

These are the tentative rulings for civil law and motion matters set for Tuesday, October 11, 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, Friday, October 7, 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. S-CV-0032113 Rose, Stephen, et al vs. Lennar Renaissance, Inc.

The motion for determination of good faith settlement is dropped from the calendar in light of the notice to withdraw the motion filed on September 30, 2016.

2. S-CV-0034577 Giannini, Remy, et al vs. Stiefel, Hank

The motion for summary judgment and/or summary adjudication is continued to October 18, 2016 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

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

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 42:

Plaintiffs' Motion to Compel Further Responses to Request for Production of Documents Propounded on Deuce and a Quarter KKLC, Inc.

Plaintiffs' request is granted in part. The request is granted as to request for production of documents (RPDs), set one, nos. 1, 2, and 13. The documentation is relevant to plaintiffs' allegations regarding the fraudulent creation of defendant's corporate form and transfers in order to avoid the underlying money owed to plaintiffs. Defendant shall provide further verified responses and responsive documents on or before October 14, 2016.

The request is also granted as to RPDs, set one, nos. 5 and 6. The court has carefully considered these requests in light of the allegations made in plaintiffs' second amended complaint. On balance, and in light of the liberal construction of the Discovery Act, the documentation is sufficiently tailored and relevant to the current litigation. Defendant shall provide further verified responses and responsive documents on or before October 14, 2016.

The request is denied as to RPDs, set one, nos. 7, 9, 10, 11, and 12. These RPDs are overbroad. They lack sufficient tailoring as to timelines or relationship to the allegations in plaintiffs' pleading, which also make the requests unduly burdensome and oppressive.

Both requests for sanctions are denied as the court finds substantial justification on the part of both parties in bringing and opposing the motion. (*Code of Civil Procedure section 2031.310(h).*)

Plaintiffs' Motion to Compel Responses to Request for Production of Documents Propounded on Kreative Kids KKLC, Inc.

Plaintiffs' request is granted. Defendant shall provide verified responses and responsive documents to request for production of documents, set one, on or before October 14, 2016. Both requests for sanctions are denied as the court finds substantial justification on the part of both parties in bringing and opposing the motion. (*Code of Civil Procedure section 2031.300(c).*)

Plaintiffs' Motion to Compel Further Responses to Request for Production of Documents Propounded on Amber Lashley

Upon review of the briefing filed by the parties, it appears the scope of the disputed discovery is limited to compelling defendant's further responses to request for production of documents (RPDs), set one, nos. 3 and 8. Plaintiffs' request as to these RPDs is granted. Defendant shall provide further verified responses and specifically identify the responsive documents for RPDs, set one, nos. 3 and 8. Both requests for sanctions are denied as the court finds substantial justification on the part of both parties in bringing and opposing the motion. (*Code of Civil Procedure section 2031.310(h).*)

4. S-CV-0035732 Fredette, Mark vs. Ford Motor Company

The motion for attorney's fees and costs is continued to October 27, 2016 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

5. S-CV-0036217 Alonso, Esmeralda vs. Hinkey, Jill

The motion for summary judgment is continued to October 13, 2016 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

6. S-CV-0036315 Auburn Woods I Homeowners Ass'n vs. State Farm Insurance

The appearances of the parties are required on the continued hearing for the three motions for summary judgment/summary adjudication.

7. S-CV-0036599 Wesley Holdings Ltd., et al vs. County of Placer , et al

Plaintiff's Motion for Leave to File Third Amended Complaint (TAC)

In the current request, plaintiff seeks leave to file a TAC. A short recitation of the procedural history in this case will assist in understanding its posture to properly review plaintiff's current motion. Plaintiff filed his original complaint more than a year ago on July 23, 2015, which alleged causes of action for negligent misrepresentation; breach of the implied covenant of good faith and fair dealing; unjust enrichment; conversion; and malice. He then filed a first amended complaint (FAC) on September 17, 2015, narrowing the causes of action to breach of fiduciary duty; conversion; and malice. The Placer County defendants successfully challenged the FAC with a demurrer. Plaintiff was afforded leave to file a further amended complaint to cure the deficiencies in the breach of fiduciary duty; conversion; and malice causes of action. Plaintiff filed his second amended complaint on January 8, 2016. He then improperly filed a TAC on April 8, 2016, expanding the defendants and causes of action in the case. The defendants, in the meantime, challenged the TAC. The court did not adjudicate the merits of the defendants' demurrers since plaintiff had improperly filed the TAC and the pleading was struck in its entirety on August 2, 2016. This left the SAC as the current operative pleading in this action.

Plaintiff then filed a series of motions for leave to amend his operative complaint. The first was filed on August 5, 2016, purporting to seek leave to file a SAC while requesting relief to file a fourth amended complaint (4thAC) in the substance of the motion. He then filed an amended motion on August 11, 2016, again purportedly seeking relief to file a SAC while substantively requesting to file a 4thAC. Plaintiff filed his final reiteration of his motion on August 31, 2016, seeking leave to file a TAC. The Placer defendants filed oppositions to two forms of plaintiff's motions.

