Department 5 Civil L&M Notes for Wednesday, September 24, 2025

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8:30 a.m.

1-2 Milbourn et al v. Carrillo (CV63984)

Hearing on: a) Set Aside "Default" Judgment by Defendant
b) Writ of Attachment by Plaintiffs

This is a personal injury action filed by an alleged victim of sexual abuse. It is generally alleged by plaintiff #1 that defendant groomed her into a vulnerable position by using his family and "church" connections to access and sexually assault her when she was 14 years of age (or younger). Defendant was found guilty in a related criminal case (CRF56188), and is presently appealing that judgment (F082996).

Before the Court this day is defendant's motion to set aside what he describes as a "default" judgment, occurring as a result of surprise and excusable neglect on or about February 18, 2025. There is no opposition to the motion appearing in the court file, and no proof of service on plaintiffs accompanying the motion. Given the nature of the request, and plaintiffs' silence, this Court suspects that a continuance of the hearing will be warranted. However, it is worth noting that a review of the court file reveals a potential anomaly regarding defendant's right of access. See, *e.g., Smith v. Ogbuehi* (2019) 38 Cal.App.5th 453, 465-467; *Hoversten v. Superior Court* (1999) 74 Cal.App.4th 636, 641-642. That is not to necessarily prejudge the motion to set aside, but rather to invite perhaps some colloquy between the parties.

Also before the Court this day is plaintiff's application for a writ of attachment. There is no opposition to the motion appearing in the court file, despite there being both a proof of mail service and a proof of actual delivery in the court file. However, the application is incomplete as there is no AT-105 in the court file. Moreover, a writ of attachment is a prejudgment provisional remedy for cases involving fundamentally liquidated contract disputes, and only those relating to the defendant's trade, business or profession. See CCP §483.010; in accord, *Park v. NMSI, Inc.* (2023) 96 Cal.App.5th 346, 353-354; *Santa Clara Waste Water Co. v. Allied World Nat'l Assur. Co.* (2017) 18 Cal.App.5th 881, 886. This case does not seem to fit that description. This is not intended to prejudge the application, only to note that this might require a continuance as well.

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3 **Itria Ventures LLC v. Icenogle (CV65055)**

Hearing on: a) Default Prove-up (Reserved)

This is a business dispute involving a commercial loan secured by receivables. Ten (10) months following the commencement of the action, plaintiff filed a notice of settlement. Seventeen (17) months later, plaintiff requested that the action be returned to the "active" list because the settlement had apparently blown up. That request was granted. Shortly thereafter, plaintiff secured entry of defendant's default – which triggered the ministerial scheduling of a prove-up hearing. However, the trial court – on 06/06/2025 – ordered the default set aside. This prove-up hearing should have been ministerially vacated at the time, but was not. Thus, to the extent any party believes this prove-up hearing is still on calendar, it is not.

4 **Dotson v. Entrust Solutions Group (CV65234)**

Hearing on: a) Motion to Dismiss by Defendant

This is an employment dispute involving allegations of wage/hour violations and wrongful termination. Before the Court this day is a defense motion to dismiss following a putative settlement. The salient facts appear to be as follows:

- 04/12/23: Plaintiff, by and through his retained counsel, filed suit.
- 10/04/23: Counsel filed motion to withdraw; plaintiff as missing in action .
- 03/07/24: Counsel officially substituted out of the case; plaintiff in pro per.
- 05/09/24: Plaintiff and defendant filed joint notice of *unconditional* settlement; no OSC set (likely because parties elected not to use CM-200).
- 01/16/25: Defendant filed declaration and request for dismissal; court rejected.
- 07/18/25: Defendant filed motion to dismiss; plaintiff contends (in email attached as exhibit) that defendant failed to comply with settlement terms.

At the risk of putting too fine a point on this, the motion defendant probably should have filed is a §664.6 motion to enforce the settlement agreement – which presumably included an agreement to dismiss the action following specified preconditions. That would have avoided the "good cause" exception to the mandatory dismissal under CRC 3.1385(b). Alternatively, defendant could have filed a motion to have the action dismissed pursuant to CCP §583.420(a)(1)(B), if sufficient time was allowed for completion of the settlement terms (see CRC 3.1340). Either way, it does appear as though this Court will be able to assist the parties with ending the impasse.

