

Judge Benson – Law & Motion – Wednesday, September 3, 2025 @ 9:00 AM
TENTATIVE RULINGS

1. 22CV00348 AquAlliance et al v. Biggs-West Gridley Water District et al

EVENT: Plaintiffs' Motion for Leave to File Third Amended Complaint

Plaintiffs' Motion for Leave to File Third Amended Complaint is GRANTED. The Court will sign the proposed order.

2. 22CV00822 Grimes, Emma v. Kennemer, Franklin R et al

EVENT: Plaintiff's Motion for an Award of Attorney's Fees and Expenses

Plaintiff's Motion for an Award of Attorney's Fees and Expenses is DENIED in its entirety. A trial court can deny fees altogether based on a "near total lack of success." (*Russell v. Carleson* (1973) 36 Cal.App.3d 334, 349.) "A fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether." (*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 990)

Chavez involved that situation – the Court found plaintiff's level of success modest at best, yet plaintiff sought attorney fees for a total of \$870,935.50. (Although *Chavez* involved FEHA and not the Labor Code, the Court finds the distinction inconsequential. FEHA and the Labor Code serve the same purpose – to protect employee rights)

Similarly here, an attorney fee request in excess of \$100,000 in relation to a jury verdict for \$65 is disproportionate to the degree a complete denial of the motion is warranted.

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

3. 24CV01644 Pro Garage Doors, Inc v. Pitts, Tim

EVENT: OEX (Tim Pitts)

The Court will swear in the witness.

4. 25CV01634 Fatco III Leasing, LP v. GSO Printing, LLC et al

EVENT: Plaintiff's Demurrer to Answer and Cross-Complaint

Plaintiff's Demurrer to Defendants' Answer

The demurrer is overruled with respect to affirmative defense nos. 2,4,8 and 9. The Court finds these matters concern facts one would expect to be in the possession of Plaintiff, thus less specificity is required.

The demurrer is sustained with leave to amend with respect to affirmative defense nos. 3,6, and 7. Unlike the previous defenses, the Court would expect Defendants to have knowledge of the facts concerning these defenses.

The demurrer is sustained without leave to amend with respect to affirmative defense no.5. Affirmative defense no. 5 is duplicative with affirmative defense no. 4.

Defendants, if they so choose, shall amend within 20 days' notice of this order.

Plaintiff's Demurrer to the Cross Complaint

First Cause of Action for Breach of Contract

The demurrer is sustained with leave to amend. With respect to Plaintiff's arguments that Cross-Complainants did not in fact fully perform or that Cross Defendants did not breach the agreements, such arguments are extrinsic matters which cannot be considered on demurrer.

With respect to Cross-Complainants' failure to attach the relevant agreements, the Court notes the agreements have been attached to the complaint. Thus, the Court fails to see the necessity in either attaching the documents or providing detailed summaries assuming the agreements referenced in the Cross-Complaint are the same agreements attached to the complaint. Cross-Complainants shall amend and indicate whether the agreements referenced in the cross-complaint are the same agreements attached to the

complaint. If the agreements are the same, the breach of contract cause of action is otherwise sufficiently pled.

Second Cause of Action for Breach of Implied Warranties

The demurrer is sustained with leave to amend.

Preliminarily, this discussion further illustrates why the cross complaint must be amended to clearly indicate whether or not the agreement attached to the complaint is or is not the agreement also applicable to the cross complaint. Currently, because it's unclear from the cross complaint whether the contracts attached to the complaint are the operative contracts, technically we cannot assume the warranty disclaimers are part of the contract referenced in the cross-complaint.

However, that being case, the opposition appears to concede the warranty disclaimers are part of the agreement. If it was not part of the agreement, one would expect counsel to object accordingly. Thus, because the opposition appears to admit the existence of the disclaimers, the Court proceeds to the merits.

Cross-Complainants cite *Dorman v. International Harvester* for the proposition that whether a warranty exclusion is sufficiently conspicuous is a question of fact. However, *Dorman* does not stand for that proposition. Rather, *Dorman* stands for the proposition that whether a disclaimer is sufficiently conspicuous shall be determined by the court. (*Dorman v. Int'l Harvester Co.* (1975) 46 Cal.App.3d 11, 17) In any event, there are no allegations in the cross-complaint that the warranty disclaimer is not sufficiently conspicuous. As such the cross-complaint needs to be amended.

Cross-Complainants argue courts have held that a disclaimer clause cannot defeat an implied warranty claim where the buyer relies on the seller's skill and judgment in selecting goods for a particular purpose citing *Greenman v. Yuba Power Products, Inc.* (1963) 59 Cal.2d 57, 64; *Keith v. Buchanan* (1985) 173 Cal.App.3d 13, 25. Neither case cited stands for that proposition. Neither case involved contracts containing warranty exclusions.

