Judge Benson – Law & Motion – Wednesday, August 27, 2025 @ 9:00 AM
TENTATIVE RULINGS

1. **17CV03587 Unipan, Mark v. Reetz, Kimberly et al.**

EVENT: Motion for Order Vacating Void Judgment

Motion for Order Vacating Void Judgment is DENIED. The Court finds Defendant's representations that she and her daughter were not served with the summons and complaint on January 14, 2018 not credible. Further, the email dated November 5, 2018 demonstrates that, at a minimum, Defendants had actual notice of this case since at least that time and yet waited roughly 5.5 years before filing a motion with the Court.

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

2. **21CV03075 Hall, Chantelle v. City of Chico et al**

EVENT: Plaintiff's Motion to Amend Complaint

Counsel is ordered to appear. Plaintiff's Motion to Amend Complaint is granted on the condition that, at the City's election, the jury trial scheduled for December 22, 2025 is continued.

In light of the new factual allegations and theories, the City has the right to investigate the same. If the trial is continued, all discovery deadlines would run with the new trial date. Counsel should be prepared to select a new date in that event.

Further, it is the Court's understating Defendant Villa Rita was dismissed by Plaintiff without prejudice in 2022. In light of this, Defendant Villa Rita would be entitled to a trial continuance if it so desires.

In light of the amended pleading, the City's motion for summary judgment/summary adjudication currently scheduled for further hearing on October 1, 2025 is moot, see *State Compensation Ins. Fund v. Superior Court* 184 Cal. App. 4th 1124, 1131. Similarly, Plaintiff's motion for summary judgment scheduled for October 1, 2025 is also moot. Both motions are hereby vacated. However, the City will be permitted to file a second motion for summary judgment/summary adjudication if it so desires; the City need not seek leave of court.

Lastly, the Court notes a Mandatory Settlement Conference is currently scheduled for November 19, 2025. The Court is inclined to keep that date.

Plaintiff shall file the First Amended Complaint within 20 days.

3-4. 22CV01196 Renteria, Graciano, Agustina v. Hignell, Incorporated

EVENT: (1) Final Approval Hearing re: Class Action Settlement

(2) Settlement Approval Hearing

Motion for Final Approval of Class Action Settlement is GRANTED. The Court will sign the proposed order and judgment. A status conference is hereby scheduled for March 25, 2026 at 9:00am. No later than March 11, 2026, Plaintiff shall file a declaration that complies with CCP § 384 indicating whether there are any unclaimed funds. In the event there are unclaimed funds, Plaintiff shall prepare an amended judgment accordingly.

5. 23CV02979 Heredia's Familia, Inc et al v. Cruz, Francisco

EVENT: Cross Defendants' Motion for Judgment on the Pleadings (Continued from 7/30/25)

Cross Defendants' Motion for Judgment on the Pleadings is GRANTED in PART and DENIED in Part.

Breach of Contract and Implied Covenant of Good Faith and Fair Dealing

The motion in GRANTED WITHOUT LEAVE TO AMEND.

Preliminarily, the moving papers attempt to present a litany of extrinsic evidence via a declaration from Marcelino Heredia. However, because this is a motion for judgment on the pleadings – functionally equivalent to a demurrer – we cannot consider extrinsic evidence. Rather, as with a demurrer we are limited to the pleading.

That stated, the statement in the Cross-Complaint that "the APA was never executed" appears to be fatal to Mr. Cruz's breach of contract cause of action. Additionally, because the implied covenant of good faith and fair dealing requires the existence of a binding contract, the covenant of good faith and fair dealing claim fails as well.

Fraud and Negligent Misrepresentation

The motion is DENIED.

The moving papers contend "a fraud claim cannot be based on representations in an unexecuted contract because such representations do not constitute actionable misstatements of fact." This not supported by the law. Neither CACI 1900 (Misrepresentation) nor CACI 1903 (Negligent Misrepresentation) requires a misrepresentation based on an enforceable contract term. It simply requires misrepresentation of a "fact".

