

TENTATIVE RULINGS

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

1-2. **21CV02330 DECKER, MICHAEL P ET AL V. SIERRA PACIFIC LAND & TIMBER COMPANY**

EVENTS: (1) Order to Show Cause re: Preliminary Injunction as to Michael P. Decker

(2) Defendants' Motion for Preliminary Injunction

Defendants' Request for Judicial Notice is granted. Plaintiffs' Request for Judicial Notice is denied as to Request Nos. 1, 2, and 3, and granted as to Request Nos. 4, 5 [only as to the existence of *Civil Code* §813, and not as to the proffered interpretation or application, which is not the proper subject of a Request for Judicial Notice], 6 [only as to the existence of the Court records and not the proffered interpretation or conclusions drawn therefrom, which are not the proper subject of a Request for Judicial Notice], 7, 8, 9, 10, 11, 12, 13, 14, 15 [only as to the existence of the Court records and not the proffered interpretation or conclusions drawn therefrom, which are not the proper subject of a Request for Judicial Notice], and 16 [only as to the existence of the Court records and not the proffered interpretation or conclusions drawn therefrom, which are not the proper subject of a Request for Judicial Notice]. Plaintiffs' and Defendants' respective Objections to Evidence are overruled. Defendants have established the likelihood of prevailing on their claims, and that the balance of harm weighs in their favor. Therefore, Defendants' request for preliminary injunction is granted. Bond is ordered in the amount of \$10,000. The Court will sign the form of order submitted by counsel. Additionally, the Court will advance the Case Management Conference on calendar August 9, 2023 to 9:00 a.m. and continue the Case Management Conference to December 6, 2023 at 10:30 a.m.

3. **22CV01506 VAIL, NATHAN ET AL V. ANDERSON BURTON CONSTRUCTION, INC. ET AL**

EVENT: Defendant CNA Financial Corporation dba CNA Surety's Demurrer to Fifth Cause of Action in Plaintiffs' First Amended Complaint

The Court finds that Plaintiffs have sufficiently plead a cause of action for breach of contract as a third-party beneficiary against Defendant CNA Financial Corporation dba CNA Surety. [See, First Amended Complaint at ¶¶49-50; See also, *Ochs v PacifiCare of Cal.* (2004) 115 Cal.App.4th 782.] The Demurrer to the Fifth Cause of Action in Plaintiffs' First Amended Complaint is overruled and Defendant CNA Financial Corporation dba CNA Surety shall file and serve its Answer to the First Amended Complaint within 10 days' notice of this ruling. Counsel for the Plaintiffs shall submit a form of order consistent with this ruling within two weeks.

4. **22CV01555 WONACOTT, JOSEPH MICHAEL ET AL V. THOR MOTOR COACH ET AL**

EVENT: Defendant Thor Motor Coach's Motion to Stay Action

The Court finds that although it is true that ordinarily the party opposing enforcement of a mandatory forum selection clause bears the burden of proving why it should not be enforced, "that burden is reversed when the claims at issue are based on unwaivable rights created by California statutes." *Verdugo v. Alliantgroup L.P.* (2015) 237 Cal.App.4th 141, 147. Thus, Defendant must satisfy its burden to show that Plaintiffs freely and voluntarily agreed to the forum selection clause. *America Online, Inc. v. Superior Court* (2001) 90 Cal.App.4th 1, 11-12. Defendant has done so. Moreover, by agreeing to stipulate that Song-Beverly and the Consumer Legal Remedies Act will apply to Plaintiffs' claims should they file an action in Indiana, the Defendants have "eliminated any doubt" and "eliminated any uncertainty" which law an Indiana court will apply to Plaintiffs' allegations. Unlike the defendant in *Verdugo*, Plaintiffs' unwaivable rights as to Defendants in this action under Song-Beverly and the Consumer Legal Remedies Act will not be diminished by enforcement of the mandatory forum selection clause. Defendant Thor Motor Coach's Motion to Stay Action is granted and the matter is stayed. The Court orders the parties to prepare a Stipulation that Song-Beverly and the Consumer Legal Remedies Act will apply to Plaintiffs' claims should they file an action in Indiana. The Court vacates the Mandatory Settlement Conference on July 17, 2024, the Trial Readiness Conference on August 15, 2024, and the Jury Trial on August 19, 2024, and sets this matter for a Review Hearing on May 1, 2024 at 10:30 a.m. for status. Counsel for the Defendants shall submit a Status Report no later than April 24, 2024. Counsel for the Defendants shall submit a form of order consistent with this ruling within two weeks.

5. **22CV01749 PEOPLE OF THE STATE OF CALIFORNIA V. MAXWELL, ANTHONY PAUL**

EVENT: Amended Motion for Relief From (1) Findings that Admissions Set One are True; (2) Default; (3) Default Judgment; (4) Striking of Mr. Maxwell's Claim Opposing Forfeitures; Alternatively, (5) Dismiss the Forfeiture

Claimant Paul Anthony Maxwell's Motion to Set Aside Default and Judgment of Forfeiture is granted, the Court finding that Claimant has sufficiently established all elements of the three-part test as set forth in *People v. One Parcel of Land* (1991) 235 Cal.App.3d 579 by showing diligence, excuse, and a meritorious case. The Default Judgment and Order for Forfeiture entered on June 7, 2023 is stricken. Moreover, the Court grants Claimant's Motion for Relief from Finding That Admissions Set One Are True pursuant to the discretionary provisions of *Code of Civil Procedure* §473(b). The Order After Hearing on Motion to Deem Requests for Admission Set One Admitted entered on February 16, 2023 is stricken. In relation to Claimant's Motion for Relief from Striking of the Claim Opposing Forfeiture, that request is denied as there was no such order [See this Court's Order After Hearing on Motion to Strike Claim Opposing Forfeiture for Lack of Legal Standing entered on April 6, 2023], and Claimant's Request for Dismissal of the Forfeiture Action is also

denied. The Court sets this matter for a Case Management Conference on November 1, 2023 at 10:30 a.m. Case Management Conference Statements are to be timely filed and served. Counsel for the Plaintiff shall submit a form of order consistent with this ruling within two weeks.

6. 23CV01274 IN RE: ROBERTS, STEVEN D

EVENT: Petition for Change of Name

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

7. 23CV01528 IN RE: MARKEY, MAKENNA

EVENT: Petition for Change of Name

All documents are in order and the Petition is granted. The Court will sign the Decree submitted and no appearances are required.

8. 23CV01546 IN RE: VIERRA, JAIDYN TRAYANN

EVENT: Petition for Change of Name

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