

**Judge Mosbarger – Law & Motion – Wednesday, November 15, 2023 @ 9:00 AM
TENTATIVE RULINGS**

1. 16CV03116 AMBROSE, LYNDAL V. OROVILLE HOSPITAL ET AL

EVENT: Plaintiff's Motion for Leave to Amend Complaint

Based on this Court's prior Order Re Defendants' Motion to Strike, filed August 31, 2023, the Court finds that Plaintiffs' Motion for Leave to Amend Complaint to Allege Punitive Damages is timely as it was filed within 60 days of that Order, as authorized by the Court therein. The Court finds that Plaintiffs have set forth, by clear and convincing evidence, a prima facie case for a punitive damages claim and Plaintiffs' motion to amend the complaint is granted. Counsel for the Plaintiffs shall submit a form of order within two weeks.

2. 21CV00451 MCMILLAN, SCOTT ET AL V. CITY OF GRIDLEY ET AL

EVENT: City of Gridley's Motion for Summary Judgment or, in the Alternative, Summary Adjudication of Issues

Defendants/Respondents' and Plaintiffs/Petitioners' Requests for Judicial Notice are granted. Defendants/Respondents' Objections to Evidence and Motion to Strike Evidence Submitted in Support of Plaintiffs' Opposition and Objections and Motion to Strike Improper Statements of Fact in Plaintiffs' Opposition and overruled and denied in their entirety. The Court finds that the fact that there are transfers to the general fund constitutes only evidence that there may be excessive charges but it is not dispositive of the core issue of whether residential customers are in fact overcharged. There remains a triable issue of material fact as to whether the City's residential electric rates exceed service cost and the City has failed to meet this burden with any evidence on its motion for summary judgment/adjudication. Under *Barratt*, the change to the fees in September 2020 was in effect the City's affirmation that the fees met the legal requirements for adoption under the circumstances present at that time and thus, the fees were subject to legal challenge even though the City alleges that the rates were decreased and upper-tier rates rescinded. See, *Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal. 4th 685, 728-729. Thus, the rate changes of September 21, 2020 were actionable.

The Court further finds that a triable issue of material facts exists as to whether the residential customers of electricity in Gridley have a "property interest" in the continued provision of electrical services, and whether such a finding of a property interest in continued power service for purposes of procedural due process, can be a taking. See, *Memphis Light, Gas & Water Div. v. Craft* 436 U.S. 1, 15-19. Defendant's Motion is denied. Counsel for the Plaintiffs shall submit a form of order consistent with this ruling within two weeks.

3. 21CV02456 HAYES, DANIEL ET AL V. GONZALES PARK, LLC ET AL

EVENT: Plaintiffs' Motion for Preliminary Approval of Class Action Settlement

Plaintiffs' Motion for Preliminary Approval of Class Action Settlement is granted and the matter is set for a hearing for final settlement approval on March 6, 2024 at 9:00 a.m. The Court will sign the form of Order provided by counsel.

4-5. 22CV02432 CAMPOS, AUSTIN ET AL V. FORD MOTOR COMPANY ET AL

EVENTS: (1) Defendant Ford Motor Company's Motion to Compel Arbitration/Court's Notice of Intent to Vacate Prior Ruling

*(2) Case Management Conference *Special Set*

The Court vacates and strikes its Ruling on Defendant Ford Motor Company's and Defendant Gridley Country Ford's Motions to Compel Arbitration and Stay Action dated April 26, 2023 and issues a new and different Order as follows:

The party seeking to compel arbitration bears the burden of proving by a preponderance of the evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. *Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 218-219.

The Court finds that Defendant Gridley Country Ford, Inc. dba Gridley Country Ford has failed to satisfy this burden. Specifically, the Court finds that the Plaintiffs' cause of action for negligent repair against Defendant Gridley Country Ford, Inc. dba Gridley Country Ford alleges that Defendant "owed a duty to Plaintiffs to use ordinary care and skill in storage, preparation and repair of the Subject Vehicle in accordance with industry standards, [and] ... breached its duty to Plaintiffs to use ordinary care and skill by failing to properly store, prepare and repair of the Subject Vehicle in accordance with industry standards." [See Complaint at ¶¶42-43.] These allegations are not "intimately founded in and intertwined with the underlying contract obligations." See, *Felisilda v. FCA US LLC* (2020) 53 Cal.App.5th 486, 495-496. Defendant Gridley Country Ford, Inc. dba Gridley Country Ford's Motion is denied.