Accounting

The motion is DENIED.

A fiduciary relationship between the parties is not required to state a cause of action for accounting. (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179) All that is required is that some relationship exists that requires an accounting.

The Cross-Complaint meets the low standard of alleging "some relationship" exists.

Resulting Trust

The motion is DENIED.

Contrary to the moving papers, a resulting trust does not necessarily require a contract. The Cross-Complaint alleges that Cross-Defendants hold funds belonging to Cross-Complainants. This is all that is required for a resulting trust.

Constructive Trust

The motion is DENIED.

The moving papers contend there is no wrongful act supporting a constructive trust cause of action. However, as discussed, the fraud causes of action are sufficiently plead with respect to the issues raised in this motion. Consequently, the alleged fraudulent conduct could support a constructive trust.

The Court will prepare the order.

6. 24CV04513 Ayers-Anderson, Penny et al v. Serger, John et al.

EVENT: Defendant Board of Trustees of the California State University's Demurrer to Plaintiff's Second Amended Complaint

Plaintiff's request for judicial notice is granted in its entirety.

Preliminarily, although the previous demurrer was overruled with respect to Defendant CSU's liability, a defendant may demurrer again to a cause of action that was previously overruled when a subsequently amended complaint is filed so long as it is not based on the same argument, see *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1035 and *Goncharov v. Uber Technologies, Inc*. (2018) 19 Cal.App.5th 1157, 1167. Thus, the Court will consider the new arguments presented by Defendant CSU regarding Gov Code §§ 820.2 and 850.4 with respect to the theory that Defendant's agents improperly prevented good Samaritans from rescuing the decedent.

1. CSU liability for Officer Serger

The pleading is essentially divided into four parts with respect to Defendant CSU: the DUI vehicle pursuit, the decision of Officer Serger to pursue the suspect on foot instead of checking on the well-being of the residents, and the conduct of the responders who allegedly were negligent in not timely rescuing decedent and were negligent in preventing good Samaritans from rescuing decedent.

With respect to vicarious liability for Officer Serger's conduct, the SAC alleges no new facts which would alter the previous ruling. The opposition appears to concede the issue however the opposition also states:

> By pursuing the Mustang (at night, while it was raining, and while in a residential neighborhood), Plaintiff alleges that CSU's agents affirmatively contributed to the Mustang crashing into Decedent's house and starting a fire.

Thus, it is unclear whether Plaintiff has or has not conceded the issue with respect to vicarious liability for Officer Serger. In any event, the foregoing argument contradicts the previous ruling in which the Court found that the enumerated "conditions" were not created by Officer Serger, and that the only affirmative act by Officer Serger was the decision to pursue the vehicle, and that decision is immunized.

It is illogical that Officer Serger or any other agent of CSU affirmatively contributed to the crash by the simple fact that it was dark, raining, the driver was a DUI suspect, and the event occurred in a residential neighborhood. The opposition further states:

> "Plaintiff's SAC alleges CSU took affirmative acts by causing the Mustang to start a house fire and by prohibiting third parties from rescuing Decedent."

Again, there are no facts that CSU or its agents caused the vehicle to collide with the residence. The only fact linking the collision with CSU and its agents is Officer Serger's decision to pursue which is immunized.

With respect to Officer Serger's conduct after the collision, neither the SAC nor the opposition demonstrate sufficient facts supporting liability. Consequently, Plaintiff's legal theories with respect to CSU's vicarious liability for Officer Serger are stricken without leave to amend.

2. Allegations Responders Were Negligent in not Timely Extracting Decedent from the Residence

At the previous hearing, the Court granted plaintiff leave to amend to better articulate why the responders had a legal duty to timely extract plaintiff from the residence. However, before addressing that, the Court addresses a new immunity issue raised by Defendant.

Gov. § Code 850.4

> Gov. Code 850.4 Injury caused in fighting fires and from condition of fire-fighting equipment or facilities
>
> Neither a public entity, nor a public employee acting in the scope of his employment, is liable for any injury resulting from the condition of fire protection or firefighting equipment or facilities or, except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code, for any injury caused in fighting fires.

