

Judge Mosbarger – Law & Motion – Wednesday, August 13, 2025 @ 9:00 AM
TENTATIVE RULINGS

1-2. 19CV01362 BOWEN, AARON ET AL V. CITY OF CHICO ET AL

EVENTS: (1) Petitioners Aaron and Hilda Bowen’s Motion to Strike Costs of Canyon Oaks Property Owner’s Association

(2) Canyon Oaks Property Owner’s Association’s Motion for Attorney Fees

Petitioners Aaron and Hilda Bowen’s (“Petitioners” herein) Motion to Strike Costs of Canyon Oaks Property Owner’s Association (“Respondent” herein) is granted in part and denied in part. Pursuant to the plain language of *Code of Civil Procedure* §998, which states in relevant part:

“(c) (1) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover their post-offer costs and shall pay the defendant’s costs from the time of the offer.”

Petitioners are entitled to those costs incurred after the date of the CCP §998 offer, here October 10, 2023. Based upon the evidence presented to the Court, it appears that all of the fees incurred for work performed by Melton Design Group, Inc. (hereinafter “MDGI”) occurred prior to that date. The Motion to Strike the \$4,983.12 in expert fees for MDGI is granted.

In regard to the expert fees for Robert S. Griswold, the Court concludes that based upon the evidence presented by Respondent, including Paragraph 6 of the Declaration of Julia V. Islas, the Court finds that these expert witnesses fees were incurred after Respondent’s CCP §998 offer and are therefore recoverable. The Motion to Strike the \$2,580 in expert fees for Robert S. Griswold is denied.

In regard to the expert fees for Scott S. Hamm, MAI, the Court concludes that based upon the evidence presented by Respondent, including Paragraph 5 of the Declaration of Julia V. Islas, the Court finds that these expert witnesses fees were appropriately apportioned and were incurred after Respondent’s CCP §998 offer and are therefore recoverable. The Motion to Strike the \$8,800 in expert fees for Scott S. Hamm, MAI is denied.

Finally, as the Court Reporter fees, once the adverse party presents evidence or argument in opposition to the verified cost bill, the claimant then bears the burden of substantiating the claim with detailed declarations or affidavits and supporting documentation, if necessary. See *Fennessy v DeLeuw-Cather Corp.* (1990) 218 Cal.App.3d 1192; *Rappenecker v Sea-Land Servs.* (1979) 93 Cal.App.3d 256. Here, the Court finds that Respondent has failed to meet its burden of substantiating the Court Reporter fees, nor has Respondent sufficiently demonstrated that the fees are “established by statute” as required by CCP §1033.5(a)(11). The Motion to strike “Court reporter fees” of \$2,093.99 for “Carol Nygard & Associates” and \$498.57 for “STENO” is granted.

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

In regard to Canyon Oaks Property Owner's Association's Motion for Attorney Fees, notice does not comply with CCP §1005. The proof of service shows electronic service on July 22, 2025, which is only 16 Court days before the hearing. CCP §1005 and 1010.6(a)(3)(B) require an additional 2 Court days when a motion is served electronically. Notice is therefore insufficient, and the Motion is continued to August 27, 2025 at 9:00 a.m. to allow for proper notice.

3-7. 21CV02434 KITCHEN, IVANELL ET AL V. WINDSOR CHICO CREEK CARE AND REHABILITATION CENTER, LLC

EVENTS: (1) Motion to Compel Attendance, Production of Deponents & Documents at Deposition

(2) Motion for Judgment on the Pleadings as to Defendant Rockport Administrative Services, LLC

(3) Motion for Judgment on the Pleadings as to Defendants Windsor Chico Creek Care and Rehabilitation Center, LLC, Lee Samson, Lawrence Feigen, and Chico Heights Rehabilitation & Wellness Centre, LP

(4) Motion to Compel Further Responses to Requests for Admissions & Accompanying Form Interrogatories

(5) Motion to Compel Further Responses to Special Interrogatories

The Court on December 4, 2024 found good cause to appoint a discovery referee in this matter pursuant to CCP §§638-645.1, as well as the California Rules of Court 3.900-3.932, and makes the same finding here in relation to the following pending discovery motions: (1) Plaintiffs' Motion to Compel Attendance, Production of Deponents & Documents at Deposition; (2) Plaintiffs' Motion to Compel Further Responses to Requests for Admissions & Accompanying Form Interrogatories; and (3) Plaintiffs' Motion to Compel Further Responses to Special Interrogatories, all set for hearing on August 13, 2025 at 9:00 a.m.; as well as (4) Plaintiffs' Motion for Sanctions, Including for Failure to Obey Court Orders, set for hearing on August 20, 2025 at 9:00 a.m., which the Court hereby vacates. The Court appoints Patricia Savage to act as discovery referee for the purpose of resolving the issues raised in the aforementioned discovery motions. Plaintiffs and Defendants shall share the cost of the discovery referee equally (50% paid by each). Counsel for the Plaintiffs shall submit a form of order consistent with this ruling within two weeks.

