



# Superior Court of California County of San Benito

## **Tentative Decisions for March 6, 2024**

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

### **CU-20-00002 Lua v. John Deere Construction, et al.**

Plaintiff's Motion to Compel Deposition of Defendant's Person(s) most knowledgeable is GRANTED. Defendant City of Hollister is ordered to produce its Person Most Knowledgeable ("PMK") within 30 days after notice of this order and produce the documents specified in the deposition notice served on November 14, 2023.

The court notes that the requested deposition is not of a natural person, but rather for a governmental entity to produce a person most qualified to respond to a discrete area of inquiry. While it is true that natural persons may only be deposed once without leave of court or consent of the deponent, governmental entities, such as Defendant are not natural persons. Moreover, the person most knowledgeable is not deposed as a natural person, but rather as the voice of the entity in question, whether that be a corporation, an association, or as here, a governmental entity. Here the inquiry focuses on the application of particular signage and policies regarding signage attached to certain vehicles owned and operated by the Defendant, and their policies and procedures relating to such signage. This is both highly relevant to the case and is likely to lead to the discovery of admissible evidence related to Plaintiff's claim and also address Defendant's affirmative defense.

The Court denies the request for monetary sanctions finding that Defendant acted with substantial justification.

The Trial Setting Conference is continued to March 27, 2024 at 10:30a.m.

Page 1 of 4

**\*\*Please contact Judicial Courtroom Assistant, Wendy Guerrero, at  
(831) 636-4057 x129 or [wguerrero@sanbenitocourt.org](mailto:wguerrero@sanbenitocourt.org) with  
any objections or concerns.**

**CU-23-00170 Zarate v. Estate of Lisa C. Biakanja**

The Demurrer brought by Cross-Defendants Araceli Murillo Zarate and Altman Specialty Plants, LLC (collectively “Cross-Defendants”) to Cross-Complainants Estate of Lisa C. Biakanja by and through its co-administrator, Kenneth M. McIntire and Joan and Kenneth M. McIntire, individually, and on behalf of all wrongful death beneficiaries of Lisa Biakanja, is OVERRULED as to both the Fourth and Fifth Causes of Action.

Code of Civil Procedure section 452 requires the Court to construe the allegations of pleadings liberally. (*Porten v. Univ. of San Francisco* (1976) 64 Cal.App.3d 825, 833.) In addition, in considering a Demurrer, the Court must accept as true all facts alleged in the Complaint. (*Fundin v. Chicago Pneumatic Tool Co.* (1984) 152 Cal.App.3d 951, 955.)

As to the Fourth Cause of Action, Cross-Complainant has sufficiently pled facts to constitute a cause of action for wrongful death under California Code of Civil Procedure sections 377.60, *et seq.* A claim for wrongful death requires pleading showing 1) a wrongful act or neglect; 2) causal connection between said wrongful act/neglect and death; and 3) death of the decedent. (*Barrett v. Sup. Ct.* (1990) 222 Cal. App. 3d 1176, 1185-6; Cal. Code Civ. Proc. §377.60.) A cause of action for the death of a person pursuant to California Code of Civil Procedure section 377.60 may be asserted by “(t)he decedent’s surviving spouse, domestic partner, children, and issue of deceased children, or, if there is no surviving issue of the decedent, the persons, including the surviving spouse or domestic partner, who would be entitled to the property of the decedent by intestate succession.” The Probate Code provides that, absent a surviving spouse, domestic partners, children, or issue, the decedent’s intestate estate passes to the decedent’s parent or parents equally. (Cal. Prob. Code §6402(b).) Here, the Cross-Complaint alleges that John McIntire is the natural mother and wrongful death beneficiary of Decedent. (Cross-Complaint 3:4-8.) The Cross-Complaint also alleges that Decedent and her three children were killed during the incident (Cross-Complaint 4:19-25.) As a result, the Demurrer is overruled as to the Fourth Cause of Action for Wrongful Death.

As to the Fifth Cause of Action, Cross-Complainant has sufficiently pled facts to constitute a cause of action for Survival. Cross-Defendants argue that the Cross-Complaint fails in that Survival actions may only be brought if the deceased person did not die immediately from his or her injuries. (*See* Cal. Code of Civ. Proc. §377.34(a) and (b).) However, for purposes of ruling on a demurrer, demurrer admits provisionally for purposes of testing the pleading all material facts properly pleaded, however improbable they may be. (*Gervase v. Superior Court* (1995) 31 Cal. App. 4th 1218, 1224.) In deciding a demurrer, the sole question is whether a party has pled facts sufficient to state a valid cause of action - not whether such facts are ultimately true. All of the allegations in the Cross-Complaint must be accepted as true for the purpose of ruling on this Demurrer, even if the Court finds the allegations unlikely or improbable. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) To survive a demurrer, a complaint need only allege facts that state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged. (*C.A. v. William S. Hart Union H.S. Dist.* (2012) 53 Cal.4<sup>th</sup> 861, 872.) Here, Cross-Defendants rely heavily on the contention that Decedent died immediately and, therefore, removed any opportunity for any economic or non-economic damages to accrue between the incident and Decedent's death. There is no evidence nor any allegation in the Cross-Complaint that Decedent died instantly or immediately. The Cross-Complaint alleges that the acts or omissions of Cross-Defendant were the direct, legal and proximate cause of the harm and economic damages to Decedent. (Cross-Complaint 103-5.) Therefore, the Cross-Complaint has sufficiently pled facts to the Fifth Cause of Action of Survival and the Demurrer is overruled.

The Case Management Conference is continued to April 24, 2024 at 10:30a.m.

**CU-22-00225 Henandez v. WGS Group, Inc. et al.**

The Motion for Preliminary Approval of Class Action Settlement is GRANTED as requested.

The Final Fairness and Approval Hearing shall be held before this Court on July 10, 2024 at 10:30am in Department 1.

The case management is continued to July 10, 2024 at 10:30am in Department 1.

Page 3 of 4

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**FL-20-00019 Gomez v. Meneses**

The Review hearing is continued to April 3, 2024 at 1:30pm to allow for the completion of the Level 1 Investigation Report.

**END OF TENTATIVE DECISIONS**