Plaintiff argues the pleading does not allege that the responders were "fighting fires" and therefore section 850.4 is inapplicable. For pleading purposes, the Court agrees. The Court's research indicates the Legislature intended to immunize decisions made during the course of fighting a fire, and firefighting equipment malfunctions. In reviewing the SAC it does not allege at any point that the responders were engaged in fire-fighting. Thus, for purposes of demurrer, section 850.4 is inapplicable.

The FAC Fails to Sufficiently Allege Facts Demonstrating the Responders Induced Decedent's Reliance

Paragraph 33 of the SAC alleges a special relationship existed between the decedent and defendants agents because "she detrimentally relied on the conduct of the officers who were at the scene of the collision, who were aware that the house was on fire and that there were

residents inside." The SAC further alleges that the decedent could see from her place at the window the movements of the officers which gave her a false sense of security.

California courts have found no duty of care and have denied recovery "for injuries caused by the failure of police personnel to respond to requests for assistance, the failure to investigate properly, or the failure to investigate at all, where the police had not induced reliance on a promise, express or implied, that they would provide protection." (*Camp v. State of California* (2010) 184 Cal.App.4th 967, 975) A duty of care may arise where the evidence demonstrates "the requisite factors to a finding of special relationship, namely detrimental reliance by the plaintiff on the officers' conduct, [or on] statements made by them which induced a false sense of security and thereby worsened [the plaintiff's] position." (*Id at p*.976)

At most, the SAC alleges that based on the officers' presence at the scene, the officers induced reliance. However, that is not enough.

> Camp, supra, at p. 976
>
> A special relationship is not established "simply because police officers responded to a call for assistance and took some action at the scene." (*Adams v. City of Fremont, supra,* 68 Cal.App.4th at p. 279.) Nor is it "enough to assert that the law enforcement officers took control of the situation." [Emphasis Added]

With respect to Plaintiff's theory that Defendant's agents owed a duty to timely extract decedent from the residence, Plaintiff must amend, if they can, to allege additional facts beyond the officers' mere presence at the scene in order to demonstrate the officers induced decedent's reliance.

3. Allegations Responders Were Negligent by Preventing Good Samaritans From Entering the Residence

Gov. Code § 850.4

The Court reincorporates the previous discussion with respect to Gov. § Code 850.4. Because the pleading does not allege the responders were engaged in firefighting when the responders allegedly prevented the good Samaritans from entering the structure, Gov. § Code 850.4 does not preclude liability at the pleading stage. (Although paragraph 35 suggests that, at some later point in time responders were actually engaged in fire suppression, making all reasonable inferences in favor of Plaintiff, the Court infers that at the time the good Samaritans were prevented from entering the structure fire suppression was not taking place.)

Gov. Code § 820.2

Plaintiff argues the officers had a ministerial obligation to prevent people from entering the structure by referencing the CSU Chico Police Department Policy Manual. Assuming that is

true, the Court struggles to see how liability can be imposed. While it is true that section 820.2 does not apply to ministerial acts, that exception applies when *neglecting or refusing* to perform a ministerial act, see *Ellis v. Council of Burlingame* (1963) 222 Cal.App.2d 490, 498. .[The rule is well settled that where the law requires absolutely a ministerial act to be done by a public officer, and he *neglects or refuses* to do such act, he may be compelled to respond in damages to the extent of the injury arising from his conduct.] [Emphasis Added]

The SAC does not allege that the officers failed to perform a ministerial act. To the contrary, it alleges that they prevented the public from entering the structure, which means Plaintiffs have essentially alleged that the officers did perform their ministerial obligations. It is true that ministerial actions can be subject to liability when the actions are performed negligently, see *Johnson v. State of California* (1968) 69 Cal.2d 782, 797.

