

Judge Mosbarger – Law & Motion – Wednesday, October 29, 2025 @ 9:00 AM
TENTATIVE RULINGS

1. 20CV00531 BERTAGNA, BERTON N ET AL V. DEAL REAL INTERNATIONAL, INC. ET AL

EVENT: Motion to Dismiss for Failure to Bring to Trial

Notice does not comply with *Code of Civil Procedure* §1005. The proof of service shows service by mail on October 13, 2025, which is only 12 Court days' notice. The Code requires an additional 4 Court days, plus 5 calendar days because the Motion was served by mail. The last date on which service by mail would have been timely was October 2, 2025. However, even if the Court were to consider the merits of the Motion, the Court notes that there is sufficient evidence to show that despite Plaintiffs' diligent efforts to bring this matter to trial, there have been multiple factors that have caused delays that made bringing the matter to trial impossible, impractical, or futile, and the Motion would be denied on its merits as well. Counsel for the Plaintiffs shall prepare and submit a form of order consistent with this ruling within two weeks.

2. 23CV00692 HINOJOSA, ISAIAH V. FORD MOTOR COMPANY ET AL

EVENT: Plaintiff's Motion for Protective Order or, in the Alternative, Motion to Quash/Modify Amended Subpoena

Plaintiff's Motion for Protective Order or, in the Alternative, Motion to Quash/Modify Amended Subpoena is granted, the Court finding that Plaintiff has established good cause for Ms. Tracy Geary's deposition to be taken by contemporaneous videoconference rather than in person. The Court orders counsel to meet and confer on a date and time that is mutually convenient. Counsel for the Plaintiff shall prepare and submit a revised form of order consistent with this ruling within two weeks.

3. 25CV00691 DOE 1, JANE V. GROZE, MELISSA ET AL

EVENT: Plaintiff's Motion for Leave to File First Amended Complaint

The proof of service shows service by mail on October 10, 2025, which is only 13 Court days before the hearing. *Code of Civil Procedure* §1005(b) requires an additional 3 Court days, plus 5 additional calendar days because the Motion was served by mail. Thus, Notice is insufficient. Additionally, the Motion fails to comply with any of the procedural requirements of California Rules of Court Rule 3.1324, and the Motion is denied.

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4. **25CV02344 DECASPER, MONICA V. JOHNSON, MARK**

EVENT: Demurrer to First Amended Complaint

Defendant RSC Associates, Inc.'s ("Defendant" herein) Request for Judicial Notice is granted.

Under the Sham Pleading Doctrine, "[i]f a party files an amended complaint and attempts to avoid the defects of the original complaint by either omitting facts which made the previous complaint defective or by adding facts inconsistent with those of previous pleadings, the court may take judicial notice of prior pleadings and may disregard any inconsistent allegations." *Colapinto v. County of Riverside* (1991) 230 Cal.App.3d 147, 151; *Amid v. Hawthorne Community Medical Group, Inc.* (1989) 212 Cal.App.3d 1383, 1390; *Owens v. Kings Supermarket* (1988) 198 Cal.App.3d 379, 383–384. However, the sham pleading doctrine applies only where a plaintiff knowingly omits or contradicts material facts from a prior pleading to avoid dismissal, and only when those contradictions are both "unexplained and irreconcilable." See *Colapinto v. County of Riverside* (1991) 230 Cal.App.3d 147, 151; *Larson v. UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 344. Here, the Court finds that Plaintiff's First Amended Complaint is not inconsistent with her original complaint; rather, it provides additional factual detail and clarification of her claims after Defendant's meet and confer correspondence identified alleged ambiguities. The Demurrer based upon the Sham Pleading Doctrine is overruled.

The Court agrees with the Defendant that to sufficiently state causes of action one through ten, Plaintiff must allege facts establishing either direct liability or liability under the doctrine of respondeat superior. California law establishes two fundamental elements for respondeat superior liability. First, there must be an employee-employer relationship, as distinguished from an independent contractor arrangement; and second, the employee's tortious conduct must have been committed within the scope of employment. *Perez v. Van Groningen & Sons, Inc.* (1986), 41 Cal.3d 962; *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202; *Diaz v. Carcamo* (2011) 51 Cal.4th 1148. Here, the Court finds that Plaintiff has done so. See First Amended Complaint at ¶¶18-24, 29.

Defendant's contention that the assault arose solely from a personal relationship is contrary to the allegations, which must be accepted as true at this stage. *Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966-967; *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 213 ["[T]he question of scope of employment is ordinarily one of fact for the jury to determine."] Plaintiff alleges that the misconduct occurred within the context of employment, while Defendant was acting as her supervisor and enforcing directives related to her work. The Demurrer on the ground that Plaintiff fails to state sufficient facts to support employer liability is overruled.

Plaintiff must allege sufficient facts of an adverse employment action to sustain her causes of action for retaliation. *Akers v. County of San Diego* (2002) 95 Cal.App.4th 1441, 1453; *Taylor v. City of Los Angeles* (2006), 144 Cal.App.4th 1216, 1229. The Court finds that Plaintiff has done so. See, First Amended Complaint at ¶¶22, 30-38. The

Demurrer on the ground that Plaintiff fails to state sufficient facts to establish an adverse employment action is overruled.

