

These are the tentative rulings for civil law and motion matters set for Thursday, November 10, 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, Wednesday, November 9, 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-0065620 Capital One Bank (USA), N.A. vs Seoud, Lucy, et al

Plaintiff's unopposed motion for judgment on the pleadings is granted. A motion for judgment on the pleading, when brought by a plaintiff, may be granted where the complaint states facts sufficient to constitute a cause of action and the answer does not state facts sufficient to constitute a defense to the complaint. (CCP§438(c)(1)(A).) A review of the complaint shows that it sufficiently alleges a cause of action for breach of contract while the answer does not allege facts to constitute a defense to this claim.

Judgment is entered forthwith against defendant in the amount of \$3,435.29 and \$355 in costs. (CCP§438(h)(3).)

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

Cross-defendant Borge Construction's unopposed motion for 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.

3. S-CV-0030314 Belisle, David, et al vs. Centex Homes, et al

The reply filed by Centex in relation to its motion to strike plaintiff Rosa Ahlberg's Expert Witness Disclosure refers to an opposition. The court file, however,

does not reflect that any opposition to the motion was filed with the court. As the court file appears to be incomplete, plaintiff is requested to submit an endorsed filed copy of its opposition on Monday, November 14, 2016 by 11:00 a.m.

Centex's motion to strike plaintiff Rosa Ahlberg's expert witness disclosure is continued to November 17, 2016 at 8:30 a.m. in Department 43.

4. S-CV-0036820 Fiore, Linda vs. Smith, Tyler, M.D., et al

The motion for summary judgment is dropped from the calendar. A full dismissal was entered on November 2, 2016.

5. S-CV-0036834 Welter, Kyle vs. Dickinson, Bill C.

The motion to quash subpoena and motion to continue trial are dropped from the calendar. A notice of settlement of the entire case was filed on October 31, 2016.

The court confirms the OSC re dismissal currently set for January 3, 2017 at 8:30 a.m. in Department 40.

6. S-CV-0037206 Stoffle, Leland J. vs. Union Pacific Railroad Company

The pro hac vice application is dropped from the calendar at the request of the moving party.

7. S-CV-0037502 Villa, Jenifer vs. Bains, Raman, et al

The two demurrers are dropped from the calendar as defendants failed to remedy the issue regarding the insufficient payment of their first appearance fee.

8. S-CV-0037670 Gilchrist, Debra vs. Greene, Casey et al

Plaintiff's Motion for Order Disqualifying Counsel George F. Vogt, Jr. and Herrig & Vogt, LLP

Ruling on Objections

Defendant's objections nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, and 14 are sustained. The remainder of the objections are overruled.

Ruling on Motion

The motion is denied. The court has the inherent power to disqualify an attorney based upon its ability to control the conduct of ministerial officers and all other persons connected to the judicial proceeding. (CCP§128(a); *In re Charlisse C.* (2008) 45 Cal.4th 145, 159-161; *People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.*

(1999) 20 Cal.4th 1135, 1145.) An attorney may not use any knowledge or information acquired from the former client that would injure the client. (*People ex rel Deukmejian v. Brown* (1981) 29 Cal.3d 150, 155.) Conflicts arising from successive representation invoke issues of a client's confidentiality rather than an attorney's duty of loyalty. (*In re Charlisse C.* (2008) 45 Cal.4th 145, 159-161; *Flatt v. Superior Court* (1994) 9 Cal.4th 275, 283.)

When considering client confidentiality in successive representation, the court looks to see if there is a substantial relationship between the former and current representation. (*Ibid.*) The existence of a substantial relationship may be found by looking for a factual similarity, a legal similarity, and the nature and extent of the attorney's involvement in the cases. (*H.F. Ahmanson & Co. v. Salomon Bros.* (1991) 229 Cal.App.3d 1445, 1453; *Rosenfeld Construction Co. v. Superior Court* (1991) 235 Cal.App.3d 566, 576.) If the factors are sufficient to show a substantial relationship, then there is a presumption that the attorney had access to confidential information and disqualification is mandatory. (*In re Charlisse C.* (2008) 45 Cal.4th 145, 159; *Flatt v. Superior Court* (1994) 9 Cal.4th 275, 283.) Hence, there is no requirement that the former attorney actually possess confidential information under the substantial relationship test. (*H.F. Ahmanson & Co. v. Salomon Bros.* (1991) 229 Cal.App.3d 1445, 1453.) It is the former client that bears the burden of proof to show that a substantial relationship exists. (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 283.)

The plaintiff has failed to meet her burden in this case. The admissible evidence submitted in support of the motion fails to establish any relationship, let alone an attorney-client relationship, between plaintiff and Mr. Vogt or the Herrig & Vogt law firm. Plaintiff's admissible evidence also fails to establish any factual basis as to the similarity between the litigation and the alleged relationship between plaintiff and Mr. Vogt. Since plaintiff fails to meet her burden, the motion is denied.

Defendants' Demurrer to the Complaint

Ruling on Objections

Defendants' objections are sustained in their entirety.

Ruling on Demurrer

The demurrer 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.) The complaint, when read as a whole, alleges sufficient facts to support the thirteen causes of action. Defendants shall file and serve their answer and/or general denial on or before November 18, 2016.

