

Judge Mosbarger – Law & Motion – Wednesday, December 3, 2025 @ 9:00 AM
TENTATIVE RULINGS

1-2. 21CV00888 DAUN, DOROTHY ET AL V. STRATUS TOOL TECHNOLOGIES, LLC ET AL

EVENTS: (1) Defendants Stratus Tool Technologies, LLC; Tempest Aero Group, LLC; and Aero Accessories, LLC's Motion to Seal Unredacted Motion for Order Finding Good Faith Settlement Agreement

(2) Defendants Stratus Tool Technologies, LLC; Tempest Aero Group, LLC; and Aero Accessories, LLC's Motion for Order Finding Good Faith Settlement

The Court may seal filed records only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest. California Rules of Court, Rule 2.550(d); *McNair v. National Collegiate Athletic Assn.* (2015) 234 Cal.App.4th 25, 32. The burden to make such a showing is on the party seeking to seal the documents. *H.B. Fuller Co. v. Doe* (2007) 151 Cal.App.4th 879, 894. The Court finds that here, Defendants have met their burden and Defendants Stratus Tool Technologies, LLC; Tempest Aero Group, LLC; and Aero Accessories, LLC's Motion to Seal Unredacted Motion for Order Finding Good Faith Settlement Agreement is granted. The Court will sign the form of order submitted by counsel. Additionally, the Court finds that the settlement between Defendants Stratus Tool Technologies, LLC; Tempest Aero Group, LLC; and Aero Accessories, LLC and Plaintiffs (1) Dorothy Daun, Rebecca Daun-Widner, and Stacey Elizabeth Owen; and (2) Ayumi Suemoto, was made in good faith pursuant to *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488. Defendants Stratus Tool Technologies, LLC; Tempest Aero Group, LLC; and Aero Accessories, LLC's Motion for Order Finding Good Faith Settlement is granted, and the Court will sign the form of order submitted by counsel.

3-4. 22CV02594 MOFFITT, DEREK C ET AL V. MOFFITT, TERESA L ET AL

EVENTS: (1) Motion to Strike

(2) Motion for Leave to File Amended Cross-Complaint, Nunc Pro Tunc to October 23, 2025

Plaintiffs/Cross-Defendants Derek C. Moffitt and Sandi Moffitt's Motion to Strike is granted. The Court finds that the First Amended Cross-Complaint was filed without the required leave of the Court in violation of *Code of Civil Procedure* §472. The Court will sign the form of order submitted by the Plaintiffs.

Defendants/Cross-Complainants Teresa L. Moffitt and Theldor Farms, Inc.'s Motion for Leave to File Amended Cross-Complaint, Nunc Pro Tunc to October 23, 2025 is unopposed and is granted in part. The Court grants the Defendants/Cross-Complainants Teresa L. Moffitt and Theldor Farms, Inc.'s request for leave to file their

First Amended Cross-Complaint but denies the request that such order be made nunc pro tunc. See, *City of Los Angeles v. Superior Court* (1968) 264 Cal.App.2d 766 [finding that the purpose of a nunc pro tunc order is to correct the record to reflect actions that were taken but not properly recorded due to clerical error or neglect and that the principle limits the use of nunc pro tunc orders to situations where the record needs to be corrected to reflect reality, rather than to create a new legal effect retroactively.] The First Amended Cross-Complaint shall be filed and served within ten days' notice of this ruling. Counsel for the Defendants/Cross-Complainants shall prepare and submit a form of order within two weeks.

5. 22CV02762 PRYDE, DONALD C V. PRYDE, GARY A ET AL

EVENT: Defendant's Motion for Leave to Amend Cross-Complaint

The Court finds that the Motion complies with the procedural requirements of California Rules of Court, Rule 3.1324. In regard to Plaintiff's arguments relating to the sufficiency of the proposed amendments, the Court finds that it is not proper to challenge the legal sufficiency of the requested amendments in an opposition to a motion for leave to amend the complaint. California courts have held that the "better course of action" is to allow the plaintiff to amend the complaint and then test its legal sufficiency in subsequent proceedings, such as through a demurrer or motion to strike. *Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824, 843. See also *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 760 ["we believe that the better course of action would have been to allow Atkinson to amend the complaint and then let the parties test its legal sufficiency in other appropriate proceedings. (citation omitted)"]. Finally, the Court finds that Plaintiff has failed to meet his burden of showing prejudice should the Court allow the requested amendments. Defendant's Motion for Leave to Amend Cross-Complaint is therefore granted. Defendant shall file and serve the First Amended Cross-Complaint within ten (10) days. Counsel for the Defendant shall submit a form of order consistent with this ruling within two weeks.

