

**Judge Mosbarger – Law & Motion – Wednesday, May 8, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1. 16CV00411 JOINER, MATT G V. NEHER, TIMIOTHY L ET AL

EVENT: Plaintiff's Motion for Summary Judgment

As previously advised at the hearing on February 21, 2024, in the presence of Defendant Timothy L Neher (“Defendant” herein) and Plaintiff Matt G. Joiner (“Plaintiff” herein) through his counsel of record, no further continuances of the instant motion were to be considered or granted absent compliance with Butte County Local Rule 2.8(a), and for good cause shown. The Court is in receipt of the document entitled “Continuance Requested Due to Medical Emergency and Other Reasons” filed by Defendant on May 6, 2024; however, that document fails to comply with the aforementioned Local Rule and the requested continuance is denied on that basis. The Court further finds that none of the factual statements, nor any documents submitted and attached to the “Continuance Requested Due to Medical Emergency and Other Reasons” filed by Defendant on May 6, 2024 support the Court finding good cause for a further continuance. Specifically, the Court notes that Defendant has provided nothing from a treating physician at Stanford indicating he is currently hospitalized and based on Defendant’s prior history of being dishonest with the Court, the Court questions the veracity of the note from the physician in Willows. The request for continuance is therefore denied on that basis as well.

In addition, it is the Court’s understanding that Defendant personally filed the document entitled “Continuance Requested Due to Medical Emergency and Other Reasons” at the Chico Courthouse on May 6, 2024 at approximately 11:00 a.m. and returned later that afternoon to file a Proposed Order thereon. As such, the Court finds that Defendant’s statements that “Defendant was admitted to the hospital on February 19, 2024, and has continued to remain there...” and “Defendant will not be able to attend the hearing set for May 8, 2024” to be disingenuous, false, and an attempted fraud on this Court. The requested continuance is further denied on that basis.

Lastly, the argument by Defendant that there is “new evidence being obtained by the Defendant” to support his opposition to the pending motion is untimely. *Code of Civil Procedure* §437c(h), requires that such a request be made “by ex parte motion at any time on or before the date the opposition response to the motion is due.” The deadline for an opposition ran on April 24, 2024, and therefore the request is untimely and is denied on that basis as well.

Although the Court previously authorized an additional Opposition to be filed and served by Defendant no later than Wednesday, April 24, 2024 [14 Court days prior to the hearing per *Code of Civil Procedure* §437c(b)(2)], and a further Reply to be filed and served by Plaintiff no later than Friday, May 3, 2024 [5 days prior to the hearing per *Code of Civil Procedure* §437c(b)(4)]. The Court has not received any supplemental or further briefing from either Plaintiff or Defendant.

Pursuant to *Code of Civil Procedure* §437c(b)(3), opposition papers “shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those

facts are undisputed. The statement also shall set forth plainly and concisely any other material facts the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion." Here, Defendant has failed to file a separate statement. However, in the Court's discretion, although the procedural deficiency is noted, the Court has considered the substantive arguments raised by Defendant in his Opposition.

Plaintiff's Request for Judicial Notice is granted. Plaintiff's Motion for Summary Adjudication on the first cause of action (fraud) is granted [See UMF Nos. 2-8, 12-16, and 19-21]. However, the Court denies Plaintiff's request for punitive damages, for failure to establish by clear and convincing evidence that Defendant made representations knowing that they were false and with the intent to induce reliance thereon, and further failed to establish by clear and convincing evidence that Defendant's actions were willful, fraudulent and oppressive. Plaintiff's Motion for Summary Adjudication on the second cause of action (negligent misrepresentation) is granted [See UMF Nos. 2-8, 12-16, 19-21, and 23-24]. Plaintiff's Motion for Summary Adjudication on the fourth cause of action (money had and received / money lent) is granted [See UMF Nos. 2-8, 12-16, 19-21, 23-24, and 26-28]. Therefore, Judgment shall be entered for Plaintiff and against Defendant on the first, second and fourth causes of action, and Plaintiff shall be awarded damages in the amount of \$123,371.98, plus prejudgment interest on the damages, plus costs in an amount to be determined. Plaintiff shall prepare and submit a form of order and proposed judgment within two weeks. The matter is set for a review hearing regarding status of judgment on June 5, 2024 at 10:30 a.m.

