**Judge Benson – Law & Motion – Wednesday, August 26, 2026 @ 9:00 AM**

1. **22CV00409 Char-Dor Realty et al. v. Rainwater Construction, et al.**

*EVENT: Motion to Be Relieved as Counsel (Rainwater Construction, 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 Plaintiff was served with the order.

2. **22CV01319 Swigart, Barbara et al v. Westhaven, Inc.**

*EVENT: Plaintiffs' Motion to Permit Punitive Damages Discovery*

Plaintiffs' Motion to Permit Punitive Damages Discovery is DENIED.

The Court rules on Defendant's evidentiary objections as follows. Objection nos. 1 and 2: sustained. Objection no. 3: overruled.

As to objection nos. 1 and 2, it is well settled that unverified pleadings are not evidence. Plaintiffs appear to rely on our previous ruling which conclusively determined liability in favor of Plaintiffs in order to present the FAC as a form of admissible evidence. However, the scope of the order does not include punitive damages. The previous ruling was not intended to deem conclusive allegations in the pleading relating to punitive damages and the conduct that must be proved to establish punitive damages, i.e., malice, oppression, fraud. It was intended to deem conclusive all matters relating to the prima facie elements of the causes of action, excepting damages. Accordingly, the Court is not considering the allegations in the FAC.

Regarding Plaintiffs' objections to the expert declaration of Mr. O'Connor, the objections are sustained in part and overruled in part. To the extent the expert declaration attempts to negate causation in the context of the prima facie elements in the causes of action asserted in the FAC, the declaration will not be considered as those matters are disposed.

However, in the context of punitive damages, it is an individualized punishment and deterrent imposed upon a particular and identified defendant whose malicious or oppressive acts are the proximate cause of the injury sustained by the plaintiff. (*Magallanes v. Superior Court* (1985) 167 Cal.App.3d 878, 887) Thus, although we are not considering the expert declaration in context of prima facie element causation, the declaration can still be considered as to whether the alleged conduct constituting malice, oppression, or fraud was the proximate cause for Plaintiffs' harm for punitive damages purposes.

Additionally, the objection to Exhibit C is sustained to the extent it seeks to deem as true Cameron Owings' statement that the junction box was not part of their work.

> *Kerner v. Superior Court* (2012) 206 Cal.App.4th 84, 120:
>
> A trial court considering a motion to permit discovery of a defendant's financial condition must weigh the evidence submitted in support of and in opposition to the motion and determine whether the plaintiff has established a "substantial probability" (Civ. Code 3295, subd. (c)) of prevailing on a claim for punitive damages. (Jabro, supra, 95 Cal.App.4th at p. 758.) In this context, a "substantial probability" of prevailing on a claim for punitive damages means that it is "very likely" that the plaintiff will prevail on such a claim or there is " 'a strong likelihood' " that the plaintiff will prevail on such a claim. (Ibid.)
>
> *Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1181
>
> At a minimum, California law requires conduct done with "willful and conscious disregard of the rights or safety of others" or despicable conduct done "in conscious disregard" of a person's rights. (Civ. Code 3294, subd. (c)(1), (2); *see Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895–896 [157 Cal. Rptr. 693, 598 P.2d 854] [conscious disregard means "that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences"].)

The Court finds Plaintiffs have not demonstrated a strong likelihood of establishing malice, oppression, or fraud at trial. The evidence indicates Mr. Swigart was placed on notice concerning the electrical problems at the residence. Mr. McQueary also informed Mr. Swigart that he needed to retain a licensed electrician and that some of the electrical work was done "pretty shady".

Regarding the alleged fraudulent permit, it is unclear whether the permit was open or closed, or whether there was a software malfunction. There appears to be no nexus between the permit issue and any alleged concealment and the fire as the correspondence occurred after this case was filed.

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

3. **<u>23CV03127 Wilson, Daedalys et al v. Park, Lisa et al.</u>**

*EVENT: Plaintiffs and Cross-Defendants' Daedalys Wilson and Kimberly Torres' Motion for Relief from Waiver of Objections*

Plaintiffs and Cross-Defendants' Daedalys Wilson and Kimberly Torres' Motion for Relief from Waiver of Objections is GRANTED. The ruling does not preclude Defendants from filing a discovery motion should they deem it necessary. The Court will sign the proposed order.

