

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar  
Judge: HONORABLE RICHARD H. DUBOIS  
Department 16

400 County Center, Redwood City  
Courtroom 7A

Friday, August 10, 2018

**NOTICE TO ALL COUNSEL**

Until further order of the Court, no endorsed-filed "courtesy copy" of pleadings is required to be provided to the Law and Motion Department.

IF YOU **INTEND TO APPEAR** ON ANY CASE ON THIS CALENDAR YOU MUST DO THE FOLLOWING:

1. YOU MUST CALL (650) 261-5019 BEFORE 4:00 P.M. TO INFORM THE COURT OF YOUR INTENT TO APPEAR.
2. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do both items 1 and 2 will result in no oral presentation.

**Notifying CourtCall with your intent to appear is not an alternative to notifying the court.**

All Counsel are reminded to comply with California Rule of Court 3.1110. The Court will expect all exhibits to be tabbed accordingly.

Case

Title / Nature of Case

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9:00

LINE: 1

16-CIV-02469 TELIGENZ TECH SOLUTIONS PVT. LTD. VS. TORA HOLDINGS,  
INC., ET AL.

TELIGENZ TECH SOLUTIONS PVT. LTD.  
TORA HOLDINGS, INC.

TERANCE D. ORME  
JEREMY SUGERMAN

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TELIGENZ TECH SOLUTIONS PVT. LTD.'S MOTION For JUDGMENT ON THE  
PLEADINGS AND SANCTIONS PURSUANT TO CCP 128.5

**TENTATIVE RULING:**

Plaintiff / Cross-Defendant TELIGENZ TECH SOLUTIONS PVT, LTD.'s Motion for Judgment on the Pleadings is DENIED in its entirety. Plaintiff's motion suffers from multiple procedural defects, including untimeliness (Code Civ. Proc. § 438(e)) and failure to meet and confer (Code Civ. Proc. § 439(a)).

The motion fails on its merits. The Court finds that Defendant / Cross-Complainant TORA HOLDINGS, INC.'s First Cause of Action for Breach of NDA and Second Cause of Action for Breach of Settlement Agreement and Release are sufficiently pled.

With respect to the First cause of action for breach of the NDA, Plaintiff asserts that it was relieved of or excused from performance by Defendant's own breach of the NDA. However, this Court has already disposed of Plaintiff's claim for Defendant's breach of the NDA on summary judgment, finding that no breach occurred. Defendant's Cross-Complaint alleges that the NDA required Plaintiff to return all of Defendant's confidential information, which Plaintiff has not done. This cause of action is, therefore, sufficiently pled.

With respect to the Second cause of action for breach of the Settlement Agreement and Release, Plaintiff asserts that the Release does not apply to Defendant. Plaintiff cites to a number of cases which stand for the proposition that a third-party beneficiary who was not expressly named in a Release may nonetheless be considered a Releasee if the intent of the contracting parties is clear. Plaintiff then argues that the converse should also be true: that a third party who is **expressly identified** in a Release may nonetheless *not* be a Releasee, depending upon the intent of the parties. Plaintiff's contractual interpretation is incorrect. Defendant, an admitted "related entity" to MedPassage and who was specifically named in the Release, was clearly intended to benefit from the Release. Plaintiff asks the Court to look at a string of emails between its CEO and the CEO of MedPassage to determine otherwise; however, on this type of

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motion, consideration of extrinsic evidence is not permitted.

Plaintiff further relies on a prior order of this Court overruling Defendant's demurrer to the Second Amended Complaint. At the time, the Court found that *based on the allegations of Plaintiff's SAC*, the Release did not apply to bar Plaintiff's claims. However, the Order made no findings of ultimate fact; it merely found that certain of Plaintiff's claims were sufficiently pled on the face of the SAC. Defendant's Cross-Complaint now specifically alleges that the conduct giving rise to this action occurred, at least in part, prior to the execution of the Release. Plaintiff admitted as much in its Answer. This cause of action is, therefore, sufficiently pled.

Plaintiff's Request for Judicial Notice is GRANTED as to Exhibit 1 and DENIED as to the remainder. Defendant's Request for Judicial Notice is GRANTED as to Exhibits A-I. Judicial notice is GRANTED as to Exhibits J and K insofar as these documents were filed with the Court and contain certain admissions made by Plaintiff.

Plaintiff's request for sanctions pursuant to Code Civ. Proc. § 128.5 is DENIED. Again, this motion suffers from multiple procedural defects, including the failure to provide a 21-day safe harbor period, failing to file as a separately noticed motion, and failing to set forth in the Notice of Motion the specific sanctions sought. The motion further fails on its merits, as the Court does not find the Cross-Complaint "totally and completely without merit or for the sole purpose of harassing an opposing party".