The Court finds that Defendant Ford Motor Company, as a non-signatory vehicle manufacturer cannot invoke the arbitration clause in the sales contract because the manufacturer's express or implied warranties at issue, which accompanied the vehicle at the time of sale, did not arise from that contract, and Defendant Ford Motor Company, as a non-signatory vehicle manufacturer is not a third-party beneficiary of the sales contract. See, *Ford Motor Warranty Cases* (2023) 89 Cal.App.5th 1324, 1334; *Montemayor v. Ford Motor Co.* (2023) 92 Cal.App.5th 958, 961 (Montemayor); *Kielar v. Superior Court* (2023) 94 Cal.App.5th 614.

Counsel for the Plaintiffs shall submit a form of order consistent with this ruling within two weeks.

6. 23CV00189 VOLLRATH, MICHAEL DAVID V. MID VALLEY TITLE AND ESCROW COMPANY ET AL

EVENT: Plaintiff's Motion for Leave to Supplement Pleading

The Court finds that Plaintiff has failed to satisfy his burden of showing why the amendments are necessary and proper as required by California Rules of Court, Rule 3.1324(b)(2), and again has failed to comply with the procedural requirements for this type of motion found in CRC 3.1324(a), which states a motion to amend a complaint must include a copy of the proposed pleadings and identification of the allegations that are to be changed by page, paragraph and line number. Here, while there is a copy of the proposed amended complaint attached to the motion, the proposed changes are not specifically identified. Additionally, the Court finds that (1) Plaintiff has always known the name of the defendants. Plaintiff now seeks to name a new defendant without any declaration as to an ignorance of that individual's identity. Thus, this amendment is not proper. (2) The legal description of the property was never challenged, and the identity of the property is not in dispute. Thus, this amended is not necessary. (3) It is unclear from the proposed amended complaint whether Plaintiff seeks damages from Mid Valley Title, despite its disclaimer of interest. (See Proposed Amended Complaint, (p. 7, ¶ 4.) (4) The amount Plaintiff claims he paid for the property is an evidentiary fact, not an ultimate fact. A complaint need not allege evidentiary facts, only ultimate facts. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872. Thus, amending the complaint to allege evidentiary facts is neither necessary nor proper. (5) This proposed amendment is uncertain and does not appear relevant to the issues before the court. Thus, the amended is neither necessary nor proper. (6) Plaintiff's original complaint contained a prayer for relief to quiet title, for injunctive relief, and for costs. It is unclear why this amendment is necessary and proper. The Motion is denied.

☐ Taken Under Submission ☐ Continued To: ☐ Tentative Adopted ☐ Appearances/Argument
Ruling Drafted: _____

7. 23CV00692 HINOJOSA, ISAIAH V FORD MOTOR COMPANY ET AL

EVENT: County of Butte's Demurrer to Plaintiff's Complaint

The Court finds that the pending appeal in the related matter entitled *Hinojosa v. State of California et al* (Butte County Case No. 23CV00699), which has a direct impact on the Court's consideration and ruling on Defendant County of Butte's Demurrer to Plaintiff's Complaint, is still pending. As such, the Court continues the hearing on the Demurrer to February 7, 2024 at 9:00 a.m. Plaintiff shall file and serve a Status Report no later than January 30, 2024 with an update as to the status of the appeal. No appearances are required on November 15, 2023.

8. 23CV2708 IN RE: VIERRA, JAIDYN TRAYANN

EVENT: Petition for Change of Name

If proper proof of publication is submitted at or before the hearing, the Petition will be granted.

9. 23MH00400 PETITION OF: GOMES, TREVER JAMES

EVENT: Request for Hearing for Relief from Firearms Prohibition / Petition Seeking Judicial Determination Regarding Return of Firearm (Welfare & Institutions Code §8102)

The Court will hear from the parties.

10. 23MH00443 BUTTE COUNTY SHERIFF'S OFFICE V. BATTIN, DONALD CHARLES

EVENT: Petition for Default and Order on Petition for Judicial Determination Re: Return of Firearms

The Petition is granted. The Court will sign the form of order submitted by counsel and the Status Conference set for December 27, 2023 is vacated.