In regard to Plaintiffs' Motion for Judgment on the Pleadings as to Defendant Rockport Administrative Services, LLC, the Court finds that "new matter" affirmative defenses may not be proffered in the form of terse legal conclusions. Rather, defendants must set forth facts "averred as carefully and with as much detail as the facts which constitute the cause of action and are alleged in the complaint." *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Here, the following Affirmative Defenses pled by

Defendant Rockport Administrative Services, LLC in its Second Amended Answer to Plaintiffs' First Amended Complaint are lacking the required factual specificity and the Motion is granted as to the following: Second Affirmative Defense (Negligent Conduct of Others); Third Affirmative Defense (Assumption of the Risk); Fourth Affirmative Defense (Comparative Negligence of Plaintiffs); Fifth Affirmative Defense (MICRA Professional Licensure Protections); Sixth Affirmative Defense (Failure to Mitigate Damages); Tenth Affirmative Defense (Comparative Negligence of Plaintiffs); Eleventh Affirmative Defense (Comparative Negligence of Plaintiffs); and the "Additional Defenses". The Court grants leave to amend. Any amended Answer shall be filed and served within 10 days' notice of this ruling. Counsel for the Plaintiffs shall prepare and submit a form of order consistent with this ruling within two weeks.

In regard to Plaintiffs' Motion for Judgment on the Pleadings as to Defendants Windsor Chico Creek Care and Rehabilitation Center, LLC, Lee Samson, Lawrence Feigen, and Chico Heights Rehabilitation & Wellness Centre, LP, the Court finds that "new matter" affirmative defenses may not be proffered in the form of terse legal conclusions. Rather, defendants must set forth facts "averred as carefully and with as much detail as the facts which constitute the cause of action and are alleged in the complaint." *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Here, the following Affirmative Defenses pled by Windsor Chico Creek Care and Rehabilitation Center, LLC, Lee Samson, Lawrence Feigen, and Chico Heights Rehabilitation & Wellness Centre, LP in its Answer to Plaintiffs' First Amended Complaint are lacking the required factual specificity and the Motion is granted as to the following: Second Affirmative Defense (Statute of Limitations); Third Affirmative Defense (Negligent Conduct of Others); Fourth Affirmative Defense (Assumption of the Risk); Fifth Affirmative Defense (Comparative Negligence); Sixth Affirmative Defense (MICRA Professional Licensure Protections); Seventh Affirmative Defense (MICRA Professional Licensure Protections); Eighth Affirmative Defense (MICRA Professional Licensure Protections); Ninth Affirmative Defense (MICRA Professional Licensure Protections); Tenth Affirmative Defense (MICRA Professional Licensure Protections); Twelfth Affirmative Defense (MICRA Professional Licensure Protections); Fourteenth Affirmative Defense (Failure to Mitigate Damages); Sixteenth Affirmative Defense (Statute of Limitations); Seventeenth Affirmative Defense (Comparative Negligence); Twenty-Second Affirmative Defense (Comparative Negligence); Twenty-Third Affirmative Defense (MICRA Professional Licensure Protections); Twenty-Fourth Affirmative Defense (MICRA Professional Licensure Protections); Twenty-Fifth Affirmative Defense (MICRA Professional Licensure Protections); Twenty-Sixth Affirmative Defense (Comparative Negligence); Twenty-Eighth Affirmative Defense (Negligent Conduct of Others); Twenty-Ninth Affirmative Defense (Failure to Mitigate Damages); Thirty-First Affirmative Defense (MICRA Professional Licensure Protections); Thirty-Sixth Affirmative Defense ("Two Schools of Thought" Doctrine); and the "Additional Defenses". Additionally, the Court finds that the Thirtieth and Thirty-Fourth Affirmative Defenses are duplicative, and the Motion is granted in that regard as well. The Court grants leave to amend. Any amended Answer shall be filed and served within 10 days' notice of this ruling. Counsel for the Plaintiffs shall prepare and submit a form of order consistent with this ruling within two weeks.