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5-6 Taylor et al v. Larson Farms (CV65320)

Hearing on: a) Motion for *Personal* Protective Order by Defense Counsel
b) Motion to Continue Trial by Defendant

This is a personal injury action commenced by way of complaint more than two years ago. Although the details are not set forth in the operative pleading, plaintiff alleges in general that she was "standing in stagnant water caused by a leaking appliance" while visiting defendant's property, and slipped while trying "to unplug an extension cord that was daisy-chained to power a marijuana grow operation on the property."

Before the Court this day is an application by defense counsel for a "protective order" pursuant to CCP §128(a)(3) and (5) that plaintiff stop sending emails which contain "personal insults, profanities, and threatening language that serve no legitimate litigation purpose and have disrupted the orderly conduct of this case." Although the express authority to control conduct "before it" includes the power to both silence and remove persons from court proceedings (see *People v. Sully* (1991) 53 Cal.3d 1195, 1239-1240; *People v. Hayes* (1991) 229 Cal.App.3d 1226, 1233-1234), that authority does not empower trial courts to suppress free speech and require civil discourse outside of its presence. To the extent that defense counsel truly feels threatened by any of the messages received from plaintiff, counsel is free to file a petition for personal protection under CCP §527.6 – commonly referred to as a civil harassment restraining order. If harassment is established, conditions for contact can be put in place. In the interim, this Court invites plaintiff to consider *Crawford v. JPMorgan Chase Bank, N.A.* (2015) 242 Cal.App.4th 1256, for its holding that trial courts have the inherent authority to dismiss a case as a sanction in extreme situations, such as where one party engages in conduct that is clear, deliberate, offensive, and unlikely to be remedied by a lesser response. This Court cannot easily compel civility by a non-lawyer outside of its immediate presence, but it can dismiss a case if civility is not voluntarily adopted after fair warning. Plaintiff should consider this her fair warning.

Also before the Court this day is a defense motion to continue the trial – which is presently set for 10/20/2025. The basis for the request is CRC 3.1332(c)(7): a significant and unanticipated change in the status of the case. According to defense counsel, the MSJ was originally set to be heard one month prior to trial, giving the parties time to "evaluate the ruling, complete discovery and prepare for trial if necessary." Since the case was reassigned, the MSJ is now set to be heard only three days prior to trial, which obligates the defense to effectively prepare for trial at the same time that defendant is hoping to avoid trial altogether. Since the motion would dispose of the entire claim, defendant is correct that a hearing so close to trial creates an

inequity that was not of its doing. The trial date should have been moved to accommodate the new hearing date, but how far remains an open question. There is no response from plaintiff as to whether she opposes, or supports a brief trial continuance – but given the age of this case, and that fact that the trial date has been moved several times already, there is little justification for anything more than perhaps a month or two at best.

7-8 Prevost Car (US) Inc v. Bartholomew (CV65775)

Hearing on: a) Ex Parte Application to Confirm Bench Trial
b) Ex Parte Application for Leave to Serve Expert Witness Designation by Defendant

This is a breach of contract action involving labor and services for a 1999 Prevost Coach Motorhome. Plaintiff contends that defendant owes it $144,053.44. Defendant denies the allegation, and filed a cross-complaint for damages relating to alleged fraud, conversion, unfair practices, negligence and breach of contract.

A reservation was made on behalf of a party for an ex parte application to confirm whether this case would proceed as a bench trial or as a jury trial. There are no notes in the court file regarding who made the reservation, or why. There are no ex parte application papers on file in support of such a request, despite the requirement that "the applicant must file his or her moving papers in advance of the hearing." TCSC Rule 1.13.0. Since this case is presently set for a jury trial on 10/06/2025, perhaps the request for clarification has become moot.

