

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

Wednesday, August 15, 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

17-CIV-01927 JOEL DROTTS VS. RONALD E. SNOW, ET AL

JOEL DROTTS  
RONALD E. SNOW

PRO/PER  
STEPHEN P ELLINGSON

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MOTION TO VACATE  
TENTATIVE RULING:

For the reasons set forth below, Plaintiff Joel Drotts' "Motion to Vacate," filed 6-15-18, in which he seeks to vacate the 5-21-18 Judgment and the related 5-3-18 Minute Order sustaining Defendants' "unopposed" Demurrer to Plaintiff's Fourth Amended Complaint without leave to amend, is GRANTED under the discretionary provisions of Code Civ. Proc. § 473(b). Largely for the reasons set forth in Defendants' Opposition papers, Plaintiffs' alternative request for relief under Code Civ. Proc. §§ 473.5, 473(d), 1008, and 418.10 lack merit, and is DENIED. The Court finds, however, that Plaintiff has met his burden of demonstrating grounds for relief under § 473(b).

Plaintiff does not seek relief under Code Civ. Proc. § 663. Thus, contrary to Defendants' contention, the Court does not lack jurisdiction to rule on Plaintiff's motion. Where a party seeks relief under § 473(b), relief from a Judgment may be granted within a reasonable time, not exceeding six months after the Judgment was taken.

Plaintiff has sufficiently shown inadvertence, surprise, mistake, and/or excusable neglect that resulted in the 5-3-18 Minute Order and the subsequent 5-21-18 Judgment, both of which were based, at least in part, on Defendants' Demurrer being "unopposed." While the Proof of Service attached to Defendants' Demurrer papers indicated timely service, Plaintiff contends he received the papers only one day before his Opposition brief was due, which led to Plaintiff filing a late Opposition, and only after Defendants had filed a "Statement of Non-Opposition" with the Court, notifying the Court that their Demurrer was unopposed. Plaintiff's problems were compounded when he failed to follow the Court's rule requiring that parties seeking to contest a Tentative Ruling (which the Court posts on the website one day prior to the hearing) notify the moving party of such intent the day prior to the hearing. Because Plaintiff did not comply with this rule, although he appeared at the 5-3-18 hearing, he was not permitted to present oral argument in opposition to the Demurrer, or request a continuance of the hearing. The resulting Minute Order, while it addressed the merits of Defendants' statute of limitations defense, found that the Demurrer was unopposed, and sustained the Demurrer as

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to all asserted claims, without leave to amend. Plaintiff's proposed Opposition papers included a proposed Fifth Amended Complaint, which Plaintiff apparently offered in an attempt to demonstrate an ability to amend the allegations to avoid Defendants' statute of limitations defense.

In general, unrepresented parties are held to the same standards as attorneys, and Plaintiff's non-compliance with the Court rule regarding contesting Tentative Rulings, in itself, would not constitute grounds for relief. However, given Plaintiff's contention that he received the moving papers much later than the Proof of Service indicates, which he contends led to his late-filed Opposition, and in light of the 5-3-18 Order sustaining Defendants' "unopposed" Demurrer without leave to amend, the Court finds Plaintiff has demonstrated grounds for relief under § 473(b). Plaintiff apparently contends he can, and should be, permitted to plead around the statute of limitations defense. Without passing on the merits of Defendants' Demurrer to Plaintiffs' Fourth Amended Complaint, the Court finds that the 5-3-18 Minute Order and the resulting 5-21-18 Judgment should be, AND HEREBY ARE, SET ASIDE/VACATED under § 473(b), and that the hearing on the Demurrer should be re-calendared, so that the Court can treat it as an opposed Demurrer.

The parties shall meet and confer to calendar a new hearing date on Defendants' Demurrer to the Fourth Amended Complaint. No new papers relating to the Demurrer shall be filed except for a reply to the responsive pleadings, absent further Court Order. The Court will treat the Demurrer as opposed, and issue a new Tentative Ruling prior to the new hearing date. Any party seeking to challenge the Tentative Ruling shall comply with the Court's rules for doing so.

Unless the parties agree otherwise, the hearing on the demurrer shall be set for September 18, 2018 at 9:00 a.m. in the Law and Motion Department.

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-02046 TATIANNA SMITH VS. TE CONNECTIVITY CORPORATION, ET AL.

