

**Judge Benson – Law & Motion – Wednesday, September 13, 2023 @ 9:00 AM
TENTATIVE RULINGS**

1-5. 20CV01510 Ortega, Ruben et al. v. Puig Palomar, Miguel, MD, et al.

EVENT: (1) Defendant Liva Nova USA Inc.'s Motion for Summary Judgment, or , in the Alternative, Summary Adjudication

(2) Defendant Peter J. Wolk M.D.'s Motion For Summary Adjudication of Plaintiff's Claim for Medical Negligence (Standard of Care)

(3) Defendant Peter J. Wolk M.D.'s Motion For Summary Adjudication of Plaintiff's Claim for Medical Negligence (Causation)

(4) Defendant Peter J. Wolk's Motion for Summary Adjudication of Plaintiff's Claim for Intentional Concealment

(5) Plaintiff's Ex Parte Application to Continue Liva Nova's Motion for Summary Judgment

LIVA NOVA'S MOTION

Defendant Liva Nova USA Inc.'s Motion for Summary Judgment, or, in the Alternative, Summary Adjudication is continued to October 11, 2023 at 9:00am. Plaintiffs are permitted to file the final deposition transcripts of Fernando Fleischman M.D. and Marco Medici as well as an amended separate statement no later than September 20, 2023. It is the Court's expectation that only relevant excerpts of the declaration will be included.

A limited scope reply, addressing only the relevant deposition transcripts, is due no later than September 28, 2023.

DR. WOLK'S MOTIONS

Standard of Care and Causation

The motion is DENIED as to both motions. In light of Dr. Merrick's declaration, triable issues of fact exists as to both standard of care and causation.

As to relevant evidentiary objections made by Dr. Wolk, the Court rules as follows.

Causation - objections to the declaration of Dr. Merrick – objection nos. 2,3, and 4 - overruled.

Intentional Concealment

The Motion is GRANTED.

The elements of a cause of action for fraud based on concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must

have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.

(Bigler-Engler v. Breg (2017) 7 Cal.App.5th 276, 310-11 [Emphasis Added]

Resolution of this motion hinges on whether a triable issue of fact exists that Dr. Wolk intended to defraud Plaintiff. It is not enough that Defendant intended to conceal a fact - he must have concealed the fact with intent to defraud.

A fraudulent state of mind includes not only knowledge of falsity of the misrepresentation but also an ‘“intent to ... induce reliance”’ on it. (*Beckwith v. Dahl*, (2012) 205 Cal. App. 4th 1039, 1062) The evidence before the Court is that Dr. Wolk allegedly concealed the fact that there was a large mass near or on decedent’s heart (UMF 56). Even in light of the rule requiring liberal construction of evidence in favor of the non-moving party, there is no evidence, either direct or circumstantial, supporting an inference that Dr. Wolk intended to induce reliance by concealing facts.

For example, there is no circumstantial evidence that Defendant was concealing facts with the purpose of preventing decedent from uncovering a malpractice claim. Nothing in the evidence presented suggests that at the time the alleged concealment occurred circumstances existed which could provide motivation for Dr. Wolk to induce reliance. While Dr. Wolk’s omissions may constitute negligence, the omissions in and of themselves do not provide an evidentiary basis to infer intent to defraud.

Defendant Dr. Wolk shall prepare and submit a form of order consistent with this ruling within 2 weeks.

6. 22CV02644 Greene, Robin v. Housing Authority of the County of Butte

EVENT: Defendant’s Motion For Requests For Admissions (Set One) Propounded Upon Plaintiff Robin Greene To Be Deemed Admitted And Request For Monetary Sanctions

Defendant’s Motion For Requests For Admissions (Set One) Propounded Upon Plaintiff Robin Greene To Be Deemed Admitted And Request For Monetary Sanctions is GRANTED. Sanctions are awarded in the amount of \$500. The Court will sign the Proposed Order.

7. 162440 CMRE Financial Services v. Diamond, Evyn

EVENT: Motion to Amend Judgment

Motion to Amend Judgment is GRANTED. The Court will sign the Proposed Judgment.

8. 21CV00287 Peters, Ed et al. v. Foster, Lionel, Jr. et al.