Separately, before the Court this day is defendant Bartholomew's ex parte application for an order shortening time on a motion for leave to file a tardy expert witness designation. A party who fails to timely exchange may obtain leave to submit a tardy designation under CCP §2034.720 on such terms as may be just if the moving party's failure resulted from "mistake, inadvertence, surprise, or excusable neglect," the motion for relief was filed as soon as practical upon discovery, the new expert is made immediately available for deposition, no prejudice is shown to other parties, and the moving party has met and conferred with others to resolve the issue first. See CCP §2034.710(c); *Cottini v. Enloe Medical Center* (2014) 226 Cal.App.4th 401, 420-421. The papers submitted do not memorialize the required meet and confer effort, but otherwise permit an inference of inadvertence (depending on just what the expert is expected to testify about).

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9-10 Carrera et al v. Toste Insurance Services et al (CV66334)

Hearing on: a) Demurrer to FAC by Defendant Toste (only); joinder by Safeco
b) Continued CMC

This is a breach of contract and putative insurance "bad faith" case. Before the Court this day is a demurrer by defendant Toste Insurance Services, directed at the operative pleading (First Amended Complaint) and both causes of action asserted therein on *failure to state* grounds. Co-defendant Safeco filed a "joinder" in the demurrer, although Toste and Safeco enjoy very different roles.

A demurrer is a legal challenge to the adequacy of a pleading, not a challenge to the validity of the claims themselves. See *Greif v. Sanin* (2022) 74 Cal.App.5th 412, 426. The most common challenge happens to be the one asserted here, to wit: failure to state. See CCP §430.10(e). If upon a consideration of all the facts stated it appears that the plaintiff is entitled to any relief at the hands of the court against the defendants, the complaint will be held good, although the facts may not be clearly stated or may be intermingled with a statement of other facts irrelevant to the cause of action shown. *New Livable California v. Association of Bay Area Governments* (2020) 59 Cal.App.5th 709, 714; *Wittenberg v. Bornstein* (2020) 51 Cal.App.5th 556, 566. In other words, a demurrer for failure to state a cause of action must be overruled, if the pleading states, however inartfully, facts disclosing some right to relief. *Weimer v. Nationstar Mortgage, LLC* (2020) 47 Cal.App.5th 341, 352.
The salient facts as alleged are as follows:

- Plaintiff Carrera is the registered owner of the subject 2022 Chevrolet Camero;
- Plaintiff Valdez is making payments on the vehicle and for the car insurance;
- Using Toste, "plaintiffs" purchased auto insurance through Safeco;
- On 12/05/2023, Safeco cancelled the insurance policy;
- On 01/27/2024, the vehicle was stolen;
- On 02/06/2024, plaintiffs submitted an insurance claim for the vehicle;
- On 03/18/2024, the vehicle was recovered, but in poor (vandalized) condition.

Plaintiffs' first cause of action is for breach of contract: written and oral. Whether it is written, oral, or implied, the elements for breach of contract are: (1) parties capable of contracting, (2) mutual consent, (3) a lawful object, (4) sufficient cause or consideration, (5) plaintiff's performance or excuse for failure to perform, (6) defendant's breach, and (7) damage. Civil Code §§ 1550, 1605; *Stockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 453; *Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508, 525. Precision or *in haec verba* is not required, nor is attaching the actual contract if in writing. Pleading the legal effect (ie, enough

facts to show actionable breach of an enforceable agreement) is good enough. *Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 401-402. The only difference is that oral contracts require a specific allegation supporting consideration. Civil Code §1614; *Stevenson v. San Francisco Housing Authority* (1994) 24 Cal.App.4th 269, 284.

With regard to Toste, the breach is inadequately stated. As the brokerage responsible for binding the policy, plaintiffs have not pled a basis for any ongoing duty on its part to update addresses, warn of future coverage concerns, or the like. According to plaintiffs, Toste was sending out emails that Carrera thought were spam, but plaintiffs do not allege that Toste had a contractual duty to only communicate via the US postal service. Plaintiff Valdez admits that he received the email from Toste warning that the policy would be cancelled, but that he elected not to take the warning seriously. The breach alleged as to Safeco is self-explanatory: failure to pay a righteous claim, assuming that the cancellation was either defective or pretextual. That appears to be an issue for discovery more than the pleadings, which might explain why Safeco did not file its own demurrer.

