

**Judge Benson – Law & Motion – Wednesday, April 12, 2023 @ 9:00 AM**  
**TENTATIVE RULINGS**

**1-2. 18CV03213 Conn, Shannon L v. Hale, Jim et al**

*EVENT: (1) Hudson Insurance Company's Demurrer to Second Amended Complaint*  
*(2) Hudson Insurance Company's Motion to Strike*

Defendant Hudson Insurance Company's Demurrer to Second Amended Complaint is SUSTAINED in its entirety. As to the 16th and 17th causes of action, it is sustained without leave to amend. As to the 18th cause of action, it is sustained with leave to amend. Plaintiff shall amend her complaint within 20 days of notice of this order.

Defendant Hudson Insurance Company's Motion to Strike is GRANTED in part and DENIED in part as set forth herein.

Defendant's Request for Judicial Notice is Granted.

**DEMURRER**

*16th Cause of Action – Refusal to Pay On Contractor's License Bond*

As noted by Defendant, Business & Professions Code Section 7071.11 appears to be the applicable limitations period for this cause of action. Subdivision (c)(1) requires an action "Within two years after the expiration of the license period during which the act or omission occurred."

As to the phrase "act or admission occurred" the Court interprets this language as pertaining to the underlying wrong-doing by the contractor which thereby triggers the surety's obligation. The Court finds no authority, nor has any been cited, suggesting that "act or admission" would include the contractor's failure to satisfy a judgment. Therefore, it appears to the Court that the limitations period starts to run upon the contractor's wrong-doing, or when the contractor's wrong-doing was discovered and not when default judgment was entered against the contractor in 2022.

Here, it is clear Plaintiff was aware of the facts concerning contractor Hale's acts or omissions when she filed the Complaint on May 25, 2017. The bond that was in place during Hale's acts or omissions in May 2016 expired on August 12, 2017, which means Plaintiff had until August 12, 2019 to initiate this cause of action. The Court additionally notes even under the three year rule prescribed by CCP Section 583.210, the last day to add Defendant Hudson as a Doe Defendant was May 25, 2020

*17th Cause of Action – Breach of the Covenant of Good Faith and Fair Dealing*

Pursuant to *Cates Construction, Inc. v. Talbot Partners*, (1999) 21 Cal. 4th 28, the demurrer is sustained. There is no dispute Defendant is a surety. Consequently, pursuant to *Cates*, the cause of action fails.

*18th Cause of Action – Intentional Interference With Contract*

In reviewing the SAC, it is unclear to the Court how Defendant's refusal to pay on the bond resulted in any type of interference with Hale's obligations to perform under the Plaintiff – Hale contract. The Court grants leave to amend as to the 18th cause of action for Plaintiff to clearly allege how the refusal to pay on the bond interfered with Hale's performance. The Court declines addressing the statute of limitations argument at this time.

**MOTION TO STRIKE**

Consistent with *Cates, supra*, the motion is GRANTED as to all punitive damages allegations. The motion is DENIED in all other respects.

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

**3. 19CV02574 Najolia, Miriam v. Chavez, Michelle et al**

*EVENT: Motion to be Relieved as Counsel*

Motion to be relieved as counsel is continued to May 10, 2023 at 9:00am. Meanwhile, counsel is directed to file and serve a completed Judicial Council form MC-052. This form is mandatory. Counsel shall also give notice to both Plaintiff and Mr. Guiffra of the new hearing date.