6. 24CV01428 LARSON, COREEN V. PUTZMEISTER AMERICA, INC.

EVENT: Motion to Compel Further Responses to Discovery Requests

Plaintiffs' Motion to Compel Further Responses to Discovery Requests is denied as moot, Plaintiffs having subsequently received Code compliant responses. However, Plaintiffs' request for sanctions is granted, the Court finding that Plaintiffs were forced to seek this relief prior to Defendant providing such Code compliant responses without substantial justification. The Court awards sanctions against Defendant in the amount of \$2,000, which are to be paid within 30 days' notice of this ruling. Counsel for the Plaintiffs shall submit a revised form of order consistent with this ruling within two weeks.

7. 25CV00069 NORLUND, RICHARD ET AL V. SCHALLER, JOHN C

EVENT: Defendant's Demurrer to Complaint

The Demurrer is Sustained in Part as set forth herein. To the extent Plaintiffs are granted leave to amend, they shall file an amended complaint within 20 days' notice of this order.

With respect to Defendant's Request for Judicial Notice, the Court rules on the requests material to this ruling as set forth below.

Statute of Limitations

The 1-year Limitations Period Applies to All of Plaintiffs' Claims

CCP § 340.6

(a) An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year

...

Plaintiffs' suggestion that other limitations periods are applicable, such as the four-year period for breach of written contract under CCP § 337 or the two-year period for breach of oral contract, is meritless. The Legislature intended to apply the one-year limitations period to both tortious and contractual instances of legal malpractice, see *Stoll v. Superior Court* (1992) 9 Cal.App.4th 1362, 1368. Consequently, the one-year period applies to all of Plaintiffs' claims.

The Limitations Period Began No Later Than April 15, 2022

Truong v. Glasser (2009) 181 Cal.App.4th 102, 113:

Jordache specifically noted the approach of the Court of Appeal, which "suggested that ... actual injury does not occur until related litigation concludes" (*Jordache*, supra, 18 Cal.4th at p. 752), is an approach that "departs from *Budd* [*v. Nixen* (1971) 6 Cal.3d 195 [98 Cal. Rptr. 849, 491 P.2d 433]] and *Adams* [*v. Paul*, supra, 11 Cal.4th 583]. Actual injury refers only to the legally cognizable damage necessary to assert the cause of action. There is no requirement that an adjudication or settlement must first confirm a causal nexus between the attorney's error and the asserted injury. The determination of actual injury requires only a factual analysis of the claimed error and its consequences. The inquiry necessarily is more qualitative than quantitative because the fact of damage, rather than the amount, is the critical factor."

The *Jordache* court concluded the attorney's negligence, by allowing the insurers to interpose an objectively viable defense to coverage, caused immediate injury to the clients in the form of additional litigation costs in the coverage litigation, as well as reducing the value of the claim against the insurers and other lost opportunity costs.

[Emphasis Added]

Pursuant to Evidence Code §452(d), the Court takes judicial notice of Los Angeles Superior Court case no. 20STCV27665 and Plaintiffs' motion to expunge lis pendens filed April 15, 2022. The motion to expunge lis pendens clearly demonstrates Plaintiffs retained counsel (therefore incurring additional litigation costs) to address the problem with the deed of trust. That motion also states that Richard Norlund became aware of the issues concerning the deed of trust "At the end of June 2020."

Thus, it is beyond dispute that Plaintiffs became aware of "the fact of damage" no later than April 15, 2022. Consequently, absent tolling of the statute, this action is time barred.

The Tolling Agreement

The moving papers identified the existence of a tolling agreement which ostensibly tolls the statute to January 1, 2025. The moving papers noted that, in meet and confer conversations, Plaintiffs indicated they attempted to file the complaint on January 2, 2025 but that the clerks rejected the filing.

After inquiry, the Court confirms Plaintiffs attempted to file the Complaint on January 2, 2025. The filing was rejected because the filing fees were not included. On January 6, 2025 the filing was accepted because a request for fee waiver was filed concurrently. The January 2 attempt did not include a fee waiver.

CCP § 12a. Computation of time where last day for performance of act is holiday

(a) If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday.

