

Judge Benson – Law & Motion – Wednesday, May 28, 2025 @ 9:00 AM
TENTATIVE RULINGS

1. 20CV02205 Conrad, Ethan et al v. Orozco, Joshua et al.

EVENT: (1) Plaintiffs' Motion for Summary Judgment

(2) Defendant William Cotter's Ex Parte Application to Continue Plaintiffs' Motion for Summary Judgment

Plaintiffs' Motion for Summary Judgment is DENIED WITHOUT PREJUDICE.

The proof of service indicates moving papers were served on 2/27/25, which is 83 days before the hearing. The current iteration of CCP § 437c requires a minimum of 81 days, plus an additional 5 days if service is by mail. The proof of service indicates the papers were served by mail. Thus, in this case, notice needed to be a minimum of 86 days before the hearing. Consequently, notice is deficient.

Trial courts do not have authority to shorten the minimum notice period for summary judgment hearings. (*Robinson v. Woods* (2008) 168 Cal.App.4th 1258, 1262) A continuance is a violation of due process and an abuse of discretion. (*Id* at p.1268) The notice period must begin anew. (*Id* at p. 1267)

Accordingly, the motion must be denied without prejudice. If Plaintiffs desire, they will need to file a new motion which complies with the notice requirements of CCP § 437c. The Court will prepare the order.

2-3. 22CV01196 Renteria Graciano, Agustina v. Hignell, Incorporated

EVENT: (1) Motion for Preliminary Approval of Class & Representative Action Settlement & Provisional Class Certification for Settlement Purposes Only (Continued from 5/7/25)

(2) Case Management Conference

Motion for Preliminary Approval of Class & Representative Action Settlement & Provisional Class Certification for Settlement Purposes Only is GRANTED.

The Court is in receipt of the updated class notice. Additionally, upon further review, Plaintiffs are correct – the current requirements of Labor Code § 2699(m) only apply to cases filed on or after June 19, 2024. Consequently, the proposed distribution of 75% to the LWDA is in accordance with the law.

The Court will sign the proposed order, modifying the LWDA distribution to reflect the 75% - 25% allocation. A final approval hearing is hereby set for August 27, 2025 at 9:00am. All papers in support of final approval shall be filed by August 11, 2025.

4-5. 22CV02593 Haman, John et al. v. F&S Houseboats, LLC et al.

EVENT: (1) Plaintiffs and Cross-Defendants John Haman and Katherine Haman Motion to Compel Responses to Form Interrogatories, Set One

(2) Plaintiffs and Cross-Defendants John Haman and Katherine Haman Motion to Compel Responses to Production of Documents, Set Two

Form Interrogatories

No. 15.1

The motion is denied as moot.

No. 17.1

The motion is denied.

The Separate Statement is inadequate. Typically, in a motion to compel further responses to 17.1, the Separate Statement includes the actual requests for admission. Providing the Court with the actual request for admission is obviously necessary so that we have context when we analyze the motion. 17.1 is inextricably connected with the request for admissions for which it seeks further information.

CRC 3.1345(c)

Contents of separate statement A separate statement is a separate document filed and served with the discovery motion that provides all the information necessary to understand each discovery request and all the responses to it that are at issue. The separate statement must be full and complete so that no person is required to review any other document in order to determine the full request and the full response. Material must not be incorporated into the separate statement by reference. The separate statement must include--for each discovery request (e.g., each

interrogatory, request for admission, deposition question, or inspection demand) to which a further response, answer, or production is requested--the following:

...

(5) If the response to a particular discovery request is dependent on the response given to another discovery request, or if the reasons a further response to a particular discovery request is deemed necessary are based on the response to some other discovery request, the other request and the response to it must be set forth;

[Emphasis Added]

Production of Documents

The motion is denied for failure to file a Separate Statement.

Request for sanctions is denied. Defendants shall prepare and submit a form of order consistent with this ruling within 2 weeks.

6. 24CV00371 995 Nord Retail, LLC v. Ballesteros, Tina

EVENT: Plaintiff's Motion to Vacate Dismissal

Plaintiff's Motion to Vacate Dismissal is GRANTED. A Case Management Conference is hereby scheduled for June 25, 2025 at 10:30am. Plaintiff shall prepare the order.

7. **24CV00627 Norcal Home Design, Inc. v. Allstate Insurance Company et al.**

EVENT: Motion to be Relieved as Counsel (Defendants Diana Cantea and First Response, Inc.)

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. **24CV02390 Vermillion, Nicole v. Clisham Painting**

EVENT: Application for Sale of Dwelling

The Court is in receipt of Plaintiff's request for a continuance to July 30, 2025. The matter is continued to July 30, 2025 at 9:00am.

9. **24CV03009 Platts, Kishaunte v. Johnson, Mark**

EVENT: Defendants' Demurrer to Complaint

Code of Civil Procedure section 335.1

The demurrer on the grounds of the 2-year time limitation under CCP § 335.1 is overruled.

