



# Superior Court of California County of San Benito

## Tentative Decisions for April 24, 2024

**Courtroom #1: Judge J. Omar Rodriguez**

**10:30 a.m.**

**CU-23-00049 DeCarlo sv. Envirosiences, LLC, et. al.**

### Plaintiff's Discovery Motions

Plaintiffs' Motions to Compel are denied. Plaintiff filed to comply with the rules of court when Plaintiffs filed a single omnibus motion relating to multiple forms of discovery, directed to disparate Defendants. Moreover, Plaintiffs filed a single omnibus "separate statement" which fails to fulfil the requirements of the rules of court. The court therefore denies the motions without prejudice.

### Request for Judicial Notice

Defendant Agromin's Request for Judicial Notice of the transcript of the Deposition of Timothy Lee DeCarlo, submitted as Exhibit A to the Declaration of Frank Peretta, pursuant to Evidence Code §§452(d)(1) and 453, is GRANTED. As part of the Court's file, judicial notice may be taken of this transcript. However, though the existence of statements contained in a deposition transcript filed as part of the court record can be judicially noticed, their truth is not the subject of judicial notice. (Ev. Code §452; *see also Garcia v. Sterling* (1985) 176 Cal. App. 3rd 20, 22.)

### Demurrer filed by Defendant Agromin ("Agromin")

A demurrer generally serves to test the legal sufficiency of the complaint's factual allegations. (*Genis v. Schainbaum* (2021) 66 Cal. App. 5th 1007, 1014.) It does not test the

Page 1 of 9

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any objections or concerns.**

factual accuracy or truth of the facts alleged. The court must assume the truth of all properly pled allegations. The process of a demurrer does not serve to test the merits of the Plaintiff's case. (*Tenet Health System Desert Inc. v. Blue Cross of CA.* (2016) 245 Cal App 4th 821, 834.) Because a demurrer only challenges the defects on the face of the complaint, it can only refer to matters outside the pleadings which are subject to judicial notice. (*Tenet, supra*, at 831.)” When any ground for objection to a complaint...appears on the face thereof, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by a demurrer to the pleading.” (CCP§430.30 sub (a); *Levy v. Nielson* (2000) 83 Cal. App. 4th 1061, 1063.) For the purpose of demurrer, a judge must treat the demurrer as an admission of all material facts properly pled in the challenged pleading or that reasonably rise by implication, however improbable they are. (*Collins v. Thurmond* (2019) 41 Cal. App 5th 879, 894.) For the purpose of testing the sufficiency of a cause of action, contentions, deductions, or conclusions of law are not admitted as true, and must be ignored. (*Aubry v. Tri-City Hosp Dist.* (1992) 2 Cal. 4th 962, 966-67.) “California law emphasizes ultimate fact pleading (with some exceptions, notably for fraud and related torts) ‘in ordinary and concise language,’ and the test for adequacy is not absolute but ‘whether the pleading as a whole apprises the adversary of the factual basis of the claim.’” (*Lim v. The TV Corp. Internat.* (2002) 99 Cal.App.4th 684, 690, citing 4 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 339, pp. 436, 438, *Semole v. Sansoucie* (1972) 28 Cal. App. 3d 714, 719.) Additionally, a party may not allege facts inconsistent with the exhibits to the complaint. (*Moran v. Prime Healthcare Management, Inc.* (2016) 3 Cal. App. 5th 1131, 1145-6.)

The Demurrer as to the Ninth Cause of Action, Extortion, is OVERRULED. Extortion is the obtaining of property from another with their consent induced by the “wrongful use of force or fear....” (*Malin v. Singer* (2013) 217 Cal. App. 4th 1283, 1294, quoting Penal Code §518.) Fear as would qualify as extortion may be induced by threat to 1) do an unlawful injury to the person, their property, or of a third person; or, 2) accuse the individual threatened, or their relative, or their family of crime; or 3) expose a secret affecting him, her, or them; or 4) to expose or impute to the individual, or their family of a deformity, disgrace, or crime; or 5) to report his , her, or their immigration status or suspected immigration status.

(Penal Code §519). Here, the First Amended Complaint (“FAC”) alleges that Defendants, including Agromin, made use of threats and intimidation, including acts of defamation.

