

Judge Mosbarger – Law & Motion – Wednesday, April 9, 2025 @ 9:00 AM
TENTATIVE RULINGS

1. 22CV00400 ALFARO, TIFFANY V. ENLOE MEDICAL CENTER

EVENT: Defendant Chico Cardiology Associates Motion for Summary Judgment

The Motion for Summary Judgment being unopposed, and Defendant having made a prima facie showing that there is no liability with respect to Defendant Chico Cardiology Associates (erroneously sued as Enloe Medical Center dba Enloe Cardiology Services), the Motion for Summary Judgment is granted. Defendant shall submit a form of order within two weeks. The Court vacates the Mandatory Settlement Conference on April 30, 2025, the Trial Readiness Conference on June 26, 2025, and the Jury Trial on June 30, 2025, and sets this matter for a Status Hearing on May 7, 2025 at 10:30 a.m. for status of judgment and dismissal.

2. 23CV02343 DENNY, CINDY V. GENERAL MOTORS, LLC

EVENT: Defendant General Motors LLC's Motion to Tax Memorandum of Costs

Defendant General Motors LLC's Motion to Tax Memorandum of Costs is granted in part and denied in part. In the Court's discretion, pursuant to *Code of Civil Procedure* §1033.5(c)(4), the Court concludes that in regard to the disputed costs associated with the Motions to Compel Defendant's PMQ and Dave McWherter, Plaintiff has demonstrated that these were reasonably necessary to the conduct of the litigation, and the Motion is denied as to these costs. In relation to the disputed Court Reporter Fees, the Court finds that Plaintiff has failed to provide any statutory authority for the recovery of that expense, as is required by *Code of Civil Procedure* §1033.5(a)(11) and the Court grants the Motion in this regard in the amount of \$550.00. Finally, Defendant objected to the filing fee for the instant motion, in the amount of \$60.00. Once an opposing party properly objects, the burden shifts back to the claimant to prove reasonableness and necessity. *Ladas v Calif State Auto Ass'n* (1993) 19 Cal.App.4th 761, 774. Thus, the burden was on Plaintiff to establish that the cost was reasonable and necessary. *Melnyk v Robeldo* (1976) 64 Cal.App.3d 618, 624; *Levy v Toyota Motor Sales, U.S.A., Inc.* (1992) 4 Cal.App.4th 807, 816. Plaintiff failed to address this cost in the Opposition, and therefore the Motion is granted as to the sum of \$60.00. The Court taxes Plaintiff's Memorandum of Costs in the amount of \$610.00, and thus awards costs in the reduced amount of \$1,195.29. Counsel for the Defendant shall submit a form of order within two weeks.

3. 23CV02862 DOCKINS, BRYCE V. LA VISTA VERDE APARTMENTS ET AL

EVENT: Petition for Approval of Compromise of Claim or Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability

The Petition for Approval of the Minor's Compromise is granted. The minor is not required to attend the hearing, the Court finding good cause to dispense with his

personal appearance. The matter will remain on calendar on May 14, 2025 at 10:30 a.m. for status of proof of funding the annuity and status of dismissal. The Court will sign the form of order submitted by counsel.

4. 23CV03194 CHEN, MAOMEI V. TOBUREN, FRANCIS ET AL

EVENT: Defendant M&S Wesley Tree Service's Motion for Summary Judgment

Defendant's Objections to Evidence are sustained as to Objection Nos. 1 (relevance) and 2 (relevance) and overruled as to the remainder of the objections. Defendant M&S Wesley Tree Service was retained by Defendant Thomas Atmore on March 2, 2022, to trim a sycamore tree and remove a dead tree thereunder at the Subject Property [UMF No. 9]. Defendant M&S Wesley Tree Service was not asked to perform any work related to the Subject Tree and did not perform any work related to the Subject Tree [UMF No. 10]. Although Plaintiff attempts to broaden the scope of Defendant M&S Wesley Tree Service's agreed upon contractual duties, Plaintiff has failed to present any evidence that would raise a triable issue of material fact as to Defendant M&S Wesley Tree Service's contractual duties as it relates to the Subject Property or Subject Tree. The Court thus finds that there is no triable issue of material fact as to the issues of duty [UMF Nos. 9, 10, 12, 13 and 14, and the evidence cited therein], and therefore Defendant M&S Wesley Tree Service's Motion for Summary Judgment's is GRANTED. The Court will sign the form of order submitted by the Defendant.

