

Judge Benson – Law & Motion – Wednesday, January 21, 2026 @ 9:00 AM
TENTATIVE RULINGS

1. 25CV01634 Fatco III Leasing, LP v. GSO Printing, LLC et al.

EVENT: UBEO West LLC's Demurrer to the First Amended Cross Complaint

The First Cause of Action for Breach of Contract – Lease Agreement

The demurrer is overruled on the ground the FACC fails to allege sufficient facts demonstrating breach. However, the demurrer is sustained with leave to amend on the ground the first cause of action is duplicative with the second cause of action.

UBEO's request for judicial notice is granted as unopposed. The Court takes judicial notice of the written agreement which includes the unambiguous terms indicating the equipment was being provided "as is" and disclaims any warranty, either express or implied.

We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. (*Evans v. City of Berkeley*, (2006) 38 Cal. 4th 1, 6) We also consider matters which may be judicially noticed. Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. (*Id*)

Although the "as is" and warranty disclaimer language appears to negate the allegation that the equipment did not perform as intended, the FACC alleges that the "as is" and disclaimer language is unconscionable. The moving papers do not address the issue of unconscionability. The unconscionability allegations are a predicate to adjudicating whether allegations the equipment did not perform as intended are viable. Because the moving papers do not address the unconscionability allegations, we must overrule the demurrer on this particular ground at this time.

The basic allegation in the first cause of action is that the equipment did not perform as intended. The second cause of action makes that same allegation and elaborates by alleging representations made by UBEO. Thus, the first cause of action adds nothing to the second cause of action "by way of fact or theory of recovery". (*See Palm Springs Villas II Homeowners Assn., Inc. v. Parth* (2016) 248 Cal.App.4th 268, 290)

The Fifth Cause of Action for Breach of Contract as to the Guaranty Agreement

The demurrer 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]

The moving papers' contention that it is undisputed the GSO parties didn't make contractually obligated payments. However, we are required to accept as true the allegation in the FACC that they performed their contractual obligations.

Further, GSO parties are correct in that we cannot determine who breached first on demurrer. The FACC need only allege they fulfilled their obligations until the other party materially breached the agreement. (See *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 277) [When a party's failure to perform a contractual obligation constitutes a material breach of the contract, the other party may be discharged from its duty to perform under the contract]

The Seventh Cause of Action for Declaratory Relief

The demurrer is sustained with leave to amend. Declaratory relief is superfluous when issues invoked are already fully engaged in other causes of action. (See *Hood v. Superior Court* (1995) 33 Cal.App.4th 319, 324) In reviewing the FACC, the issues sought to be determined under the declaratory relief cause of action are already engaged in other causes of action.

Cross-Complainants shall amend within 20 days' notice of this order. Cross Defendant UBEO shall prepare the form of order.

2. 25CV03500 Johnson, Lyle Wayne v. Richards, Kenneth Stanley

EVENT: Motion to Strike Portions of Plaintiff's Complaint

A stipulation and order was signed on January 14, 2026 striking punitive damages from the Complaint. In light of this development, Defendant's Motion to Strike is moot.

3. **25CV04474 In re: Pugh, Deborah Gail**

EVENT: Change of name (adult)

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

4. **25CV04496 In re: Cruz, Juan Sanchez**

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.

5. **25CV04514 In re: Louque, Gena Angelica**

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.

6. **25CV04588 In re: Chen, Yusi**

EVENT: Change of name (minor)

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

7. 25MH00548 Petition of Vandegrift, Jeffrey Brian

EVENT: Request for Relief from Firearms Prohibition

The Court will conduct a hearing.

8. 24CV02709 Tank District, LLC v. Hilbers, Inc et al.

EVENT: Technical Steel Construction Inc.'s Demurrer to Plaintiff Tank District LLC's Complaint

Technical Steel Construction Inc.'s Demurrer to Plaintiff Tank District LLC's Complaint is OVERRULED. As Plaintiff notes, the long-standing rule in this state is that negligence may be plead in general terms. The complaint sufficiently alleges facts under that standard.

Defendant shall file an answer within 20 days' notice of this order. Plaintiff shall prepare the form of order within 2 weeks.