EVENT: Defendants Lionel S. Foster, Jr. M.D. (erroneously sued as Lionel Foster Jr. M.D.), Dove's Landing Multispecialty Practice (erroneously sued as Oroville Hospital Urology) and Oroville Hospital's Motion for Summary Judgment

Defendants Lionel S. Foster, Jr. M.D. (erroneously sued as Lionel Foster Jr. M.D.), Dove's Landing Multispecialty Practice (erroneously sued as Oroville Hospital Urology) and Oroville Hospital's Motion for Summary Judgment is DENIED. Regarding the 3 year time limitation under CCP § 340.5, "Once the damaging effect of the alleged wrongful act is apparent, the statute is activated." (*Hills v. Aronsohn*, (1984) 152 Cal. App. 3d 753, 762)

Here, the Court finds Defendants have failed to meet their initial burden demonstrating no triable issue of fact exists as to whether the symptoms experienced by Plaintiff in November 2016 constituted an "injury" for purposes of the 3 year time limitation. Unlike *Hills, supra*, reasonable minds can draw more than one conclusion as to whether the symptoms experienced by Plaintiff in November 2016 were the damaging effect of the alleged malpractice.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 2 weeks.

9-12. 22CV01764 Richardson, Gary et al. v. Crozier, David L et al.

EVENT: (1) Plaintiffs' Motion for Order Compelling Response to Form Interrogatories, Set One;

(2) Plaintiffs' Motion for Order Compelling Response to Special Interrogatories, Set One;

(3) Plaintiffs' Motion for Order Compelling Response to Request for Production of Documents, Set One;

(4) Plaintiffs' Motion for Order Establishing Admissions and For Sanctions

Plaintiffs' Motion for Order Compelling Response to Form Interrogatories, Set One; Motion for Order Compelling Response to Special Interrogatories, Set One; Motion for Order Compelling Response to Request for Production of Documents, Set One; and Motion for Order Establishing Admissions and For Sanctions are all GRANTED. Sanctions are granted in the amount of \$1,000.00. Defendant is ordered to provide code complaint responses without objection within 20 days of notice of this order.

Plaintiffs shall prepare and submit the form of order.

13. 20CV02212 Owens, Marc et al. Aegis Security Insurance Company et al.

EVENT: Defendant Aegis Security Insurance Company's Motion for Leave to Amend Answer

Defendant Aegis Security Insurance Company's Motion for Leave to Amend Answer is GRANTED. Defendant shall separately file its amended answer within 10 days. The Court will sign the Proposed Order with this modification.

14. 23CV01381 Kravica, James v. Novak, Larissa

EVENT: Motion to Strike Plaintiff's Entire Complaint

Motion to Strike Plaintiff's Entire Complaint is DENIED. While a motion to strike is addressed to the sound discretion of the trial court a matter which is essential to a cause of action should not be stricken. *Clements v. T. R. Bechtel* (1954) Co., 43 Cal. 2d 227, 242) Defendant's moving papers implicitly acknowledge the purchase agreement attached to the complaint is essential to this case.

As noted in the Court's ruling on demurrer, the Court simply has no authority to make a factual determination concerning the genuineness or lack thereof, of the documents attached to the complaint. Neither CCP § 436, nor CCP § 430.10 provide the Court with authority to make such a determination. Defendant is ordered to file an answer within 20 days. The Court will prepare the order.

15. 22CV00648 Citibank NA v. Soria, Hortencia

EVENT: Claim of Exemption

The Court will conduct a hearing.

16. 158784 Cavalry SPV I, LLC v. Lee, Yeng

EVENT: Assignee's Motion for Renewal of Judgment Nunc Pro Tunc

On the Court's own motion, this motion is continued to September 27, 2023 at 9:00am.

17. 18CV02797 Reviver Financial, LLC v. Reynolds, Kimmie

EVENT: Opposition to Claim of Exemption

The Court will conduct a hearing.

18. 149849 Newport Capital Recovery Group II v. Heydenrieck, Janet

EVENT: Opposition to Claim of Exemption (continued from 8/16/23)

The Court will conduct a hearing.

19. 22CV02781 Mountain Circle Family Services v. Rossington, Shauna

EVENT: Plaintiff's Motion to Compel Production of Documents, Set Six

Plaintiff's Motion to Compel Production of Documents, Set Six is DENIED. Preliminarily, the Court notes that notice is not compliant with CCP § 1005 which requires a minimum of 16 court days notice, plus an additional 5 days for mailing. According to the proof of service, the moving papers were served on August 21 which is only 11 Court days before the hearing.

Further, to the extent discovery requests are issued to Defendant Mountain Circle Family Services, Inc., who is a party to this action, a subpoena is not the proper procedural mechanism. Notwithstanding the foregoing, the information sought is not relevant to this action even under the broad provisions of CCP § 2017.010.

Defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.