

**Judge Benson – Law & Motion – Wednesday, May 3, 2023 @ 9:00 AM  
TENTATIVE RULINGS**

**1. 19CV00236 McCrea, Bruce v. Schuegeraf, Bridgette et al**

*EVENT: Plaintiff/Cross-Defendant Bruce McCrea's Motion to Strike Costs*

Plaintiff/Cross-Defendant Bruce McCrea's Motion to Strike Costs is GRANTED and is unopposed. The Court will sign the proposed order.

**2-3. 22CV01582 Klempa, Sandra et al. v. California Capital Insurance Company**

*EVENT: (1) Defendant's Demurrer to the Second Amended Complaint*

*(2) Defendant's Motion to Strike Portion of the Second Amended Complaint*

Defendant's Demurrer to the Second Amended Complaint ("SAC") is SUSTAINED in part as set forth herein. To the extent the demurrer is sustained, Plaintiffs shall amend within 20 days of notice of this order.

Defendant's Motion to Strike is GRANTED in PART and DENIED PART as set forth below.

Additionally, as discussed herein, the Court on its own motion and pursuant to CCP § 436 is striking the prayer of general damages from the SAC.

**DEMURRER**

*Does the Prohibition on Assignment Render the Assignment Invalid?*

Before addressing this question, Plaintiff has raised a threshold issue by contending the subject policy does not include a prohibition on assignment. Notably, none of the excerpts attached to the SAC contain a prohibition on assignment.

A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp.*, (2007) 148 Cal. App. 4th 97, 113-114) The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. (*Id*)

While it is true the Court previously took judicial notice of the entire policy, the issue of assignment was not before the Court at that time. Here, a contested factual issue has

arisen as to whether the subject policy prohibits assignment. Because such a dispute is not properly resolved on demurrer, the demurrer is overruled as to the issue of whether the policy prohibited assignment.

*Is an Assignment Including Damages Personal in Nature Invalid?*

Damages potentially recoverable in a bad faith action, including damages for emotional distress and punitive damages, are not assignable. (*Essex Ins. Co. v. Five Star Dye House, Inc.*, (2006) 38 Cal. 4th 1252, 1261) In its prayer for relief the SAC includes a request for general damages. It is clear that (1) Ms. Klempa cannot sue for general damages on her own behalf because general damages are personal in nature and not assignable; and (2) there is no authority for which the Court is aware authorizing a corporation to recover general damages.

However, pursuant to *Murphy v. Allstate Ins. Co.*, (1976) 17 Cal. 3d 937, 946 the fact certain damages are not assignable does not render the cause of action unassignable. As a result, Defendant's arguments regarding the non-assignability of general damages in the context of a demurrer necessarily fail because it does not dispose of the cause of action.

However, because the law is clear that Ms. Klempa nor Ponderosa Gardens can recover general damages under the circumstances of this case, the Court, on its own motion, strikes general damages from the SAC.

*Has the Assignment Been Properly Plead?*

As an initial matter, the Court disagrees with Plaintiffs that simply because breach of assignment is not alleged they do not need to properly plead assignment. Clearly, assignment is a threshold matter to any cause of action asserted by Ms. Klempa. The demurrer is sustained with leave to amend as to Plaintiff Sandra Klempa in its entirety on the ground the SAC does not comply with CCP § 430.10(g).

**MOTION TO STRIKE**

The Motion is GRANTED as to ¶ 29 (6:13-16) and ¶ 39 (7:18-19). The motion is GRANTED as to ¶ 48 as to Plaintiff Sandra Klempa only.

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

4. **23CV00362 In re: Lapira, Arby Kier Sahagun**

*EVENT: Change of Name (Adult)*

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

5. **23CV00533 In re: Starnes-Shy, Quentin Kenneth**

*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. **23CV00556 In re: Bullock, Jon Randall Lance**

*EVENT: Change of Name (Adult)*

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

**7. 23CV00600 In re: Melton, Alex**

*EVENT: Change of name (minor)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

**8. 22CV01848 Gulbransen, Mike et al v. Golightly, Michaela**

*EVENT: Motion for Order That Matters In Request For Admissions Be Admitted And For Sanctions (Continued from 4/26/23)*

Pursuant to CCP § 2033.290(e) Motion for Order That Matters In Request For Admissions Be Admitted And For Sanctions is GRANTED. The Court will sign the proposed order.