

**Judge Mosbarger – Law & Motion – Wednesday, November 20, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1. 22CV01054 SMITH, JOHN L ET AL V. DUCCINI, DEANNA ET AL

EVENT: Motion to Modify, Reform, and Enforce Settlement Agreement, or, in the Alternative, Motion to Rescind Settlement Agreement

The Motion is unopposed and is granted. The Mediation Settlement Agreement shall be reformed at Paragraph 3 to provide that in lieu of a lot line adjustment, Defendant Deanna Duccini shall grant an exclusive easement for the portion of the property as described below:

REAL PROPERTY LOCATED IN COUNTY OF BUTTE, STATE OF CALIFORNIA
AND IS DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT CERTAIN GRANT DEED TO A REVOCABLE TRUST
TO DEANNA L. DUCCINI AS TRUSTEE OF THE DEANNA LOUISE SMITH FAMILY
TRUST, RECORDED NOVEMBER 16, 2021 UNDER RECORD SERIAL NO. 2021-
0050066, BUTTE COUNTY OFFICIAL RECORDS, BEING MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH WEST CORNER OF SAID GRANT DEED; THENCE
FROM SAID POINT OF BEGINNING ALONG THE PERIMETER OF SAID GRANT
DEED THE FOLLOWING FOUR (4) COURSES AND DISTANCES:

1. SOUTH 00°11'26" EAST 105.00 FEET;
2. SOUTH 27°21'00" EAST 97.29 FEET;
3. SOUTH 00°11'26" EAST 275.00 FEET TO THE SOUTH WEST CORNER OF
SAID GRANT DEED;
4. ALONG THE SOUTHERLY LINE OF SAID GRANT DEED NORTH 57°23'06"
EAST 119.76 FEET;

THENCE LEAVING SAID SOUTHERLY LINE NORTH 21°54'32" WEST 131.73
FEET; THENCE NORTH 16°12'26" WEST 196.11 FEET; THENCE NORTH
10°57'48" WEST 92.34 FEET TO THE NORTH LINE OF SAID GRANT DEED.
THENCE ALONG SAID NORTH LINE SOUTH 89°48'34" WEST 26.50 FEET TO
THE POINT OF BEGINNING FOR THIS DESCRIPTION.

SAID LAND CONSISTS OF 23,567 SQUARE FEET, OR 0.54 ACRES, MORE OR
LESS.

END OF DESCRIPTION.

Counsel for the Plaintiff shall submit a form of order within two weeks.

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2. 22CV02187 A, C V. COUNTY OF BUTTE

EVENT: Motion to be Relieved as Counsel

There is no proof of service in the Court's file evidencing notice has been provided to opposing counsel, therefore the Court cannot confirm whether notice complies with Cal Rules of Ct 3.1362(d) or Code of Civil Procedure §1005. The Motion is continued to December 18, 2024 at 9:00 a.m. to allow sufficient time for notice and filing of a proof of service.

3-4. 23CV02177 HELENA AGRI-ENTERPRISES, LLC V. BASSI & DHILLON, INC ET AL

EVENTS: (1) Order of Examination – Bassi & Dhillon, Inc.

(2) Order of Examination – Harjit Dhillon aka Harjit Singh Dhillon

The Court will swear in the Judgment Debtor for examination.

5. 23CV03270 SMITH, KAMERON V. FADALE, DAMON ET AL

EVENT: Motion to Set Aside Default Judgment due to Fraud

There is no proof of service in the Court's file. However, the Opposition indicates that the Motion was personally served by the Defendant on October 31, 2024, which is only 13 Court days' notice. Pursuant to *Code of Civil Procedure* §1005, an additional 3 Court days' notice is required. Notice is therefore insufficient. In addition, the motion is procedurally defective in that there is no notice of motion [Cal. Rules of Ct. Rule 3.1112(a)(1)], no memorandum of points and authorities [Cal. Rules of Ct. Rule 3.1112(a)(3)], and no supporting declaration or other evidence. The Court further finds that the authority cited by Defendant in support of the Motion – Penal Code §115 – is wholly inapplicable. However, even if the Court were to consider the merits of the Motion under the correct authority, there has been no showing of extrinsic fraud. See, e.g., *County of San Diego v Gorham* (2010) 186 Cal.App.4th 1215, 1228 (false return of summons may constitute extrinsic fraud and mistake); *Yolo County Dep't of Child Support Servs. v Myers* (2016) 248 Cal.App.4th 42, 49; *Moghaddam v Bone* (2006) 142 Cal.App.4th 283, 290; *Marriage of Park* (1980) 27 Cal.3d 337, 342. As such, the Motion is DENIED.