The Demurrer to the Eleventh Cause of Action, Negligence, is OVERRULED. The elements of negligence; a legal duty to use care, breach of that legal duty, and breach as the proximate or legal cause of the resultant injury, are well established. (*Ladd v. Cty. Of San Mateo* (1994) 12 Cal. 4th 913, 917.) Here, the FAC alleges the elements of negligence. Defendant argued, without legal authority, that the Demurrer should be sustained because Plaintiff testified that Plaintiff could not provide testimony regarding every element of the cause of action, no legal authority was provided to conclude that Plaintiff was precluded from making claims for this cause of action because Plaintiff was unable to establish the facts through his own testimony.

As to the Thirteenth Cause of Action for Nuisance, the Demurrer is SUSTAINED with leave to amend. Civil Code section 3480 and related statutes requires that this cause of action be pled with particularity. (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal. 3rd 780, 795.) Pursuant to Civil Code section 3493, a private party may maintain an action for public nuisance if it specially injures him but may not do so otherwise. This element is not pled in the FAC.

As to the Twenty-Second Cause of Action for Intentional Interference with Prospective Business Advantage, the Demurrer is SUSTAINED with leave to amend. Plaintiff alleges that Agromin is an employee/agent/ or representative of EnviroServices. (FAC ¶11.) The cause of action fails because the tort for interference with contract cannot lie with a party to the contract and because the FAC alleges that there was interference with other employees of EnviroServices. (*Applied Equip. Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal. 4th 503, 514.) Further, the allegation is interference with an at-will employment relationship, therefore Plaintiffs must plead that Defendant engaged in an independently wrongful act that induced interference with the relationship. (*Reeves v. Hanlon* (2004) 33 Cal. 4th 1150, 1152-3.) The allegation is not that there was any independently wrongful act by Agromin which was the mechanism by which Plaintiffs’ termination was affected, and thus it too fails.

Motions to Strike filed by Agromin and Defendants Merrell, Crestani, et. al.

The two Motions to Strike Punitive Damages are GRANTED with leave to amend. A court may properly grant a motion to strike when the complaint fails to set forth the elements stated in the statute. (*Turman v. Turning Point of Cent. Cal. Inc.* (2010) 191 Cal. App. 4th 53, 63-64.) The use of mere “buzzwords” to plead malice, fraud, or oppression is inadequate. Ultimate facts sufficient to support the conclusion that the Defendants acted with oppression, fraud, and/or malice is insufficient.

Plaintiffs conceded the motion as to the claim for treble damages at item “q”, the court grants the motion to strike the treble damages claim with leave to amend.

Demurrer filed by Defendants Merrell, Crestani, et. al.

The Demurrer is SUSTAINED with leave to amend as to the First Cause of Action. The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) Fraud must be pled specifically; general and conclusory allegations do not suffice. (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 74; *Nagy v. Nagy* (1989) 210 Cal.App.3d 1262, 1268.) The FAC fails to allege representations that were made to him by defendants, who made the specific representations and how they were made.

The Demurrer is SUSTAINED with leave to amend as to the Second Cause of Action. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. (*Los Angeles Federal Credit Union v. Madatyán* (2012) 209 Cal.App.4th 1383, 1387.) The FAC alleges that Defendants took unspecified amounts from Enviro. (FAC ¶71.) The FAC fails to allege facts regarding Plaintiff's ownership or right to possession of the property.

The Demurrer is SUSTAINED with leave to amend as to the Third Cause of Action. Defendants note that Plaintiffs allege, in conclusory fashion, there were misrepresentations, extortion and unfair advantage in obtaining DeCarlo's signature on the LLC operating agreement. (FAC ¶102.) However, Plaintiffs did not claim that this agreement was procured

by fraud. DeCarlo Jr alleges that he is a member, but this doesn't give him standing to sue in this matter, as noted in the second cause of action, that claim belongs to EnviroServices. Members of LLC's do not have a right to the assets of the LLC. Only the LLC is a real party of interest that can sue on its claim. (*PacLink Communications Intern., Inc. v. Sup. Ct.* (2001) 90 Cal. App. 4th 958,964.) As such, Plaintiffs again lack standing and the demurrer should be sustained with leave to amend.

