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

Thursday, November 8, 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

9:00

LINE: 1

17-CIV-02395 WELLS FARGO BANK, N.A. VS. RICHARD FLESKES

WELLS FARGO BANK, N.A. ALEXA A. CHRISOS
RICHARD FLESKES

RICHARD FLESKES' MOTION TO VACATE DEFAULT JUDGMENT
TENTATIVE RULING:

Defendant's unopposed motion to vacate default judgment and entry of default is GRANTED.

Defendant shall file and serve his answer to the complaint on or before November 15, 2018.

Defendant's concurrent motion to quash the summons is denied. The summons was properly served by substituted service.

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 is required as the tentative ruling affords sufficient notice to the parties. Prevailing party shall provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

9:00

LINE: 2

17-CIV-03004 EMILIO LUNA FLORES VS. YEVGENIY KORAVITSYN, ET AL.

EMILIO LUNA FLORES	ARASH KHORSANDI
YEVGENIY KORAVITSYN	KEVIN J. GRAY

DEFENDANTS YEVGENIY KORAVITSYN AND ESFIR KOROVITSYNA'S MOTION TO COMPEL PLAINTIFF'S FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET TWO AND REQUEST FOR PRODUCTION OF DOCUMENTS, SET TWO; AND MONETARY SANCTIONS REQUEST

TENTATIVE RULING:

Defendant's motion to compel further responses to Interrogatories (Set Two) and Request for Production of Documents (Set Two) is DENIED.

The motion is untimely. Discovery motions must be heard no later than 15 days before the initial trial date. The initial trial date is November 13, 2018. Any discovery motion must have been heard no later than October 29, 2018.

Further, the Motion is deficient for failure to include a Separate Statement setting forth all of the requests and responses at issue, along with a statement explaining why a further response is required. (CRC Rule 3.1345.)

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 is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 3

17-CIV-03369 NORMA NAJARRO VS. OCEANA SENIOR HOUSING CORPORATION, ET AL.

NORMA NAJARRO	PRO/PER
OCEANA SENIOR HOUSING CORPORATION	TIMOTHY C. DAVIS

DEFENDANT OCEANA SENIOR HOUSING CORPORATION'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION AGAINST PLAINTIFF NORMA NAJARRO

TENTATIVE RULING:

Defendant's unopposed motion for summary judgment is GRANTED.

Plaintiff alleges she was injured in a slip and fall accident caused by a leaking refrigerator in a dwelling unit controlled and operated by Defendant. However, the undisputed evidence produced by Defendant supports the following findings:

On or about June 9, 2015, during a housing inspection conducted by Mr. Paul Tonga, Defendant's maintenance manager, and Ms. Irina Ayrapetyan, Defendant's property manager, Plaintiff complained that her in-room refrigerator was leaking. As a result, Mr. Tonga prepared a Work Order Request on behalf of Plaintiff and noted the same issue on an Oceana Housing Inspection Form.

On the same date, Mr. Tonga inspected Plaintiff's refrigerator and determined that her refrigerator was operating properly. During Mr. Tonga's inspection, he discovered that there was a small (approximately 16 oz.) bottle of water on the top shelf of Plaintiff's refrigerator, which was stored sideways and not fully capped. As a result, the water bottle had leaked, resulting in a small puddle of water on Plaintiff's kitchen floor. Mr. Tonga did not observe any other source of liquid dripping or leaking from Plaintiff's refrigerator. As part of Mr. Tonga's inspection, he noted the cause of the alleged water leak on the Work Order Request.

On or about July 13, 2015, Plaintiff completed a Work Order Request regarding the refrigerator in her dwelling unit. On the same date, Mr. Tonga inspected Plaintiff's refrigerator unit and determined that there were no signs of any leak from the refrigerator.

Following Mr. Tonga's July 13, 2015 inspection of Plaintiff's refrigerator, Plaintiff made additional verbal complaints about her refrigerator to Ms. Silvia Donaire. Mr. Tonga followed up on these additional verbal complaints, but did not find any dripping or leaking problem with Plaintiff's refrigerator.