4. **<u>25CV05091 De Baun, Roger Dale v. Fulton, Lauren Lynn et al.</u>**

*EVENT: City of Oroville's Demurrer to Plaintiff Roger Dale De Baun's First Amended Complaint*

*Fourth Cause of Action (Title II)*

The demurrer is OVERRULED.

Defendant's first contention is that the pleading fails to allege whether the subject sidewalk was an "existing facility" for Title II purposes (i.e. whether the sidewalk was constructed before or after 1992). Less specificity is required when it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy. (*Miles v. Deutsche Bank National Trust Co*. (2015) 236 Cal.App.4th 394, 403) Such is the case here. Defendant necessarily possesses full information as to when the subject sidewalk was constructed. The pleading sufficiently alleges in the alternative that the subject sidewalk constituted an existing facility.

Defendant proceeds to argue that the pleading does not allege sufficient facts demonstrating program-wide issues with city sidewalks. However, Defendant does not cite a case indicating program-wide issues must be specifically alleged at the pleading stage, nor is the Court aware of any. The cases cited were in the context of summary judgment, trial, and other evidentiary hearings.

Here again, facts relating to whether the sidewalks are inaccessible on a program level to disabled persons is information we would expect to be in the City's possession. The pleading sufficiently alleges program level inaccessibility.

Defendant next argues the allegations of being forced into the roadway establish injury not a Title II violation. Defendant seems to suggest that the allegation of Plaintiff's injury does not demonstrate program-wide inaccessibility to sidewalks. That's true, but as discussed, Plaintiff has sufficiently alleged program level inaccessibility for pleading purposes.

Next Defendant argues Plaintiff cannot plead in the alternative that the sidewalks were altered after January 26, 1992 thus potentially implicating the stricter facility standards. Defendant cites no authority for this argument and it contradicts the general principle permitting alternative pleading. Again, whether the sidewalk was altered is information we would expect to be in the City's possession.

Lastly, Defendant contends the cause of action is subject to a special demurrer for uncertainty because it cannot be ascertained whether the program access standard or the facility access standard applies. 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)

This is not an incomprehensible pleading. As discussed, Plaintiff is permitted to plead in the alternative.

*Sixth Cause of Action (Disabled Persons Act)*

The demurrer is overruled.

Because the Court has found the allegations supporting the ADA claim are sufficient for pleading purposes, the demurrer to the Disabled Person's Act claim fails.

As to the proposed Second Amended Complaint lodged with the opposition, Plaintiff of course is free to file a motion for leave to amend if he so desires.

Defendant shall file and serve an answer within 20 days' notice of this order.

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

5. **<u>25CV01590 Quality Loan Service Corp v. All Claimants to Surplus Funds et al</u>**

*EVENT: Wilmington Trust, National as Trustee of Bravo Residential Funding Trust 2019-NQM2'S Claim to Interpled Funds*

The Court has reviewed the Wilmington Trust, National as Trustee of Bravo Residential Funding Trust 2019-NQM2'S Claim to Interpled Funds. The claim appears to be in order and the claimant appears to have a priority claim over a portion of the funds. The claimant's petition is granted. The clerk is directed to disburse $41,730.51 payable to Loan Acquisition Trust 2017-RPL1, c/o McCarthy & Holthus, LLP Attn: Surplus Funds Department and mailed to 2763 Camino Del Rio South, Suite 100, Sand Diego, CA 92108.

Claimant shall prepare the form of order.

**6. <u>25CV02166 AAA Properties v. Calagna, Samantha</u>**

*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 a proof of service demonstrating Plaintiff was served with the order.

**7-10. <u>25CV05073 Marin, Armando v. California Automobile Insurance Company</u>**

*EVENT: (1) Defendant's Motion to Compel Responses to Form Interrogatories, Set One; Request for Monetary Sanctions Against Plaintiff and/or Counsel*

*(2) Defendant's Motion to Compel Responses to Special Interrogatories, Set One; Request for Monetary Sanctions Against Plaintiff and/or Counsel;*

*(3) Defendant's Motion to Compel Responses to Request for Production of Documents, Set One; Request for Monetary Sanctions Against Plaintiff and/or Counsel;*

*(4) Defendant's Motion for Order Establishing Admissions; Request for Monetary Sanctions Against Plaintiff and/or Counsel;*

Defendant's discovery motions are granted. The admissions are deemed admitted. Plaintiff shall provide responses without objection to the other discovery requests within 10 days. Sanctions are awarded against Plaintiff (but not against Plaintiff's counsel) in the total amount of $3,500 ($875 per motion). The Court will sign the proposed orders with these modifications.

