

These are the tentative rulings for civil law and motion matters set for Tuesday, November 1, 2016, at 8:30 a.m. in the Placer County Superior Court. 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. today, Monday, October 31, 2016. Notice of request for oral 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 after 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: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0043825 Colorado Capital Investments, Inc. vs. Gannon, Sharon

Defendant's motion to set aside the default judgment is denied as there is no proof of service in the file that comports to the service requirements of CCP§1013.

2. M-CV-0066015 Rabara, Estela vs Somora, Jennifer et al

Defendant's motion to vacate the judgment is denied as there is no proof of service in the file that comports with the service requirements of CCP§1013.

3. M-CV-0066213 Vculek, Candy vs. Springfellow, Gaige et al

Defendant's demurrer is overruled. As an initial matter, the court notes that defendant failed to provide plaintiff with sufficient notice of the current hearing date. (CCP§1005.) Moreover, there is no merit to defendant's substantive argument. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§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.) As such, 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 complaint, when read as a whole, alleges sufficient facts to support an unlawful detainer claim.

Defendant shall file and serve an answer or general denial on or before November 4, 2016. (CCP§1167.3.)

4. M-CV-0066393 Autumn Oaks-200, LLC vs. Mcconville, Aaron, et al

Defendant's motion to strike the complaint is denied as the complaint is drawn in conformity with the law. (CCP§436.) Defendant shall file and serve his answer or general denial on or before November 4, 2016.

5. S-CV-0029141 Cooley, David, et al vs. Centex Homes

The Law Offices of Artiano Shinoff's Motion to be Relieved as Counsel

The Law Offices of Artiano Shinoff's motion to be relieved as counsel for cross-defendant Quality Interiors, Inc. is granted and they shall be relieved as counsel of record effective upon the filing of the proof of service of the signed order upon Quality Interiors, Inc.

Cross-Defendant Western Insulation's Good Faith Settlement Motion

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling cross-defendant's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

6. S-CV-0030637 Agutos, Florencio, et al vs. Centex Homes

Cross-defendant Fletcher Plumbing, Inc.'s motion for determination of good faith settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling cross-defendant's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

7. S-CV-0032447 Westwood Montserrat vs. AGK Sierra de Montserrat

The demurrer is sustained with leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§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.) As such, 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.) A review of the doe amendment in conjunction with the SAC shows that there are insufficient factual allegations against the moving defendant to support claims asserted against them.

Plaintiff shall file and serve its third amended complaint on or before November 18, 2016.

8. S-CV-0035393 Seibert, Robert Jr. vs. Seibert, James

Defendant Bank of America's demurrer to the third amended complaint (TAC) is overruled. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§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.) As such, 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.) Defendant demurs solely to the seventh cause of action for negligence. The TAC, when read as a whole, alleges sufficient facts to support this claim.

Defendant shall file and serve its answer or general denial on or before November 10, 2016.

9. S-CV-0035435 Anderson, Tela vs. Aml, Inc., et al

The motion for summary judgment is continued to December 1, 2016 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

10. S-CV-0035599 Voyager Restaurant Group, Inc. vs Sonora Petroleum

Defendants 2012-SIP-1 Venture LLC and Sabal Financial Group LP's Demurrer to the Third Amended Complaint (TAC)

Preliminary Matters

As an initial matter, plaintiff raises in its opposition the contention that defendants are unable to challenge the substance of the TAC since they stipulated to its filing. This reading of the stipulation, however, is too broad. The recitals in the stipulation refer to plaintiff's agreements to remedy deficiencies identified by defendant Roseville Petroleum. It does not indicate any waived on the part of the moving defendants to challenge the substance of the TAC. Rather, it implies that the moving defendants would not oppose the filing of the TAC. In light of this, the court will proceed to review the substance of the moving defendants' demurrer.

Ruling on Requests for Judicial Notice

Defendants' request for judicial notice is granted.

Plaintiff's request for judicial notice is granted.

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. (CCP§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.) As such, 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 demurrer challenges the second cause of action for intentional interference with prospective business advantage; the third cause of action for negligent interference with prospective business advantage; and the fifth cause of action for UCL violations.

The elements of an intentional interference with prospective advantage action include: (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional wrongful acts by the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153-1154; *Della Penna v. Toyota Motor Sales, U.S.A.* (1995) 11 Cal.4th 376.) The TAC fails to allege sufficient facts of an economic relationship between plaintiff and a third party that was disrupted due to wrongful acts on the part of the moving defendants. Since the elements of this claim are not sufficiently pleaded, this cause of action fails.

“The tort of negligent interference with prospective economic advantage is established where a plaintiff demonstrates that (1) an economic relationship existed between plaintiff and a third party; (2) the defendant knew of the existence of the relationship and was aware or should have been aware that if it did not act with due care its actions would interfere with this relationship and cause plaintiff to lose in whole or in part the probable future economic benefit or advantage of the relationship; (3) the defendant was negligent; and (4) such negligence caused damage to plaintiff in that the relationship was actually interfered with or disrupted and plaintiff lost in whole or in part the economic benefits or advantage reasonably expected from the relationship”. (*Venhaus v. Shultz* (2007) 155 Cal.App.4th 1072, 1078.) This claim is also deficiently pleaded as there are insufficient factual allegations to establish an economic relationship between plaintiff and a third party that was negligently interfered with by the moving defendants.

