

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

---

These are the tentative rulings for the **THURSDAY, OCTOBER 8, 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, OCTOBER 7, 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: TELEPHONIC APPEARANCES ARE STRONGLY ENCOURAGED FOR CIVIL LAW AND MOTION MATTERS. (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).

---

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard at **8:30 a.m.** in **DEPARTMENT 42** located at 10820 Justice Center Drive, Roseville, California.

---

**1. M-CV-0075410 PORTFOLIO RECOVERY ASSOC v. BARBER, RANDY**

Plaintiff's Motion for Order that Matters in Request for Admission of Truth of Facts be Admitted

The motion is granted. The matters encompassed in plaintiff's requests for admissions, set one, are deemed admitted as to defendant Randy Barber.

**2. M-CV-0076144 CONAM THE BRIDGES v. HADLEY, JOSEPH**

The demurer is dropped from the calendar as no moving papers were filed with the court.

///

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

---

**3. M-CV-0076678 SURETEC INS CO v. GRAVES, ZENAIDA**

Defendant's Motion for Sanctions

The motion is denied. In the current request, defendant seeks sanctions under Code of Civil Procedure section 128.7. She asserts there is no basis to support the complaint in this action, arguing the action was initiated merely to harass and annoy defendant. Section 128.7 sanctions may be awarded against filings that are (1) factually frivolous; (2) legally frivolous; or (3) brought for an improper purpose. (*Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 167.) Whether the filing is subject to Section 128.7 sanctions is determined under an objectively unreasonable standard. (*Ibid.*) Here, defendant has not made a sufficient showing that the claims alleged in the complaint are either frivolous or brought for an improper purpose. Simply put, there has been insufficient showing that the filing of the complaint was objectively unreasonable. (see *San Diegans for Open Government v. City of San Diego* (2016) 247 Cal.App.4th 1306, 1318-1319 [“Although the objective standard of proof is easier to satisfy, the Legislature intended to ‘retain the extremely high proof required for such awards’ with its applicability lying with ‘truly egregious behaviors.’ [Citations.]”].) Moreover, attorney’s fees as sanctions cannot be awarded to a party who represents herself. (*Musaelin v. Adams* (2009) 45 Cal.4th 512.) For these reasons, the motion is denied.

**4. S-CV-0020322 PALOS, ANTHONY v. PALOS, STEVEN**

The motion to set aside default judgment and quash summons is continued to Thursday, October 29, 2020 at 8:30 a.m. in Department 30 to be heard by the Honorable Todd D. Irby.

**5. S-CV-0039790 WINKEL, MARY v. RODLI, JEFFREY**

The motion for judgment on the pleadings is continued to Thursday, November 5, 2020 at 8:30 a.m. in Department 42.

**6. S-CV-0040270 FIELD SUPPLY v. FIELD, JONATHAN**

Defendants' Motion for Leave to File Amended Cross-Complaint

The motion is granted. In the current request, defendants seek leave to amend their cross-complaint to include two additional claims for declaratory relief and

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

---

breach of fiduciary duty. The court may permit a party to amend a pleading in the furtherance of justice and on such terms as may be just. (Code of Civil Procedure sections 473(a)(1), 576.) Furthermore, leave to amend is generally exercised liberally so long as there is no showing of prejudice to the opposing party. (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428; *Douglas v. Superior Court* (1989) 215 Cal.App.3d 155, 158.) The court has carefully reviewed the request, determining it is not brought in bad faith and there has not been a showing of prejudice to plaintiff.

Defendants shall file and serve their first amended cross-complaint by October 23, 2020.

**7. S-CV-0040580 HIRSCHBEK, ERIK v. ASPEN EARTHWORKS**

Defendants' Aspen Earthworks, Inc.'s Motion to Compel Responses to Special Interrogatories and Sanctions

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. In the case where only objections are served, the responding party need not provide a verification. (Code of Civil Procedure section 2030.250(a).) KCS Management served its objections to the subject special interrogatories on July 13, 2020, which required any motion to compel to be filed and served by August 27, 2020. The current motion was not filed and served until September 14, 2020. Thus, the motion is untimely and denied in its entirety.

Defendant KCS Management is awarded \$780 in sanctions for successfully opposing the motion. (Code of Civil Procedure section 2030.300(d).)

**8. S-CV-0042132 CARTER, JAMES v. JACKSON, GENE**

Plaintiff's Motion for Assignment

The motion is granted in part. Initially, the court notes that plaintiffs have withdrawn portions of their request in light of defendants' consent to a part of the request. At this time, plaintiffs only seek an assignment of the two promissory notes along with the issuance of a restraining order.