Plaintiffs' second cause of action is for the tort of negligence. The allegations are unclear as to what non-contractual duty of care Toste owed to the plaintiffs. As for Safeco, the non-contractual duty of care would be "bad faith" even though the allegations are not well pled.

11 <u>Whitehouse v. Boehrer (CV66990)</u>

Hearing on: a) Default Judgment (Quiet Title)

This is an action to halt a nonjudicial foreclosure, cancel a deed of trust, remove a cloud, and quiet title to certain real property located within this county which was allegedly encumbered via false representations and possible dependent adult abuse. The matter is set for a default prove-up, though a review of the court file reveals a possible anomaly regarding the entry of default and counsel's obligation as set forth in *Fasuyi v. Permatex* (2008) 167 Cal.App.4th 681, 702. Assuming that issue is a non-issue, hearing can proceed and defendant is free to participate. See CCP §473(b) and 764.010; *Bailey v. Citibank, NA* (2021) 66 Cal.App.5th 335, 348; *Harbour Vista, LLC v. HSBC Mortgage Services Inc.* (2011) 201 Cal.App.4th 1496, 1502-1505.

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12-13 Starks v. Curtis Creek Elementary School District (CV67134)

Hearing on: a) Motion to Enter Default Judgment by Plaintiff
b) Demurrer to FAC by Defendant

This is a special proceeding commenced by way of a single operative pleading styled as a "writ of administrative mandate and monetary relief." It was noted that the pleading was ambiguous in that it appeared to combine a complaint for damages (ie, wrongful discharge or retaliation) with a writ of mandamus (ie, CCP §1085 or CCP §1094.5). Since then, petitioner filed a First Amended Complaint alleging what amounts to reputational harm resulting from the "tarnishment" that has resulted from being placed on paid leave, being removed prematurely from the classroom setting, and from the decision not to re-engage plaintiff. The operative pleading still refers, however, to "unlawful termination" and "retaliation" as underscoring the theory of wrongdoing.

Before the Court this day is plaintiff's motion to enter a default judgment against defendant. This motion was filed on 08/29/2025, shortly after this Court declined to enter plaintiff's proposed JUD-100. The motion purports to be based on defendant's failure to timely respond to the operative pleading, and yet a review of the court file reveals a response (a demurrer) to the operative pleading filed 08/19/2025. The fact that the demurrer was filed one day beyond the 30-day period to respond is of no consequence since plaintiff elected not to file a motion to strike. See *Fiorentino v. City of Fresno* (2007) 150 Cal.App.4th 596, 605; *Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 141; *Amacorp Industrial Leasing Co., Inc. v. Robert C. Young Assocs., Inc.* (1965) 237 Cal.App.2d 724, 729-730. Even if, as plaintiff alleges, defendant failed to substantially comply with the pre-filing meet and confer requirement set forth in CCP §430.41, that failure "shall not be grounds to overrule a demurrer." In fact, failure to comply with the meet and confer requirement can only delay the ruling and, in some cases, expose a party to monetary sanctions under CCP §128.5; it does not result in any automatic striking of the response and putting the party in default jeopardy.

Also before the Court this day is that very defense demurrer. A demurrer is a legal challenge to the adequacy of a pleading, not a challenge to the validity of the claims themselves. See *Greif v. Sanin* (2022) 74 Cal.App.5th 412, 426. The most common challenges happen to be the ones asserted here, to wit: failure to state and uncertainty. CCP §§ 430.10(e) and (f). As to the former, if upon a consideration of all the facts stated it appears that the plaintiff is entitled to any relief at the hands of the court against the defendants, the pleading will be held good, although the facts may not be clearly stated or may be intermingled with a statement of other facts irrelevant to the cause of action shown. *New Livable California v. Association of Bay*

Area Governments (2020) 59 Cal.App.5th 709, 714; *Wittenberg v. Bornstein* (2020) 51 Cal.App.5th 556, 566. In other words, a general demurrer for failure to state a cause of action must be overruled, if the pleading states, however inartfully, facts disclosing some right to relief. *Weimer v. Nationstar Mortgage, LLC* (2020) 47 Cal.App.5th 341, 352. As to the latter, a demurrer for uncertainty will be sustained only where the pleading is so bad that the defendant cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. See *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695; *Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822; *Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135; *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616. Before engaging in any substantive discussion regarding the various claims potentially subsumed within the operative pleading, it is necessary to confirm the proper stipulation to proceed on the merits.