The above recitation assists in analyzing the current request for two reasons. First, it helps to remind all parties of the importance of an operative pleading. A civil complaint frames and limits the issues to be adjudicated by the court and appraises the defendant of the basis upon which a plaintiff is seeking recovery. (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 211-212, superseded by statute on other grounds as stated in *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223.) "In fulfilling this function, the complaint should set forth the ultimate facts constituting the cause of action, not the evidence by which plaintiff proposes to prove those facts. [Citation.]" (*Ibid.*) Second, it helps remind all parties that the filing of a complaint is not the time in which a party begins to formulize the theories to assert a claim. This process occurs prior to the filing of a complaint. The challenges to the complaint and evidence gathering that occurs through discovery are

meant to narrow the focus of the litigation to viable legal claims and prepare the parties for trial. The court keeps this in mind in reviewing plaintiff's motion.

Returning to the substance of plaintiff's request, he seeks leave to file the TAC, asserting the TAC will fix clerical errors; add additional defendants; and assert two new causes of action. Plaintiff contends, in conclusory fashion, that the defendants will not be prejudiced by this amendment. The court may permit a party to amend its operative pleading in the furtherance of justice and on such terms as may be just. (*Code of Civil Procedure section 473(a)(1)*; *Code of Civil Procedure section 576*.) This request can be brought up to and including at the time of trial. (*Ibid*; *Singh v. Southland Stone, U.S.A., Inc.* (2010) 186 Cal.App.4th 338, 354-355.) The amendments, however, must not prejudice any opposing party. (*Douglas v. Superior Court (1989) 215 Cal.App.3d 155, 158.*)

Granting plaintiff leave to file his TAC at this time would be highly prejudicial to the defendants. As seen in the previous recitation, plaintiff's filings provide little precision or procedural certainty in this litigation. He continues to file procedurally improper pleadings and motions that the defendants, in turn, must respond to. Plaintiff's continuous filings have caused confusion and the consumption of additional resources as both the parties and the court attempt to decipher what pleading, in actuality, is the proper operative complaint and what relief is indeed sought by plaintiff. To reiterate, the filing of a complaint does not begin the process of developing a legal theory against a defendant. Yet, this is the approach taken by plaintiff. His current request does not address the pending demurrer brought by the Placer defendants or how the proposed amendments would remedy the issues raised in the demurrer. Instead, plaintiff proffers an approach to this litigation that leaves the defendants in an unending attempt to challenge a moving target.

Furthermore, the substance of the proposed TAC provides little to sufficiently frame the issues of this litigation. The proposal is replete with argument and conclusory statements rather than ultimate facts, which are necessary to properly frame causes of action. While plaintiff asserts there are only four causes of action, impliedly eliminating the malice claim, the substance of the complaint still contains allegations for malice. Plaintiff does not sufficiently explain why the amendments are necessary for the insertion of additional claims or why these claims were not originally raised in plaintiff's complaint. He also includes allegations for attorney's fees to recover for his time spent acting in propria persona. Simply put, the proposed TAC is disjointed and poorly drafted. Allowing it to be filed would prejudice the defendants with further delays in the proceedings as they would be forced to challenge a clearly deficient pleading. For these reasons, the motion is denied.

Placer County Defendants' Demurrer to the Second Amended Complaint (SAC)

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 SAC is reviewed keeping these principles in mind.

The first cause of action asserts a claim for breach of fiduciary duty against the Placer County defendants. Plaintiff alleges these defendants became settlors and trustees of the excess proceeds from the tax sale of real property, owing various fiduciary duties to him. (SAC ¶¶46-51.) Plaintiff goes on to allege the defendants breached these duties by failing to provide an independent audit; failing to act as a prudent investor; and failing to pay the return on excess tax sale proceeds to the trust. (*Id.* at ¶51.) The elements of a breach of fiduciary duty action include (1) the existence of a fiduciary duty, (2) breach of that duty, and (3) damages. (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086; *Mosier v. Southern California Physicians Ins. Exch.* (1998) 63 Cal.App.4th 1022, 1044.) A review of the SAC shows that plaintiff has failed to sufficiently allege all three elements. Initially, the allegations that sections of the Revenue and Taxation Code support the creation of a fiduciary relationship between the Placer County defendants and plaintiff are insufficient to support the existence of a fiduciary duty. The sections relied upon by plaintiff, R&T C§§4672, 4672.1, 4672.2, 4673, 4674, and 4675, present a statutory framework for local governmental agencies to proceed with tax sales of real property and how to handle any excess proceeds from the sale. The statutes do not provide for the creation of a fiduciary relationship between and taxpayer and the local governmental agency.

Even if the sections could be interpreted as creating a fiduciary relationship, the SAC still fails to allege any breach of that purported relationship. The allegations within the SAC are conclusory in nature and the statutory framework does not establish any requirements that local governmental agencies provide independent audits for taxpayer or invest excess proceeds for taxpayers. Furthermore, the allegations regarding the taking of excess tax proceeds are conclusory and contradict other allegations within the SAC where plaintiff alleges the excess proceeds were paid to plaintiff. (SAC ¶¶21, 51.)