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

---

Plaintiffs' request for an assignment order regarding the two promissory notes, which defendants consent to, is granted. The December 31, 2016 promissory note executed by Eric and Crystal Savell and Legacy of Faith Partners, Inc., in the amount of \$121,000, and the July 1, 2017 promissory note executed by Eric and Crystal Savell and Legacy of Faith Partners, Inc., in the amount of \$156,000, are subject to an assignment order in favor of plaintiffs. All payments related to these two promissory notes are assigned to plaintiffs and defendants shall execute any and all documents necessary to effectuate the assignment to plaintiffs.

Plaintiffs' request for a restraining order is denied without prejudice. Plaintiffs have not yet made a sufficient showing that the order is necessary. (Code of Civil Procedure section 708.520(b).)

**9. S-CV-0042228 SPINE & NEUROSURGERY v. BLUE SHIELD OF CA**

Defendant's Motion to Seal Documents Filed in Support of Summary Judgment/Summary Adjudication Motion

The motion is granted. In the current request, defendant seeks to seal three documents, submitted as exhibits in support of its motion for summary judgment/summary adjudication, which contain health and/or medical information for a nonparty. Court records are presumed to be open to the public unless confidentiality is required by law. (California Rules of Court, Rule 2.550(c).) The court may order a record be filed under seal upon express findings of fact that establish: (1) an overriding interest that overcomes the public's right to access, (2) an overriding interest supporting sealing the record, (3) a substantial probability that the overriding interest will be prejudiced if the record is not sealed, (4) the sealing of the record is narrowly tailored, and (5) there are no less restrictive means to achieve the overriding interest. (California Rules of Court, Rule 2.550(d).)

The court finds that such information is confidential, invoking privacy rights that are recognized as an overriding interest that overcomes the right to public access to the record and supports sealing of the record. (Civil Code section 56.10; *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178.) The court also finds that there is a substantial probability that this overriding interest will be prejudiced if the exhibits are not sealed. Further, the court finds that the moving party has shown that sealing the three exhibits is the least restrictive means to achieve the overriding interest. Thusly, the court

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

---

orders Exhibits 2, 10, and 11 submitted in support of defendant's motion for summary judgment/summary adjudication shall be filed under seal.

The clerk shall ensure Exhibits 2, 10, and 11 are sealed within the physical court file along with being sealed in the electronic case management system.

Defendant's Motion for Summary Judgment or, Alternatively, Summary Adjudication

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 either summary judgment or summary adjudication as to the three causes of action asserted in plaintiff's complaint. The trial court shall grant a motion for summary 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).) A party to the action may also move for summary adjudication if that party contends there is no merit to one or more of the causes of action, which completely disposes of the claim. (Code of Civil Procedure section 437c(f)(1).) In reviewing the motion, 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.) The court reviews the four causes of action keeping these principles in mind.

First Cause of Action – Violations of Health & Safety Code  
Section 1371.4

The first cause of action alleges a violation under Health & Safety Code section 1371.4 with plaintiff alleging it provided services to defendant's insured who subsequently failed to provide sufficient reimbursement to plaintiff for the insured's treatment. (Complaint ¶¶14-20.) Health & Safety Code section 1371.4 is part of the Knox-Keene Act, a comprehensive system of licensing and regulation under the jurisdiction of the Department of Managed Health Care. (*California Medical Assn. v. Aetna U.S. Healthcare of California, Inc.* (2001)

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

---

94 Cal.App.4th 151, 155, fn. 3.) Section 1371.4 was enacted in 1994 requiring health care service plans to reimburse noncontracting providers for emergency medical services. (*Ochs v. PacifiCare of California* (115 Cal.App.4th 782, 790.) Health care service plans are defined as either (1) a “person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees” or (2) a “person, whether located within or outside of this state, who solicits or contracts with a subscriber or enrollee in this state to pay for or reimburse any part of the cost of, or who undertakes to arrange or arranges for, the provision of health care services that are to be provided wholly or in part in a foreign country in return for a prepaid or periodic charge paid by or on behalf of the subscriber or enrollee.” (Health & Safety Code section 1345(f)(1), (2).) Section 1371.4 does not expressly provide for a private right of action against a health care service plan. (*Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994; *Coast Plaza Doctors Hospital v. UHP Healthcare* (2002) 105 Cal.App.4th 693, 706-707.) Plaintiff does not dispute its inability to allege a private cause of action under the statute. (Plaintiff’s Responsive SSUMF, Issue No. 2.) Since plaintiff concedes the first cause of action cannot proceed against defendant, summary adjudication is granted as to plaintiff’s claim of violations under Health & Safety Code section 1371.4.