Plaintiff contends that, even if the decision to prevent the public from entering the residence was discretionary, the pleading alleges that defendant was negligent in blocking civilian rescue efforts. The allegation that defendant was negligent in blocking civilian rescue efforts is not an allegation that the officers performed their obligation to "establish a perimeter to prevent entry to the scene…." negligently, or that the obligation was executed negligently. Rather, the gravamen of that theory is a direct challenge to the decision or policy to secure the perimeter and prevent entry by the public in the event of a fire.

Consequently, because the officers performed their ministerial obligations and there are no allegations that the officers were negligent in executing those obligations, the demurrer is sustained without leave to amend. The Court struggles to see how the pleading can be amended to allege negligent execution of the officers' ministerial obligations such that there would be a causal connection between said negligence and Plaintiffs' damages attendant to Decedent's death.

With respect to punitive damages, in the event Plaintiff elects to amend Plaintiff shall ensure that the allegations of punitive damages with respect to Defendant CSU are be removed.

In sum, with respect to the four theories alleged against Defendant CSU, both theories with respect to Officer Serger are sustained without leave to amend. The theory that the Officers were negligent in failing to timely extract Decedent is sustained with leave to amend. The theory that the Officers were negligent in preventing good Samaritans from entering the residence is sustained without leave to amend.

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

7-8. 25CV01161 Warner, Cathy v. Canterbury, Steven et al.

EVENT: (1) Defendant Arlene Canterbury's Motion to Set Aside Default and Quash Service of Summons (Defective Service of Summons and Lack of Jurisdiction of Nonresident Defendant)

(2) Plaintiff's Motion for Extension of Time

Plaintiff's Motion for Extension of Time is DENIED. The motion fails to comply with the notice requirements of CCP §1005 and there is no proof of service which complies with CCP § 1013a. Consequently, the Court lacks jurisdiction to grant the relief requested. As such the Court deems Defendant's motion unopposed.

Defendant Arlene Canterbury's Motion to Set Aside Default and Quash Service of Summons is GRANTED. Defendant Arlene Canterbury is dismissed with prejudice.

Pursuant to CCP § 473(b) Defendant has set forth sufficient evidence demonstrating mistake, inadvertence, and excusable neglect.

When a nonresident defendant questions the trial court's in personam jurisdiction, the issue is tested by a special appearance in the form of a motion to quash service of summons (§ 418.10, subd. (a)). (*Sch. Dist. v. Superior Court* (1997) 58 Cal.App.4th 1126, 1131) Although the defendant is the moving party and must present some admissible evidence (declarations or affidavits) to place the issue before the court (by showing the absence of minimum contacts with the state), the burden of proof is on the plaintiff to establish, by a preponderance of the evidence, a basis for jurisdiction (minimum contacts between the defendant and the forum state) and valid service of process in conformance with our service statutes. (*Id*)

Here, Defendant Arlene Canterbury has presented evidence demonstrating she does not have sufficient contacts with California such that California's exercise of jurisdiction over her would be appropriate. There are two types of personal jurisdiction: "general" (sometimes called "all-purpose") jurisdiction and "specific" (sometimes called "case-linked") jurisdiction. (*Bristol-Myers Squibb Co. v. Superior Court* (2017) 582 U.S. 255, 262) The exercise of general jurisdiction is the individual's domicile. (*Id*)

Here, the evidence before the Court is that Arlene Canterbury is currently a resident of Washington and has not resided in California since 2020. Thus, Defendant has presented evidence demonstrating she is not subject to general jurisdiction. As the motion is unopposed, Plaintiff has failed to meet her evidentiary burden demonstrating Defendant is subject to general jurisdiction.

Specific jurisdiction is determined by a three-part test: (1) the out of state defendant purposefully established contacts with the forum state; (2) plaintiff's cause of action arises

out of or is related to defendant's contacts with the forum state; and 3) the forum's exercise of personal jurisdiction in the particular case comports with fair play and substantial justice. (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 477-478) Defendant has presented evidence that she was not involved in the subject breach of contract action. Further, the complaint does not specifically allege how Arlene Canterbury was involved with the contract. As the motion is unopposed, Plaintiff has not met her burden demonstrating that Defendant had purposeful contacts with the state and that those contacts are related to the breach of contract allegations.