[Defendant's UMF ¶¶ 25-28; 65-68] Plaintiff does not allege the condition of her floor was caused by any mechanism other than a defective refrigerator. Despite having had an adequate opportunity for discovery, Plaintiff has produced no evidence indicating that the condition of her floor was caused by a defective refrigerator or other mechanism within Defendant's control. Further, Plaintiff has provided no evidence indicating that Defendant had notice of a defective condition on Plaintiff's floor on July 27, 2015, the date of the alleged accident. Notably, Plaintiff has not opposed Defendant's motion for summary judgment.

In light of the foregoing, the court finds that Defendant is entitled to summary judgment as to Plaintiff's claims for negligence and premises liability because Plaintiff has not raised a triable issue of material fact with respect to whether Defendant breached a duty of care.

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.

9:00

LINE: 4

17-CLJ-02643 CAVALRY SPV I, LLC, VS. NARZAL LOPEZ, ET AL.

CAVALRY SPV I, LLC STEPHEN S. ZELLER
NARZAL LOPEZ

MOTION BY PLAINTIFF CAVALRY SPV I, LLC AS ASSIGNEE OF CITIBANK, N.A., TO TRANSFER VENUE

TENTATIVE RULING:

Plaintiff's unopposed motion to change venue to Los Angeles County, Chatsworth Courthouse, is GRANTED. Plaintiff shall pay the costs of the transfer. CCP §399

CCP §395 provides that the superior court in the county in which the defendant resides at the time a case is filed is the proper court for trial of the case. At the time this action was filed, plaintiff believed that defendant resided in Pacifica. However, plaintiff has since learned that defendant resides in Northridge, California.

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.

9:00

LINE: 5

18-CLJ-01430 BANK OF AMERICA, N.A. VS. FLORDELIZA L. LAU, ET AL

BANK OF AMERICA, N.A.	ROBERT SCOTT KENNARD
FLORDELIZA L. LAU	PRO/PER

PLAINTIFF'S MOTION FOR ORDER DEEMING ADMISSIONS ADMITTED
TENTATIVE RULING:

The motion is DENIED as untimely.

CCP §2024.020 provides that a party is entitled to have motions concerning discovery heard on or before the 15th day before the date initially set for trial of the action. Here, the motion is set to be heard just 12 days before the November 20, 2018 trial date. CCP §2024.050 provides that, on the motion of a party, the court may grant leave to have a motion concerning discovery heard closer to the initial trial date. However, plaintiff has not made any motion seeking this relief nor has it addressed the statutory factors that would support relief.

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 is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 6

CIV525758 N.A. SALES COMPANY INC VS. HAE-SUK LEE, ET AL.

N.A. SALES COMPANY, INC.	GRACE B. KANG
BISHOP RANCH GATEWAY INC.	R. KENNETH BAUER

DEMURRER BY DEFENDANT'S HAE SUK LEE, SOON BOK PARK, AND MOON JOO LEE TO PLAINTIFF'S THIRD AMENDED COMPLAINT
TENTATIVE RULING:

Defendants MOON JOO LEE; HAE SUK LEE; and SOON BOK PARK's Demurrer to the Tenth Cause of Action for Civil RICO, as set forth in Plaintiff's Third Amended Complaint, is OVERRULED. The Court finds that this cause of action is sufficiently pled.

Plaintiff's Request for Judicial Notice is GRANTED as to Exhibits 1 and 2.

Plaintiff has standing to bring a civil RICO claim. Standing is met when plaintiff sustains injury to its business or property "by reason of" defendant's violation of 18 U.S.C. § 1962. For example, in *GICC Capital Corp. v. Technology Finance Group* (2d Cir. 1994) 30 F.3d 289, the Court found that a creditor had standing to bring a RICO claim against the debtor's parent corporation, which had fraudulently conveyed the debtor's assets, leaving creditors unpaid. Here, the Lee Family and June Kim looted the Madfish restaurants' cash funds to avoid Plaintiff's claims, causing Plaintiff direct injury. (TAC ¶ 90.)

