

ANDREWS v. ANDERSON, et al.

23CV46644

DEMURRER TO THIRD AMENDED COMPLAINT and MOTION TO COMPEL DISCOVERY

Plaintiff alleges breach of contract, fraud, and elder abuse, concerning construction work and three loans at 3441 Appaloosa Road in Angels Camp.

- **SPECIAL DEMURRER TO THIRD AMENDED COMPLAINT THIRD CAUSE OF ACTION FOR ELDER ABUSE**

Before the Court is the defendants' demurrer to the Elder Abuse (Third) Cause of Action of the Third Amended Complaint.

To state a cause of action for elder abuse, the plaintiff must plead facts showing two elements: (1) the defendant has subjected an elder to statutorily defined physical abuse, neglect or financial abuse; and (2) the defendant acted with recklessness, malice, oppression, or fraud in the commission of the abuse. (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 407.)

"The plaintiff must allege (and ultimately prove by clear and convincing evidence) facts establishing that the defendant (1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care; (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs; and (3) denied or withheld goods or services necessary to meet the elder or dependent adult's basic needs, either with knowledge that injury was substantially certain to befall the elder or dependent adult (if the plaintiff alleges oppression, fraud or malice) or with conscious disregard of the high probability of such injury (if the plaintiff alleges recklessness)." (*Carter v. Prime Healthcare Paradise Valley LLC*, supra (2011) 198 Cal.App.4th at pg. 406-407 [citations omitted].)

The new allegations in plaintiff's Third Amended Complaint do not address a fiduciary relationship, a grossly oppressive and unfair advantage of plaintiff's necessities, or undue influence marking an imbalance of power, and is essential to state a claim for Elder Abuse. Facts to support these elements are not included in plaintiff's amended Third Cause of Action for Elder Abuse.

As this is plaintiff's third amendment, there has been sufficient opportunity under California's liber pleading standards to have properly alleged a cause of action for elder abuse. For the foregoing reasons, the Court finds that the Demurrer to the Third Cause of Action for Elder Abuse is SUSTAINED without leave to amend.

- **MOTION TO COMPEL PLAINTIFF TO ANSWER SPECIAL INTERROGATORIES AND TO PROVIDE FURTHER ANSWERS TO REQUEST FOR ADMISSION AND FORM INTERROGATORIES, AND SANCTIONS**

On August 28, 2023, defendants propounded on plaintiff: form interrogatories; special interrogatories; and requests for admission. Plaintiff served responses to the Requests for Admission and Form Interrogatories but no response has been provided to Special Interrogatories. The Motion to Compel was filed on November 3, 2023. [The Court notes that each form of discovery requires a separate motion to compel, and motions to compel initial responses and ones to compel further responses involve different procedures and standards, but in the interests of justice will rule on the single filed motion.]

Plaintiff's opposition states, in part:

"The following is an outline of all verified Discovery Responses that have been provided to Defendants.

"Discovery Responses include the following:

Response to Form Interrogatories was served on 10-18-2023.

Response to Special Interrogatories was served on 11-2-2023.

Response to Request for Documents was served on 10-18-2023.

Response to Request for Admissions was served on 10-18-2023.

Counsel Exchanged letters regarding Special Interrogatories on November 3rd, 9th & 11th.

Amended Response to Special Interrogatories were served on 12-4-23."

The motions to compel response to special interrogatories is moot, and arguments raised in the Reply Memorandum and Declaration do not raise specific deficiencies alleged in plaintiff's responses. The request to compel further responses to Form Interrogatories and Requests for Admissions is DENIED without prejudice to file a proper motion to compel further responses to the amended responses served on Dec. 4, 2023, if appropriate. Sanctions are denied in light of the substance of this ruling.

The Clerk shall provide notice of this Ruling to the parties forthwith. The defendant is to submit a formal Order in compliance with Rule 3.1312 in conformity with these Rulings.

ARIZA v. LAKESIDE VENTURES, LLC, et al.

22CV46059

MOTION FOR PRELIMINARY INJUNCTION

This lawsuit arises from the sale of “Lakeside Mobile Home Estate” (hereafter “Park”). The plaintiff filed a verified complaint seeking specific performance of a contract to purchase the Park. The moving parties are defendants and cross-complainants (hereafter “defendants”), seeking a preliminary injunction for the pendency of the action.

CALAVERAS COUNTY SUPERIOR COURT LOCAL COURT RULE 3.3.7 effective: JANUARY 1, 2018)

3.3.7 Tentative Rulings (Repealed Eff. 7/1/06; As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court’s website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court’s website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court. [Emphasis in original.]

Failure to include this language in the notice may be a basis for the Court to deny the motion.

The Motion is denied without prejudice to renew a motion complying with Rule 3.3.7.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order is required.

HINES, et al v. UNITED PARCEL SERVICE, INC.

23CV46772

**MOTION TO COMPEL ARBITRATION
OF ALL CLAIMS**

Defendant moves for an order compelling all claims to arbitration and dismissing this lawsuit. Defendant makes this Motion under the Federal Arbitration Act ("FAA") and the terms of the arbitration agreements that UPS and plaintiffs entered cover all claims asserted in the operative complaint.

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Failure to include this language in the notice may be a basis for the Court to deny the motion.

The Motion is denied without prejudice to renew a motion complying with Rule 3.3.7.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order is required.