5. 24CV00418 NELSON, HARWOOD ET AL V. WARNER ENTERPRISES, INC ET AL

EVENT: Defendants' Motion for Summary Judgment or, in the Alternative, Summary Adjudication

The Court finds there exists triable issues of material fact as to (1) whether Defendant Gary Warner is a party to the contract [ISSUE 5 UMF Nos. 1-4; Declaration of Jennifer J. Panicker at Pgs. 11-15 (Standard Logging Agreement)]; (2) whether Plaintiffs were damaged and the amount of such damages [ISSUE 1 UMF Nos. 7, 8, 10-24]; and (3) whether Plaintiff failed to act reasonably to mitigate damages (and the Court finds that as to this issue, Defendants failed to meet their burden to provide evidence supporting a prima facie showing that the plaintiff failed to act reasonably to mitigate damages) [ISSUE 6 UMF 7-24]. As to the remaining alternative requests for summary adjudication not addressed above, the Court notes that the issues of "Entitlement to Damages", "Measure of Damages", and "Current Condition of the Road is Irrelevant" are not proper subjects for summary adjudication as they do not conclusively negate an element of the Plaintiffs' claim or establish a complete defense thereto. However, even if the Court were to consider these issues here, a defendant moving for summary adjudication must meet the burden of showing that a cause of action is meritless. This can be achieved by demonstrating that one or more elements of the plaintiff's cause of action cannot be established or by establishing a complete defense to the cause of action. *Federal Deposit Ins. Corp. v. Superior Court* (1997) 54 Cal.App.4th 337. The defendant must

present evidence to support the motion, such as affidavits, declarations, or other admissible evidence, and cannot merely point out that the plaintiff lacks evidence. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826. If the defendant meets this initial burden, the burden shifts to the plaintiff to show that a triable issue of material fact exists. *Guess v. Bernhardson* (2015) 242 Cal.App.4th 820. Here, the Court finds that Defendants have failed to meet their initial burden on these issues [ISSUE 2 UMF Nos. 7-10, 16-18; ISSUE 3 UMF Nos. 7-9, 16-18; and ISSUE 4 UMF Nos. 5, 7-24]. The Motion is denied in its entirety and counsel for the Plaintiffs shall prepare and submit a form of order within two weeks.

6. 24CV01783 STEELE, MANDY ET AL V. HARMONY COMMUNITIES, INC ET AL

EVENT: Defendants' Motion to Strike Plaintiffs' Demand for Punitive Damages and Demand for Attorney's Fees

The Court finds that the factual allegations of the Second Amended Complaint are sufficient to support a claim of punitive damages (SAC at ¶¶33-34), and the Motion to Strike in regard to punitive damages, is denied. In regard to attorneys' fees, the Court finds that the Second Amended Complaint fails to include the alleged Contract or its terms, and therefore there are no factual allegations to support a statutory or contractual right to recover attorney's fees. The Motion is granted in this regard. The following is stricken from the Second Amended Complaint:

¶80, the words: "Attorneys' fees and costs;"

The Court does grant leave to amend. Any amended Complaint shall be filed within 20 days' notice of this ruling. Counsel for the Defendants shall submit a revised form of order consistent with this ruling within two weeks.

7. 24CV04200 PECHKIS, HYEWON ET AL V. BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY

EVENT: Defendant Board of Trustees of the California State University's Special Motion to Strike the Second and Sixth Causes of Action from Plaintiffs' Complaint

The Court concludes that Plaintiffs' claims arise from activity and speech protected under the anti-SLAPP statute because the Defendant's administrative investigation into Plaintiff Hyewon Pechkis's alleged FERPA violation constituted an official proceeding authorized by law. Further, the Second Cause of Action for Retaliation and the Sixth Cause of Action for Whistleblower Retaliation are both based upon that FERPA investigation. [See Complaint at ¶¶36, 37, 38, 45, 48, 49, 68, 69 and 97]. However, the Court finds that Plaintiffs have satisfied their burden of proof as to the second prong of the Anti-SLAPP analysis by demonstrating a likelihood of success on the merits of their Second and Sixth Causes of Action. As such, the Motion is denied. Plaintiff's request for recovery of attorney's fees is denied, the Court finding that the motion was not frivolous or solely intended to cause unnecessary delay. *Code of Civil Procedure* §425.16; *Baughn v.*

Department of Forestry & Fire Protection (2016) 246 Cal.App.4th 328. Counsel for the Plaintiffs shall submit a form of order consistent with this ruling within two weeks.

8. 25CV00472 BADGER, NIKOLAS V. CHRISTIANSON, JESSICA

EVENT: Jessica Christianson's Motion to Quash Service of Summons

The Proof of Service on the pending Motion shows service by mail on March 27, 2025, which is only 8 Court days prior to the hearing. Code of Civil Procedure §1005 requires an additional 8 Court days and 5 calendar days for mailing. Notice is insufficient and the Motion is continued to April 30, 2025 at 9:00 a.m. to allow for proper notice. Specially appearing Defendant Jessica Christianson is ordered to provide notice the continued hearing date.