

**PLACER COUNTY SUPERIOR COURT  
THURSDAY, CIVIL LAW AND MOTION  
DEPARTMENT 42  
THE HONORABLE CHARLES D. WACHOB  
TENTATIVE RULINGS FOR SEPTEMBER 3, 2020 AT 8:30 A.M.**

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These are the tentative rulings for the **THURSDAY, SEPTEMBER 3, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, SEPTEMBER 2, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

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**NOTE: ALL LAW AND MOTION MATTERS WILL PROCEED BY TELEPHONIC APPEARANCES. (PLACER COURT EMERGENCY LOCAL RULE 10.28.)**

More information is available at the court's website: [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).

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Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard via telephonic appearance.

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**1. M-CV-0075006 HALDEMANCORP v. HUCKABEE, CLIFTON**

Cross-Defendant Curt Gomes' Demurrer to the Cross-Complaint

Ruling on Request for Judicial Notice

Gomes' request for judicial notice is granted under Evidence Code section 452.

Ruling on Demurrer

The demurrer is sustained without leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure section 430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) Huckabee alleges claims for

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deceit/fraudulent inducement and conspiracy to defraud against Gomes. Neither of these causes of action are sufficiently pleaded.

A fraud claim requires the specificity in pleading a misrepresentation; knowledge of falsity; intent to induce reliance; justifiable reliance; and damages. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) Here, Huckabee does not plead the level of specificity necessary to support any of the elements required to allege a fraud cause of action. Since the fraud claim is deficiently pleaded, the demurrer to the first cause of action is sustained.

As to Huckabee's conspiracy to defraud claim, conspiracy is not an actual cause of action. (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510-511.) Rather, conspiracy is a legal doctrine that imposes liability on persons who share with immediate tortfeasors a common plan or design. (*Ibid.*) A conspiracy requires the commission of some actual tort to engender liability. (*Ibid.*) Thus, a party must allege the formation and operation of a conspiracy of the conspiracy and damages resulting to plaintiff from acts done in furtherance of a common plan. (*Ibid.*) A review of Huckabee's cross-complaint shows short, conclusory statements that fail to allege an underlying tort or acts on the part of Gomes related to a common plan. The fourth cause of action is also subject to demurrer.

The remaining issue to address is whether leave to amend should be afforded to Huckabee. Despite being afforded a continuance of the matter to submit an opposition, Huckabee has not filed an opposition the demurrer. The failure to oppose the demurrer may be construed as an abandonment of the claims. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.) Further, a review of the cross-complaint does not reveal Huckabee is able to remedy the deficiencies identified in the pleading. For these reasons, the demurrer is sustained without leave to amend.

Cross-Defendant Susan Rivera's Demurrer to the Cross-Complaint

Ruling on Request for Judicial Notice

Rivera's request for judicial notice is denied.

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Ruling on Demurrer

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The cross-complaint alleges a single cause of action for breach of fiduciary duty against Rivera. The elements of a breach of fiduciary duty action include (1) the existence of a fiduciary duty, (2) breach of that duty, and (3) damages. (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086; *Mosier v. Southern California Physicians Ins. Exch.* (1998) 63 Cal.App.4th 1022, 1044.) The cross-complaint is completely devoid of factual allegations of a fiduciary relationship between Huckabee and Rivera; any breach of duty; or damages. Huckabee has also failed to make a sufficient showing to demonstrate an ability to amend the cross-complaint. Since the cross-complaint fails to allege even a minimal amount of factual allegations to support a breach of fiduciary duty claim and Huckabee cannot demonstrate an ability to amend the cross-complaint, the demurrer is sustained without leave to amend.

Cross-Defendant Susan Rivera's Motion to Strike the Cross-Complaint

The motion is granted without leave to amend. A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. (Code of Civil Procedure section 436(a), (b).) The allegations for punitive damages are not supported against Rivera. Specifically, there are insufficient factual allegations of fraudulent, malicious, oppressive, or despicable conduct on the part of Rivera to support punitive damages. Nor does the cross-complaint lend itself to amendment so as to sufficiently allege a basis for punitive damages against Rivera. For these reasons, the motion is granted and all language referring to punitive/exemplary damages against Rivera is stricken.