As for specificity, the TAC makes very specific allegations about which checks and which cash deposits Defendants made into June Kim's accounts, as well as 38 instances of forged signatures, the dates when those signatures were forged, and the amount and nature of each transaction. (TAC ¶¶ 92-97.)

With respect to the element of intent, the TAC is sufficiently pled. Bank fraud, as alleged here, requires only knowing participation in a scheme. 18 U.S.C. § 1344; *U.S. v. Toney* (5th Cir. 1979) 598 F.2d 1349, 1356. The scheme of forging signatures on checks is a classic example of a bank fraud scheme. *U.S. v. Morgenstern* (2d Cir. 1991) 933 F.2d 1108. Here, Defendants all knew about the scheme and actively participated in it. June Kim misrepresented to the bank that she and the Lee Family were authorized to deposit cash or issue checks, when in fact she had no entitlement to such funds (TAC ¶¶ 88-97); and that the Lees were authorized to use her debit card. (TAC ¶ 98.) As a

result, the bank released money from its custody and control to unauthorized persons, primarily the Lees. June Kim was the Lees' bookkeeper, and worked in full consort and under close guidance of Moon Joo Lee. (TAC ¶87.)

The "enterprise" element is likewise adequately pled. An "enterprise" "need not have a hierarchical structure or a 'chain of command'", as Defendants assert. *Boyle v. United States* (2009) 556 U.S. 938, 948. Rather, "enterprise" is defined as "*any* individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). Here, Plaintiff has alleged that the "enterprise" between the Lee Family and June Kim had the purpose of keeping the Lees' and Madfish restaurants' assets from the reach of their creditors, including Plaintiff.

Finally, this claim is not time-barred, as the TAC relates back to the original Complaint. The relation-back doctrine applies "if the amendment (1) rests on the same general set of facts; (2) involves the same injury; and (3) refers to the same instrumentality." *Pointe San Diego Residential Community, L.P. v. Procopio, Cory, Hargreaves & Savitch LLP* (2011) 195 Cal.App.4th 265, 276. Here, Plaintiff's original Complaint asserted the unpaid debt of the Madfish restaurants. (Complaint ¶¶ 7, 12.) The injury complained of was Plaintiff's monetary damages from being deprived of its receivables. (Complaint ¶ 12.)

The fact that June Kim was not named in the original Complaint is irrelevant, as Plaintiff sued her as a DOE Defendant. A complaint will relate back to a previously unnamed defendant if the plaintiff was ignorant about defendant's connection with the case. *GM Corp. v. Superior Court* (1996) 48 Cal.App.4th 580, 593.
Even if the relation-back doctrine did not apply, however, the RICO cause of action is not time-barred because the enterprise's last act occurred in January 2015. Moreover, any applicable statutes of limitation were tolled by the three-year stay that occurred in this case as a result of Defendants' appeal. (RJN Exh. 1.) Code Civ. Proc. § 356 provides that when commencement of an action is stayed by statute, the period of stay is excluded from the time limit.

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.

9:00

LINE: 7

CIV525758 N.A. SALES COMPANY, INC. VS. HAE-SUK LEE, ET AL.

N.A. SALES COMPANY, INC.	GRACE B. KANG
BISHOP RANCH GATEWAY INC.	R. KENNETH BAUER

DEMURRER BY DEFENDANT JUNE J. KIM TO PLAINTIFF'S THIRD AMENDED COMPLAINT

TENTATIVE RULING:

Defendant JUNE KIM's Demurrer to the Tenth Cause of Action for Civil RICO, as set forth in Plaintiff's Third Amended Complaint, is OVERRULED. This cause of action is sufficiently pled as set forth in the court's previous ruling regarding the other Defendants demurrer.

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.

