



Superior Court of California County of San Benito

Tentative Decisions for February 10, 2025

Courtroom #1: Judge J. Omar Rodriguez

CU-24-00157 Tate vs. Armon

California Trucker's Safety Association's unopposed Motion for Leave to file Complaint in Intervention is GRANTED.

The court may grant leave to non-parties to join the plaintiff in claiming what is sought in the underlying complaint, to unite with the defendant to resist the plaintiff, or demand anything adverse to both parties. Courts have held that intervention is proper where 1) the non-party has a direct and immediate interest in litigation' 2) intervention will not enlarge the issues of the case; and 3) the reasons for intervention outweigh opposition by existing parties. (*Truck Ins. Exch. V. Sup. Ct. (Transco Syndicate 1)* (1997) 60 Cal. App. 4th 342, 346; Cal. Code of Civ. Proc. §387(a).)

Based on the proposed intervenor's pleadings, the proposed intervenor has made a proper showing that 1) they are a necessary party to this matter and has a pecuniary interest in this case through seeking subrogation remedies pursuant to Labor Code sections 3852 through 3856. Their lack of adequate representation is confirmed by the representation that they have a lien on judgment, but would have no way to protect their interests if the case is resolved through settlement. Their intervention would not enlarge or alter the issues of this case, and they have communicated with Defendant's carrier, and they are aware of the foregoing.

The Case Management Conference is continued to April 7, 2025 at 10:30 a.m.

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

CU-24-00236 **Grant, Jr. vs. Lawn, et al**

In light of the order permitting the filing of an amended complaint, the Case Management Conference is continued to April 7, 2025 at 10:30 a.m.

CU-24-00243 **Lacorte vs. Clark Pest Control of Stockton, Inc., et al.**

The filing of the First Amended Complaint has rendered the Demurrer and Motion to Strike as to the original Complaint moot.

The Case Management Conference is continued to April 7, 2025 at 10:30 a.m.

CU-24-00285 **Petition of Benjamin Harry Garabedian**

The Petition is APPROVED.

CU-24-00286 **Petition of Mojica, Mariah et al**

The Petition is APPROVED.

PR-13-00046 **In Re: Henry J. Mello 2011 Revocable Trust**

In light of the Petition for Proposed Order that was filed on February 6, 2025 by Mr. Killeen as Creditor, the matter is continued to February 24, 2025 at 10:30 a.m. to allow for timely service of the petition prior to a hearing on the merits.

PR-24-00030 **Conservatorship of Vinh Thi Weisser**

The Petition to Authorize Proposed Action is APPROVED.

PR-24-00056 **Estate of Sylvia Steele**

In light of the Status Report filed by Petitioner, the Status Conference is continued to August 11, 2025 at 10:30 a.m.

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PR-24-00116 **Estate of Jan Jaap Van Erven**

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 August 11, 2025 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-24-00117 **Estate of Robert R. Figueroa**

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 August 11, 2025 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-24-00118 **Conservatorship of Nessa Jo Davis**

The hearing is continued to April 7, 2025 at 10:30 a.m. to allow for the completion of the investigation.

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The Demurrer filed by Defendants EnviroServices, Keith Merrell, and Kelly Crestani to the Third Amended Complaint (“TAC”) is SUSTAINED with leave to amend. Plaintiffs have up to March 7, 2025 to file a Fourth Amended Complaint.

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.) A party may demur when any ground for objection to a complaint appears on the face of it, or from a matter from which the court is required or may take judicial notice. (Cal. Code of Civ. Proc. §430.30(a); *Levy v. Neilson* (2000) 83 Cal.App.4th 1061, 1063.) Demurrer lies where it appears on the face of the complaint that the plaintiff has not alleged facts sufficient to state a cause of action. (Cal. Code of Civ. Proc. §430.10(e); *James v. Sup. Ct.* (1968) 261 Cal.App.2nd 415.) 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.) 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. (Cal. Code of Civ. Proc. §430.30(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.) 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.)