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**2. S-CV-0039890 YOUNG, CHRISTOPHER v. PEARSE, JULIANNA**

Defendant Julianna Pearse’s Motion to Compel Verified Responses to Request for Production of Documents

The motion is granted. Plaintiff Helmsman Management Services, Inc. shall provide further verified responses and responsive documents, without further objections, to request for production of documents, set three, nos. 12, 13, and 16 by September 25, 2020.

**3. S-CV-0040180 CROWDER, MARY v. PURPLE COMMUNICATIONS**

Plaintiff Mary Crowder’s Motion for Class Certification

Ruling on Request for Judicial Notice

Plaintiff’s request for judicial notice of the FLSA Opinion Letter is granted under Evidence Code section 452.

Plaintiff’s request for judicial notice submitted with the reply papers is denied.

Ruling on Motion

In the current request, plaintiff seeks class certification of two classes: (1) the unpaid overtime class and (2) the wage statement class. Class certification may be ordered where the moving party demonstrates the existence of an ascertainable and sufficiently numerous class; a well-defined community of interest; and a substantial benefit from certification rendering a class action superior to other alternatives. (Code of Civil Procedure section 382; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.) After carefully reviewing the second amended complaint and the entirety of the briefing submitted by the parties, the court determines plaintiff has not made a sufficient showing to support certification at this time.

The Unpaid Overtime Class

Initially, plaintiff has not made a sufficient showing of ascertainability/numerosity for this potential class. Plaintiff’s deficiencies begin with the class definition. In the SAC, plaintiff defines the potential class as the “Overtime Class”, stating it encompasses “all [d]efendants’ current and former

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non-exempt, non-union employees in California who did not work pursuant to a collective bargaining agreement and: (i) worked more than 8.0 hours per workday and/or 40.0 hours per workweek and received [i]ncentive [p]ay during a corresponding time period; and/or (ii) were subject to [d]efendants' timekeeping policies/practices, during the four years immediately preceding the filing of the [c]omplaint through the present." (SAC ¶13.a.) This definition differs significantly from the class definition identified in plaintiff's moving papers. In the motion, plaintiff changes the class definition significantly. She now designates the potential class as the "Unpaid Overtime Class" defined as "all current and former non-union, non-exempt '[v]ideo [i]nterpreters' employed by Purple Communications, Inc. in California who received a [v]ideo [i]nterpreter [b]onus and worked overtime hours during the same calendar month in which the [v]ideo [i]nterpreter [b]onus was earned, during the time period of October 11, 2013, to December 31, 2017." (Plaintiff's Motion, p. 2:7-10.) While the new class designation refers to unpaid overtime, the definition does not describe the potential class members as failing to be paid overtime. The confusion over the class definition is exacerbated by the fact that defendant has apparently paid the outstanding overtime amounts referred to the class definition. (Mrkacek declaration ¶3.)

Plaintiff has also not made a sufficient showing regarding the size of the class. She contends the class includes at least 90 individuals. (Schmidt declaration ¶13.) Defendant, however, identifies at least 34 individuals who may not be potential class members due to the execution of general releases. (Bain declaration ¶¶5, 6; Stixrud declaration ¶13.) Between the amorphous class definition and the unclear class size, plaintiff has not made a sufficient showing regarding the ascertainability or numerosity of this potential class.

Moreover, plaintiff has not made a sufficient showing of a substantial benefit from certification that is superior to other alternatives. As previously discussed, defendant has apparently paid the outstanding overtime amounts to the potential class members. (Mrkacek declaration ¶3.) Plaintiff has not sufficiently addressed how proceeding with a class action is of substantial benefit where there is, potentially, no unpaid overtime due to the potential class members. Further, plaintiff has not made a sufficient showing as to why a class action is necessary when a PAGA action may sufficiently resolve the issues where the overtime has been paid. The court declines to certify this class until such time as plaintiff sufficiently addresses these issues.