Defendant's request for monetary sanctions against Plaintiff and its counsel is GRANTED in the amount of \$850.00 (calculated at two hours to respond to Plaintiff's sanction motion), which amount is to be paid no later than August 17, 2018. Code Civ. Proc. § 128.5(f)(1)(C).

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 2

17-CIV-03956 TERRAPIN 1250 BAYSHORE PROPERTY OWNER, LLC VS. HOTEL  
CONNECTIONS, INC., ET AL.

TERRAPIN 1250 BAYSHORE PROPERTY OWNER, LLC  
HOTEL CONNECTIONS, INC.

DAVID A. BOVINO  
CHRISTOPHER COOKE

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HOTEL CONNECTIONS, INC.'S DEMURRER TO FOURTH CAUSE OF ACTION IN  
PLAINTIFF'S FIRST AMENDED COMPLAINT

**TENTATIVE RULING:**

The demurring party failed to file a declaration, as required by CCP §430.41(a)(3), showing that the parties met and conferred, in person or by telephone, for the purpose of determining whether an agreement could be reached to resolve the objections to be raised in the demurrer. Consequently, the hearing on the demurrer is continued to September 11, 2018 at 9:00 a.m. in the Law and Motion Department so that the parties may meet and confer.

The demurring party is required to file, no later than 7 days prior to the new hearing date, a code-compliant declaration stating either (1) the parties have met and conferred and (a) the parties have resolved the objections raised in the demurrer, which shall be taken off calendar or (b) the parties did not reach an agreement resolving the objections raised in the demurrer or (2) the party who filed the pleading subject to demurrer failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. If the moving party fails to file and serve the declaration demonstrating compliance with the requirements of Section 430.41, the demurrer will be stricken as procedurally improper.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties

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9:00

LINE: 3

17-CIV-03956 TERRAPIN 1250 BAYSHORE PROPERTY OWNER, LLC VS. HOTEL  
CONNECTIONS, INC., ET AL.

TERRAPIN 1250 BAYSHORE PROPERTY OWNER, LLC  
HOTEL CONNECTIONS, INC.

DAVID A. BOVINO  
CHRISTOPHER COOKE

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LOUIS I. LAMATIAN, ESQ. JOINDER IN HOTEL CONNECTIONS, INC.'S NOTICE ON  
DEMURRER

**TENTATIVE RULING:**

The demurring party failed to file a declaration, as required by CCP §430.41(a)(3), showing that the parties met and conferred, in person or by telephone, for the purpose of determining whether an agreement could be reached to resolve the objections to be raised in the demurrer. Consequently, the hearing on the demurrer is continued to September 11, 2018 at 9:00 a.m. in the Law and Motion Department so that the parties may meet and confer.

The demurring party is required to file, no later than 7 days prior to the new hearing date, a code-compliant declaration stating either (1) the parties have met and conferred and (a) the parties have resolved the objections raised in the demurrer, which shall be taken off calendar or (b) the parties did not reach an agreement resolving the objections raised in the demurrer or (2) the party who filed the pleading subject to demurrer failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. If the moving party fails to file and serve the declaration demonstrating compliance with the requirements of Section 430.41, the demurrer will be stricken as procedurally improper.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties

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9:00

LINE: 4

17-CLJ-03133 WELLS FARGO BANK, N.A. VS. JOHN C. GOINS, JR.

WELLS FARGO BANK, N.A.  
JOHN C. GOINS

BRIAN N WINN  
PRO/PER

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MOTION TO DEEM FACTS AS ADMITTED AND REQUEST FOR ATTORNEY FEES OF \$200.00 PLUS FILING FEE OF \$60.00 [CRC §3.1702, CCP§§2023.010 AND 2033.280(b)] by WELLS FARGO BANK, N.A.

**TENTATIVE RULING:**

Plaintiff's motion to deem facts admitted is GRANTED. The genuineness of any documents and the truth of any matters in the requests for admission are deemed admitted.

The request for sanctions is also granted pursuant to CCP §2033.280(c). Defendant shall pay plaintiff \$260 within 14 days.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

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9:00

LINE: 5

17-CLJ-05614 DISCOVER BANK VS. BRUCE A. PARKER

DISCOVER BANK  
BRUCE A. PARKER

IMINDERJIT POONI  
DUSTIN A. YOUNG

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DUSTIN A. YOUNG'S MOTION TO BE RELIEVED AS COUNSEL FOR DEFENDANT

**TENTATIVE RULING:**

Dustin Young's Motion to Be Relieved as Counsel for defendant is GRANTED, contingent on Defense Counsel appearing at the hearing (appearance by court call is sufficient) and providing evidence that he confirmed his client's address in the last 30 days or made sufficient efforts to do so.

