

Judge Benson – Law & Motion – Wednesday, September 14, 2022 @ 9:00 AM
TENTATIVE RULINGS
(Heard by Judge Mosbarger)

1. 21CV00337 Hunt, Kirsten v. Heaven Chaun Christina, et al.

EVENT: Defendants' Motion to Compel Answers to Form Interrogatories, Special Interrogatories and Request For Production

Defendants' Motion to Compel Answers to Form Interrogatories, Special Interrogatories and Request For Production is Granted. Sanctions are awarded against Plaintiff in the amount of \$585.00 payable within 20 days of entry of order. Plaintiff shall provide code complaint responses without objection within 10 days of entry of order. Defendants shall prepare and submit a form of order.

2. 22CV01459 In re: Sewell, Kapua Fiefia

EVENT: Change of Name (Adult)

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

3. 22CV01629 In re: Olausen, Kevin James

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.

4. **19CV02194 Lefevers, Kathleen et al v. Enloe Medical Center et al.**

EVENT: Motion for Preliminary Approval of Settlement

Motion for Preliminary Approval of Settlement is Continued to October 5, 2022 for counsel to provide an amended notice of settlement which includes the mandated language of CRC 3.766(d)(5) (A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel).

5. **22CV01641 In re: Marshall-Smith, Jody Rae**

EVENT: Change of Name (Adult)

There is no proof of publication on file. Additionally, the background check is still pending. The petition is continued to September 28, 2022 at 9:00am.

6. **21CV02238 Hall-Goodbar , Debroah v. Lyft, Inc.**

EVENT: Plaintiff's Motion to Quash Deposition Subpoenas For Production of Business Records Directed to CSAA Insurance Exchange and Allstate Insurance Company and Request for Reasonable Attorney Fees and Costs in the Amount of \$4,810.00

In light of Defense counsel's representations that Defendant Lyft Inc. has withdrawn the three subpoenas which are the subject of this motion, Plaintiff's Motion to Quash is Denied as moot. Both Plaintiff and Defendant Lyft's request for sanctions is Denied. Defendant Lyft shall prepare and submit a form of order consistent with this ruling within 10 days.

7-8.22CV00196 De LA Torre, Saul et al. v. KNS LLC et al.

EVENT: (1) Defendant's Demurrer to Certain Causes of Action of Plaintiffs' First Amended Compliant

(2) Defendant's Motion to Strike Portions of Plaintiffs' First Amended Complaint

Defendant's Demurrer to Certain Causes of Action of Plaintiffs' First Amended Compliant ("FAC") is OVERRULED.

Defendant's Motion to Strike Portions of Plaintiffs' First Amended Complaint is DENIED.

DEMURRER

First Cause of Action – Breach of Contract

The demurrer is OVERRULED. In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties. (*Perez v. Golden Empire Transit Dist.*, 209 Cal. App. 4th 1228) This rule of liberal construction means that the reviewing court draws inferences favorable to the plaintiff, not the defendant. (*Id.*) Applying that standard, it is a reasonable inference that the terms in paragraph 26 of the FAC were implied in the context of hotel lodging. Certainly Defendant engaging in this business would know or should know that tenants expect that their room and bed will be free of bed bugs.

The formation of an implied contract can become an issue for the jury to decide: "Whether or not an implied contract has been created is determined by the acts and conduct of the parties and all the surrounding circumstances involved and is a question of fact." (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 611)

As to the basic elements [of a contract cause of action], there is no difference between an express and implied contract. . . . While an implied in fact contract may be inferred from the conduct, situation or mutual relation of the parties, the very heart of this kind of agreement is an intent to promise. (*Division of Labor Law Enforcement v. Transpacific Transportation Co.* (1977) 69 Cal.App.3d 268, 275) Finding that the FAC as sufficiently alleged a cause of action under at least an implied contract theory, the Court declines to address Defendant's contentions concerning the written contract allegations.

Third Cause of Action – Public Nuisance

The demurrer is OVERRULED. The FAC has adequately alleged that a substantial number of people have been injured due to the alleged infestation, see paragraphs 42, 44,45 and 46 of the FAC.

Fourth Cause of Action – Fraud

The demurrer is DENIED. The FAC has adequately plead Defendant’s knowledge of the alleged infestation problem, see paragraph 13 of the FAC.

MOTION TO STRIKE

Similar to the Court’s analysis of the fraud cause of action, the Court finds Plaintiff has adequately plead facts supporting malice, oppression and fraud, see paragraph 13 of the FAC. The Motion to Strike is OVERRULED.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 10 days.

9. 21CV00181 Jumper, Rochelle et al. v. Bullet Express Line, INC.

EVENT: Plaintiffs’ George Bent and Monica Bent’s Application for Pro Hac Vice Admission

Plaintiffs’ George Bent and Monica Bent’s Application for Pro Hac Vice Admission is Continued to October 12, 2022 to comply with the notice requirements of CRC 9.40(c).

10. 20CV02205 Conrad, Ethan et al v. Orozco, Joshua et al.

EVENT: Plaintiff’s Motion to Strike Answer of Defendant Platinum Sales Group LLC

Plaintiff’s Motion to Strike Answer of Defendant Platinum Sales Group LLC is continued to October 12, 2022 at 9:00am. In the meantime, Defendants are hereby ordered to obtain counsel for Defendant Platinum Sales Group LLC by October 11, 2022. In the event Defendants fail to comply with this order, the Court will grant the motion to strike the answer as to Defendant Platinum Sales Group LLC only, pursuant to CCP § 436(b) which authorizes a pleading to be stricken that is not in conformity with an order of the court.

Plaintiffs shall prepare and submit a form of order consistent with this ruling within 5 days.