Second Cause of Action – Violations of Insurance Code  
Section 790.03

The second cause of action alleges a violation under Insurance Code section 790.03. Plaintiff alleges defendant’s failure to reimburse for the insured’s emergency treatment was a form of coercion/intimidation to force plaintiff to waive a substantial portion of its claim in violation of Insurance Code section 790.03. (Complaint ¶¶21-24.) Insurance Code section 790.03 is part of the Unfair Insurance Practices Action (UIPA), which was modeled on the National Association of Insurance Commissioners’ Model Unfair Claims Practices Act. (*Moradi-Shalal v. Fireman’s Fund Ins. Companies* (1988) 46 Cal.3d 287, 297.) The Act was intended to allow only administrative enforcement by the Insurance Commissioner. (*Id.* at p. 300.) Private UIPA actions are completely barred even when fashioned as a basis for a UCL claim. (*Zhang v. Superior Court* (2013) 57 Cal.4th 364, 384.) Plaintiff does not dispute its inability to allege a private right of enforcement under Section 790.03. (Plaintiff’s Responsive SSUMF, Issue No. 4.) Since plaintiff concedes the second cause of action cannot proceed

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

---

against defendant, summary adjudication is granted as to plaintiff's claim of violations under Insurance Code section 790.03.

Third Cause of Action – UCL Claim

The third cause of action alleges UCL violations based upon defendant's failure to reimburse plaintiff for services provided to its insured as required under Health & Safety Code section 1371.4, entitling plaintiff to restitution in the amount of \$25,167.66. (Complaint ¶¶25-31.) "The UCL does not proscribe specific activities, but broadly prohibits any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising. ...By proscribing 'any unlawful business practice,' section 17200 'borrows' violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable. Because section 17200 is written in the disjunctive, it establishes three varieties of unfair competition-acts or practices which are unlawful, or unfair, or fraudulent. In other words, a practice is prohibited as 'unfair' or 'deceptive' even if not 'unlawful' and vice versa." [Citations and quotations omitted.] (*Puentes v. Wells Fargo Home Mortg., Inc.* (2008) 160 Cal.App.4th 638, 643-644.) While Section 1371.4 does not expressly provide for a private action against a health care service plan, the section does not preclude a private action at common law or under the UCL. (*Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994; *Coast Plaza Doctors Hospital v. UHP Healthcare* (2002) 105 Cal.App.4th 693, 706-707.) Defendant submits evidence it did not insure the patient who obtained medical treatment from plaintiff. (Defendant's SSUMF Nos. 1-5; Defendant's RJN Exhibits A-F.) This evidence eliminates any responsibility defendant had to reimburse plaintiff since defendant did not insure the patient that obtained medical services from plaintiff, shifting the burden to plaintiff to establish a triable issue of material fact.

Plaintiff, however, has not met its burden. Plaintiff contends equitable estoppel prevents defendant from asserting any defense that it is not the proper defendant in this case. Equitable estoppel may apply where the conduct of a party induces the other to take a position that it would be injured if the first should be permitted to repudiate its acts. (*DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Café & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 59.) Four elements must be shown to support equitable estoppel: (1) the party to be estopped must know the facts; (2) the party must intend that its conduct shall be acted upon, or must so act that the party asserting the estoppel had the right to believe that it was so intended; (3) the party asserting the estoppel must be ignorant to the true state of facts;

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

---

and (4) the party must rely upon the conduct to its injury. (*Ibid.*) The evidence presented by plaintiff does not establish these elements. First, defendant's responses to plaintiff's request for admissions do not show defendant asserted any position that it insured the subject patient as the responses consist primarily of objections. (Plaintiff's Responsive SSUMF Nos. 2-5 and evidence cited therein.) Second, plaintiff's evidence does not show defendant corresponded with plaintiff regarding reimbursement for the subject patient's treatment. The submitted documentation shows plaintiff corresponded with Blue Shield of California, not Blue Shield of California Promise Health Plan. (*Ibid.*) Finally, plaintiff's submitted evidence does not show defendant issued any denial of reimbursement to plaintiff. Again, the submitted evidence shows plaintiff corresponded with Blue Shield California rather than Blue Shield California Promise Health Plan. (*Ibid.*) Since plaintiff has not met its burden, summary adjudication is granted as to the third cause of action.

Disposition

For the reasons set forth above, the motion is granted in its entirety.

**10. S-CV-0042659 FAULKNER, MERCEDES v. BRAZIL, ANASTACIA**

The motion for summary judgment is continued to Thursday, October 29, 2020 at 8:30 a.m. in Department 42. 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 as no reply papers currently appear in the court file.

