

**Judge Mosbarger – Law & Motion – Wednesday, September 28, 2022 @ 9:00 AM
TENTATIVE RULINGS**

1. 18CV01433 REYNOSO, ADRIANA MARGARITA ET AL V. BURCH, DEAN ROCKEY ET AL

EVENT: Plaintiff's Motion for CCP §998 and Civil Code §3291 Prejudgment Interest, Expert Witness Fees, Costs, Etc.

The Court, on its own motion, continues the hearing on Plaintiffs' Motion for CCP §998 and Civil Code §3291 Prejudgment Interest, Expert Witness Fees, Costs, Etc., to October 19, 2022 at 9:00 a.m. to be heard concurrently with Defendants' Richard Thompson's and Mary Lake-Thompson's Motion to Strike or Tax Costs and Defendant Rockey Dean Burch's Motion to Tax Costs, which the Court also continues to October 19, 2022 at 9:00 a.m.

2. 21CV00762 DOE, JANE V CHICO UNIFIED SCHOOL DISTRICT

EVENTS: (1) Plaintiff's Motion to Compel Further Responses to Request for Production of Documents, Set Three (Amended), From Defendant Chico Unified School District

(2) Plaintiff's Motion to Compel Further Responses to Request for Production of Documents, Set Four, From Defendant Chico Unified School District

(3) Defendant's Motion to Compel Mental Exam with a Psychologist

Based upon the Court Orders signed by Judge Benson on July 12, 2022 denying the Request for Pretrial Discovery Conference and providing that the Plaintiff had 45 days to file its Motions to Compel, the Court deems the instant Motions timely.

In regard to Plaintiff's Motion to Compel Further Responses to Request for Production of Documents, Set Three (Amended), From Defendant Chico Unified School District, the Court overrules the objections raised by Defendant and the Motion is granted. However, in regard to Request Nos. 91, 92, 93, 94, and 95, Defendant's response shall be limited to the time period of 2008-2014. The Court Orders Defendant to provide a further response and produce all responsive documents to these Requests for Production, within 14 days' notice of this Order. Counsel for the Plaintiff shall submit a form of Order consistent with this ruling within two weeks. Defendant's request for sanctions is denied.

In regard to Plaintiff's Motion to Compel Further Responses to Request for Production of Documents, Set Four, From Defendant Chico Unified School District, the Court finds that the information requested relating to the identification and contact information for those individuals identified by Plaintiff as potential witnesses to the alleged abuse is relevant and discoverable and therefore, the Motion is granted as to Request Nos. 96, 97, 98, and 99. The Court Orders Defendant to provide a further response and produce all responsive documents to these Requests for Production, following compliance with the notification and confidentiality requirements set forth in Education Code §49077. Counsel for the Plaintiff shall

submit a form of Order consistent with this ruling within two weeks. Defendant's request for sanctions is denied.

Finally, in regard to Defendant's Motion to Compel Mental Exam with a Psychologist, the Motion is granted. The Plaintiff shall undergo an independent mental examination on October 21, 2022, at 9:00 a.m. at 1074 East Avenue, Suite 0, Chico, CA 95926 to be examined by psychologist William O'Donohue, Ph.D. Dr. O'Donohue shall conduct a mental exam of Plaintiff consisting of: Clinical interview, history, diagnostic, Symptom Checklist 90-R, PTSD Checklist-PCL-5, Beck Anxiety Inventory-2, Beck Depression Inventory, and MMPI2-RF. Counsel are precluded from attending the examination, but an audio recording of the examination is permitted pursuant to CCP §2032.530. Counsel for the Defendant shall submit a form of Order consistent with this ruling within two weeks.

3. 21CV01205 LARSEN, AUSTIN V. HARMONY COMMUNITIES, INC.

EVENT: Plaintiff's Motion to Continue Trial Dates

The motion was served on September 1, 2022 by electronic mail, which is only 16 Court days plus 1 additional Court-day before the hearing on the motion. CCP §1005(b) and CCP §1010.6(a)(4)(B) require an additional 2 Court days where service is made by electronic email. See also Rutter's Civil Proc. Before Trial at Section 9:87.2a. Notice is therefore insufficient and the motion is continued to October 19, 2022 at 9:00 a.m. to allow for additional notice and the filing of an opposition, if desired. Based on what is before the Court at this time, the Court is inclined to find good cause to grant the Motion.