In light of the Court's ruling, the Court declines addressing the other issues raised in the moving papers.

Defendant shall prepare an order consistent with this ruling within 2 weeks.

9. 25CV01665 Cohasset, LLC v. Zebrosky, LLC et al.

EVENT: Plaintiff's Motion to Determine Value, and Send Buyout Notice (Continued from 7/23/25

Counsel is ordered to appear. The Court will hear from counsel regarding status of any potential settlement.

If the matter is not resolved, the Court is inclined to rule as follows.

- Justin Schlageter is appointed appraiser
- Apportionment of Costs

  The Court approves the $4,000 appraisal fee. Pursuant to CCP § 874.321, because this proceeding is opposed, Plaintiff shall bear all costs. Costs shall be paid within 20 days of this order.
- Next Hearing Date: September 17, 2025 at 9:00am to determine fair market value of the property.
- It appears that one named Defendant, Rodney Raphael, is not represented by counsel and has not been defaulted. While the Court acknowledges the Partition of Real Property Act is unclear as to what stage any merits issues with respect to title are to be adjudicated, in the absence of specific guidance the Court will require entry of default with respect to Mr. Raphael prior to the Court ordering the sale of the property.

10. 25CV02064 Deer Creek Broadcasting v. Hibdon Auto Center, Inc

EVENT: Defendant Shawn T. Hibdon's Demurrer to Complaint

The demurrer is overruled on the grounds it is untimely and fails to comply with CRC 3.1113. Defendant shall file an answer within 20 days' notice of this order. Plaintiff shall prepare and submit a form of order within 2 weeks.

11. 25CV02246 In re: Sanger, Al Abdul

EVENT: Change of name (minor) (Continued from 8/13/25)

The Petition is in order. The Court will sign the decree provided.

12. 25CV02313 California Highway Patrol v. McNeill, Gregory

EVENT: Vehicle Forfeiture Petition (Continued from 7/23/25)

The Court will hear from Petitioner. Absent express statutory language to the contrary (the Court is not aware of any), the Court is inclined to find that a governmental entity such as CHP must be represented by a licensed attorney. The longstanding rule is entities must be represented by counsel; representation of entities by non-licensed individuals constitutes the unauthorized practice of law. (See *CLD Construction, Inc. v. City of San Ramon* (2004) 1141, 1146)

Consequently, it appears that this Petition cannot proceed until Petitioner obtains counsel.

13. 25CV02371 In re: Hammontre, Susan Lorraine

EVENT: Change of name (adult)

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

14. 25CV02427 In re: Webb, Daniel

EVENT: Change of name (minor)

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

15. 25CV02752 Morales, Laila Danae v. Click, Christian James

EVENT: Application for Writ of Possession

The Court will hear from Plaintiff. The Court needs clarification regarding the ownership interests of the dog. Is Plaintiff and Defendant co-owners of the dog? If the answer is in the affirmative, the Court is inclined to rule as follows:

> Application for writ of attachment is DENIED. Claim and delivery is a remedy by which a party with a superior right to a specific item of personal property may recover possession of that specific property before judgment. (*Waffer Internat. Corp. v. Khorsandi* (1999) 69 Cal.App.4th 1261, 1271) [Emphasis Added] Because the parties are co-owners of the dog, neither party has a superior right to the dog. Consequently, a writ of possession is not available. It is well-settled that an action for claim and delivery will not lie for an undivided interest in a chattel. (*Adams v. Thornton* (1907) 5 Cal.App. 455, 460) A pet is the type of property which is not divisible. Although it may be Plaintiff's turn to have temporary custody of the dog, that does not mean Plaintiff's possession to the exclusion of Defendant's right to possession. Plaintiff fails to cite any authority that, to the extent the dog is her emotional support animal this entitles her to a writ of possession.