Plaintiff's request for sanctions pursuant to *Code of Civil Procedure* §128.7 is denied because Plaintiff failed allow for the 21-day safe harbor provision as required under subsection (c)(1). 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)(2).

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

6. 24CV00889 CLIFTON, ANGELA V. SAYALATH, PAUL

EVENT: Motion to be Relieved as Counsel

The Motion to be Relieved as Counsel is granted and the Court will sign the form of order submitted by counsel, with the following modifications: (1) The Court will mark box 5.a., indicating that the Order will be effective upon the filing of the proof of service of this signed order upon the client; and (2) The next hearing date is now a Motion to Set Aside Default, set for hearing on December 4, 2024 at 9:00 a.m., which shall be written in in Paragraph 7.

7-8. 24CV01513 CODROMAC, DAVID V. HARROD, JEFF ET AL

EVENTS: (1) Defendants' Demurrer to First Amended Complaint

(2) Defendants' Motion to Strike Portions of First Amended Complaint

Demurrer to Complaint

The Court finds that Plaintiff has stated facts sufficient to remove the First Cause of Action for negligence from the purview of the Economic Loss Rule, having now alleged damage to property in Paragraphs 21 and 23 of the First Amended Complaint. However, based upon the allegations in the First Amended Complaint, Plaintiff is not seeking recovery of those damages alleged in Paragraphs 21 and 23 in relation to the First Cause of Action. [See, First Amended Complaint at Paragraph 40.] As such, the Demurrer to the First Cause of Action is sustained on this basis, with leave to amend. Defendant's argument that Plaintiff's First Cause of Action makes no allegations against individual Defendant Jeff Harrod, fails. The Court notes that in looking at the First Amended Complaint, the First Cause of Action is "against all Defendants", which includes Jeff Harrod individually. (FAC, ¶¶3-4, 37.) The Demurrer to the First Cause of Action is overruled on this basis.

In relation to the Second Cause of Action for Breach of Contract, the Court finds that Plaintiff has failed to allege Plaintiff's performance or excuse for nonperformance, and finds that as pled is improperly alleged against Defendant Jeff Harrod, an individual, as the allegations of the First Amended Complaint state that the contract was entered into only "between Plaintiff and Defendant Jeffs Truck Service and Power, Inc." There are no factual allegations to support a cause of action for breach of contract against Defendant Jeff Harrod, an individual. Therefore, the Demurrer is sustained as to the Second Cause of Action for Breach of Contract, with leave to amend.

The Court finds that Plaintiff has now sufficiently alleged a fraud cause of action (FAC at ¶¶49-57), and the Demurrer is overruled as the Third Cause of Action.

Finally, the Court finds that Plaintiff has sufficiently alleged a cause of action for Violation of Consumer Protection Laws under Business and Professions Code §17200 with the required specificity (FAC at ¶¶58-67), and further finds that Defendant's argument that Plaintiff's Fourth Cause of Action makes no allegations against individual Defendant Jeff

Harrod, fails. The Court notes that in looking at the First Amended Complaint, the Fourth Cause of Action is “against all Defendants”, which includes Jeff Harrod individually. (FAC, ¶¶3-4, 58.) The demurrer to the Fourth Cause of Action is overruled.

Motion to Strike

The Court finds that the factual allegations of the First Amended Complaint are sufficient to support a claim of punitive damages (FAC at ¶¶49-57), and the Motion to Strike Portions of the Complaint, in regard to punitive damages, is denied.

In regard to attorneys’ fees, the issue is whether Plaintiff is proceeding under the Unfair Practices Act (UPA; Business and Professions Code §§17000–17101; attorney’s fees recoverable) versus the Unfair Competition Law (UCL; Business and Professions Code §§17200-17210; attorney’s fees not recoverable). The Court finds that it is clear that Plaintiff is proceeding under the UCL in this action (FAC at ¶59) and the Motion is granted in this regard. The following is stricken from the First Amended Complaint:

¶42, the words: “attorneys’ fees”;

¶48, the words: “attorneys’ fees”;

¶55, the words “attorneys’ fees”;

¶57, the words “attorneys’ fees”;

¶67, the words “attorneys’ fees”;

The fifth prayer for relief as to “attorneys’ fees”.

Any amended Complaint shall be filed within 20 days’ notice of this ruling. Counsel for the Plaintiff shall submit a form of order consistent with this ruling within two weeks.

9. 24CV03246 IN RE: BEALS, TYLER ALAN

EVENT: Petition for Change of Name

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

10. 24CV03266 IN RE: COOPER, SHARON BRIDGETT

EVENT: Petition for Change of Name

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