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Wage Statement Class

Plaintiff contends this class should be certified as well since it is a derivative of the unpaid overtime class. This is an insufficient reason to support certification. The wage statement class definition alleged in the SAC and plaintiff's motion are substantially similar, unlike the prior definition. The definition, however, includes as potential class members "all members of the [o]vertime and/or [m]inimum [w]age [c]lasses". (SAC ¶13.c.; Plaintiff's Motion, p. 2:11-12.) The inclusion of minimum wage class members is improper since plaintiff expressly states she is not seeking certification of a minimum wage class. (Plaintiff's Motion, p. 2, fn. 2; Schmidt declaration.) Moreover, this class suffers from the same ascertainability, numerosity, and lack of substantial benefit showing discussed above. The court declines to certify this class as well.

Disposition

For the reasons stated above, the motion is denied without prejudice.

**4. S-CV-0041470 HOFFMAN, AARON v. OMNI STRUCTURES**

The motion to contest good faith settlement is continued to Thursday, September 10, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for the inconvenience.

**5. S-CV-0042658 LABEL, PATRICK v. BENTON, LORENZA**

Defendant Walmart Inc.'s Motion for Summary Judgment

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

In the current request, defendant seeks summary judgment as to all claims alleged in the first amended complaint. Defendant contends the evidence does not establish liability on its part since defendant Lorenza Benton was not acting within the scope of his employment when the physical altercation between Mr. Benton and plaintiff took place. The trial court shall grant a motion for summary

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judgment if “all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” (Code of Civil Procedure section 437c(c).) The moving party bears the initial burden of establishing that one or elements of a cause of action cannot be established or there is a complete defense to the cause of action. (Id. at 437c(p)(2).) Only when this initial burden is met does the burden shift to the opposing party to establish a triable issue of material fact. (Ibid.) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.)

Defendant has met its initial burden here. An employer may be vicariously liable for the torts committed by an employee during the scope of employment. (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 967.) An employer is not liable when an employee inflicts an injury out of personal malice not engendered by the employment. (*Lisa M. v. Henry Mayo NewHall Memorial Hospital* (1995) 12 Cal.4th 291, 298.) In order for there to be a link between the employment and the injury, the incident leading to the injury must be an outgrowth of the employment and the risk of tortious injury must be inherent in the working environment or typical of or broadly incidental to the enterprise the employer has undertaken. (Ibid.) Defendant submits evidence that the road rage incident between Mr. Benton and plaintiff took place approximately thirty minutes prior to the physical altercation between the two. (Defendant’s SSUMF Nos. 1-6, 9.) Defendant also submits evidence Mr. Benton was on a break when the physical altercation took place. (Id. at Nos. 9, 11.) This evidence is sufficient to meet defendant’s initial burden, challenging whether Mr. Benton’s actions during the physical altercation were engendered by him employment to defendant. The burden now shifts to plaintiff to establish a triable issue of material fact.

Plaintiff has made a sufficient showing to establish a triable issue of material fact. Plaintiff submits evidence that when Benton entered the Subway shop, he pointed at a tow truck driver and asked “You drive that blue truck?” (Plaintiff’s response to SSUMF No. 8; Plaintiff’s Additional Facts No. 10, LaBel deposition at 49:10-13.) This is consistent with Benton’s answer to Special Interrogatory 1 which includes, in part, that when Benton exited the freeway he noticed the blue truck whose driver had thrown a water bottle at his truck; that he went in to the Subway near where the blue truck was parked; and that he “looked for the Plaintiff to find out why he threw a water bottle at me;” and that after plaintiff

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responded that he was the driver of the blue truck, Benton “asked him if he was the person who threw the water bottle at me.” (Defendant’s SSUMF Nos. 9-11.) Taken together, a reasonable inference from this evidence is that plaintiff LaBel was attempting to locate and identify the driver of the truck who had only within the past 25-30 minutes thrown a water bottle at his employer’s truck. That inquiry bears a reasonable relationship to Benton’s scope of employment as a driver for Walmart. Plaintiff submits evidence that immediately after Benton entered the Subway and identified plaintiff as the driver involved in the prior road rage altercation, Benton lunged at plaintiff. (Plaintiff’s Additional SSUMF Nos. 1-11.) This evidence, and the reasonable inferences drawn from the evidence, tends to show Benton followed or looked for plaintiff in order to identify and confront him regarding the prior road rage incident. The evidence thus further suggests that the physical altercation that immediately ensued was a continuation of the road rage incident that had occurred shortly before during the scope of Mr. Benton’s employment.