Pursuant to section 12a, Plaintiffs would have until January 2, 2025 to file the Complaint. A paper is deemed filed when it is deposited with the clerk with directions to file the paper. (*Rojas v. Cutsforth* (1998) 67 Cal.App.4th 774, 778)

Cowdery v. London & San Francisco Bank (1903) 139 Cal. 298, 306:

A nunc pro tunc order cannot be made for the purpose of declaring that something was done which was not done. Its only office is to cause the record to show something done which was actually done, but which, by misprision or neglect, was not at the time entered in the record.

[Emphasis Added]

The circumstances here fall within the Court's nunc pro tunc authority. Plaintiffs actually attempted to file the Complaint on January 2, 2025, and due to an omission on their part, the filing was rejected. On the Court's motion, the Complaint is deemed to have been filed on January 2, 2025.

The demurrer is sustained on statute of limitations grounds. Plaintiffs are provided leave to amend to allege tolling pursuant to the tolling agreement.

Standing

Richard Norlund, Individual

The Complaint, on page 3, lines 15-16 alleges Defendant represented Richard as an individual. Defendant argues the Complaint is limited to representation in connection with the settlement, and because the settlement agreement attached to the Complaint indicates Defendant only represented Richard Norlund as trustee with respect to the underlying probate cases, Richard only has standing as trustee of Trust A and Trust B of the Norlund Family Trust. This argument is supported by the settlement agreement, attached to the Complaint as exhibit A, which indicates Richard was represented by Defendant in his capacity as trustee and by Mr. Sandelman in his individual capacity.

Where facts appearing in attached exhibits or judicially noticed documents contradict, or are inconsistent with, the complaint's allegations, we must rely on the facts in the exhibits and judicially noticed documents. (*A.S. v. Palmdale School Dist.* (2023) 94 Cal.App.5th 1091, 1096) The Court agrees with Defendant that Richard Norlund individually lacks standing to sue Defendant with respect to breaches of the settlement agreement, and most of the Complaint concerns failures to comply with the settlement agreement, including the alleged failure to properly prepare the trust deed.

However, we read the complaint as a whole and its parts in context to give the complaint a reasonable interpretation. (*Ring v. Harmon* (2021) 72 Cal.App.5th 844, 850) Paragraph 15 alleges Defendant failed “to aid RICHARD in obtaining title insurance insuring him personally as the buyer of the WAREHOUSE”. This obligation does not appear in the settlement agreement.

Weil & Brown California Practice Guide (The Rutter Group) (2022) Civil Procedure Before Trial, Demurrer, [7:44]

No matter how unlikely: The sole issue raised by a general demurrer is whether the facts pleaded state a valid cause of action – not whether they are true. Thus, no matter how unlikely or improbable, plaintiff’s allegations must be accepted as true for the purpose of ruling on demurrer. [*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 CA3d 593, 603]

Assuming Richard Norlund’s allegation as true that he retained Defendant in his individual capacity to obtain title insurance for himself personally, he appears to have standing in that limited respect. Thus, the demurrer is overruled as to Richard Norlund individually.

Sharon Bacon-Norlund Individually and as Trustee

Page 3 lines 17-18 of the Complaint allege that Mr. Schaller represented Sharon Bacon-Norlund individually and as co-trustee of the Norlund Family Trust Dated May 13, 2019.

Unlike Richard Norlund, we have no exhibit attached to the Complaint stating Sharon was represented by someone other than Defendant. Thus, because we must assume as true the allegation that Mr. Schaller represented Ms. Norlund both individually and as trustee, the demurrer is overruled.

Richard Norlund as Trustee of the Richard L. Norlund Separate Property Trust Dated 12/11/97

Page 3 line 16 of the Complaint alleges Defendant represented Richard Norlund as trustee “of his separate property trust.” Unlike the analysis of Richard Norlund as an individual, where we have an exhibit indicating he was represented by separate counsel, there is nothing contradicting the allegation that Defendant represented Richard as trustee of his separate trust. Assuming the truth of the allegation as we must at this stage, the demurrer is overruled.

Richard Norlund as Trustee of the Norlund Family Trust Dated 5/13/19

Page 3 lines 16-17 of the Complaint allege Defendant represented him as co-trustee of the Norlund Family Trust Dated 5/13/19. Again, there is nothing directly contradicting this allegation, therefore it must be accepted as true for purposes of demurrer. The demurrer is overruled.