The above is the Court's intended ruling. As previously advised, the Court waives the requirement of the provision of notice in relation to the call-in notification to the Court and opposing counsel of a request for oral argument, pursuant to Butte County Local Rule 2.9 and California Rules of Court 3.1308(a)(1), and instead deems the Plaintiff (through counsel) and Defendant, have already made such a request for oral argument. **Counsel for the Plaintiff and Defendant are ordered to appear at the hearing on Wednesday, May 8, 2024, at 9:00 a.m. in person or by Court Call, for oral argument. If there is no appearance, the Court will deem such non-appearance as a submission on the briefing and tentative ruling.**

2-3. 21CV00692 DAVIS, KELLY L V. WARD, KIMBERLY ET AL

EVENTS: (1) Application of Robert L Shannon Jr to Appear Pro Hac Vice

(2) Application of Logan Owens to Appear Pro Hac Vice

The applications to be admitted pro hac vice are granted. Robert L. Shannon, Jr. and Logan M. Owens are permitted to appear as counsel pro hac vice on behalf of Defendant Windstorm Mitigation, Inc. in this matter. The Court will sign the forms of order submitted by counsel.

4-5. 23CV00692 HINOJOSA, ISIAH V. FORD MOTOR COMPANY ET AL

EVENTS: (1) County of Butte's Demurrer to Plaintiff's Complaint

*(2) Case Management Conference *Special Set*

The Court finds that the appeal in the related matter entitled Hinojosa v. State of California et al (Butte County Case No. 23CV00699), which has a direct impact on the Court's consideration and ruling on Defendant County of Butte's Demurrer to Plaintiff's Complaint, is fully briefed, but is still pending. As such, the Court continues the hearing on the Demurrer and the Case Management Conference to September 4, 2024 at 9:00 a.m. Plaintiff shall file and serve a Status Report no later than August 21, 2024 with an update as to the status of the appeal. No appearances are required on May 8, 2024.

6-8. 23CV00834 WANG, ZIH JUN V. PACIFIC GAS & ELECTRIC COMPANY ET AL

EVENTS: (1) Defendant Pacific Gas and Electric Company's Motion to Strike Plaintiff's Claims for Punitive Damages in the Amended Complaint

(2) Defendants FCO Forester's Inc and Adam Crook's Demurrer to Plaintiff's First Amended Complaint

(3) Defendants FCO Forester's Inc and Adam Crook's Motion to Strike Portions of Plaintiff's First Amended Complaint

Defendant Pacific Gas and Electric Company's Motion to Strike Plaintiff's Claims for Punitive Damages in the Amended Complaint

The Court finds that the factual allegations of the Amended Complaint are insufficient to support a claim of punitive damages and Defendant Pacific Gas and Electric Company's Motion to Strike is granted. However, the Court grants leave to amend. Any amended Complaint shall be filed and served within 10 days' notice of this order. The Court will utilize the form of order submitted by Defendant.

Defendants FCO Forester's Inc and Adam Crook's Demurrer to Plaintiff's First Amended Complaint and Motion to Strike Portions of Plaintiff's First Amended Complaint

A demurrer to a complaint must be filed within 30 days after service of the complaint pursuant to CCP §430.40(a). Here, the Amended Complaint was served by e-mail on February 22, 2024. Defendants therefore had 30 days (plus 2 Court days because of electronic service) to file the instant Demurrer – March 27, 2024. The instant Demurrer was not filed until April 2, 2024, which is 6 days too late. However, the Court in its discretion, has considered the merits of the Demurrer. Jackson v Doe (2011) 192 Cal.App.4th 742, 749; McAllister v County of Monterey (2007) 147 Cal.App.4th 253, 281.

