

**PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR SEPTEMBER 10, 2020 AT 8:30 A.M.**

These are the tentative rulings for the **THURSDAY, SEPTEMBER 10, 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 9, 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.

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.

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.

1. M-CV-0057266 WELLS FARGO v. RUGRODEN, ROBERT

Plaintiff's Motion to Vacate Judgment

The motion is granted. "A court is without jurisdiction to proceed when one of the parties before it has died and there has been no substitution of any representative of the deceased. [Citations.]" (*In re Cazaurang's Estate* (1939) 35 Cal.App.2d 556, 558.) According to plaintiff's declaration, defendant died five months prior to entry of the default judgment. (Espinosa declaration ¶2.) For these reasons, the motion is granted.

The default judgment entered on March 27, 2015 is vacated. The complaint filed on January 11, 2013 is dismissed without prejudice.

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2. M-CV-0075006 HALDEMANCORP BUILDERS v. HUCKABEE, CLIFTON

Plaintiff Haldemancorp Builders' Motion for Order Compelling Discovery Responses and Monetary Sanctions

The motion is granted. Defendant Clifton Huckabee shall provide verified responses and responsive documents, without objections, to form interrogatories, set one, and request for production of documents, set one, by September 30, 2020. Sanctions are denied as to the form interrogatories and request for production of documents since the motion was not opposed. (Code of Civil Procedure sections 2030.290(c); 2031.300(c).) However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.)

The matters encompassed in plaintiff's requests for admissions, set one, are deemed admitted. Sanctions in the amount of \$273.50 are imposed on defendant Clifton Huckabee pursuant to Code of Civil Procedure section 2033.280(c).

3. S-CV-0039890 YOUNG, CHRISTOPHER v. PEARSE, JULIANNA

The motion to dismiss is dropped from the calendar as no moving papers were filed with the court.

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

The motion to contest the good faith settlement is dropped from the calendar at the request of the moving party.

5. S-CV-0041927 LULL, CHRISTOPHER v. ROYSDON, DEREK

Plaintiffs' Motion for Attorney's Fees

The motion is granted. The court finds, on balance, that plaintiffs are the prevailing parties as they achieved a limited monetary result on their first cause of action, notwithstanding their failure to prove their second and third causes of action. As plaintiffs are the prevailing parties, they are entitled to attorney's fees under Civil Code section 1717 as the rental agreement contains an

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attorneys' fees provision. However, plaintiffs' recovery is limited to \$1,500. Plaintiffs ignore that the rental agreement entered into includes a limitation in the recovery of attorney's fees under paragraph 30, which states:

“In the event of a breach of contract or default by the Tenant of any covenant, condition, or promise of this Rental Agreement on the part of the tenant to be performed, and/or in the event an action is brought by the Landlord for the recovery of rent or other monies due or to become due under this Rental Agreement, and/or in the event an action is brought by the Landlord for recovery of the premises, and/or to enforce one or more covenant, condition, or promise of the Rental Agreement on the part of the Tenant to be performed, subject to the last sentence in this Paragraph, Tenant shall be responsible to the Landlord for all costs incurred by the Landlord as a result of such default, including but not limited to attorneys fees and costs of suit, whether for provision of this Rental Agreement, whether or not such action concludes with a judgment against the Tenant. In no event shall any award for attorneys fees against either party for any violation of the terms of this Rental Agreement, violations of California law, concerning or in connection with, or arising out of, or deriving from the landlord-tenant relationship specified herein, or based on any other theory of recovery, exceed the total sum of \$1,500.00; further, in no event shall any award of attorneys fees resulting from a lawsuit for Unlawful Detainer exceed \$1,500.00. In the event a lawsuit for Unlawful Detainer is filed against the Tenant, and such lawsuit is dismissed by the Landlord prior to a final decision on the merits of the case being rendered by the trier of fact, the parties hereto agree that there shall be no prevailing part[y] for purposes of an award of attorney's fees and costs of suit.”

The plain language of the provision is clear, any action arising out or deriving from the rental agreement is capped at \$1,500 for an award of attorney's fees. This contractual language is clear and explicit, the prevailing party is entitled to no more than \$1,500 in attorney's fees. (see *U.S. Bank National Association v. Yashouafar* (2014) 232 Cal.App.4th 639, 646 [“If contractual language is clear and explicit, it governs.”].)

Plaintiff is awarded \$1,500 in attorney's fees pursuant to the clear, express language of the rental agreement.