The Demurrer is SUSTAINED with leave to amend as to the Fourth Cause of Action. An action for an accounting has two elements: (1) that a relationship exists between the plaintiff and defendant that requires an accounting; and (2) that some balance is due the plaintiff that can only be ascertained by an accounting. (*Sass v. Cohen* (2020) 10 Cal.5th 861, 869.) As discussed above, DeCarlo is not a member of Enviro and there is no relationship that requires an accounting.

The Demurrer as to the Fifth Cause of Action is SUSTAINED with leave to amend. There is no allegation that Plaintiff is a member of Enviro and there is no fiduciary duty from the members to him. While DeCarlo alleges he and Mitchell own 60% of Enviro, and Crestani is a manager, the allegations are contradicted by the Operating Agreement. A party may not allege facts inconsistent with exhibits to the complaint. (*Moran v. Prime Healthcare Mgmt., Inc.* (2016) 3 CA5th 1131, 1145-1146.) DeCarlo jr. does not have standing to bring the action as any claim belongs to Enviro as it is not alleged that he is a manager or has any standing to sue. (*Schrage v. Schrage* (2021) 69 Cal.App.5th 126, 158.)

As to the Sixth Cause of Action, the Demurrer is SUSTAINED with leave to amend. As discussed above, DeCarlo is not a member of the LLC and had no standing to bring the claim. While DeCarlo Jr. claims he is a member, the claim is allowed only against the against Enviro. (Cal. Corp. Code § 17707.03.) DeCarlo is not a member so has no standing, DeCarlo Jr. has no claim against Crestani or Merrell as they are not LLCs.

As to the Seventh Cause of Action, the Demurrer is SUSTAINED with leave to amend. As discussed above, DeCarlo is not a member of the LLC and had no standing to bring the claim. DeCarlo Jr. has not alleged he complied with derivative suit obligations and has no standing to sue. (*Schrage v. Schrage* (2021) 69 Cal.App.5th 126, 158.)

As to the Eighth Cause of Action, the Demurrer is SUSTAINED with leave to amend. As discussed above, DeCarlo is not a member of the LLC and had no standing to bring the claim. DeCarlo Jr. has no claim against Crestani or Merrell as they are not Enviro.

The Demurrer as to the Ninth Cause of Action, Extortion, is OVERRULED. Extortion is the obtaining of property from another with their consent induced by the “wrongful use of force or fear...” (*Malin v. Singer* (2013) 217 Cal. App. 4th 1283, 1294, quoting Penal Code §518.) Fear as would qualify as extortion may be induced by threat to 1) do an unlawful injury to the person, their property, or of a third person; or, 2) accuse the individual threatened, or their relative, or their family of crime; or 3) expose a secret affecting him, her, or them; or 4) to expose or impute to the individual, or their family of a deformity, disgrace, or crime; or 5) to report his , her, or their immigration status or suspected immigration status. (Penal Code §519). Here, the First Amended Complaint (“FAC”) alleges that Defendants, including made use of threats and intimidation, including acts of defamation.

The Demurrer is SUSTAINED with leave to amend as to the Tenth Cause of Action – Negligent Misrepresentation. In order to recover damages for Negligent Misrepresentation, a party must prove: “misrepresentation of a past or existing material fact, without reasonable ground for believing it to be true, and with intent to induce another's reliance on the fact misrepresented; ignorance of the truth and justifiable reliance on the misrepresentation by the party to whom it was directed; and resulting damage....’ ” (*Shamsian v. Atlantic Richfield Co.* (2003) 107 Cal.App.4th 967, 983.) Under § 10.13 of Exhibit A to the FAC, all promises and agreements are stated solely in the Operating Agreement. Members have no duty to provide further Capital Contributions. §6.02 Operating Agreement. The Operating Agreement has none of the future promises, alleged.

The Demurrer as to the Eleventh Cause of Action, Negligence, is OVERRULED. The elements of negligence; a legal duty to use care, breach of that legal duty, and breach as the proximate or legal cause of the resultant injury, are well established. (*Ladd v. Cty. Of San Mateo* (1994) 12 Cal. 4th 913, 917.) Here, the FAC alleges the elements of negligence.