First Cause of Action - Fraud

The elements for fraud are: (1) a representation; (2) that is false; (3) made with knowledge of its falsity; (4) with an intent to deceive; (5) with actual detrimental reliance; and (6) resulting damage. (*Lim v. The.TV Corp. Internat.* (2002) 99 Cal.App.4th 684, 694.) Furthermore, fraud must be pled with specificity. (*Small v. Fritz Companies Inc.* (2003) 30 Cal.4th 167, 182.) General and conclusory allegations are insufficient to support a claim for

fraud. (*Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1402.) Fraud constitutes “a serious attack on character, and fairness to the defendant demands that he should receive the fullest possible details of the charge in order to prepare his defense. Thus, the policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any material respect.” (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73.) “This particularity requirement necessitates pleading facts which “show how, when, where, to whom, and by what means the representations were tendered.” (*Ibid.* citing *Hills Trans. Co. v. Southwest* (1968) 266 Cal.App.2d 702, 707.) In *Stansfield*, the Court of Appeal upheld trial court’s decision to sustain the demurrer without leave to amend. The trial court has sustained a demurrer as to the fraud cause of action because the complaint did not allege who acted as the agent of what principal, when each false representation was made, and the causal connection between the misrepresentations and the harm to the complainants. (*Id.* at 74-75.)

Similarly, here, the TAC lacks the particularity (e.g. who, what where, when) that is required to adequately plead a fraud cause of action. For example, the TAC fails to allege specifically which defendant(s) forged the signature on the promissory note, when was the promissory note created or forged, when the representations were made regarding two million-dollar investment or when the representations were made to plaintiffs regarding the new machinery.

Fifth Cause of Action – Negligent Misrepresentation

Like fraud, negligent misrepresentation must be pled “with a high degree of meticulousness” and specificity. (*Robinson Helicopter Co. v. Dana Corp.* (2004) 34 Cal.4th 979, 993.) The elements of a cause of action for negligent misrepresentation are: (1) the misrepresentation of a past or existing material fact; (2) without reasonable ground for believing it to be true; (3) with intent to induce another’s reliance on the fact misrepresented; (4) justifiable reliance on the misrepresentation; and (5) damages. (*Apollo Capital Fund LLC v. Roth Capital Partners LLC*. (2007) 158 Cal.App.4th 926, 941.) Fure events are mere opinions and are not actionable as negligent misrepresentation. (*Pub. Employees’ Ret. Syst. V. Moody’s Investors Serv., Inc.* (2014) 226 Cal.App.4th 643, 662.)

Plaintiffs’ Fifth Cause of Action suffers from the same inadequacies as the First Cause of Action in that it fails to identify and distinguish between the various Defendants necessary

to plead a claim of negligent misrepresentation. For example, the Fifth Cause of Action alleges, “Defendants Crestani, Friebe, Mitchell, and Merrell represented, both orally and in writing...” without stating which Defendants made the statements, when the statements were made, which statements were in writing versus oral, nor is the specific harm alleged with respect to the misrepresentations. (TAC ¶123.)

Moreover, the TAC alleges future events to support Plaintiffs’ claims for negligent misrepresentations constitute future promises and cannot form the basis for a cause of action for negligent misrepresentation as a matter of law. (See TAC ¶123-124.)

Seventh Cause of Action - Nuisance

Pursuant to Civil Code section 3480 a public nuisance in California is one which injures someone’s health, prevents the free of use property and interferes with a community’s enjoyment of life or property. This cause of action must be pled with particularity (*Lopez v. Southern Cal. Rapid Transit Distr.* (1985) 40 Cal 3rd 780, 795) and a private party may only maintain an action for public nuisance if it specially injures him personally, in a manner different from the public generally. (*Cal. Dept. of Fish and Game v. Sup. Ct.* (2001) 197 Cal App 4th 1322, 1352.)

Plaintiffs have not specified public nuisance; they have just repeated the language of the statute. Allegations of a nuisance, pleading only broad, conclusory allegations of the purely theoretical impact of contamination are insufficient. There is no indication that any member of the public was impacted. (*Team Enterprises, LLC v. Western Inv. Real Estate Trust* (2010) 71 F. Supp. 2d 898,908). Consequentially, Plaintiffs have failed to plead sufficient facts under Civil Code § 3480 sufficient to state causes of action.

END OF TENTATIVE DECISIONS