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6. S-CV-0043836 BPX COMMERCIAL v. SIERRA COLLEGE ESTATES

The motion to enforce settlement is dropped from the calendar as no moving papers were filed with the court.

7. S-CV-0044208 IRPO LAKE TAHOE PARK ASSOCIATION

Amended Petition to Reduce Required Voting Percentages

The amended petition, filed on June 22, 2020, is granted as prayed. The court finds petitioner has provided notice as required in the June 29, 2020 ex parte order. Having received no objections to the petition, the court determines the following amendment to be a fair and equitable method, under the circumstances, to obtain the vote of the members. The language in the 1976 Bylaws is amended as to reflect the following:

AMENDMENTS: These Bylaws may be repealed or amended or a new Constitution and Bylaws may be adopted at any meeting or on written ballot of the membership or by the Board of Directors when thereunto authorized at any meeting or on written ballot of the members by the vote of ~~two-thirds (2/3)~~ or the members at least sixty-six and two-thirds percent (66 2/3%) of a quorum consisting of at least thirty-three and one-third percent (33 1/3%) of the members.

The petitioner is instructed to take all necessary steps to properly record and file this amendment with all appropriate legal entities.

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

Defendants' Demurrer to the First Amended Complaint (FAC)

Ruling on Request for Judicial Notice

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

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Ruling on Demurrer

The demurrer is sustained with leave to amend. In the current request, defendants demur to the second, third, fourth, fifth, and sixth causes of action. 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.) The court reviews the five challenged claims keeping these principles in mind.

Second Cause of Action - Defamation

Plaintiff's second cause of action alleges a defamation claims against all defendants. The elements of a defamation claim includes a false, defamatory, and unprivileged publication that has a natural tendency to injure or cause special damages. (*Price v. Operating Engineers Local Union No. 3* (2011) 195 Cal.App.4th 962, 970.) A claim for defamation requires publication, which refers to a communication to some third person who understands the defamatory meaning of the statement. (*Dible v. Haight Ashbury Free Clinics, Inc.* (2009) 170 Cal.App.4th 843, 854.) Among other allegations, plaintiff alleges that on March 25, 2019 he was informed of a meeting with defendant Evans and John Roza. Roza is not a party to this suit. Plaintiff alleges that Evans said plaintiff's employment was "being terminated due to domestic violence charges and detention violations in his background check." It is further alleged that Evans stated "in the presence of others" that plaintiff's "charges and detention were not suitable for further employment." (FAC ¶20.) Plaintiff also alleges Evans stated plaintiff's termination was due to the recent suicide death of plaintiff's daughter due to her disabilities. (FAC ¶21.) Plaintiff alleges defendants' statements included an accusation that plaintiff "was involved with the death of his child." (FAC ¶37.) Plaintiff alleges he assured Evans he had "never been convicted or a crime or domestic violence." (FAC ¶21. He alleges he was previously falsely accused and charged with domestic violence and that in 2011 "these assertions were dismissed by the Placer County Court." (FAC ¶28.) Plaintiff alleges Evans received his information from the school principal, defendant Leighton, and that she "published these statements to members of the community."

Defendants contend this cause of action fails to state sufficient facts to constitute a cause of action because it is limited by the facts set forth in plaintiff's

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government claim (Exhibit A to Request for Judicial Notice), which claim does not include facts describing written or oral publication of false facts to a third person. First, contrary to defendants' contentions, the FAC alleges publication of statements regarding criminal charges and involvement with his daughters' death to third parties, including to Roza and members of the community. Second, these allegations are not a clear or material departure from plaintiff's government claim. In that claim, plaintiff referenced many of the facts recounted in the allegations set forth above. The claim references statements allegedly made by Evans regarding "red flags" in his background check and that his termination had something to do with the death of his daughter. It would be commonly understood that "background check" would include criminal history.

Taken together, the allegations are sufficient to state a cause of action. The court notes an apparent typographical error in the date of his daughter's death. Defendants acknowledge this is an obvious typographical error as November 15, 2019 should have been November 15, 2018. The demurrer is overruled as to this cause of action.

Third Cause of Action – Intentional Infliction of Emotional Distress

The third cause of action alleges a claim of intentional infliction of emotional distress against the defendants. The elements of an intentional infliction of emotional distress cause of action include: “ ‘(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct...’ Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community.” (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 903.) A review of the allegations in support of this cause of action shows they are essentially conclusory and insufficiently specific to support the claim of severe or extreme emotional distress. The demurrer as to this cause of action is sustained.