The Demurrer as to the Twelfth Cause of Action, Involuntary Dissolution of Partnership, is SUSTAINED with leave to amend. Any alleged partnership was terminated on the formation of Enviro. § 10.13 of the Operating Agreement. There cannot be an oral

partnership and an LLC covering the same greenwaste operation. Any alleged partnership was extinguished when the LLC was created. (*Persson v. Smart Inventions, Inc.* (2005) 125 Cal.App.4th 1141, 1157 (a partnership does not continue to exist after the formation of a corporation.)

As to the Thirteenth Cause of Action, Nuisance, the Demurrer is SUSTAINED with leave to amend. Civil Code section 3480 and related statutes requires that this cause of action be pled with particularity. (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal. 3rd 780, 795.) Pursuant to Civil Code section 3493, a private party may maintain an action for public nuisance if it specially injures him but may not do so otherwise. This element is not pled in the FAC.

As to the Fourteenth Cause of Action, Negligence, the Demurrer is OVERRULED. . The elements of negligence; a legal duty to use care, breach of that legal duty, and breach as the proximate or legal cause of the resultant injury, are well established. (*Ladd v. Cty. Of San Mateo* (1994) 12 Cal. 4th 913, 917.) Here, the FAC alleges the elements of negligence.

As to the Fifteenth Cause of Action, Defamation, the Demurrer is OVERRULED. The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage. (*Taus v. Loftus* (2007) 40 Cal.4th 683, 720; *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1369.) Here, the FAC alleges that Plaintiff was accused of theft, that he is not to be trusted and that he is illegally dumping toxic and hazardous material.

The case management conference is continued to June 5, 2024 at 10:30 a.m.

**CU-24-00022 Petition of Daymien Castro Valencia**

The Petition is APPROVED as requested.

**PR-20-00050 Estate of Gerald Slibsager**

The Petition is APPROVED as requested.

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**PR-24-00028 Estate of Nicolas Basilio Mendizabal**

The Petition is APPROVED as requested. Bond is waived. Lucia Areias is appointed as referee. Full authority is granted to administer the estate under the Independent Administration of Estates Act. Petitioner is to file an Inventory and Appraisal within four months of issuance of letters (Prob. Code section 8800(b)) and either a petition for an order for final distribution of the estate or a report of status of administration within the timeframe set out in Probate Code section 12200.

The matter is set for hearing on October 23, 2024 at 10:30 a.m. for status of estate or final account and distribution. No appearances at the hearing will be required if the court determines that administration of the estate is timely proceeding, or good cause is shown why more time is required.

**3:30 p.m.**

**CU-23-00071 Better San Benito vs. County of San Benito**

In light of the objection regarding insufficient service, the Court is continuing the hearing on the motion to enforce and case management conference one week to May 1, 2024 at 10:30 a.m.

**PR-16-00049 In re Estate of Donald R. Clausen**

The Petition is APPROVED and proceedings for the administration are hereby terminated. Petitioner is discharged as the personal representative of the estate.

**PR-24-00011 Estate of David John Thompson III**

The Petition is APPROVED as requested. Bond is waived. Lucia Areias is appointed as referee. Full authority is granted to administer the estate under the Independent Administration of Estates Act. Petitioner is to file an Inventory and Appraisal within four months of issuance of letters (Prob. Code section 8800(b)) and either a petition for an order for final distribution of the estate or a report of status of administration within the timeframe set out in Probate Code section 12200.



The matter is set for hearing on October 23, 2024 at 10:30 a.m. for status of estate or final account and distribution. No appearances at the hearing will be required if the court determines that administration of the estate is timely proceeding, or good cause is shown why more time is required.

**PR-24-00029 Guardianship of Leylah Rose Garcia**

The hearing is continued to June 26, 2024 at 3:30 p.m. to allow for the investigation to take place and report prepared and served.

**PR-24-00031 In the Matter of R&D Martinez Family Trust dated 4/27/2010**

The Petition is APPROVED as requested.

**END OF TENTATIVE DECISIONS**