“The issue of scope of employment is generally a question of fact for the jury to determine. (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 968, 227 Cal.Rptr. 106, 719 P.2d 676.) However, when the facts are undisputed and no conflicting inferences are possible, then the issue may be decided by the court as a question of law. (Ibid.)” (*Kephart v. Genuity, Inc.* (2006) 136 Cal.App.4th 280, 289.) Defendant argues the case of *Fields v. Sanders* (1947) 29 Cal.2d 834 should control here because in *Fields* the altercation between two drivers occurred immediately following a collision whereas, here, 25-30 minutes passed from the time of the road rage incident until the alleged assault, at which time defendant was on a lunch break. However, the fact that 25-30 minutes passed is only a factor to be considered in evaluating whether there is a sufficient causal nexus between the employee’s work and the alleged misconduct in order to hold the employer vicariously liable. “The necessary link between the employment and the injury may be described in various ways: “the incident leading to injury must be an ‘outgrowth’ of the employment [citation]; the risk of tortious injury must be ‘inherent in the working environment’ [citation] or ‘typical of or broadly incidental to the enterprise [the employer] has undertaken’ [citation].” (Ibid.) Courts may consider whether the tort was foreseeable in the sense that the employment is “such as predictably to create the risk employees will commit intentional torts of the type for which liability is sought.” (Id. at p. 299, 48 Cal.Rptr.2d 510, 907 P.2d 358.) The conduct should not be so “unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer’s business.” [Citations.]” (Ibid.)” (*Kephart, supra*, at 293.) In this case, the parties concede that road rage incidents are foreseeable

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events in the course of truck driving – so much so that defendant Walmart makes road rage prevention training available to its drivers. (Plaintiff’s Additional Facts Nos. 12-15.)

Since plaintiff has raised a triable issue of material fact as to whether the alleged assault occurred within the scope of Benton’s employment, the motion is denied.

**6. S-CV-0043518 MACCHOLZ, DONALD v. CUNNINGHAM LEGAL**

Plaintiff’s Motion to Compel Further Responses to Form Interrogatories, Special Interrogatories, and Sanctions Against Defendant Ascent Wealth Management

The motion is denied as untimely. Code of Civil Procedure section 2030.300(c) requires notice of any motion to compel further responses to interrogatories be given within 45 days of service of the verified responses. A notice of motion must identify not only the ground upon which it is made but must also include a copy of the papers upon which the notice is based. (Code of Civil Procedure section 1010; see *Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316.) Plaintiff’s notice of motion, filed on July 15, 2020, provides notice that the motion is based upon a memorandum, separate statement, and supporting declaration. However, these documents were not filed or served until a month after the original notice of motion was filed. Plaintiff failed to properly support the motion with noticed documents within the 45 day period as required under the statute. Thus, the motion is untimely and denied in its entirety.

Defendant Ascent Wealth Management is awarded \$2,138.50 in sanctions for successfully opposing the motion. (Code of Civil Procedure sections 2030.300(d), 2033.290(d), 2031.310(h).)

Plaintiff’s Motion to Compel Further Responses to Request for Admissions and Sanctions Against Defendant Ascent Wealth Management

The motion is denied as untimely. Code of Civil Procedure section 2030.290(c) requires notice of any motion to compel further responses to requests for admissions be given within 45 days of service of the verified responses. A notice of motion must identify not only the ground upon which it is made but must also include a copy of the papers upon which the notice is based. (Code of Civil Procedure section 1010; see *Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316.) Plaintiff’s notice of motion, filed on July 15, 2020, provides

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notice that the motion is based upon a memorandum, separate statement, and supporting declaration. However, these documents were not filed or served until a month after the original notice of motion was filed. Plaintiff failed to properly support the motion with noticed documents within the 45 day period as required under the statute. Thus, the motion is untimely and denied in its entirety.

Defendant filed an omnibus opposition to this motion, the request for sanctions was addressed in relation to plaintiff's motion to compel further responses to interrogatories. No further sanctions are awarded for this motion.

