Judge Mosbarger – Law & Motion – Wednesday, April 16, 2025 @ 9:00 AM
TENTATIVE RULINGS

1-2. 23CV01517 ESTRADA, SUNNI V. RENEWABLE ENERGY LIVING, LLC ET AL

EVENTS: (1) Plaintiff's Motion to Request Extension

(2) Plaintiff's Motion to Reopen Case

The Court is in receipt of the Proofs of Service filed on April 10, 2025 on the individually named Defendants. The Court notes however, that the Defendants are represented by counsel, Landon T. Little, who was not provided notice. As such, this matter is continued to June 4, 2025 at 9:00 a.m. to allow Plaintiff to provide notice to Mr. Little, and file a Proof of Service.

3. 24CV00765 HATZIS, MORGAN RAE V. PRIETO, MARIA NERISSA ET AL

EVENT: Plaintiff's Motion for Leave of Court to File a Second Motion for Summary Judgment

Plaintiff seeks leave of Court to file a second Motion for Summary Judgment or in the alternative, Summary Adjudication pursuant to *Code of Civil Procedure* §1008(b) and *Code of Civil Procedure* §437c(f)(2). As to the first basis, there is a very short period of time in which a party may move for reconsideration of a Court's ruling. In terms of notice, CCP §1008(a) states that "…any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order…" make application to the Court for reconsideration. Here, Plaintiff seeks reconsideration of the Court's December 18, 2024 Order, but the instant motion was not served until March 14, 2025 or filed until March 17, 2025, which is well beyond the statutory deadline. The Motion is thus untimely under *Code of Civil Procedure* §1008(b), and the Motion is denied on that basis. Turning to *Code of Civil Procedure* §437c(f)(2), that Section is also governed by the provisions of *Code of Civil Pro*cedure §1008, thus the same deadline applies, and the motion is untimely. The Court further notes that under both *Code of Civil Procedure* §§1008(b), and 437c(f)(2), if the motion is made more than 10 days after an original motion, it is a new motion. Both sections authorize the new motion under prescribed circumstances but *Code of Civil Procedure* §1008(b) does not purport to authorize a new summary judgment motion that does not comply with the requirements for such motions set out in *Code of Civil Procedure* §437c. Motions for summary judgment may be brought only under *Code of Civil Procedure* §437c and in accordance with its requirements. See, *UAS Management, Inc. v. Mater Misericordiae Hospital* (2008) 169 Cal.App.4th 357. Here, Plaintiff's Motion for Leave is incomplete in that it does not include a copy of the proposed summary judgment motion, nor does it set forth the alleged new facts, circumstances, or law that would support the Court's granting of this Motion. The Motion is denied.

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4. 24CV01920 SANDERS, MARLENE V. FIDELITY MANAGEMENT TRUST

EVENT: Motion for Order Setting Aside Stipulation and Order and Dismissal

"It is a well-settled proposition of law that where a plaintiff has filed a voluntary dismissal of an action pursuant to section 581, subdivision 1, the court is without jurisdiction to act further. [Citations.]" *Eddings v. White* (1964) 229 Cal.App.2d 579, 583. Unless a defendant has filed a cross-complaint seeking affirmative relief or has moved for a change of venue under CCP §396b, a California court loses subject matter jurisdiction of the case when the plaintiff voluntarily dismisses an action. CCP §581(b)(1), (h); *Roski v Superior Court* (1971) 17 Cal.App.3d 841. A plaintiff's right to dismiss in an action in which no affirmative relief has been sought may be exercised without the parties' knowledge or court's consent any time before trial has commenced. *Wilson v Los Angeles County Civil Serv. Comm'n* (1954) 126 Cal.App.2d 679. Neither the clerk nor the court can refuse to enter the dismissal. *Klinghoffer v Barasch* (1970) 4 Cal.App.3d 258, 262. Nor may the court set aside such a dismissal. *Simpson v Superior Court* (1945) 68 Cal.App.2d 821. Further, a third party generally does not have standing to seek to set aside a dismissal with prejudice for purposes of filing an interpleader motion unless specific exceptions apply. Under California law, standing to challenge a dismissal with prejudice is typically limited to parties to the action or those who can demonstrate a direct and concrete interest in the outcome of the case. See, e.g., *O'Dell v. Freightliner Corp*. (1992) 10 Cal.App.4th 645; *Robinson v. Hiles* (1953) 119 Cal.App.2d 666. Here, Claimant is not a party to this action and in any case, has failed to present the required factual showing to support application of the narrowly construed exception. The Court lacks jurisdiction to hear the Claimant's Motion for Order Setting Aside Stipulation and Order and Dismissal and the Motion is denied.