9:00

LINE: 8

CIV538117 GREGORY & TRACEY AGUILAR VS. UNION METAL CORP, ET AL.

GREGORY AGUILAR	CHRISTOPHER B. DOLAN
AMERON POLE PRODUCTS, LLC	MICHAEL D. MCLEAN

AMERON POLE PRODUCTS, LLC'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES

TENTATIVE RULING:

The Motion of Defendant Ameron Pole Productions, LLC ("Defendant") for Summary Judgment or, in the alternative, Summary Adjudication, is ruled on as follows:

(1) Defendant's Motion for Summary Judgment is DENIED based on the reasons discussed below.

(2) Defendant's Motion for Summary Adjudication to the First and Third through Eighth Causes of Action on the ground that Plaintiff Tracey Aguilar ("Plaintiff") cannot establish causation is DENIED.

> Plaintiff raises a triable issue of material fact as to whether there were concurring causes of the decedent's injuries. In cases where concurrent independent causes contribute to an injury, the "substantial factor" test applies rather than "but for" causation. Thus, the court should look at whether Defendant was a substantial factor in causing the alleged damages. It is true that the accident would not have occurred "but for" Milkovski falling asleep while driving and crashing into the light pole. However, Plaintiff raises a triable issue of material fact as to whether Defendant contributed to the cause of the decedent's death when the light pole broke off and fell on top of the vehicle, particularly since Milkovski and Adams were relatively unscathed by the accident. Plaintiff presents two expert declarations that raise a triable issue of material fact regarding whether Defendant was a substantial factor in causing the decedent's injuries because the light pole did not include a break away. First, the declaration by Zachary Moore, Mechanical Engineer, finds that the light pole contributed to the injuries to the decedent. Moore reviewed documents and records concerning the accident and also personally performed an inspection of the pole and roadway. (Moore Decl., paras. 5, 6.) He opines that in the course of examining hundreds of motor collisions, it is foreseeable that a vehicle will leave the roadway and become involved with fixed objects such as light poles. (Moore Decl.,

para. 11.) He concludes that the light pole constituted an unsafe /dangerous condition at the time of the accident that contributed to the fatal injuries sustained by the decedent. (Moore Decl., para. 12.) Thus, Moore's declaration raises a triable issue of material fact as to causation.

The other declaration by Robert Douglas, Professional Engineer, claims that Defendant knew or should have known that its light poles were dangerous for the purpose that they were used. The parts of the declaration claiming Defendant must have known though, are speculative and lack foundation. However, there is enough in Douglas' declaration to support a triable issue regarding whether Defendant was negligent in failing to include a breakaway feature in its light pole, which may have caused the injuries to the decedent.

(3) Defendant's Motion for Summary Adjudication to the Second Cause of Action is GRANTED. This claim alleges a dangerous condition of public property based on Government Code section 835. Defendant establishes that it is not a public entity, and did not own or control the property where the accident occurred. (See Defendant's Undisputed Material Facts ("DUMF") no. 21.) Plaintiff admits this fact is undisputed, and concedes in opposition that this claim may not be brought against Defendant. (See Plaintiff's Response to DUMF no. 21.)

(4) Defendant's Motion for Summary Adjudication to the Sixth, Seventh and Eighth Causes of Action on the ground that these claims are not wrongful death claims and thus Plaintiff has not established any injuries are treated by the court instead as a Motion for Judgment on the Pleadings, and GRANTS THE MOTION WITH LEAVE TO AMEND.

Unlike the other claims in the Complaint that are alleged as wrongful death claims by Plaintiff, these negligence claims are brought directly by Plaintiff. Plaintiff has not established the injury element of these claims though, since she was not involved in the accident.

If the court concludes any claim is insufficient as a matter of law, the court may elect to treat the hearing of a summary judgment motion as a motion for judgment on the pleadings and grant the opposing party an opportunity to file an amended complaint to correct the defect. (*Hobson v. Raychem Corp.* (1999) 73 Cal.App.4th 614, 625 (disapproved on other grounds in *Colmenares v. Braemar Country Club, Inc.* (2003) 29 Cal.4th 1019, 1031).) Accordingly, Plaintiff has 30 days from the date of the order to file and serve a First Amended Complaint.