**11. S-CV-0043138 KONDRAD, KURT v. CENTRIC, AARON**

Plaintiffs' Motion for Trial Setting Preference

Objections to Evidence

Defendants' objections to plaintiff's supplemental declarations filed on October 1, 2020 are sustained. These declarations were submitted after the filing of defendants' opposition and defendants have not had an opportunity to respond to the new evidence. (*Alliant Ins. Services, Inc. v. Gaddy* (2009) 159 Cal.App.4th 1292, 1307-1308.) Further, declarations by counsel are only sufficient where the facts stated are matters which the attorney would be presumed to have knowledge, otherwise the attorney lacks the personal

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

---

knowledge necessary to make such a declaration. (see *Maltby v. Shook* (1955) 131 Cal.App.2d 349, 351-352; *DiCola v. White Bros. Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 681.)

Ruling on Motion

The motion is denied without prejudice. In the current request, plaintiffs seek trial preference under Code of Civil Procedure section 36(e), which allows for preference where there is a showing that the interests of justice serve granting the request. The court looks to the totality of the circumstances based upon supporting declarations that show good cause. (*Salas v. Sears, Roebuck & Co.* (1986) 42 Cal.3d 342, 344; California Rules of Court, Rule 3.1335(b).) Plaintiffs, however, do not submit sufficient evidence of plaintiff Kurt Kondrad's medical condition that would warrant granting preference at this time. Furthermore, trial is currently set for January 19, 2021, which is within 103 days. The court declines to grant the request until such time as plaintiffs present sufficient documentary evidence of Mr. Kondrad's current medical condition that would support setting trial for an earlier date.

**12. S-CV-0043518 MACHHOLZ, DONALD v. CUNNINGHAM LEGAL**

Defendant James Cunningham's Motion to Compel Further Responses to Written Discovery

Ruling on Request for Judicial Notice

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

Ruling on Motion

The motion is granted. Plaintiff Robert Machholz shall provide further verified responses and responsive documents, without further objections, to (1) special interrogatories nos. 10, 11, 12, 13; (2) request for admissions nos. 5, 6, 9, 10, 11, 12, 13 and corresponding requests in form interrogatories no. 17.1; and (3) request for production of documents nos. 9, 11, 12. Mr. Machholz shall provide the further responses and responsive documents by October 30, 2020.

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

---

Defendant James Cunningham is awarded \$2,350 in sanctions for successfully bringing the motion. (Code of Civil Procedure sections 2030.300(d), 2033.290(d), 2031.310(h).)

Plaintiff's request for sanctions is denied.

Defendant Cunningham Legal's Motion to Compel Deposition Testimony from Robert Machholz

Ruling on Request for Judicial Notice

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

Ruling on Motion

The motion is granted. Plaintiff Robert Machholz shall provide further deposition testimony for the following categories: (1) assignment of the legal malpractice claims; (2) the December 24, 2019 correspondence to the court; (3) retention of current counsel; (5) when Mr. Machholz learned of the current action; (6) how Mr. Machholz learned of the current action; and (7) Mr. Machholz's online posts regarding the current action.

Defendant Cunningham Legal is awarded \$1,645 in sanctions, which are imposed on Robert Machholz and his current counsel jointly and severally. (Code of Civil Procedure section 2025.480(j).)

Plaintiff's request for sanctions is denied.

**13. S-CV-0043836 BPX COMMERCIAL v. SIERRA COLLEGE ESTATES**

Plaintiff's Motion to Enforce Settlement Agreement

While the court is inclined to grant the request, there are three areas that require further clarification from plaintiff before the motion can be granted. The first has to do with the damages amount sought by plaintiff. The moving papers refer to the outstanding damages amount as either \$350,000 or \$325,000. The court needs further clarification regarding the actual amount outstanding under the terms of the settlement agreement. Second, plaintiff requests \$2,500 in attorney's fees but does not provide a sufficient declaration addressing the

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

---

reasonableness of these fees. Finally, plaintiff does not provide a sufficient declaration regarding the calculation of liquidated damages/interest.

The motion is continued to Thursday, November 5, 2020 at 8:30 a.m. in Department 42. Plaintiff may file a supplemental declaration addressing these issues by 12:00 p.m. on Friday, October 23, 2020. If plaintiff fails to submit a supplemental declaration, the court shall proceed to hear the merits of the motion on the documentation presented in the moving papers.

**14. S-CV-0044678 TISKIY, SVETLANA v. CLEAR RECON CORP**

The demurrer is dropped from the calendar. A first amended complaint was filed on September 25, 2020.

**15. S-CV-0044894 AMERICAN BAR QUARTZ MINING CO v. WALKER, DANNY**

The demurrer and motion to quash are continued to Thursday, November 5, 2020 at 8:30 a.m. in Department 42.