Defendant cites *A&M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 473 for the proposition that warranty exclusions are unenforceable if they are the by product of fraud, misrepresentation, or unequal bargaining power. *A&M* held that the warranty disclaimers were unconscionable and therefore unenforceable.

The court finds no allegations in the cross complaint with respect to the disclaimer being unconscionable, not to mention any allegations of unequal bargaining power. The cross-complaint must be amended to sufficiently allege unconscionability, which requires allegations of both procedural and substantive unconscionability, see *A&M Produce*, supra, at p.485.

Third Cause of Action – Fraud

The demurrer is sustained with leave to amend.

While there is case law suggesting fraudulent concealment may have relaxed pleading standards when the facts are in the exclusive possession of the defendant, that rule does not apply to misrepresentations. When affirmative misrepresentation fraud is alleged, “This particularity requirement necessitates pleading facts which ‘show how, when, where, to whom, and by what means the representations were tendered.’” (*Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 43)

The fraud alleged here is misrepresentations not concealment. Consequently, the general rule that each element must be supplied with specificity applies.

Contrary to the opposition, the pleading does not specifically allege representations that the equipment would “be suitable for high-volume, high-speed printing jobs”, nor does it allege those representations were made “in late 2020”.

Fourth Cause of Action – Negligent Misrepresentation

For reasons similar to the fraud analysis, the demurrer is sustained with leave to amend. Again, in reviewing the pleading the court is not seeing any allegations concerning representations that the equipment would be suitable for high-volume, high-speed printing jobs, or that those representations were made in late 2020. The pleadings must allege facts concerning the misrepresentations and the surrounding of misrepresentations.

Fifth Cause of Action – Breach of Contract (Guaranty Agreement)

For reasons similar to the first cause of action, the demurrer is sustained with leave to amend. The pleading does not clarify whether the contracts attached to the complaint are the same contracts referenced in the cross complaint. As to the argument in the moving papers that cross complainants failed to meet their obligation to pay amounts due, that is extrinsic to the pleading and cannot be considered at this stage.

Sixth Cause of Action for Fraud Based on Lease Payments

The demurrer is sustained without leave to amend. The opposition does not cite, nor is the Court aware of any authority providing the contract price itself may constitute a misrepresentation for fraud purposes. A contract price in and of itself is in no way a representation by the seller of the product’s value. The contract price is simply the price both sides have agreed to in order to effectuate the transaction.

Under Cross-Complainants’ theory, anytime someone sells a product exceeding the market price, or anytime someone sells a product for more than cost (which occurs in most cases), such conduct could be subject to prosecution for a fraudulent

misrepresentation. Seemingly this would be contrary to public policy and have a chilling effect on commerce.

The gravamen of what cross complainants are alleging is that the price is substantively unconscionable and that they were taken advantage of with respect to price. While perhaps that might be actionable in some form or fashion, the price itself is not a misrepresentation for purposes of fraud.

The cross complaint does not allege cross defendants made representations (separate from the contract price) about the market value of the equipment. There are no allegations that cross defendants held themselves out as experts concerning the value of the equipment and that they were advising cross complainants of the market value of the equipment.

Seventh Cause of Action – Rescission

The demurrer is sustained with leave to amend. Because the Court has sustained the demurrer as to the alleged grounds for rescission (i.e. misrepresentations and breach of warranty), those causes of action will need to be cured for a viable rescission claim.

Eighth Cause of Action – Declaratory Relief

The demurrer is sustained with leave to amend. Declaratory relief is superfluous when issues invoked in declaratory relief are already engaged by other causes of action. See *Hood v. Superior Court* (1995) 33 Cal.App.4th 319, 324. Here, the declaratory relief simply restates claims engaged in other causes of action.

To the extent leave to amend is granted, Cross-Complainants shall amend within 20 days' notice of this order. Cross-Defendants shall prepare the order within two weeks.

5. 25CV01952 In re: Fitzhugh, Cosette Christine

EVENT: Change of name (adult) (Continued from 7/16/25 and 8/13/25)

The Court will hear from Petitioner.

6. **25CV02345 In re: Silvas Esquivel, Citlally**

EVENT: Change of name (minor)

The Court will hear from Petitioner.

7. **25CV02369 In re: Van Gorder, Alexa Kelley Jacqueline**

EVENT: Change of name (adult) (continued from 8/20/25)

There is no proof of publication on file. If there is no proof of publication submitted by the hearing and there are no appearances, the Petition will be dismissed without prejudice.

8. **25CV02490 In re: Lay, William Hunter**

EVENT: Change of name (minor)

The Court will conduct a hearing.

9. **154580 Jane Doe 1 et al v. Carter, Christopher Steven**

EVENT: OEX (Christopher Steven Carter)

The Court will swear in the witness.