Weil & Brown California Practice Guide (The Rutter Group) (2022) Civil Procedure Before Trial, Demurrer, [7:44]

No matter how unlikely: The sole issue raised by a general demurrer is whether the facts pleaded state a valid cause of action – not whether they are true. Thus, no matter how unlikely or improbable, plaintiff's allegations must be accepted as true for the purpose of ruling on demurrer. [Del E. Webb Corp. v. Structural Materials Co. (1981) 123 CA3d 593, 603]

Because the Court cannot inquire on demurrer as to whether the alleged bite on August 26, 2022 is a truthful allegation, the Complaint on its face adequately alleges compliance with CCP § 335.1. Consequently, the demurrer is overruled.

Code of Civil Procedure section 338(a)

For the same reasons, the demurrer on the grounds of the 3-year time limitation period under CCP §338(a) is overruled. The alleged incident on August 26, 2022 negates CCP § 338(a) for demurrer purposes.

8th cause of action under Civil Code § 1942.3 and 9th Cause of Action under Civil Code § 1942.4

The Court is in receipt of Plaintiff's dismissal of the 9th cause of action. The demurrer to the 9th cause of action is moot.

The demurrer to the 8th cause of action is sustained with leave to amend. The Complaint as currently constructed fails to allege any harm sustained within the year prior to the filing of the complaint.

Code of Civil Procedure section 338(b)

The demurrers to the 12th and 13th causes of action are overruled for the same reasons discussed re: CCP § 335.1 and CCP § 338(a).

Battery

The demurrer is sustained with leave to amend. The Complaint fails to allege sufficient facts on the element of intent.

Negligence

The demurrer is overruled. The presence of bed bugs in itself is a potential breach of Defendants' duty to provide a habitable premises.

Intentional Infliction of Emotional Distress

The demurrer is sustained with leave to amend. The pleading alleges fails to allege facts (instead it alleges conclusions) concerning the elements of outrageous conduct and intentional/reckless conduct.

Note: The moving papers attempt to demurrer in somewhat conclusory fashion to causes of action (4), (5), (7), (8), (9), (10), (12), and (13) in Defendants' Intentional Infliction of Emotional Distress heading (IV. C.) of the moving papers. That portion of the demurrer is overruled.

Uncertainty

The demurrer is overruled. Demurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond. (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.*, (2019) 38 Cal. App. 5th 677, 695) The pleading is not unintelligible.

Plaintiff shall amend within 10 days.

Defendants shall prepare and submit the form of order.

The Court on its own motion, consolidates this matter with Kishaunte Platts v. Mark Johnson, et al, Case No. 24CV03009, for all purposes including trial, with Case No. 24CV02857 being the lead case. Pursuant to California Rules of Court, Rule 3.350(c) and (d), any subsequent document must be filed only in the lead case, and all documents filed in the consolidated case must include the caption and case number of the lead case, followed by the case number of the consolidated case. The next hearing in the consolidated matters will be a Case Management Conference on July 30, 2025 at 10:30 a.m. (The Case Management Conference in this case, currently scheduled for May 28, 2025 at 10:30am, is hereby vacated)

10. 25CV01081 In re: Glayzer, Shelly Elaine

EVENT: Change of name (minor)

There is no proof of publication on file. Also, there is no proof of service on the non-consenting parent. The Court will hear from Petitioner.

11. 25CV01109 In re: Chambers, Arlene Frances

EVENT: Change of name (minor)

The Court will hear from Petitioner.

12. 25CV01131 In re: Frazier, Angelina Marie

EVENT: Change of name (minor)

There is no proof of publication on file. Also, there is no proof of service father as required by CCP 1277(a)(4).

13. 25CV01132 In re: Leahy, Bryan Anthony

EVENT: Change of name (Adult)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

14. 25CV01190 In re: Weisbrod, David Thoams

EVENT: Change of name (adult)

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

15. 25CV01421 In re: Mallan, Dellfran Lee

EVENT: Change of name (adult)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

16. 25CV01564 Capital One Bank (USA) NA v. Linzy, Ronald T.

EVENT: Defendant's Motion to Dismiss

Defendant's Motion to Dismiss is DENIED. Whether the motion is construed as a demurrer or a motion for judgment on the pleadings, the motion makes arguments extrinsic to complaint. Because the Court cannot consider extrinsic matters in the context of a challenge to the pleading, the motion is denied. The Court will prepare the order. The Court will mail the order to the parties.

17. 164293 Capital One Bank (USA) v. Jones, Pamela C

EVENT: Plaintiff's Motion to Vacate and Set Aside Default Judgment

Plaintiff's Motion to Vacate and Set Aside Default Judgment is GRANTED. The Court will sign the proposed order.