Fourth Cause of Action – Associational Discrimination under FEHA

In the fourth cause of action, plaintiff alleges associational discrimination against defendants apparently based upon his association with his daughter.

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(FAC ¶¶58-61.) Associational discrimination is a claim available under FEHA. (*Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 2 Cal.App.5th 1028, 1036-1037.) FEHA requires a showing that plaintiff associated with someone who suffers from a disability; was otherwise qualified to do his job; and his association with the disabled person was the substantial factor motivating defendants' adverse employment actions. (*Ibid.*) The factual allegations for this claim are rather amorphous, especially when considering his daughter (whom he alleges had a disability) passed away in 2018. Beyond a conclusion, plaintiff fails to sufficiently allege facts related to the claimed adverse employment actions taken against him that are connected to his association with a disabled person. The demurrer is sustained as to the fourth cause of action.

Fifth Cause of Action – Associational Harassment under FEHA

Plaintiff alleges a claim for associational disability harassment in the fifth cause of action. A claim for disability harassment under FEHA requires a showing that defendants' conduct was severe enough of sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to the employee based upon his association with the disabled person. (*Cornell v. Berkeley Tennis Club* (2017) 18 Cal.App.5th 908, 927.) This claim suffers from the same pleading deficiencies identified as to the fourth cause of action. Again, plaintiff also fails to sufficiently allege conduct on the part of defendants that created a hostile/abusive work environment that was related to his association with a disabled person. The demurrer is sustained as to this cause of action. .

Sixth Cause of Action – Failure to Prevent Discrimination and Harassment

The sixth cause of action is aimed only at defendant Roseville Joint Unified High School District (RJUHSD), asserting RJUHSD failed to prevent the associational disability discrimination and harassment alleged in the fourth and fifth causes of action. The employee may assert a private right of action under FEHA where there are actual underlying allegations of discrimination and harassment. (*Trujillo v. North County Transit Dist.* (1998) 63 Cal.App.4th 280.) If there are not sufficient allegations to support discrimination and harassment, then there are not sufficient allegations to support a claim for failure to prevent these actions. (*Ibid.*) As previously discussed, the claims for associational disability discrimination and harassment are insufficiently pleaded. This claim

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cannot stand since the underlying discrimination and harassment claims are deficiently pleaded. Thus, the sixth cause of action is also subject to demurrer.

Disposition

The demurrer is overruled as to the second cause of action. The demurrer is sustained as to the third, fourth, fifth and sixth causes of action. Plaintiff is granted leave to amend and may file and serve his second amended complaint by September 30, 2020. If plaintiff chooses to amend, plaintiff may also correct the apparent typographical error mentioned above.

9. S-CV-0044610 F&T INVESTMENTS v. WHITECHAT, PATRICIA

Plaintiff's Motion for Stay Pending Arbitration

The unopposed motion is granted. Plaintiff has met its initial burden in establishing the existence of a valid arbitration agreement between the parties. (Code of Civil Procedure section 1281.2; *Engalia v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) Defendant has not opposed the motion and, thusly, there has been no showing against arbitration. (*Ibid.*)

The parties are ordered to participate in arbitration pursuant to the terms of the underlying contract. The current action is stayed pending arbitration. (Code of Civil Procedure section 1281.4.)

An OSC re status of arbitration is set for Tuesday, January 26, 2021 at 11:30 a.m. in Department 40.

10. S-CV-0045020 IRMO GARD E.I., LLC

Amended Petition for Approval for Transfer of Payment Rights

The amended petition for approval for transfer of payments rights is denied. Petitioner was requested to provide a supplemental declaration to address various issues not fully discussed in the petition. The court file does not reflect a supplemental declaration has been filed by petitioner. The amended petition does not sufficiently identify the prior transfers sought by Erikka Olivarez; does not sufficiently address discrepancies raised in Ms. Olivarez's prior declarations as compared to the declaration filed in this action; and does not provide further updated information regarding Ms. Olivarez seeking independent professional

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advice. The court declines to grant the request until such time as petitioner sufficiently addresses these issues.

11. S-CV-0045280 FOSTER, DIANNE v. RONCO, RYAN

Verified Petition for Writ of Mandate

Preliminary Matters

Initially, the court declines to consider the untimely memorandum of points and authorities filed by petitioner on September 3, 2020.