Defense counsel uses all of the required forms, and states in general terms that there has been a significant breakdown in the attorney-client relationship. Furthermore, granting this motion will not result in prejudice to Defendant because there is no trial date set as of August 6, 2018.

However, Defense counsel has not properly served all parties to the action. He has chosen to serve his client by mail but does not include with the proof of service a Declaration that the Defendant's address has been confirmed within the last 30 days in accordance with CRC 3.1362(d)(1). Therefore, Defense counsel's motion to be relieved as counsel is made contingent upon his providing evidence that he confirmed his clients address in the last 30 days or made sufficient efforts to confirm the address.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, ATTORNEY is directed to prepare, circulate, and submit a written order on the appropriate judicial council form for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

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9:00

LINE: 6

17-CLJ-05846 WELLS FARGO BANK, N.A. VS. BRADY B VIRAY

WELLS FARGO BANK, N.A.  
BRADY B. VIRAY

LAURA M. HOALST  
PRO/PER

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MOTION TO DEEM FACTS AS ADMITTED AND REQUEST FOR ATTORNEY FEES OF \$200.00 PLUS FILING FEE OF \$60.00 [CRC §3.1702, CCP§§2023.010 AND 2033.280(b)] by WELLS FARGO BANK, N.A.

**TENTATIVE RULING:**

Plaintiff's motion to deem facts admitted is GRANTED. The genuineness of any documents and the truth of any matters in the requests for admission are deemed admitted.

The request for sanctions is also granted pursuant to CCP §2033.280(c). Defendant shall pay plaintiff \$260 within 14 days.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

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9:00

LINE: 7

18-CIV-01456 ETI LEVI-BARKAI VS. LEWIS BREAD COMPANY, LLC, ET AL.

ETI LEVI-BARKAI  
LEWIS BREAD COMPANY, LLC

HEE J. KIM  
RAVIV NETZAH

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DEFENDANTS' DEMURRER

**TENTATIVE RULING:**

Defendants Lewis Bread Company, LLC, Micha Lewis, and Dalit Lewis's Demurrer to Plaintiff Eti Levi-Barkai's 3-22-18 Complaint is ruled upon as set forth below.

The Demurrer to the Fourth Cause of Action for breach of fiduciary duty is SUSTAINED WITH LEAVE TO AMEND. Plaintiff cites authority stating that partners, joint venturers, and shareholders owe fiduciary duties, as do corporate officers/directors, to shareholders. See, generally, CACI 4100. The Complaint here alleges, in a conclusory manner, that Micha and Dalit Lewis owed fiduciary duties to Plaintiff as "majority and controlling shareholders, business partners, principals, joint venturers, or corporate officers or directors." This conclusory allegation, however, does not appear supported by the underlying factual allegations. Specifically, the Complaint alleges that although the individual parties were partners/joint venturers at one point in time, the partnership ended and was superseded by a written Employment Agreement between Plaintiff and the LLC. Although the Employment Agreement gave Plaintiff the right to purchase an interest in the business, as alleged, Plaintiff never did, because the individual defendants allegedly refused to allow Plaintiff to perform a due diligence analysis of the LLC's records. Thus, as alleged, Plaintiff never became a shareholder/owner of the business. The Employment Agreement refers to Plaintiff as an employee, which generally, without more, does not give rise to a fiduciary relationship. The Complaint does not appear to allege the existence of shareholder relationship, a partnership, an agency relationship, or any other relationship giving rise to fiduciary duties. CACI 4100.

The Demurrer to the Fifth Cause of Action for "fraud-false promise" is OVERRULED. Plaintiff notes the general rule that corporate directors/officers may be held liable for tortious conduct. *PMC, Inc. v. Kadisha* (2000) 78 Cal.App.4th 1368, 1379-80. The Complaint alleges that after Micha and Dalit Lewis breached the parties' oral partnership agreement, they spoke with Plaintiff and made false promises with respect to Plaintiff's options going forward in terms of retaining an interest in the business, including a false promise that

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Plaintiff would be able to later purchase an ownership interest in the business. Plaintiff alleges that in reliance on these misrepresentations, she agreed to enter into an Employment Agreement with the LLC, through which Plaintiff forfeited her "vested equity interest" in the business in exchange for the promised right to purchase an interest in the future. Plaintiff alleges these representations were made without any intention of ever actually allowing Plaintiff to purchase an ownership interest. At the pleading stage, this cause of action is sufficiently plead.