The final cause of action is a claim for violations under the UCL. “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.) The TAC does not sufficiently allege any cause of action against the moving defendants to support a UCL claim. Nor does the fifth cause of action allege sufficient facts of unlawful, unfair, or fraudulent business activities to support a UCL claim. Thus, the fifth cause of action also fails.

The remaining issue to address is whether plaintiff should be afforded leave to amend. A demurrer will be sustained without leave to amend absent a showing by plaintiff that a reasonable possibility exists that the defects can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. (*Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302.) The TAC is plaintiff’s fourth attempt to state a cognizable claim against the moving defendants. Despite being afforded these additional attempts to plead, plaintiff has not been successful in remedying the deficiencies. Nor has plaintiff sufficiently demonstrated an ability to cure the deficiencies in these causes of action. In light of this, the court sustains the demurrer without leave to amend.

11. S-CV-0035829 Devlin, Mark, et al vs. Moore, James

The motion for leave to file a first amended complaint is continued to November 22, 2016 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

12. S-CV-0036377 Wagoner, Marilyn C. vs. Arkema, Inc., et al

Defendant Whip Mix’s Motion for Summary Judgment

Ruling on Objections

Defendant’s objections are overruled in their entirety.

Ruling on Motion

Plaintiff’s four causes of action against the moving defendant stem from allegations of asbestos exposure in the workplace from defendant’s product. 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 §437c(c).) The trial court engages in a specific analysis when reviewing a motion for summary judgment. First, it must define the scope of the motion by looking to the operative pleading. The pleadings serve as the “outer measure of materiality” for a motion for summary judgment in addition to determining the scope of the motion. (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.) The pleadings identify the issues raised and the request must

address these issues. Second, the moving party must meet its initial burden. A moving defendant has the initial burden of showing that a cause of action has no merit or there is a complete defense to the cause of action. (Code of Civil Procedure §437c(p)(2).) 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 final part of the analysis is reached if the moving party meets its initial burden. The burden then shifts to the plaintiff to show that a triable issue of material fact exists as to the cause of action or a defense to the cause of action. (Code of Civil Procedure §437c(p)(2).) The court reviews the motion keeping these principles in mind.

Claims alleging asbestos-related injuries require the plaintiff to show there is a “reasonable medical probability based upon competent expert testimony that the defendant’s conduct contributed to plaintiff’s injury.” (*Lineaweaver v. Plant Insulation Co.* (1995) 31 Cal.App.4th 1409, 1416.) This is determined by looking to the frequency of the exposure; the regularity of the exposure; and proximity of the asbestos product to the plaintiff. (*Ibid.*) Thus, a threshold issue for a plaintiff in asbestos litigation is exposure to the defendant’s product. (*McGonnell v. Kaiser Gypsum Co., Inc.* (2002) 98 Cal.App.4th 1098, 1103; *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 982.) There is no causation without exposure. (*Ibid.*; *Collin v. Calportland Company* (2014) 228 Cal.App.4th 582, 589.) In this instance, defendant has met its initial burden of establishing plaintiff has insufficient evidence of exposure to defendant’s asbestos based products to show causation. Plaintiff cannot recall the names of defendant’s products; whether she ordered the products; or whether she ever used the products. (Defendant’s SSUMF Nos. 13-17.) Plaintiff provided a “laundry list” of generic document categories and could not produce any documentation showing defendant provided any products to her employers. (*Id.* at Nos. 5-6.) The two witnesses plaintiff identified as supporting her exposure to defendant’s asbestos based products could not recall the products being used in the workplace or plaintiff being exposed to them. (*Id.* at Nos. 7-12.) Furthermore, Janet McCrow testified that plaintiff was a receptionist and bookkeeper from 1972 through 1978 and was not responsible for stocking supplies and that plaintiff’s employer preferred the employees not go through his lab. (Duplanty declaration, Exhibit G, McCrow deposition, pp. 25:11-20, 27:9-25.) This evidence is sufficient to shift the burden to plaintiff to establish a triable issue of material fact. (Code of Civil Procedure §437c(p)(2).)

In this instance, plaintiff has submitted sufficient evidence to establish a triable issue. She submits evidence that she worked with defendant’s asbestos tape and/or strips at each of her prior places of employment and those products were distributed by defendant Patterson. (Plaintiff’s Responsive SSUMF Nos. 8-15.) As plaintiff has submitted sufficient evidence to establish a triable issue of material fact, the motion is denied.

Plaintiffs' Motion to Compel Discovery

The unopposed motion is granted. Defendant South Placer Municipal Utilities District 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, on or before November 10, 2016.

Sanctions are denied because the motion was not opposed. (CCP§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.)

Plaintiffs' Motion to Deem Request for Admissions Admitted

The unopposed motion is granted. The matters encompassed in Plaintiff's Requests for Admissions, Set One are deemed admitted. Sanctions in the amount of \$1,577.50 are imposed on the defendant South Placer Municipal Utilities District pursuant to CCP§2033.280(c).

These are the tentative rulings for civil law and motion matters set for Tuesday, November 1, 2016, at 8:30 a.m. in the Placer County Superior Court. 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. today, Monday, October 31, 2016. Notice of request for oral 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 after 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.