Ruling on Request for Judicial Notice

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

Ruling on Petition

The current writ petition filed by the pro per petitioners is a confusing hodge-podge as it addresses various provisions of the Elections Code which are clearly inapplicable to the relief they apparently seek. It appears to the court that what petitioners are really seeking is for the court to grant them additional time to gather sufficient valid signatures to place a recall of four directors of the Foresthill Public Utility District on the November 2020 ballot and, in the process, ignore multiple provisions of the statutory elections scheme. As discussed below, the petition is without merit and any relief is denied.

There are two causes of action pleaded in the writ petition. In their self-styled first cause of action, petitioners allege Elections Code section 9014(b) is unconstitutional under California Constitution, Article II, Section 8 and Article I, Sections 2 and 3. Elections Code section 9014 deals with proposed initiative measures or a referendum, neither of which are involved here.

In their second cause of action, petitioners allege Elections Code section 11042(b) is unconstitutional under the U.S. Constitution, specifically under the First Amendment and the Fourteenth Amendment. Generally, this subsection deals with a proponent's requirement to provide proof of either publication or posting of their notice of intention to recall, as well as setting a time limit for when an elections official must provide notice as to whether the form and

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wording of a proposed recall petition meets legal requirements. While this section at least deals with the subject of recall petitions, it has little to do with the apparent relief sought by petitioners and, therefore, no constitutional analysis is required. Petitioners' requests under the first and second causes of action are denied.

Turning to the actual relief petitioners seek, it appears they seek an abeyance and/or reversal of any determination by the Registrar of Voters, Ryan Ronco, regarding the sufficiency of the signatures for their recall petitions against the directors of the Foresthill Public Utility District. They also seek an order that the Registrar accept various signature types as valid; allow for a lesser number of signatures to be accepted; and allow additional time to circulate the recall petitions prior to the November 2020 election. It is the party bringing a petition for writ of mandate that bears the burden of pleading and proving the facts upon which the claim is based. (Code of Civil Procedure section 1085; *California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 113, 1153-1154; *Polster v. Sacramento County Office of Education* (2009) 180 Cal.App.4th 649, 669.) Further, election matters require the petitioners to show an error, omission, or neglect in violation of a statute or the Constitution along with a showing that the issuance of a writ will not substantially interfere with the conduct of the election. (Elections Code section 13314(a)(2). Petitioners have failed to meet their burden here.

Petitioners contend their ability to obtain signatures for the recall petition was impacted the current pandemic and, specifically, the Governor's Executive Orders. However, the allegations within their own verified petition contradict this contention. Petitioners allege they were required to gather 962 signatures for each of the recall petitions. (Verified Writ Petition ¶27.) Petitioners allege they were able to collect between 1,215 signatures and 1,224 signatures for the recall petitions as to the four directors. (*Id.* at ¶35.) From their own allegations, it is evident petitioners were able to obtain more than the required number of signatures, directly contradicting their assertions that the pandemic and Executive Orders impeded their ability to obtain signatures for the recall petitions. In Paragraph 34, petitioners admit to the heart of their problem: "[a]lthough the [r]ecall [p]etition proponents were working to validate registered voters as the signatures were collected, time ran out to collect a comfortable cushion and allow ability to vet the signatures before the deadline." Put another way, petitioners simply came up short – they ran out of time to verify the sufficiency of the signatures they obtained before filing the recall petitions with the Registrar. Petitioners needed to collect 962 valid signatures of voters

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and, according to their own petition, collected more than 1,200 signatures as to the four recall petitions. However, again according to their own petition, they needed between 18 and 52 more *valid* signatures on their petitions to recall the four directors subject to the recall petitions. Petitioners have not made a sufficient showing they were prevented from obtaining the required number of valid signatures due to the COVID-19 pandemic, or because of any restrictions put in place by Executive Orders, such that writ relief would be warranted.

Even if the court were to find some merit to petitioners' statutory or constitutional challenges, which it does not, petitioners also have not made a sufficient showing that writ relief will not substantially interfere with the November 2020 election. Indeed, the Registrar has demonstrated that granting any such relief would substantially impact the November 2020 election. The Registrar has already sent out the ballots for printing and ballots have already been mailed to overseas voters. (Ronco declaration ¶¶10, 11.) The Registrar is also required to provide vote-by-mail ballots to all registered voters by October 5, 2020. (Id. at ¶12.) This makes it impracticable for the Registrar to extend any timelines to obtain further signatures for the recall petitions in time for the November 2020 election. (Id. at ¶13.) Petitioners have failed to meet their burden here and the writ petition is denied in its entirety.