5. 24CV02929 PATTERSON, PATRICK CHARLES V. HIGHWAY 70 INDUSTRIAL PARK ET AL

EVENT: Defendant Dave Doe's Demurrer to Plaintiff's Complaint for Damages

As Defendant, Dave Hargis ("Defendant" herein), correctly states, fundamental to a viable claim for disability harassment is some factual allegation tending to establish that the allegedly harassing conduct was, in fact, motivated by the Plaintiff's disability. CACI 2522A (2025). Here, the Court finds that Plaintiff has failed to allege facts sufficient to establish that he was a member of a protected group, or that the alleged conduct was based on a disability. Further, the Court finds that Plaintiff has failed to allege facts sufficient to establish that the harassment so severe or pervasive that it created a hostile work environment. Plaintiff has therefore failed to state a cause of action for disability harassment and the Demurrer is sustained as to the First Cause of Action – Disability Harassment in Violation of the Fair Employment and Housing Act. The Court does grant leave to amend, and any amended Complaint is to be filed within 10 days' notice of entry of this order. The Court will utilize the form of order submitted by the Defendant with modification to include the Court's granting of leave to amend.

6-7. 24CV03933 SABRINA AHRENS GRAVELLE ADMINISTRATOR FOR THE ESTATE OF DEANNE ELIZABETH OSBORN V. OSBORN, RONALD ET AL

EVENTS: (1) Defendant Allied Trustee Service's Demurer to Plaintiff's First Amended Complaint

(2) Defendant Brynwood Park POA's Demurrer to Plaintiff's First Amended Complaint

As to Defendant Allied Trustee Service's ("Allied" herein) Demurer to Plaintiff's First Amended Complaint, the Court first notes that the Demurrer is unopposed. Allied's Request for Judicial Notice is granted. The Court finds that Plaintiff has failed to state facts sufficient to satisfy any of the elements of a breach of contract claim as to Allied (e.g., (1) the existence of a contract; (2) Plaintiff's performance or excuse for nonperformance, (3) Defendant's breach; and (4) the resulting damages to Plaintiff). The Demurrer is sustained as to the first cause of action – breach of contract. As to the remaining causes of action, the Court likewise finds that Plaintiff has failed to state facts sufficient to state a cause of action for intentional tort, fraud/identity theft/workmans comp, and general negligence, against Allied. The Demurrer is thus sustained as to the second cause of action – intentional tort, third cause of action – fraud/identity theft/workmans comp, and fourth cause of action – general negligence. Failure to oppose a demurrer may be construed as having abandoned the claims. See *Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20. Further, because the Demurrer is unopposed, Plaintiff has failed to suggest how the complaint might be amended to state a cause of action, does not show that any allegations were omitted from the complaint which, if inserted, would change its legal effect, and does not show how the complaint could be amended to plead a triable cause of action. *Grossmont Union High School Dist. v. California Debt. of Educ*. (2008) 169 Cal.App.4th 869, 875-76. Thus, the Demurrer is sustained without leave to amend. Allied shall submit a form of order consistent with this ruling within two weeks.

As to Defendant Brynwood Park POA's ("Brynwood" herein) Demurrer to Plaintiff's First Amended Complaint, the Court first notes that the Demurrer is unopposed. Brynwood's Request for Judicial Notice is granted. The Court finds that Plaintiff has failed to state facts sufficient to satisfy any of the elements of a breach of contract claim as to Brynwood (e.g., (1) the existence of a contract; (2) Plaintiff's performance or excuse for nonperformance, (3) Defendant's breach; and (4) the resulting damages to Plaintiff). The Demurrer is sustained as to the first cause of action – breach of contract. Additionally, the Court finds that Plaintiff has failed to state fact sufficient to satisfy the elements of a negligence cause of action as to Brynwood (e.g., (1) Defendant must have made an untrue representation as to a past or existing material fact; (2) Defendant must have made the statement without any reasonable grounds for believe it to be true; (3) The representation must have been made with the intent to induce Plaintiff to act in reliance on it; (4) Plaintiff must have relied on the statement and such reliance must have been justified; and (5) Plaintiff suffered damages due to the reliance on Defendant's representation). The Demurrer is sustained as to the fourth cause of action – general negligence. Failure to oppose a demurrer may be construed as having abandoned the

claims. See *Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20. Further, because the Demurrer is unopposed, Plaintiff has failed to suggest how the complaint might be amended to state a cause of action, does not show that any allegations were omitted from the complaint which, if inserted, would change its legal effect, and does not show how the complaint could be amended to plead a triable cause of action. *Grossmont Union High School Dist. v. California Debt. of Educ*. (2008) 169 Cal.App.4th 869, 875-76. Thus, the Demurrer is sustained without leave to amend. The Court will sign the form of order submitted by Brynwood.