

**Judge Benson – Law & Motion – Wednesday, January 25, 2023 @ 9:00 AM
TENTATIVE RULINGS**

1-2. 20CV01510 Ortega, Ruben et al. v. Puig-Palomar, Miguel, MD et al

EVENT: (1) Plaintiff's Motion to Amend Second Amended Complaint

(2) Plaintiff's Motion to Compel the Deposition of Enrico Greco and Further Answers to Interrogatories and for Sanctions

Plaintiff's Motion to Amend Second Amended Complaint is GRANTED. LivaNova PLC is hereby added to the complaint as a Defendant. Plaintiff shall prepare and submit a form of order within 10 days.

Plaintiff's Motion to Compel the Deposition of Enrico Greco and Further Answers to Interrogatories, and for Sanctions is DENIED WITHOUT PREJUDICE.

Both Plaintiffs' and Defendant's request for sanctions are DENIED. On the issue of whether Mr. Greco is a "managing agent" for purposes of CCP § 2025.280(a), the Court finds, similar to *Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 566, that Plaintiff has failed to present sufficient evidence as to the second factor (can the person be expected to comply with the party's directive to appear) (*Id* at p. 602) The Court accepts Defendant LivaNova Inc.'s evidence that, despite Mr. Greco's signature on the report indicating he is a representative of Liva Nova, Mr. Greco is legally an employee of Sorin Group Italia Srl, a subsidiary of Liva Nova.

If the deponent has no formal or legal role within the party's organization, there must be some additional factual basis to establish the party has the practical ability to require the nonparty's compliance. (*Lopez, supra* at p. 603) Here, there needs to be some evidence demonstrating Liva Nova PLC has the ability to require Mr. Greco's attendance.

Regarding Special Interrogatories 1 and 2, because the motion solely relies on the argument that Mr. Greco and Mr. Melchiorre were affiliates, the Motion is Denied.

Defendant LivaNova USA, Inc. shall prepare and submit a form of order consistent with this ruling within 10 days.

3. 21CV01362 Murphy, Wayne A. v. Harper Ferguson, Catherine Renee et al

EVENT: Cross-Defendant Nautilus Insurance Company's Motion for Judgment on the Pleadings as to Catherine Renee Harper Ferguson's Cross-Complaint

Cross-Defendant Nautilus Insurance Company's (hereinafter "Nautilus") Motion for Judgment on the Pleadings as to Catherine Renee Harper Ferguson's Cross-Complaint is GRANTED without leave to amend. Preliminarily, the Court accepts Cross-

Complainant's (hereinafter "Ferguson") concession as the second, third, and fifth causes of action. This leaves the fourth cause of action for negligence which Ferguson contends is sufficient to withstand this attack on the pleadings.

It appears generally undisputed that although Ferguson was supposed to be named as a payee on the subject insurance policy, she was ultimately not a named payee on the insurance policy. Also, it appears to be undisputed that at some point in time before Nautilus issued payment on the policy, Nautilus was made aware of Ferguson's contention that she was supposed to be named as a payee by virtue of the contract between Ferguson and Wayne Murphy (Plaintiff in the underlying case). The Cross-Complaint alleges Nautilus wrote one check to both Ferguson and Murphy, that Murphy's counsel subsequently cashed the check, and that Ferguson has been wrongfully deprived of those funds.

Regarding the fourth cause of action for negligence, Ferguson argues she has sufficiently plead negligent undertaking. However, the Court's research indicates the negligent undertaking theory is limited to persons who have suffered physical harm, see Restatement 2d of Torts §§ 323 and 324A. All of the cases reviewed by the Court pertaining to negligent undertaking all dealt with persons who suffered physical injury. In sum, the Court is finding no authority, whether in case law or in the Restatement, that extends the theory of negligent undertaking to pecuniary loss. Consequently, the Court finds under the circumstances of this case, a duty cannot be imposed on Nautilus under a theory of negligent undertaking.

Considering the issue of duty more broadly, as Nautilus correctly notes, the loss payable endorsement in an insurance policy defines the obligation of the insurer and is intended to protect the insurer by permitting it to pay the named insured and to be thereafter free of claims by other persons who might have an interest in the lost property. (*Ziello v. Superior Court*, (1995) 36 Cal. App. 4th 321, 329)

Consequently, it is clear an insurer owes no duty to a third party not named on the policy. As a result, Cross-Complainants negligence cause of action necessarily fails. Cross-Defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.