8-9. 24CV01277 13290 CONTRACTORS LANE, LLC V. WISHBONE RANCH, LLC ET AL

EVENTS: (1) Defendant Brian Howe's Demurrer to Second Amended Complaint

(2) Defendant Brian Howe's Motion to Strike Second Amended Complaint

Plaintiff's Request of Judicial Notice is granted. The Court finds that the Plaintiff has sufficiently stated a cause of action for breach of contract as to Defendant Brian Howe and has now sufficiently stated facts to establish that the cause of action was made within the statutory time period [See Second Amended Complaint at ¶18]. The Demurrer is overruled in this regard. California courts have held that a request to arbitrate cannot be raised by a demurrer. See, *Kustom Kraft Homes v. Leivenstein* (1971) 14 Cal.App.3d 805; *Bath v. State of California* (2024) 105 Cal.App.5th 1184 [the Court emphasized that where the language of an arbitration agreement does not clearly establish arbitration as the exclusive remedy, a demurrer is not the appropriate procedural tool to resolve the issue]. Thus, the Demurrer is overruled in this regard. Finally, the Court finds that Plaintiff has sufficiently plead the element of damages [see Second Amended Complaint at ¶¶21, 27, 42, and 43(1)-(4)] and the Demurrer is overruled on that basis. For the same reasons, the Motion to Strike is denied in its entirety. In addition, the Court declines to find Defendant to be a vexatious litigant as the Court does not find Defendant's actions to date rise to the level required to make such a finding under Code of Civil Procedure §391(b)(3). Counsel for the Plaintiff shall submit a form of order consistent with this ruling within two weeks. Defendant shall file his Answer to the Second Amended Complaint within 10 days' notice of this ruling.

10. 24CV03131 HUERTA RAMIREZ, CLARA ELENA V. DOE, MANNY ET AL

EVENT: Defendant Costco Wholesale Corporation's Motion for Protective Order

Defendant Costco Wholesale Corporation's Motion for Protective Order is granted, and the Court will sign the proposed Protective Order submitted by the Defendant. The request for sanctions is denied.

11. 24CV04221 CORTINA HULLING & SHELLING, LLC V. INTERNATIONAL FARM MANAGEMENT, LLC

EVENT: Order of Examination (Rocelia Camerana, as Manager/Member of Judgment Debtor International Farm Management LLC)

The Court will swear in the Judgment Debtor for examination.

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12. 25CV00374 SUN VALLEY, INC V. WEISS-MC NAIR, LLC

EVENTS: (1) Defendant's Motion to Compel Further Responses to Special Interrogatories, Set No One, and Response to Request for Production of Documents, and Award of Monetary Sanctions

(2) Plaintiff Sun Valley Inc.'s Motion to Compel Further Responses

In regard to Defendant's Motion to Compel Further Responses to Special Interrogatories, Set No One, and Response to Request for Production of Documents, and Award of Monetary Sanctions, the Court does not have a proof of service. As such, the Court is unable to determine whether sufficient notice was provided as required by *Code of Civil Procedure* §1005, notice is deemed insufficient, and the Motion is denied. Additionally, the Court has received only a two-page document entitled "Notice of Motion...". There is no memorandum of points and authorities (in violation of California Rules of Court, Rule 3.1112(a)(3) and 3.1113(a)), no separate statement (in violation of California Rules of Court, Rule 3.1345(a)), and no Declaration (in violation of *Code of Civil Procedure* §§2030.300(b)(1) and 2016.040). Therefore, the Motion is also denied on these additional procedural grounds.

In regard to Plaintiff Sun Valley, Inc.'s Motion to Compel Further Responses, on July 21, 2025 the Court initially received only a three-page document entitled "Re-Notice of Motion...". On August 5, 2025, Plaintiff untimely filed a supporting Memorandum of Points and Authorities, Declaration, Separate Statement, and proposed Order. However, pursuant to *Code of Civil Procedure* §1005(b), "all moving and supporting papers shall be served and filed at least 16 court days before the hearing." Here, the supporting papers were filed only 6 Court days before the hearing. Therefore, the Motion is denied.

13. 25CV02090 RUIZ ENRIQUEZ, EDGAR V. CSAA INSURANCE EXCHANGE

EVENT: Defendant's Motion for Protective Order

Initially, bad faith claims are immaterial in an underinsured motorist arbitration. See *State Farm Mut. Auto. Ins. Co. v. Sup.Ct.* (2004) 123 Cal.App.4th 1424, 1434 ["Whether [insurer] paid in an untimely manner or engaged in other claims-handling misconduct, is not an issue for the arbitrator." (Italics omitted); see also *Gourley v. State Farm Mut. Auto. Ins. Co.* (1991) 53 Cal.3d 121, 127-28 [bad faith claims against an insurer are not subject to mandatory arbitration].) Given that Claimant does not address this issue in the Opposition, the Court interprets that to mean Claimant concedes this point and concludes, in any case, that Claimant is not permitted to conduct discovery regarding a potential bad faith action. Additionally, *Insurance Code* §11580.2(f) limits the scope of arbitration to two issues: whether the insured is legally entitled to recover damages, and if so, the amount of damages. This is a first party underinsured motorist arbitration matter in which liability is not disputed. Thus, the only remaining issue for submission to the

arbitrator is the amount of Claimant's damages. Based on the discovery responses that were provided to the Court and the Claimant's stated purpose for the deposition "to ascertain the bases and sources of information for those responses", the Court finds that the deposition of Scott Gordon, is irrelevant to the subject matter involved in the pending action ... nor is it reasonably calculated to lead to the discovery of admissible evidence. As such, the Motion for Protective Order is granted, and the Court will sign the form of order submitted by Respondent.