TATIANNA SMITH  
TE CONNECTIVITY CORPORATION

RICHARD L RICHARDSON  
ANDREA L. FELLION

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MOTION TO COMPEL

**TENTATIVE RULING:**

The motion to compel is GRANTED. Plaintiff shall provide verified responses, without objection, to defendant's Form Interrogatories, Set Two and Request for Production of Documents, Set Three, on or before August 31, 2018. Additionally, the genuineness of any documents and the truth of any matters in the requests for admission are deemed admitted.

The request for sanction is also granted. However, the amount requested includes time anticipated to be spent preparing a reply and appearing at the hearing. Defendant has not filed a reply brief and an appearance should not be necessary given the proposed tentative ruling. Consequently, the total amount of sanctions should be reduced to \$2,584.50 (5.1 hours to prepare the motion at \$495 per hour plus \$60 filing fee.) Plaintiff shall pay defendant \$2,584.50 within 30 days of today's date.

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: 3

17-CIV-03861 JASMEET KAUR DEOL VS. BRAND MOTORS, ET AL

JASMEET KAUR DEOL  
BRAND MOTORS

JASPREET S TIWANA  
MONIKA P. LEE

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MOTION FOR SUMMARY OF JUDGMENT/ADJUDICATION OF ISSUES

**TENTATIVE RULING:**

This matter is dropped from calendar as MOOT. A dismissal of the entire action has been filed.

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9:00

LINE: 4

17-CIV-05369 ADHESIVE COATINGS CO. VS. RUST-OLEUM CORPORATION, ET AL

ADHESIVE COATINGS CO.  
RUST-OLEUM CORPORATION

JOHN L. FITZGERALD  
KAREN MARGARET SULLIVAN

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HEARING ON DEMURRER

**TENTATIVE RULING:**

Plaintiff / Cross-Defendant ADHESIVE COATINGS CO.'s Demurrer to the First and Second causes of action in Defendant / Cross-Complainant RUST-OLEUM CORPORATION's Cross-Complaint is OVERRULED. Cross-Complainant's First cause of action for unfair business practices (Bus. & Prof. Code § 17200 et seq.) and Second cause of action for unjust enrichment are sufficiently stated. Cross-Defendant is ordered to file its Answer to Cross-Complaint within ten days of notice of entry of this Order.

Rust-Oleum alleges that, due to misrepresentations by James Shannon of ADCO, it believed the last patent expired in 2018. Rust-Oleum therefore continued to make royalty payments for nearly five years after the expiration of the last patent in October 17, 2012. Rust-Oleum also relied upon Mr. Shannon's representations in engaging in negotiations for a lump-sum buyout of the License Agreement, when Mr. Shannon neither informed Rust-Oleum that ADCO had dissolved many months prior, or that all of the letters patent had expired.

Given these allegations, Rust-Oleum's causes of action for unfair business practices and unjust enrichment are sufficiently alleged.

To state a claim for unfair business practices, a plaintiff must allege that defendant engaged in business conduct that was unfair, unlawful or fraudulent. See Bus. & Prof. Code § 17200. In doing so, plaintiff "must state with reasonable particularity the facts supporting the statutory elements of the violation." *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 619. Here, Rust-Oleum has sufficiently and specifically alleged that Mr. Shannon's fraudulent misrepresentations regarding the expiration of the Letters Patent, and failure to inform Rust-Oleum about ADCO's dissolution, caused it harm. Rust-Oleum continued to make royalty payments that it contends were not owed, in excess of \$150,000.00.

As for the unjust enrichment claim, there is a split of authority within the First District as to whether unjust enrichment is a valid

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claim under California law. See *McBride v. Boughton* (2004) 123 Cal.App.4<sup>th</sup> 379, 387 (not recognizing unjust enrichment claim) versus *Elder v. Pacific Bell Telephone Co.* (2012) 205 Cal.App.4<sup>th</sup> 841, 857 (listing the elements for a claim of unjust enrichment). Unjust enrichment claims can exist as a separate cause of action when the claim is grounded in equitable principles of restitution. *Hirsch v. Bank of America* (2003) 107 Cal. App. 41 708, 721-722. Elements of an unjust enrichment cause of action are the "receipt of a benefit and [the] unjust retention of the benefit at the expense of another." *Lectrodryer v. SeoulBank* (2000) 77 Cal.App.4<sup>th</sup> 723, 726.