As to the meet and confer obligations, the trial court's determination that the meet and confer process was insufficient is not grounds to overrule or sustain a demurrer. CCP

§430.41(a)(4); *Dumas v Los Angeles County Bd. of Supervisors* (2020) 45 Cal.App.5th 348, 355. As such, while the Court notes that the meet and confer efforts could be found to be lacking, the Court declines to overrule the Demurrer on that basis.

The Court finds that the First Cause of Action for Inverse Condemnation is not alleged against Defendants FCO Forester's Inc. or Adam Crook and as such the Demurrer to the First Cause of Action is overruled.

As to the Second Cause of Action for Negligence, the pleading standards for a cause of action for negligence are well-established. In actions for negligence, plaintiff must allege: (1) a duty owed to plaintiff; (2) defendant's failure to perform that duty; (3) proximate causation; and (4) damage to plaintiff. *Grosetti v. Sweasey* (1917) 176 Cal. 793. Here, Plaintiff has sufficiently pled a duty: Defendants have a non-delegable duty to care regarding the operation and maintenance of utility easements, that is not limited to electrical transmission and distribution systems. (Amended Complaint, ¶¶32, 33). Plaintiff has sufficiently plead breach: Defendants negligently breached their duties with regard to the easement granted under the Judgment by cutting and destroying over one half of the viable, producing olive trees belonging to Plaintiff located on or adjacent to the Easement. (Amended Complaint, ¶34). Defendants' conduct was a substantial factor in causing injury and damaging Plaintiff's property. (Amended Complaint, ¶¶35, 36). As such, the Demurrer to the Second Cause of Action is overruled.

The Court finds that the doctrine of negligence per se is not a separate cause of action but creates an evidentiary presumption that affects the standard of care in a cause of action for negligence. See, *Turner v. Seterus, Inc.* (2018) 27 Cal.App.5th 516, 534; *Johnson v. Honeywell Int'l, Inc.* (2009) 179 Cal.App.4th 549, 555; *Quiroz v. Seventh Ave Center* (2006) 140 Cal.App.4th 1256, 1259. As such, Plaintiff's Third Cause of Action for Negligence Per Se fails to state a claim and the Demurrer is sustained in regard thereto without leave to amend.

Finally, as to the Seventh Cause of Action for Unjust Enrichment, the Court finds that Plaintiff has alleged an independent legal basis for seeking restitution and therefore the unjust enrichment cause of action has been sufficiently plead pursuant to California case law. See e.g., *Melchior v. New Line Productions, Inc.*, and *Rutherford Holdings, LLC v. Plaza Del Rey*, which seem to require an independent legal basis for seeking restitution. As such, the Demurrer to the Seventh Cause of Action is overruled.

As to the Motion to Strike, the Court finds that the factual allegations of the Amended Complaint are insufficient to support a claim of punitive damages and Defendants FCO Forester's Inc and Adam Crook's Motion to Strike is granted. However, the Court grants leave to amend. Any amended Complaint shall be filed and served within 10 days' notice of this order. The Court will utilize the form of order submitted by Defendant.

9. 23CV02484 IN RE: RED LEAF, WAPOSTA CIKALA

EVENT: Petition for Change of Name

The Court has not yet received proof of publication. If there is no appearance by the Petitioner and the Court still has not received proof of publication, the Petition will be denied without prejudice.

10. 23CV03282 HILDEBRAND, TIFFANY V. VOLKSWAGEN GROUP OF AMERICA, INC

EVENT: Plaintiff's Motion to Compel the Deposition of Defendant's Person(s) Most Knowledgeable, with Production of Documents

The Court finds that Defendant has not refused to produce its Person Most Knowledgeable for deposition, rather Plaintiff has failed to adequately meet and confer in good faith as required by Code of Civil Procedure §§2016.040 and 2025.450(b), to determine a mutually agreeable date on which the deponent and counsel are available. The Motion is denied, and the Court will sign the form of order submitted by Defendant.

11. 24CV00848 IN RE: REVERA, CYTLALIE

EVENT: Petition for Change of Name

The Court has not yet received proof of publication nor proof of service on the father as required by *Code of Civil Procedure* §1277(a). The Court will hear from the Petitioner.