Noerr Pennington Doctrine is Inapplicable

People ex rel. Gallegos v. Pacific Lumber Co (2008) 158 Cal.App.4th 950, 965:

Under the Noerr-Pennington doctrine, “[t]hose who petition government ... are generally immune from antitrust liability.”

...

“This doctrine relies on the constitutional right to petition for redress of grievances to establish that there is no antitrust liability for petitioning any branch of government, even if the motive is anticompetitive.”

...

The Noerr-Pennington doctrine has been extended to preclude virtually all civil liability for a defendant's petitioning activities before not just courts, but also before administrative and other governmental agencies.

[Emphasis Added]

The primary purpose of the Noerr Pennington Doctrine is to protect the right to petition. The gravamen of this case is not to chill Defendant's right to petition. The gravamen of this case is that Defendant was negligent in preparing the trust deed. It is the contents of the deed which apparently resulted in years of litigation. Any impact on petitioning rights is incidental at best in the context of this lawsuit. Malpractice is not a protected right.

Freeman v. Schack (2007) 154 Cal.App.4th 719, 734 fn 9:

In the former case, however, the malpractice claim arises not from the filing of the answer, but from the attorney's failure to provide competent legal representation. That the malpractice claim was triggered by the filing of the defective pleading does not upset the basic principle that attorney malpractice is not a protected right.”

Does the Complaint Allege Sufficient Facts Constituting a Cause of Action?

Legal Malpractice

The demurrer fails to identify any additional ground for sustaining the demurrer outside of the theories previously raised.

Breach of Fiduciary Duty

The Complaint has alleged sufficient facts that Defendant failed to properly prepare the trust deed. Even if there are separate theories in the fiduciary cause of action that are not well pled, if there are sufficient facts pled or that can be inferred reasonably to state a cause of action under any theory, the demurrer must be overruled. (*Lin v. Coronado* (2014) 232 Cal.App.4th 696, 700)

Breach of Contract

The breach of contract cause of action alleges there are no written retainer agreements. The cause of action is unclear as to whether the breach of contract cause of action is based on an oral or implied contract. Per CCP 430.10(g), the demurrer is sustained with leave to amend to clearly identify the legal theories and to clearly identify the terms of the agreements.

To summarize, the demurrer is sustained with leave to amend on statute of limitations grounds and on the ground the breach of contract cause of action is not sufficiently plead. The demurrer is overruled in all other respects.

Defendant shall prepare a form of order within two weeks.

If requesting oral argument, please call (530) 532-7153.

8-9. 25CV00436 TBF FINANCIAL I, LLC V. GREASE MONKEY TRUCK REPAIR, INC ET AL

EVENTS: (1) Plaintiff's Motion for Terminating Sanctions Against Defendant Mohammad Assad Khan, Striking His Answer, and Entering Default Against Him for Failing to Comply with September 24, 2025 Discovery Order

*(2) Case Management Conference *Special Set*

The Court finds that Defendant Mohammad Assad Khan has failed to comply with this Court's September 24, 2025 Order and the Court orders that Defendant Mohammad Assad Khan provide further responses to Plaintiff's Requests for Production of Documents Set One, Plaintiff's Special Interrogatories Set One, and Plaintiff's Form Interrogatories Set One, and pay the previously issued sanctions of \$1,863.75 no later than close of business on December 17, 2025. The Court finds that there has been no showing of ongoing and willful disobedience of a Court's discovery order nor blatant and ongoing abuse of the discovery process that rises to the level of discovery abuse to support terminating sanctions. As such, terminating sanctions are not warranted on this record. See, *Liberty Mutual Fire Ins. Co. v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093. Plaintiff shall submit a revised form of order consistent with this ruling

within two weeks. The Case Management Conference is continued to February 4, 2026 at 10:30 a.m. Case Management Conference Statements are to be timely filed and served.

10. 25CV00531 SANCHEZ MENDOZA, DAVID V. DOE, JOHN ET AL

EVENT: Defendant Burlington Coat Factory of Texas, Inc.'s Motion to Quash Service of Summons