9. S-CV-0037932 Vidalia Holdings, LP vs. Fox, Jesse, et al

Defendant's Demurrer to the First Amended Complaint (FAC)

Ruling on Request for Judicial Notice

Plaintiff's request for judicial notice is granted.

Ruling on Demurrer

The demurrer 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.) The FAC, when read as a whole, allege sufficient facts to support the three causes of action.

Defendant shall file and serve his answer and/or general denial on or before November 18, 2016.

10. S-CV-0037950 Regan, Jerry vs. Musolino Development Co., LLC, et al

Defendants' Motion for Leave to File a First Amended Answer

The unopposed motion is granted.

Defendants shall file and serve their first amended answer on or before November 14, 2016.

Plaintiff's Motion to Compel Further Responses to Discovery

Plaintiff's motion is denied. The court shall impose monetary sanctions against the party who unsuccessfully makes a motion to compel further responses to interrogatories unless there is a showing of substantial justification. (CCP§2030.300(d).) Plaintiff was unsuccessful in the current motion and has failed to establish a substantial justification for bringing the motion. For these reasons, the court imposes monetary sanctions against plaintiff in the amount of \$1,701.50.

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This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 43:

Defendant Charles Maes' Demurrer to the First Amended Complaint

Ruling on Request for Judicial Notice

Defendant's request for judicial notice of the first amended complaint is granted pursuant to Evidence Code section 452.

Ruling on Demurrer

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 FAC shows that the first, fifth, and ninth causes of action are deficient as the allegations do not sufficiently support claims for breach of employment contract; misappropriation of trade secrets; or UCL violations. Moreover, the allegations as currently pleaded in the second, third, fourth, sixth, and seventh causes of action appear to be preempted by the California Uniform Trade Secrets Act.

Plaintiff shall file and serve its second amended complaint on or before November 28, 2016.

Defendant Charles Maes' Motion to Strike the First Amended Complaint

Ruling on Request for Judicial Notice

Defendant's request for judicial notice of the first amended complaint is granted pursuant to Evidence Code section 452.

Ruling on Demurrer

The motion is granted with leave to amend. A party may file a motion to strike the whole pleading or a portion of a pleading. (CCP§435(b)(1).) A motion to strike may be granted to strike irrelevant, false, or improper matters in a pleading; or to strike a pleading not drawn in conformity with the laws of the state or an order of the court. (CCP§436(a), (b).) Upon review, the allegations challenged by defendant are improper as currently drafted. The allegations identified in defendant's notice of motion are stricken. Plaintiff, however, is afforded leave to amend these allegations.

Plaintiff shall file and serve its second amended complaint on or before November 28, 2016.

Defendant TDXNet's Motion to Dismiss the First Amended Complaint

Ruling on Request for Judicial Notice

Defendant's request for judicial notice of the first amended complaint is granted pursuant to Evidence Code section 452.

Ruling on Objections

Plaintiff's objections to defendant's joinder to the motion are sustained. The court also declines to entertain the joinder of defendant Michael Addiego.

Defendant's objections to the Purdy declaration are sustained in their entirety.

Ruling on Motion

The motion is granted solely as to the moving defendant TDXNet pursuant to Code of Civil Procedure sections 410.30(a) and 418.10(a)(2). The parties entered into a subcontract that included a forum selection cause in Article 10.8.2:

“Any other dispute that arises under or is related to this Subcontract as well as any dispute that the Parties do not agree to resolve according to the procedures set forth in the foregoing Article 10.8.1, which are not resolved after a mutual, good faith effort at the senior leadership levels of the Parties, may be decided through litigation. Any such action shall be filed only in a court of competent jurisdiction in Honolulu, Hawaii; provided, however, that the Parties each hereby expressly waive any rights to a trial by jury. The Parties agree that the governing law applicable to any such action shall be the Uniform Commercial Code (UCC) as interpreted by federal judicial bodies and administrative boards of contract appeals. To the extent that the UCC is not dispositive, the Parties agree that the laws of the State of Hawaii shall govern.” (Taylor declaration, Exhibit A.)

The express terms of the subcontract state that the parties will litigate issues arising from the subcontract in Honolulu, Hawaii. The execution of a forum selection clause by sophisticated commercial entities leads to the reasonable interpretation that their actions intended for the clause to apply to all claims within the scope of the forum selection clause. (*Cal-State Business Products & Services, Inc. v. Ricoh* (1993) 12 Cal.App.4th 1666, 1676-1678.) “ ‘No satisfying reason of public policy has been suggested why enforcement should be denied a forum selection clause appearing in a contract entered into freely and voluntarily by parties who have negotiated at arms’ length. ... forum selection clauses are valid and may be given effect[] in the court’s

discretion and in the absence of a showing that enforcement ... would be unreasonable.’ [Citation.]” (*Id.* at p. 1679.) The party challenging the forum selection clause must establish that enforcement would be unreasonable. (*Ibid.*) A review of the first amended complaint shows that the allegations and claims involving the moving defendant stem from the subcontract, thus invoking the forum selection clause in Article 10.8.2. Plaintiff has not sufficiently established that enforcement would be unreasonable in this instance. In light of this, the action against the moving defendant is properly brought in Hawaii, not California. For these reasons, the motion is granted and the action is dismissed as to defendant TDXNet, LLC.

12. S-CV-0038506 Campana, Rachel Marie- In Re the Petition of:

The petition for approval of transfer of structured settlement payment is granted as prayed.

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