Plaintiff's Motion to Compel Further Responses to Request for Production of Documents and Sanctions Against Defendant Ascent Wealth Management

The motion is denied as untimely. Code of Civil Procedure section 2031.310(c) requires notice of any motion to compel further responses to requests for admissions be given within 45 days of service of the verified responses. A notice of motion must identify not only the ground upon which it is made but must also include a copy of the papers upon which the notice is based. (Code of Civil Procedure section 1010; see *Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316.) Plaintiff's notice of motion, filed on July 15, 2020, provides notice that the motion is based upon a memorandum, separate statement, and supporting declaration. However, these documents were not filed or served until a month after the original notice of motion was filed. Plaintiff failed to properly support the motion with noticed documents within the 45 day period as required under the statute. Thus, the motion is untimely and denied in its entirety.

Defendant filed an omnibus opposition to this motion, the request for sanctions was addressed in relation to plaintiff's motion to compel further responses to interrogatories. No further sanctions are awarded for this motion.

Plaintiff's Motion to Compel Further Responses to Form Interrogatories, Special Interrogatories, and Sanctions Against Defendant Cunningham Legal

The motion is denied as untimely. Code of Civil Procedure section 2030.300(c) requires notice of any motion to compel further responses to interrogatories be given within 45 days of service of the verified responses. A notice of motion must identify not only the ground upon which it is made but must also include a copy of the papers upon which the notice is based. (Code of Civil Procedure section 1010; see *Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316.) Plaintiff's

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Defendant Cunningham Legal is awarded \$1,222.00 in sanctions for successfully opposing the motion. (Code of Civil Procedure section 2030.300(d).)

Plaintiff's Motion to Compel Further Responses to Request for Production of Documents and Sanctions Against Defendant Cunningham Legal

The motion is denied as untimely. Code of Civil Procedure section 2030.300(c) requires notice of any motion to compel further responses to interrogatories be given within 45 days of service of the verified responses. A notice of motion must identify not only the ground upon which it is made but must also include a copy of the papers upon which the notice is based. (Code of Civil Procedure section 1010; see *Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316.) Plaintiff's notice of motion, filed on July 15, 2020, provides notice that the motion is based upon a memorandum, separate statement, and supporting declaration. However, these documents were not filed or served until a month after the original notice of motion was filed. Plaintiff failed to properly support the motion with noticed documents within the 45 day period as required under the statute. Thus, the motion is untimely and denied in its entirety.

Defendant Cunningham Legal is awarded \$1,856.50 in sanctions for successfully opposing the motion. (Code of Civil Procedure section 2031.310(h).)

**7. S-CV-0043998 DHESI, HARRY v. GARCIA, MARY**

The two demurrers are dropped from the calendar. A first amended complaint was filed on August 20, 2020.

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**8. S-CV-0044306 QUARTERSPOT v. ACE IN THE HOLE TOWING**

Plaintiff's Motion for Order Compelling Answers to Interrogatories, Production of Documents, Requests be Deemed Admitted, and Monetary Sanctions

The motion is granted. Defendant Shawn Nelson shall provide verified responses and responsive documents, without objections, to form interrogatories, set one; special interrogatories, set one; and request for production of documents, set one, by September 30, 2020.

The matters encompassed in plaintiff's requests for admissions, set one, are deemed admitted. Sanctions in the amount of \$365.60 are imposed on defendant Shawn Nelson pursuant to Code of Civil Procedure section 2033.280(c).

**9. S-CV-0044538 McANALLY, SALLY v. WILLIS, JOEL**

Plaintiff's Motion to Quash Subpoenas for Medical Records

Plaintiff's motion to quash subpoenas for medical records is continued to Thursday, October 1, 2020 at 8:30 a.m. in Department 42. While the court file reflects defendant filed an opposition to the current motion, the actual document within the court's records includes two identical declarations from Channone Sheller rather than an opposition. At this time, the court is experiencing significant delays in the processing time for civil documents. The motion is continued to assure the briefing in this matter is complete and allow for defendant's opposition to be presented to the court. Defendant is requested to submit an endorsed filed copy of the opposition by September 8, 2020.

**10. S-CV-0044602 KHATAMI, HOSSEIN v. ROSEVILLE JOINT UHSD**

The demurrer to the first amended complaint is continued to Thursday, September 10, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for the inconvenience.

**11. S-CV-0045028 FAGNAGI, JOHN v. DESTINATION YACHTS**

The motion to dismiss is dropped from the calendar a dismissal of the entire action was entered on August 21, 2020.