

**Judge Benson – Law & Motion – Wednesday, December 4, 2024 @ 9:00 AM  
TENTATIVE RULINGS**

**1. 20CV00578 Holman, Ryan v. County of Butte et al.**

*EVENT: Plaintiff's Motion for Change of Venue (continued from 7/24/24)*

In light of the pending appeal, Plaintiff's Motion for Change of Venue is continued to April 16, 2025 at 9:00am.

**2-3. 24CV00323 Enloe Medical Center v. Benefit Administrative Systems, LLC et al.**

*EVENT: (1) Defendant Prestige Care Inc.'s Demurrer to Complaint*

*(2) Defendant Prestige Care Inc.'s Motion to Sever and to Extend Its Deadline for Responding to the Operative Complaint Served in the Action*

**Severance**

Defendant Prestige Care Inc.'s Motion to Sever and to Extend Its Deadline for Responding to the Operative Complaint Served in the Action is DENIED. While the Court appreciates Defendant's arguments regarding judicial economy, Plaintiff has adequately alleged a connection between Defendant Prestige and the remaining defendants by virtue of Prestige's connection with Defendant Benefit Administrative Systems.

**Demurrer**

Defendant Prestige Care Inc.'s (hereinafter "Defendant") Demurrer to Complaint is SUSTAINED IN ITS ENTIRETY WITH LEAVE TO AMEND. Specifically, the demurrer is sustained on the grounds of uncertainty as well as preemption pursuant to the Employee Retirement Income Security Act (ERISA).

Although demurrers for uncertainty are generally disfavored, (see *Lickiss v. Financial Industry Regulatory Authority*, (2012) 208 Cal. App. 4th 1125, 1135) because Plaintiff has proposed amendments which would provide clarification, the Court is sustaining the demurrer with leave to amend.

As a preliminary matter, the operative complaint does not explicitly allege Defendant's plan is governed by ERISA and the Court has no ability to consider extrinsic evidence (Defendant's declaration and attachment in support of demurrer). However, the Court takes judicial notice of Plaintiff's opposition which proposes amendments including allegations Defendant "is a voluntary employees benefit association organized and existing pursuant to the laws of the United States of America, specifically 26 U.S.C. § 501(c)(9). In light of this admission, the Court is accepting the fact Defendant is governed by ERISA for purposes of demurrer.

Concerning ERISA preemption, *Port Medical Wellness, Inc. v. Connecticut General Life Ins. Co.*, (2018) 24 Cal. App. 5th 153 cited by Defendant is on point. There, the Court granted summary judgment on implied in fact contract and quantum meruit claims due to conflict preemption. *Port Medical* noted "Because Port Medical would need to prove entitlement to benefits under the Plan in order to prevail on its claims, they are preempted under ERISA." The same reasoning applies here.

While the Court appreciates Plaintiff's argument concerning emergent care and the fact they are required by law to provide those services, Plaintiff cites no legal authority exempting emergent care from ERISA preemption. Although Plaintiff spends much of the opposition addressing complete preemption, we need not address complete preemption in light of conflict preemption. As *Port Medical* noted, complete preemption and conflict preemption are independent preemption grounds.

In light of this ruling, the Court declines addressing the remaining issues in the demurrer. Plaintiff is granted leave to amend to allege a cause of action(s) other than breach of implied in fact contract and quantum meruit within 20 days of notice of this order.

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

#### **4. 24CV02820 Uong, Thahn Van Thit et al. v. Cordes, Jacquelyn et al**

*EVENT: Motion to Be Relieved as Counsel (Plaintiff's Counsel)*

Motion to Be Relieved as Counsel is GRANTED. The Court will sign the proposed order. The order will become effective upon the filing of the proof of service indicating the order was served on Plaintiffs.

5. **24CV02908 In re: Ramirez Arroyo, Salvador**

*EVENT: Change of Name (adult)*

The Court is in receipt of the proof of publication and will sign the decree provided.

6. **24CV03346 In re: Jones, Nathaniel**

*EVENT: Change of name (minor)*

The Court is in receipt of the proof of publication and will sign the decree provided.

7. **23CV02979 Heredia's Familia Inc et al v. Cruz, Francisco**

*EVENT: Attorney David S Pearson's Motion to Be Relieved as Counsel*

Attorney David S Pearson's Motion to Be Relieved as Counsel is GRANTED. The Court will sign the proposed order. The order will become effective upon the filing of a proof of service demonstrating the order was served.

8. **23CV01879 OneMain Financial Group v. Cooper, Jeremy**

*EVENT: Opposition to Claim of Exemption*

The Court will conduct a hearing.

9. **20CV02267 Alvarez, Jessica v. Abel, Jeff et al.**

*EVENT: Defendant Abel Fire Equipment's Motion to Compel Non Party Witness Shayla Love's Compliance With Deposition Subpoena*

Defendant Abel Fire Equipment's Motion to Compel Non Party Witness Shayla Love's Compliance With Deposition Subpoena is continued to January 15, 2025 at 9:00am. In reviewing the file, there is no proof of service indicating the non-party witness was served with the moving papers. Counsel shall file an amended notice of motion indicating the new date and file a proof of service indicating the non-party witness was served with the moving papers and amended notice.

10. **19CV01226 Randolph, Teresa v. Trustees of the California State University**

*EVENT: Defendants' Motion to Dismiss for Failure to Bring Action to Trial Within 5 ½ Years*

Defendants' Motion to Dismiss for Failure to Bring Action to Trial Within 5 ½ Years is GRANTED. Pursuant to *Oswald v. Landmark Builders, Inc.* (2023) 97 Cal.App.5th 240, when the court schedules a trial date beyond the statutory deadline, it is plaintiff's responsibility to object. (*Id.* p. 249)

Here, at the March 27, 2024, Plaintiff did not object to the Court setting the trial beyond the statutory deadline. Consequently, pursuant to *Oswald*, Plaintiff cannot reference the case management conference to excuse compliance with the 5-year rule.

Regarding *Nunn v. JPMorgan Chase Bank, N.A.*, (2021) 64 Cal. App. 5th 346 cited by Plaintiff, as Defendant noted there is one significant difference between *Nunn* and the circumstances in this case. In *Nunn*, Defendant sought a continuance beyond the statutory deadline in order to conduct further discovery and file a motion for summary judgment.

Here, in contrast, all indications are Defendants have been prepared to go to trial since January 2023. (See declaration of Jerry Deschler, p.3, lines 25-27) The Court agrees with Defendants' interpretation of *Dunn* that the Court's finding of an agreement was premised on the defendant in *Dunn* seeking a trial date to accommodate their interests.

The Court stated "Taken together, these expressions of mutual assent constitute an agreement" (*Nunn, supra*, at p. 357 [Emphasis Added]) – this is in reference to (2) facts – (1) defendant's request to continue beyond the statutory deadline; and (2) no objection by either party. This Court's interpretation of *Nunn* is a failure to object alone is not sufficient to support a finding of an oral stipulation pursuant to CCP § 583.330.

The case is dismissed with prejudice. All pending matters on the calendar are hereby vacated.

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

**11. 23CV00905 Walker, JR v. In-N-Out Burgers, Inc et al.**

*EVENT: Defendant's Motion for 60 Day Trial Continuance*

The Court is inclined to grant a continuance and will hear from counsel.

**12. 24CV03487 In re: Duncan, Mary**

*EVENT: Change of name (minor and adult) (Continued from 11/20/24)*

The Court is in receipt of the proof of publication. If there are no objections to the minor name changes at the hearing, the Court will sign the decree provided.