CRESPO, CARMEN V. EMERALD INVESTMENTS INC**

*EVENTS: (1) Defendant's Motion to Compel Responses to Defendant's Form Interrogatories-General, Set One, and for Monetary Sanctions Against Plaintiff Carmen Crespo*

*(2) Defendant's Motion for Order Deeming Defendant's Requests for Admissions, Set One, Admitted per Code of Civil Procedure Section 2033.280, Subdivision (b), and for Monetary Sanctions Against Plaintiff Carmen Crespo*

Defendant's Motion to Compel Responses to Defendant's Form Interrogatories-General, Set One, and for Monetary Sanctions Against Plaintiff Carmen Crespo is granted. Plaintiff Carmen Crespo shall serve verified responses to Form Interrogatories-General, Set One, within 10 days' notice of this order. The Court awards sanctions against Plaintiff Carmen Crespo, in the amount of \$771.00, which shall be paid within 30 days' notice of this order.

Defendant's Motion for Order Deeming Defendant's Requests for Admissions, Set One, Admitted per Code of Civil Procedure Section 2033.280, Subdivision (b), and for Monetary Sanctions Against Plaintiff Carmen Crespo is granted. The Court awards sanctions against Plaintiff Carmen Crespo, in the amount of \$1,047.50, which shall be paid within 30 days' notice of this order.

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

**6-7. 24CV01277 13290 CONTRACTORS LANE, LLC V. WISHBONE RANCH, LLC ET AL**

*EVENTS: (1) Defendant Brian Howe's Demurrer to Amended Complaint*

*(2) Defendant Brian Howe's Motion to Strike Amended Complaint*

Plaintiff's Request for Judicial Notice is granted. As the Court has previously ruled, 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 sufficiently state facts to establish that the cause of action was made within the statutory time period. Plaintiff is granted leave to amend. For the same reason, the Motion to Strike is granted as to the breach of contract cause of action [Paragraphs 2, 16, 20, 22, 23, 24, 25, 26, 40, 42], the Court finding 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 facts to establish that the cause of action was made within the statutory time period. Plaintiff is granted leave to amend. 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.

**8-9. 24CV03776 MOFFITT, DEREK C ET AL V. MOFFITT, TERESA L ET AL**

*EVENTS: (1) Defendants' Demurrer to Complaint*

*(2) Defendants' Motion to Strike Portions of Complaint*

Defendant's Requests for Judicial Notice are granted. Defendant's Objections to Evidence are sustained, the Court finding that the evidence cited is extrinsic evidence which cannot be considered on Demurrer. See, *Kerivan v. Title Ins. & Trust Co.* (1983) 147 Cal.App.3d 225, 229. Where there is another action pending between the same parties on the same cause of action, a special demurrer is appropriate. CCP §430.10(c); *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 787. Here, there is another action pending between the same parties in BCSC Case No. 22CV02594 (Moffitt, Derek C et al v. Moffitt, Teresa L et al) and the Court finds that the earlier filed action is premised entirely on the same joint venture as the Complaint in this matter. Thus, any adjudication of a right under the joint venture should have been brought timely in BCSC Case No. 22CV02594. The Demurrer is sustained without leave to amend. Given the Court's ruling in relation to the Demurrer, the Motion to Strike is moot and is denied on that basis. Counsel for the Defendant shall submit a form of order consistent with this ruling within two weeks.

**10. 24CV04368 GOODWIN, MICHELLE RENEE V. WELLPATH**

*EVENT: Plaintiff's Motion for Preliminary Injunction*

There is no proof of service in the Court's file therefore the Court cannot confirm whether or not notice complies with *Code of Civil Procedure* §1005. Notice is insufficient and the Motion is denied.

**11. 25PR00008 MARLER FAMILY TRUST DATED JULY 18, 2001**

*EVENT: Order to Show Cause re: Preliminary Injunction*

The Court finds that, Petitioner has established a reasonable probability of prevailing on her claims, and that the balance of harm weighs in her favor. Therefore, Petitioner's request for preliminary injunction is granted. The Court will hear from counsel as to a suggested undertaking. Counsel for the Petitioner shall submit a form of order within two weeks.