Finally, *Labor Code* §201 requires an employer to pay all wages due immediately upon discharge. *Labor Code* §203 imposes a penalty—continuation of the employee’s daily wage for up to thirty days—when the employer willfully fails to make that payment. To plead such a violation, a plaintiff need only allege that the employment relationship ended, that wages were earned and unpaid at the time of separation, and that the employer’s failure to pay was willful. The Court finds that here, that the allegations in the First Amended Complaint are sufficient. See, First Amended Complaint at ¶¶33-37. The Demurrer on the ground that Plaintiff fails to allege facts sufficient to state a cause of action for failure to timely pay wages due at termination is overruled.

The Demurrer to the First Amended Complaint is overruled in its entirety. Defendant RSC Associates, Inc. is ordered to file and serve its Answer to the First Amended Complaint within 20 days. Counsel for the Plaintiff shall submit a form of order within two weeks.

Additionally, the Court vacates the Case Management Conference on December 17, 2025 and sets this matter for a further Case Management Conference on January 21, 2026 at 10:30 a.m. Case Management Conference Statements are to be timely filed and served.

5. 25CV02563 ROBINSON, ANDREW V. DEAL, MONTE ET AL

EVENT: Review Hearing

1. The Court appoints the following three appraisers to form the panel contemplated by Corporations Code §2000 et seq. (“Section 2000”): (1) Luke Gary, MAI; (2) Claudia Stern, CPA/CFF/ABV; and (3) Kristoffer M. Hall, ASA, CVA.
2. The Court appoints the following appraisers as alternates, who will be appointed in the order listed below in the event that one of the appointed appraisers is unable to proceed with the Section 2000 valuation: (1) John Ashbrook, CFA/ASA; and (2) Eric Nath, ASA.
3. Pursuant to Section 2000, the appointed panel of appraisers (the “Panel”) shall render a valuation of Plaintiff Andrew Robinson’s fifty-percent (50%) ownership interest in D & R CUSTOM HARVESTING, INC. (the “Company”) as of the date of the filing of the operative complaint, July 9, 2025.
4. Within in thirty (30) days of their appointment, the Panel shall submit a letter outlining their recommended procedures and specific methodologies (the “Proposal”) to Deal and Robinson (together, “the Parties”) for comment. The Proposal shall state the anticipated timeframe for completing the valuation.
5. Within fourteen (14) days of receiving the Proposal, the Parties shall submit a final Proposal to the Court for approval. This final Proposal shall be filed with the Court no later than December 22, 2025.

6. Upon Court approval, the Panel shall commence the valuation. The Panel shall be entitled to request and receive any and all evidence in the possession, custody, or control of the Parties or the Company they deem necessary for purposes of conducting the valuation including, but not limited to, financial reports, accounting records, bank records, documents identifying any assets of the Company, documents identifying any liabilities of the Company, and any other evidence that is required. When requested by the Panel, the information shall be voluntarily disclosed to the Panel. Copies of documents provided to the Panel shall also be provided to all Parties. The Panel shall also be entitled to interview any of the Parties or any affiliated persons the Panel deems necessary to their valuation. Counsel for the Parties shall be present during any interview, if they so choose. The Parties shall cooperate fully with the Panel and provide any and all accurate and complete financial information or other documentation requested by the Panel. All information gathered by the Panel, including communications between them, the Parties, and their attorneys, shall be shared with all Parties and their counsel.

7. In the event the Panel needs guidance as to any issue related to their assignment, they shall proceed as follows:

- a. The Panel shall first present the question to the Parties to determine whether the Parties can agree on the guidance to be provided.
- b. If the Parties are unable to agree, the Panel shall present the question to the Court for direction.
- c. The Parties shall have five (5) court days after receipt of the Panel's request to the Court to submit comments, objections, modifications, or other suggestions.
- d. The Court shall make a final determination and provide the requested guidance to the Panel based on the above submittals.

8. Once appointed, the Panel shall not have discussions with counsel to any party outside the presence of the other parties' counsel.

9. The final valuation report ("Appraisal") shall explicitly set forth the value of the appraised interest, including any adjustments that account for any effect on value. The Appraisal shall include appropriate explanations and footnotes describing the Panel's rationale for the stated value, the Panel's supporting rationale, the source of any industry standards relied upon, and any other explanatory information needed to explain the value or any adjustments made to reach the value.

10. The Appraisal shall be filed with the Court and simultaneously served on all parties via electronic transmission on a date to be stated in the Proposal.

11. The Parties shall have thirty (30) calendar days after receipt of the Appraisal to submit any comments or objections to the Appraisal. The Parties shall also state whether they believe an evidentiary hearing is necessary. Any comments or objections shall be served electronically by the Parties.

12. The Parties shall have ten (10) court days after service of any comments or objections by the other party to file and serve any response thereto. The Court shall hold a status conference after receiving the Appraisal and the Parties' comments or objections thereto to discuss the scheduling of any hearing on the Appraisal, as well as the procedures that will govern such a hearing, including the calling of witnesses and submission of evidence. The Panel shall participate in this status conference along with the Parties' counsel.

13. All costs associated with the Panel's valuation shall be split equally by Deal and Robinson, in their individual capacities. Any required retainers shall be paid within fifteen (15) days of a request by any member of the Panel.

The Court vacates the Case Management Conference on January 7, 2026 at 10:30 a.m. and sets this matter for a Review Hearing on January 7, 2026 at 9:00 a.m. for status of the filing of the Panel's final proposal outlining their recommended procedures and specific methodologies, and the Court's approval of same. The Court will sign the form of order submitted by Defendant.