4. 22CV01493 IMPACT DEVELOPMENT GROUP, LLC ET AL V. WEST, ELMO M ET AL

EVENT: Defendant Elmo M. West's Demurrer to Plaintiffs' Complaint

Defendant's Request for Judicial Notice is granted. The Court finds that Plaintiffs are permitted to pursue an alter ego theory of liability based upon the allegations of the Complaint and concludes that there is no misjoinder of parties. [See Complaint at Page 1, Lines 1-10 and Paragraphs 3, 19, 21-27, 29-31]. The Court further finds that Plaintiffs have sufficiently plead causes of action for Breach of Written Contract [Complaint at Paragraphs 35, 38, 39, 40], Breach of Oral Contract [Complaint at Paragraphs 44, 47, 48, 49], Specific Performance [Complaint at Paragraph 56], Breach of Implied Covenant of Good Faith and Fair Dealing [Complaint at Paragraphs 35, 44], and Negligent Interference with Prospective Economic Advantage [Complaint at Paragraphs 81, 82, 83, 84], and the causes of action for Breach of Oral Contract, Specific Performance, Breach of Implied Covenant of Good Faith and Fair Dealing, and Negligent Interference with Prospective Economic Advantage are sufficiently certain to withstand demurrer. Therefore, the Demurrer is

overruled as to the First, Second, Third, Fourth, and Sixth Causes of Action. The Demurrer is sustained as to the Eighth Cause of Action on the ground that the Complaint fails to sufficiently state a cause action for fraud, specifically as to the Defendant's knowledge that the representation is false, and the intent to defraud. Plaintiffs are granted leave to amend. Counsel for the Defendant shall submit a revised form of order within two weeks.

5. 22CV01618 IN RE: SANCHEZ, ALEX ANGUIANO

EVENT: Petition for Change of Name

If proper proof of publication is submitted at or before the hearing, the Petition will be granted.

6. 22CV01761 IN RE: MCFARLAND, ELIZABETH MARIE

EVENT: Petition for Change of Name

At the request of the Petitioner, this matter is continued to October 28, 2022 at 9:00 a.m. The Petitioner is directed to obtain an Amended Order to Show Cause for publication.

7. 22CV01781 IN RE: CHARRON, JENNIFER GALE

EVENT: Petition for Change of Name

If proper proof of publication is submitted at or before the hearing, the Petition will be granted.

8. 22CV01968 BUTTE COUNTY ANIMAL CONTROL V. TORRES, ANDRE ET AL

EVENT: Petition to Determine if Dog is Vicious

Petitioner has met its burden of proof and the Court intends to grant the petition and order that the dog be destroyed. The Court will conduct a hearing.

9. 161863 SILVER, STEVE V. ARRIAGARAZO, ANTONIO

EVENT: Cross-Complainant's Motion for Attorney Fees

If the appeal essentially concludes the matter, i.e., there will not be a new judgment entered following the remittitur, as is the case here, California Rules of Court 3.1702(c)(1) applies. See, e.g., Conservatorship of McQueen (2014) 59 Cal.4th 602, 612. Under that Rule, a notice of motion to claim attorney fees on appeal under either statute or contract must be served and filed within the time for serving and

filing a memorandum of costs on appeal under California Rules of Court 8.278(c)(1) in an unlimited civil case. Under California Rules of Court 8.278(c)(1), a memorandum of costs on appeal must be filed within 40 days after issuance of the remittitur. Here, remittitur occurred on July 27, 2021, and 40 days thereafter was September 10, 2021. The Motion for fees was not filed until August 15, 2022, and is therefore untimely. Moreover, the Court finds that Cross-Complainants seek to relitigate an issue already decided by this Court when it granted Cross-Defendant's Motion to Tax Costs on November 4, 2021. The Motion to Tax Costs involved precisely the same subject matter as the instant Motion, namely Cross-Complainants' attempt to recover attorney's fees on appeal. The same issues were addressed in the Motion to Tax Costs, including whether Cross-Complainants' effort to recover attorney's fees was untimely, and whether there was any basis to award attorney's fees in the absence of a statutory or contractual basis for attorney's fees. Thus, the Court concludes again that the instant Motion is untimely. Finally, even if the Court were to reach the issue of the recoverability of attorneys' fees, Cross-Complainants seemingly ignore the scope of California Rules of Court Rule 3.1702, which limits claims for attorney's fees to fees provided for by statute or contract, neither of which is applicable in this case. The Motion is denied and counsel for the Cross-Defendants shall submit a form of order within two weeks.