The Demurrer to the Sixth Cause of Action for "intentional interference with contractual relations" is SUSTAINED WITH LEAVE TO AMEND. This cause of action applies to *third parties* to a contract who intentionally interfere with a party's performance. *Pac. Gas & Elec. Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1125. It does not apply to parties to a contract, or their agents. *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 514; *Shoemaker v. Myers*, 52 Cal.3d 1, 24 (1990) (corporate agents and employees acting for and on behalf of a corporation cannot be held liable for inducing a breach of the corporation's contract; *Wise v. Southern Pacific Co.* (1963) 223 Cal.App.2d 50, 72-73). Neither party here, in their briefing, discusses the extent to which this cause of action applies in the context of a limited liability company. The Lewis's argue that, as alleged in the Complaint, when they purportedly caused the LLC to breach Plaintiff's Employment Agreement, they were acting solely as *agents of the LLC*, and thus cannot be deemed to be third parties who tortiously interfered with that agreement. See *Shoemaker, supra*, 52 Cal.3d at 24. To the extent the Lewis's were allegedly acting in a capacity other than as the LLC's agent(s), that allegation should be made clear.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, DEMURRING PARTY is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

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9:00

LINE: 8

18-CIV-02331 MARIA CASTILLO VS. WELLS FARGO BANK, N.A., ET AL.

MARIA CASTILLO  
WELLS FARGO BANK, N.A.

MARIA CASTILLO

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WELLS FARGO N.A.'S DEMURRER TO COMPLAINT

**TENTATIVE RULING:**

The demurrer is continued to August 21, 2018 at 9:00 AM in the Law and Motion Department.

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9:00

LINE: 9

18-CIV-03487 BRETT HAMILTON, ET AL. VS. BAKIRMAN DEVELOPMENT GROUP

BRETT HAMILTON  
BAKIRMAN DEVELOPMENT GROUP

CHRISTOPHER HILL

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PLAINTIFF'S APPLICATION ON PLAINTIFF'S MOTION TO EXPUNGE MECHANIC'S LIEN

**TENTATIVE RULING:**

The Motion to Expunge Mechanic's Lien is DROPPED. This motion appears to have been entered in error as no such motion has been filed at this time. Instead, Petitioners have filed a Motion to Strike and Release Wrongful Lien. That motion will be heard separately.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 10

18-CIV-03487 BRETT HAMILTON, ET AL. VS. BAKIRMAN DEVELOPMENT GROUP

BRETT HAMILTON  
BAKIRMAN DEVELOPMENT GROUP

CHRISTOPHER HILL

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PETITIONERS' MOTION TO STRIKE AND RELEASE WRONGFUL LIEN

**TENTATIVE RULING:**

The Motion of Petitioners Brett Hamilton and Laura Hamilton ("Petitioners") to Strike and Release Wrongful Lien is CONTINUED to September 12, 2018 at 9:00 a.m. in the Law and Motion Department.

Petitioners previously brought an ex parte application on July 10, 2018, seeking an Order to Show Cause as to why the Mechanic's Lien filed by Respondent Bakirman Development Group ("Respondent") should not be stricken and released. Instead of issuing the Order to Show Cause at that time though, the court issued an Order for a hearing on noticed motion. (See court's July 10, 2018 order.) Pursuant to Code of Civil Procedure section 765.010, "[a] person or entity whose property is subject to a lien or encumbrance in violation of this section may petition the superior court of the county in which the person or entity resides or in which the property is located for an order, which may be granted ex parte, directing the lien or other encumbrance claimant to appear at a hearing before the court and show cause why the lien or other encumbrance should not be stricken and other relief provided by this article should not be granted." Accordingly, the court finds at this time that Petitioners have established grounds for an Order to Show Cause, and GRANTS the motion as to an Order to Show Cause.

The court does not reach the merits of whether the lien should be stricken or released at this time. The court's July 10, 2018 order provided that Petitioners were to file and serve their motion by July 23, 2018. Petitioners did not file their motion papers until July 24, 2018, and furthermore did not file and serve their exhibits until they filed a Notice of Errata on July 30, 2018, one week late. Given that Respondent's opposition was due August 3, 2018, this is inadequate notice and service.

It is also unclear whether Respondent was properly served. Petitioners appear to have served the papers only on Respondents' counsel in the related case, and not Respondent directly. However, since there has been no appearance by Respondent in this action, it has not been established that the same counsel also represent Respondent in this

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action. Thus, Respondent should also be served directly.

Accordingly, Petitioners are to submit a proposed Order to Show Cause to Department 16 by August 17, 2018. Petitioners may look at Judicial Council Form MC-101 for guidance. Although this form pertains to striking lien's or other encumbrance's on the property of a public officer or employee under C.C.P. section 765.010, it is instructive as to what should be included in a proposed Order to Show Cause under this statute.

Once the Order to Show Cause has been signed, Petitioners are then to serve Respondent (and Respondent's potential counsel) directly with the Order to Show Cause and all papers filed by Petitioners concerning this petition/motion.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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POSTED: 3:00 PM