Due to the split of authority in the First District regarding whether unjust enrichment is recognized as a standalone cause of action, and going by the principle that a pleading should be construed liberally, and that causes of action be permitted to stand if they set forth a cognizable claim (even if inartfully labeled) the court will overrule the demurrer in this case as well.

ADCO argues that the Limitation of Liability provision in the License Agreement bars Rust-Oleum's First and Second causes of action. However, Rust-Oleum argues that the limitation of liability provision limits itself to any "breach of the foregoing representations and warranties, or other breach of this Agreement by ADCO..." (Cross-Complaint, Exhibit A, ¶ 6.3.) Rust-Oleum is not alleging a breach of the License Agreement in its Cross-Complaint. In fact, Rust-Oleum's entire theory of the case is that the License Agreement *terminated* in October 2012, and that it is ADCO's conduct post-termination that gives rise to the Cross-Complaint. Moreover, Rust-Oleum's Cross-Complaint seeks restitution, not damages as contemplated in the limitation of liability provision. The court, therefore, overrules the demurrer on this ground as well.

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: 5

17-CIV-05594 ALLAN & HENRY, INC. VS. CEPHAS ENTERPRISES, INC., ET AL

ALLAN & HENRY, INC.  
CEPHAS ENTERPRISES, INC.

CLIFFORD R. HORNER

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MOTION FOR LEAVE TO FILE CROSS-COMPLAINT

**TENTATIVE RULING:**

The motion is continued by the court to September 19, 2018 at 9:00 AM  
in the Law and Motion Department.

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9:00

LINE: 6

18-CIV-01482 VERNON MATHIS VS. SOUTH BAY COLMA, LLC

VERNON MATHIS  
SOUTH BAY COLMA, LLC,

DANIEL M HOLZMAN  
JOHN P. BOGGS

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MOTION TO COMPEL ARBITRATION AND TO STAY

**TENTATIVE RULING:**

This matter is dropped from calendar. The parties have stipulated to arbitration in a separate order.

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9:00

LINE: 7

18-UDL-00657 DAVID CLINTON THORNTON VS. RACHELLE IMUS, ET AL

DAVID CLINTON THORNTON  
RACHELLE IMUS

MICHELLE LEU ZACCONE

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HEARING ON DEMURRER

**TENTATIVE RULING:**

The demurrer is OVERRULED. Defendant shall file an answer to the complaint by August 20, 2018.

CCP §1160(2) states that every person is guilty of forcible detainer who, in the night-time, or during the absence of the occupant of any real lands, unlawfully enters upon real property and who, after demand made for the surrender thereof, for the period of five days, refused to surrender the same to such former occupant.

CCP §1172 further states that on the trial of any proceeding for any forcible detainer, the plaintiff shall only be required to show, in addition to the forcible detainer complained of, that he was peaceably in actual possession at the time of the forcible entry or was entitled to possession at the time of the forcible detainer.

Here, the complaint alleges the following: 1) the shed is not a legal dwelling 2) defendants entry and possession of the shed was without plaintiff's permission or consent 3) defendants gained access through plaintiff's tenant who had permission to use it for storage only 4) plaintiff demand that defendants cease occupying the shed as a dwelling and that they surrender possession, to no avail 5) defendants were served with a written five-day notice to quit on June 27, 2018 and 6) the period in the notice expired on July 2, 2018 and defendants remain in possession of the shed. These facts are sufficient to state a valid cause of action against defendants.

None of the grounds stated by defendants in the demurrer establishes that the complaint fails to state a claim for forcible detainer.

Defendants also incorrectly assert that the complaint is not verified and that plaintiff cannot initiate this action by use of a five-day notice. The complaint is verified and CCP §1160(2) requires a five-day notice. Use of a five-day summons is also proper. CCP §1167.

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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: 8

CIV528860 ROSEMARY N CHUKWUDEBE VS CHRISTOPHER PIRRONE

ROSEMARY N CHUDWUDEBE  
A.O.E. LAW ASSOCIATES INC

PRO/PER  
VICTORIA T ORAFA

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MOTION FOR ORDER

**TENTATIVE RULING:**

The motion is continued to September 14, 2018 at 9:00 AM and specially set in Department 16.

No later than August 31, 2018, defendants shall submit a supplemental brief, not to exceed five pages, addressing whether attorney's fees may be claimed by a costs memorandum pursuant to CCP §§685.040, 685.070 and 685.080. Plaintiff may file a supplemental reply, not to exceed five pages, no later than September 7, 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 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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POSTED: 3:00 PM