## 11. 26CV00123 Earl's Mechanical, Inc v. Industrial Electrical Company 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 a proof of service demonstrating Plaintiff was served with the order.

## 12. 26CV01192 Ward, Kerri v. Street, Keely Ann et al

*EVENT: Defendants' Motion to Strike the Allegations and Prayer for Punitive Damages in Plaintiff's Amended Complaint*

Defendants' Motion to Strike the Allegations and Prayer for Punitive Damages in Plaintiff's Amended Complaint is GRANTED. Plaintiff has failed to allege facts constituting malice, oppression or fraud. Her allegations that Defendants acted in conscious disregard of her rights is a legal conclusion. Violation of traffic laws and the negligent operation of a motor vehicle do not, in and of itself, provide a legal basis for punitive damages.

Because Plaintiff has already attempted to amend the pleading and because the Court cannot conceive of how the pleading can be amended, leave to amend is denied.

Defendants shall prepare a form of order within 2 weeks.

## 13. 26CV01406 In re: Newton, Victoria

*EVENT: Change of name (minor) (continued from 8/12/26)*

There is no proof of publication on file nor is there a proof of service of file demonstrating the non-consenting parent was served in compliance with CCP 1277. If there are no appearances the Petition will be dismissed without prejudice.

**14. 26CV01631 Williams, Judson James et al v. Hyundai Motor America**

*EVENT: Defendant's Motion to Compel Binding Arbitration*

Defendant's Motion to Compel Binding Arbitration is GRANTED.

*Hyundai Can Enforce the Warranty Under the Equitable Estoppel Doctrine*

A defendant signatory can compel a nonsignatory plaintiff to arbitrate under equitable estoppel principles. (*See Boucher v. Alliance Title Co., Inc*. (2005) 127 Cal.App.4th 262, 269) Under that doctrine, as applied in 'both federal and California decisional authority, a nonsignatory defendant may invoke an arbitration clause to compel a signatory plaintiff to arbitrate its claims when the causes of action against the nonsignatory are "intimately founded in and intertwined" with the underlying contract obligations. (*Kielar v. Superior Court* (2023) 94 Cal.App.5th 614, 619) Equitable estoppel may also apply where, as here, defendant is the signatory and plaintiff is the non-signatory. (*Boucher, supra,* at p.269)

Here, there is no genuine dispute that the Complaint is premised on the warranty. The Court has not found a published decision applying equitable estoppel to a warranty issued by a car manufacturer. Nevertheless, the warranty includes language establishing Plaintiff's assent to the arbitration provision:

> "BY USING THIS VEHICLE OR ACCEPTING BENEFITS UNDER THIS WARRANTY … YOU AGREE TO BE BOUND BY THESE TERMS."

Here, by filing this lawsuit premised on the warranty Plaintiff has accepted the benefits of the warranty. Thus, Plaintiff has agreed to the terms of the warranty, including the arbitration clause. Accordingly, Plaintiff cannot selectively choose which provisions of the warranty will be enforced and which provisions will not be enforced.

As to unconscionability, the opposition makes vague references to unconscionability but does not specifically explain how the arbitration clause is both procedurally and substantively unconscionable. Plaintiffs make vague arguments relating to surprise in that there is no evidence the warranty was presented prior to or after the lease of the vehicle. Even if that's true, they obviously became aware of it prior to filing this lawsuit as the lawsuit is based on the warranty.

The Court finds the arbitration agreement is not unconscionable.

The action is stayed pending the outcome of arbitration.

The Court will sign the proposed order.

**15. <u>26CV02234 Grayson, John I, IV v. Internal Revenue Service</u>**

*EVENT: "Tentative Ruling Order Motion"*

The hearing is continued to September 9, 2026 at 9:00am. The Court is inclined to dismiss the case with prejudice for lack of jurisdiction. State courts do not have jurisdiction over the Internal Revenue Service nor does it have subject matter jurisdiction over federal tax disputes. (*See Civiletti v. Municipal Court* (1981) 116 Cal.App.3d 105, 109; 28 USCS 1346)