

TENTATIVE RULINGS

**This calendar will be heard by Judge Benson.*

1-4. 21CV00888 DAUN, DOROTHY ET AL V. STRATUS TOOL TECHNOLOGIES, LLC ET AL

EVENTS: (1) Defendant Air Carriage, Inc.'s Motion to File Documents Under Seal (Daun)

(2) Defendant Air Carriage, Inc.'s Motion to File Documents Under Seal (Suemoto)

(3) Defendant Air Carriage, Inc.'s Motion for Determination of Good Faith Settlement (Daun)

(4) Defendant Air Carriage, Inc.'s Motion for Determination of Good Faith Settlement (Suemoto)

This matter is continued on the Court's own motion to November 26, 2025 at 9:00 a.m.

5. 25CV01050 MERCHANTS BONDING COMPANY (MUTUAL) V. WIEBER, DAVID ET AL

EVENT: Cross-Defendant's Demurrer to Frank M. Newton and Charles F. Lee's Cross-Complaint

The Court finds that the Cross-Defendants Ronald G. Norton and American Contractors Indemnity Company ("Cross-Defendants" herein) have sufficiently stated "each ground of demurrer ... in a separate paragraph ... whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses" as required by California Rules of Court Rule 3.1320(a).

Cross-Complainants' Frank M. Newton and Charles F. Lee ("Cross-Complainants" herein) Request for Judicial Notice is granted.

The Demurrer to the Cross-Complaint on the basis of uncertainty is overruled, the Court finding that the Cross-Complainants have sufficiently alleged which Cross-Complainant is alleged to have been harmed under each of the Causes of Action, and which of the Cross-Defendants are alleged to have caused the harm. [See Cross-Complaint at Pg. 6, Lines 16-17; Pg. 13, Lines 12-13; and ¶¶41, 47-48].

As to the First Cause of Action for Recovery of Compensation Paid to Unlicensed Contractor, the Court finds that the allegations in the Cross-Complaint are sufficient to withstand demurrer as to Ronald G. Norton [See Cross-Complaint at ¶¶4, 16, 19, 21-24], and in regard to American Contractors Indemnity Company, as stated by Cross-Defendants, a bond company may be liable to a homeowner in a construction defect case in California when the surety's obligations under the bond are triggered by the contractor's default or failure to perform under the construction contract. The liability of the bond company (surety) is generally commensurate with that of the contractor (principal), meaning the surety is responsible for the same damages the contractor would be liable for under the contract, including construction defects, delays, or other breaches of the contract terms. See, *JMR Construction Corp. v. Environmental Assessment & Remediation Management, Inc.*, 243 Cal.App.4th 571, *Pierce v. Western Surety Co.*, 207

Cal.App.4th 83, *Nat'l Tech. Sys. v. Superior Court*, 97 Cal.App.4th 415. That is what is alleged here [See Cross-Complaint at ¶¶6, 16, 19, 21-24], and the Demurrer is overruled as to American Contractors Indemnity Company. See also, *Kim v. TWA Construction, Inc.* (2022) 78 Cal.App.5th 808.

As to the Second Cause of Action for Breach of Contract, the Court finds that the allegations in the Cross-Complaint have sufficiently alleged a cause of action for breach of contract against Ronald G. Norton [See Cross-Complaint at ¶¶9.c., 11, 13, and Exhibit A], and American Contractors Indemnity Company [See Cross-Complaint at ¶¶6, 9.c., 11, 13, 16, 19, 21-24].

Cross-Defendants are ordered to file and serve their Answers to the Cross-Complaint within 20 days. Counsel for the Cross-Complainants 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.

6. 25CV01982 EIDENMILLER, SETH, MD V. ROCHE, BRITTANY

EVENT: Defendant Brittany Roche's Special Motion to Strike

The Proof of Service indicates that the Motion was served electronically on October 26, 2025, which is only 16 Court days' notice. Pursuant to *Code of Civil Procedure* §§1005(b) and 1010.6(3)(B), an additional 2 Court days' notice is required for electronic service. Thus, notice here is insufficient. However, in the Court's discretion, the Court has considered the merits of the Motion. Additionally, Plaintiff is correct here that to be timely, an anti-SLAPP motion must be filed within the 60-day statutory deadline. *Code of Civil Procedure* §425.16(f); *Mora v. Menjivar* (2025) 111 Cal.App. 5th 1237, 1251. However, *Code of Civil Procedure* §425.16(f) also provides that an anti-SLAPP motion may be filed more than 60 days from service of the complaint "in the court's discretion." *Code of Civil Procedure* §425.16(f). As such, the Court has exercised its discretion and has considered the merits of the Motion. The Court finds that Plaintiff's Complaint arises from activity and speech protected under the Anti-SLAPP statute because her description of her treatment by Plaintiff in the emergency department at Enloe Medical Center was made to inform the public about Plaintiff's alleged lack of competence to provide medical treatment. The specific "public issue" implicated is the qualifications, competence, and professional ethics of a licensed physician. See, *Yang v. Tenet Healthcare Inc.* (2020) 48 Cal.App.5th 939, 947 ["Whether or not a licensed physician is deficient in such characteristics is ... a public issue."] However, it does appear that Plaintiff has sufficiently established through facts and evidence that his causes of action are legally sufficient and are supported by a prima facie showing of facts to sustain a favorable judgment based. The Motion is denied. Counsel for the Plaintiff shall submit a form of order consistent with this ruling within two weeks. The Court also advances the

Case Management Conference on November 19, 2025 at 10:30 a.m. to 9:00 a.m., and continues the Case Management to February 18, 2026 at 10:30 a.m. Case Management Conference Statements are to be timely filed and served.