Finally, plaintiff fails to sufficiently allege damages related to the first cause of action. To reiterate, the allegations are conclusory in nature and do not sufficiently identify the damages related to the Placer County defendants' purported fiduciary duties. (SAC ¶¶46-51.) Since none of the elements are sufficiently alleged, the breach of fiduciary claim fails.

In the second cause of action, plaintiff asserts a claim for conversion. A conversion action requires allegations of (1) plaintiff's ownership or right to possession of property, (2) defendant's wrongful act toward or disposition of the property, interfering with plaintiff's possession, and (3) damages to the plaintiff. (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 395.) When money is the subject of the conversion, the party must also plead a specific, identifiable sum. (*Ibid*; *Vu v. California Commerce Club, Inc.* (1997) 58

Cal.App.4th 229, 235.) The pleading deficiencies related to this claim are the insufficient allegations of a wrongful act on the part of the defendants that interfered with plaintiff's possession of the excess proceeds. Plaintiff also relies upon sections of the Revenue and Taxation Code to support this cause of action. The allegations, however, do not support any improper withholding of the excess proceeds under this statutory framework. Plaintiff alleges that it took 625 days for the Placer County defendants to release the excess proceeds funds to him, which is longer than the 365 days stated in R&T C§4674. Section 4674 refers to the timelines in R&T C§4675, which provides a minimum time period of at least one year before any distribution of excess funds is to take place. (R&T C§4675(e)(1), (2). Put another way, the statute prohibits an early distribution and requires the local governmental agency to wait at least one year before making any distribution in most cases. It does not require a distribution be made within a set period of time. Since the allegations are insufficient to establish any violations of these sections and the remaining allegations are insufficient to establish conversion, the second cause of action also fails.

The final issue to address is leave to amend. The trial court has discretion to sustain a demurrer with or without leave to amend. (*Martin v. Bridgeport Community Association, Inc.* (2009) 173 Cal.App.4th 1024, 1031.) The court presumes the facts alleged in the complaint and in the moving papers state the strongest case for the plaintiff. (see *Live Oak Publishing Co. v. Cohagan* (1991) 234 Cal.App.3d 1277, 1286.) It is the plaintiff who 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.) 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.) In this instance, plaintiff has failed to show an ability to amend the SAC. The factual allegations continue to be pleaded in a conclusory fashion and based upon statutes that do not support the claims alleged by plaintiff. Plaintiff does not identify any ability to remedy the deficiencies nor does he suggest any additional allegations that would support an amendment. Without such a showing, the court cannot make a determination that leave should be afforded. For these reasons, the demurrer is sustained without leave to amend.

8. S-CV-0036935 Whiteley, Alexis vs. Weber, Matthew, et al

Defendants' motion for terminating, evidentiary, and issue preclusion sanctions is granted in part. The request is denied as it pertains to terminating sanctions. The request is also denied as to issue preclusion sanctions since defendants have not sufficiently identified or noticed the issues which they seek preclusion. Defendant's request is granted as to evidentiary sanctions. Plaintiff Alexis Whiteley is precluded from presenting any evidence, including the presentation of testimony, regarding any of the matters addressed in defendants' discovery requests propounded on January 5, 2016.

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9. S-CV-0037121 N.CA. Co. Serv., Inc. vs. Rosenberg, Zachary Alexander

Plaintiff's six discovery motions are dropped from the calendar at the request of the moving party.

10. S-CV-0037155 Bush, David, et al vs. Tikaerb, Inc., et al

Defendants' motion for consolidation is granted. Placer Superior Court case David Bush v. Tikaerb, SCV-37155, and Roberto Cruz v. Tikaerb, SCV-37597, are consolidated with case no. SCV-37155 designated as the lead case.

11. S-CV-0037339 The Best Service Co. Inc. vs. Allopenna, Daniel R.

As an initial matter, the court notes that the original complaint filed with the court appears to be complete with all pages and exhibit attachments.

Plaintiff's motion for leave to file a first amended complaint is granted. Plaintiff shall file and serve its first amended complaint on or before October 14, 2016.

12. S-CV-0037457 Cramer, David vs. Otto, Lauren

Plaintiff's motion for reconsideration is denied. Plaintiff fails to make a showing of new and/or different facts, circumstances, or law as required under CCP§1008. Defendant's request for sanctions and vexatious litigant determination, raised in her opposing papers, are also denied.

13. S-CV-0037551 Wright, Richard, et al vs. Homeowners Support Grp, LLC

The motion to be relieved as counsel is dropped from the calendar at the request of the moving party.

14. S-PR-0006637 Davidson Neece, Barbara Ann - In re the Estate of

The motion for judgment on the pleadings is continued to October 18, 2016 at 8:30 a.m. in Department 40 to be heard in conjunction with the pending motion for summary judgment.

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