14 **Knowlton v. Speeth (CV67334)**

Hearing on: a) Motion to Strike Punis by Defendant

This is a personal injury action arising out of an automobile accident occurring on Ferretti Road in Groveland. Before the Court this day is a defense motion to strike the prayer (and supporting allegations) for punitive damages. Plaintiff contends that exemplary damages are warranted in this case because defendant was "operating his vehicle while intoxicated, with a blood alcohol content well above the legal limit … driving at an excessive speed, failed to maintain control of his vehicle, and entered oncoming traffic." Complaint Para 9. Defendants says this is not enough.

Contrary to popular folklore, there is no true heightened pleading requirement for a punitive damage prayer based on malice or oppression (there is for fraud) beyond the standard rule that bare conclusions of law without factual support are insufficient. See *Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 650; *Monge v. Superior Court* (1986) 176 Cal.App.3d 503, 510. There is, however, a heightened level of proof needed to withstand scrutiny, requiring evidence that is "sufficiently strong to command the unhesitating assent of every reasonable mind." *Amerigraphics, Inc. v. Mercury Cas. Co.* (2010) 182 Cal.App.4th 1538, 1559. Stated another way, the evidence must be of such degree as to leave "no substantial doubt" that defendant's conduct was despicable and indicative of conscious disregard for the safety of others. *Scott v. Phoenix School, Inc.* (2009) 175 Cal.App.4th 702, 716; *Barton v. Alexander Hamilton Life Ins. Co. of America* (2003) 110 Cal.App.4th 1640, 1644. Due to the higher level of proof needed, most trial courts will factor in this concern at the pleading stage.

The two leading opinions on punitive damages in drunk driving cases are *Taylor v. Superior Court* (1979) 24 Cal.3d 890 (consuming alcohol while driving), and *Dawes v. Superior Court* (1980) 111 Cal.App.3d 82 (swerving in and out of lanes amongst pedestrians) – and collectively stand for the proposition that merely driving while intoxicated is not enough for punitive damages, but that driving in a way which enhances an appreciable risk to others probably is. To clarify the issue, the Legislature followed these two cases with the additional "despicable" requirement for non-intentional malice claims under §3294. See *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210 [racing at a high rate of speed did not alone demonstrate malice, particularly where defendant showed some effort to avoid impact]. The Court of Appeal in *Sumpter v. Matteson* (2008) 158 Cal.App.4th 928, 936, revisited this issue – albeit not at the pleading stage. In that case, the matter was tried to a jury which declined to award punitive damages. Plaintiff appealed, asserting that the jury was required to award punitive damages on the state of the evidence. The Court noted that the evidence of malice was sufficient: "We are mindful that Matteson ingested drugs right before he left his house, that by his own admission, Matteson knew he was under the influence when he got into his car, and that Matteson knew the light was red for over a quarter mile before he entered the intersection, yet he never braked, choosing instead to take the risk and run the red light. Such conduct reflects a conscious disregard for the rights and safety of others and would have supported the imposition of punitive damages in this case." *Id*. However, the Court further noted that the trier of fact is free to weigh the evidence and make its own determination as to punitive damages. While *Taylor*, *Lackner* and *Dawes* teach us that causing an accident while under the influence is, alone, not enough to support an award of punitive damages – no court has really answered the question "what more is needed?" Based on *Sumpter* though, that line is in close proximity to (1) knowing you are intoxicated and (2) driving in a way which increases the risk of others because of your lowered judgment/inhibition/control. Such a line is consistent with *Taylor*, *Dawes* and *Lackner*, and can be meaningfully applied to distinguish one DUI accident from another.

15 **<u>Marriage of Darrow (FL17941)</u>**

Hearing on: a) Debtor's Examination