Code of Civil Procedure §474 applies only when “the plaintiff is ignorant of the name of a defendant...” Plaintiff’s “ignorance” has been interpreted to mean either: (1) plaintiff was unaware of defendant’s identity; (2) plaintiff was unaware of defendant’s culpability (facts giving rise to a cause of action against the defendant); or (3) the law did not give plaintiff a right of action until after commencement of the action. See *Marasco v. Wadsworth* (1978) 21 Cal.3d 82, 88; *Snoke v. Bolen* (1991) 235 Cal.App.3d 1427, 17 1431. The Court finds *Optical Surplus, Inc. v. Superior Court* (1991) 228 Cal.App.3d 776 to be instructive here. In *Optical Surplus*, the Court of Appeal held that the plaintiff’s pre-suit demand letter “clearly and unequivocally indicated that [plaintiff] knew not only [defendant’s] identity but also its alleged “actionable” activity”, and therefore the Doe amendment did not relate back to the commencement of the action for statute of limitations purposes. *Id.* Here Defendant argues that, in facts almost identical to *Optical Surplus*, Plaintiff was demonstrably aware of Burlington’s identity at the time the Complaint was filed, as evidenced by Plaintiff’s prelitigation demand letters sent to Defendant’s insurance carrier in September and November 2024 [See, Exhibits A and B to Declaration of Carly J. English]. Plaintiff’s attempt to factually distinguish *Optical Surplus* based on a vague argument that there existed “confusion and lack of knowledge as to the true location and responsible party”, is unpersuasive based on the lack of any factual support and the clear language in the two aforementioned letters. The Motion is granted, and the Court will sign the form of order submitted by Defendant.

11. 25CV02798 TYLER, MATHEW V. STATE OF CALIFORNIA ET AL

EVENT: Motion for Leave to File First Amended Complaint; for Preliminary Injunction and for an Order Barring and Striking Filings

As an initial matter, the Court finds notice to be in violation of *Code of Civil Procedure* §1015 and California Rules of Court 1.21(a), both of which explicitly state that when a party is represented by an attorney, service of papers must be made upon the attorney instead of the party. Here, Plaintiff was advised by Mr. Herzberger that he was representing Mr. Gallagher on October 30, 2025, therefore service of the instant Motion on Mr. Gallagher’s business office after that date was inappropriate. However, the Court will address the merits of the Motion. In that regard, the Court notes that Plaintiff makes three distinct and separate requests for relief by way of this Motion: (1) leave to amend complaint; (2) preliminary injunction; and (3) motion to strike.

The motion for leave to file a First Amended Complaint is denied. As Plaintiff seeks to add allegations occurring after the filing of the original Complaint, a Supplemental Complaint is required, rather than a First Amended Complaint. See, CCP §464; *California Farm & Fruit Co. v Schiappa-Pietra* (1907) 151 Cal. 732, 742. See *Earp v Nobmann* (1981) 122 Cal.App.3d 270 (amendment to original complaint not proper; supplemental complaint necessary to set forth matters occurring after complaint filed), disapproved on other grounds in *Silberg v Anderson* (1990) 50 Cal.3d 205, 219.

The request for a preliminary injunction is denied. *Code of Civil Procedure* §527(a) provides that “[a] preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor...” See also, *O’Connell v. Sup. Ct. (Valenzuela)* (2006) 141 Cal.App.4th 1452, 1481 [“In any event, the burden was on plaintiffs, as the parties seeking injunctive relief, to show all elements necessary to support issuance of a preliminary injunction. (citations omitted)”]. Here, the Court finds that Plaintiff has failed to satisfy his burden of showing sufficient legal or factual grounds to support the issuance of a preliminary injunction.

Finally, the request that the Court strike “any and all pleadings that may be submitted by the Attorney General, OLC, or their agents in this matter” on the grounds that any such filing would be the “fruit of the poisonous tree” and the direct product of an illegal expenditure and an act of unlawful retaliation, is denied as both premature, and unsupported by any legal authority.

12. 25CV03005 COBB, VIOLA V. STATE FARM INSURANCE

EVENT: Motion to Compel Arbitration and Appoint Arbitrator in an Underinsured Motorist Action with Request for Sanctions [C.C.P. §1281.6, Insurance Code §11580.2(f)]

The Proof of Service indicates that the Motion was served electronically on November 10, 2025, which is only 14 Court days’ notice. Pursuant to *Code of Civil Procedure* §1005(b), an additional 2 Court days’ notice is required, and pursuant to CCP §1010.6(3)(B), an additional 2 Court days’ notice is required for electronic service. Thus, notice here is insufficient. However, even if the Court were to reach the merits of the Motion, the Court finds that the appointment of an arbitrator by the Court is governed by *Code of Civil Procedure* §1281.6, which sets forth a procedural framework for such appointment that has not been followed here. Thus, even if the Court were to consider the merits of the Motion, it would be denied in its entirety.