(5) Defendant's Request for Judicial Notice is GRANTED.

(6) Defendant's Evidentiary Objections are ruled on as follows:

1. Douglas Declaration

Objection no. 1 (Douglas Decl., para. 19): OVERRULED.

Objection no. 2 (Douglas Decl., para. 20): SUSTAINED as to "I have heard that NOV Ameron does not make breakaway posts" and "have been told that NOV Ameron claims to be in compliance to" as improper speculation and lacks foundation. The remainder of the objections are OVERRULED.

Objection no. 3 (Douglas Decl., para. 21): SUSTAINED based on improper speculation as to "There is little doubt that someone from the pole manufacturer had to be aware of the intended use. It may not be unlawful to sell this product … and unsafe to the motoring public." The remainder of the objections are OVERRULED.

Objection no. 4 (Douglas Decl., para. 23): OVERRULED.

Objection no. 5 (Douglas Decl., para. 24): SUSTAINED based on improper speculation and lacks foundation as to "Again, any reasonable manufacturer or manufacturer's representative should strongly protest the use of these lights in this manner." The remainder of the objections are OVERRULED.

Objection no. 6 (Douglas Decl., para. 25): SUSTAINED based on improper speculation, conclusion and opinion and lacks foundation.

Objection no. 7 (Douglas Decl., para. 26): SUSTAINED based on improper speculation, conclusion and opinion.

Objection no. 8 (Douglas Decl., para. 27): OVERRULED.

Objection no. 9 (Douglas Decl., para. 31): OVERRULED.

Objection no. 10 (Douglas Decl., para. 32): OVERRULED.

2. Moore Declaration

Objection no. 1 (Moore Decl., para. 7, 3:14-18): OVERRULED.

Objection no. 2 (Moore Decl., para. 7, 3:19-4:9): OVERRULED.

Objection no. 3 (Moore Decl., para. 8): OVERRULED.

Objection no. 4 (Moore Decl., para. 9): OVERRULED.

Objection no. 5 (Moore Decl., para. 10): OVERRULED.

Objection no. 6 (Moore Decl., para. 11): OVERRULED.

Objection no. 7 (Moore Decl., para. 12): OVERRULED.

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.

9:01

LINE: 9

18-UDL-01013 DEMIGUEL & JOHNSON, LLC VS. GUADALUPE BERRELLEZA, ET AL.

DEMIGUEL & JOHNSON, LLC	STEVE NAUMCHIK
GUADALUPE BERRELLEZA	RENE ORTEGA

DEFENDANT GUADALUPE BERRELLEZA'S MOTION FOR SUMMARY JUDGMENT
TENTATIVE RULING:

Defendant's motion for summary judgment is DENIED.

The motion is premised on the court deeming plaintiff to have admitted certain facts. As noted in that motion, defendant's motion to deem facts admitted has not been granted.

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 is required as the tentative ruling affords sufficient notice to the parties.

9:01

LINE: 10

18-UDL-01013 DEMIGUEL & JOHNSON, LLC VS. GUADALUPE BERRELLEZA, ET AL.

DEMIGUEL & JOHNSON, LLC	STEVE NAUMCHIK
GUADALUPE BERRELLEZA	RENE ORTEGA

DEFENDANT GUADALUPE BERRELLEZA'S MOTION FOR ORDER DEEMING ADMITTED TRUTH OF FACTS AND GENUINENESS OF DOCUMENTS AND IMPOSING MONETARY SANCTIONS

TENTATIVE RULING:

Defendant's motion to deem facts admitted is DENIED.

Plaintiff has offered evidence to show that responses to the requests for admission were timely served on defense counsel on October 29, 2018.

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 is required as the tentative ruling affords sufficient notice to the parties.

POSTED: 3:00 PM