4. 22CV00983 Schein, Karen et al v. Bains, Jasdeep et al

EVENT: Prove Up Hearing

The Court will grant the Judgment on the evidence submitted. The Court will sign the Proposed Judgment.

5. 22CV01108 Yuhasz, James Z v. P31 Enterprises, Inc. et al

EVENT: Defendant Pacific Gas and Electric Company's Demurrer to Plaintiff's First Amended Complaint (Joined by Defendant Phillips and Jordan)

Defendant Pacific Gas and Electric Company's ("PG&E") Demurrer to Plaintiff's First Amended Complaint is sustained with leave to amend. Plaintiff shall amend within 20 days of this order. PG&E's request for judicial notice is granted.

Preliminarily, the Court disagrees with Plaintiff's contention that Defendant Phillips and Jordan, Inc. ("Phillips") cannot join in PG&E's demurrer. The FAC clearly alleges Phillips was an agent and was acting at the direction of PG&E, and the FAC does not allege that Phillips exceeded the scope of authority granted by PG&E.

As noted by Plaintiff, an actionable claim of trespass includes Defendant exceeding the permission it received, see CACI 2000. In the context of this case, and in consideration of Electric Rule 16, the question becomes whether PG&E's decision to cut down Plaintiff's trees was for a purpose "connected with" the furnishing of electric service. The Court notes that PG&E has not cited, nor has the Court found, any authority suggesting Electric Rule 16 permits PG&E to conduct unlimited vegetation management on private property. To the contrary, the plain meaning of the phrase "connected with" appears to impose some limitation on PG&E's authority. The issue appears to be whether a connection exists between the decision to cut down the subject trees and electric service.

Logically, the proximity of the trees to any electrical equipment are facts (which have not been plead) relevant to the issue of whether PG&E exceeded its authority under Electric Rule 16. Here, the FAC is bereft of allegations as to the location of the trees on the properties. Obviously, the location of the trees is within the knowledge of Plaintiff, consequently those matters cannot be plead on information and belief.

As to whether Plaintiff should be required to plead the location of electrical equipment in relation to the subject trees, the Court finds such matters may be within Plaintiff's personal knowledge, but not necessarily so. Thus, allegations based on information and belief concerning the location of electrical equipment would be permissible.

Nothing in this ruling should be interpreted to suggest there is any bright line rule as to how close the trees need to be to electrical equipment in order for Electric Rule 16 to immunize PG&E as a matter of law. Rather, that most likely will be a question fact that will need to be litigated and discovery conducted as Plaintiff suggests. However, the present allegations on the issue of connection between vegetation management activities and electrical services are conclusory.

PG&E shall prepare and submit a form of order consistent with this ruling within 10 days.

6-8. 22CV01848 Gulbransen, Mike et al v. Golightly, Michaela

EVENT: (1) Plaintiffs' Motion to Compel Further Responses to Form Interrogatories, Set One and for Sanctions

(2) Plaintiffs' Motion to Compel Production of Documents and For Sanctions

(3) Plaintiffs' Motion for Order that Matters in Request for Admissions be Deemed Admitted

Plaintiffs' Motion to Compel Further Responses to Form Interrogatories, Set One and for Sanctions and Plaintiffs' Motion to Compel Production of Documents and For Sanctions are both Granted. Defendant is ordered to provide further, verified, code compliant responses without objections within 20 days of this order.

The Court finds Defendant's objections to be without merit and are unsubstantiated.

Concerning Plaintiffs' Motion for Order that Matters in Request for Admissions be Deemed Admitted, the Court deems the motion a motion to compel further responses under CCP § 2033.290. Because Defendant provided responses, the Court does not have authority to deem the requests admitted at this stage.

Defendant is ordered to provide further verified, code compliant responses to Request for Admissions within 20 days of this order.

Plaintiff is awarded sanctions in the total amount of \$1,930.00, payable within 20 days. Plaintiff shall prepare and submit a form of order consistent with this ruling within 10 days.