

# ANDREWS v. ANDERSON, et al

23CV46644

## DEFENDANTS' MOTION TO COMPEL PLAINTIFF TO ANSWER DISCOVERY AND FOR SANCTIONS

Plaintiff alleges breach of contract, fraud, and elder abuse related to construction work and three loans at 3441 Appaloosa Road in Angels Camp. Previously, the defendants moved for further answers to special and form interrogatories and requests for admission, which was partially granted. Defendants have filed the present motion contending plaintiff never complied with the Court's Order. Plaintiff's response includes counsel's declaration conceding the Order was not timely complied with but now full responses have been provided; defendants' reply acknowledges the belated responses but contends that form interrogatories 50.1 and 50.2 have yet to be answered. (The Court notes the reply was untimely per statute filed three court days before the hearing but notes that with plaintiff's late responses the late filing will be allowed and the reply was fully considered.)

Based on the totality of the declarations, the Court finds plaintiff has complied with discovery response obligations with the exception of form interrogatories 50.1 and 50.2.

Based on the foregoing, the Court **GRANTS** Defendants' Motion to Compel Answers to Discovery as to form interrogatories 50.1 and 50.2. Full verified answers, without objection, to these two interrogatories must be provided by 5:00 p.m. on April 26, 2024. **As to sanctions, the Court finds that** in light of the mostly complete discovery answers (albeit late even per the Court's Order) an evidence sanction is unwarranted; however, based on the declaration of plaintiff's counsel, **monetary sanctions are awarded to defendants and their counsel in the amount of \$900 to be paid personally by plaintiff's counsel Lawrence Niermeyer by 5:00 p.m. on April 19, 2024.** (The Court reduces defendants' counsel's hourly billing to \$300, the going rate in the local market, and awards 3 hours of attorney time as reasonable.)

The Clerk shall provide notice of these Rulings to the parties forthwith. Defendants are to submit a formal Order in compliance with Rule 3.1312 in conformity with these Rulings.

# BROWN v. OLAN

22CF13738

## PLAINTIFF'S MOTION TO ENFORCE STIPULATION AND ORDER

This is an action for Damages, Temporary Restraining Order, and Permanent Injunction (Trespass) against defendant. This matter was settled at a Mandatory Settlement Conference on March 20, 2023. Defendant agreed to remove the wood fence at his expense, and Plaintiff agreed to remove the perforated pipe at his expense and the wrought iron fence was to remain in place. Both parties were to allow all efforts for the other party to complete their tasks with no harassment. On May 3, 2023, the parties executed and filed a Stipulation and Order formalizing the agreement.

An enforceable settlement agreement under Code of Civil Procedure (CCP) §664.6 must either be entered into orally before a court or be in writing and signed by the parties. (See *In re Marriage of Assemi* (1994) 7 Cal.4<sup>th</sup> 896, 905.) These alternative requirements aim to minimize misunderstandings. Direct participation by the litigants ensures that the settlement results from their mature reflection and deliberate assent. (See *Id.*; *Levy v. Superior Court* (1995) 10 Cal.4<sup>th</sup> 578, 585. fn. omitted.)

In this case, the parties announced their settlement terms and agreement in open court, resulting in a Minute Order that specified the terms of the settlement. The court directed plaintiff's counsel to prepare a formal agreement. Both parties then executed the written settlement terms, which the court signed, thereby adopting the terms of the settlement agreement and making them enforceable under CCP section 664.6.

The defendant committed to relocating a wooden fence that encroached on the plaintiff's property. The defendant participated in a "walkthrough" with the surveyor to verify the necessary fence relocation. However, the retaining wall and iron fence, which encroached on the plaintiff's land, were not mandated to be moved. The parties were instructed to remove drainage pipes causing water to drain onto each other's property. Instead of removing the encroaching wooden fence and drainpipes, the defendant extended the encroaching wooden fence alongside the iron fence.

Plaintiff's Motion to Enforce Stipulation and Judgment is **GRANTED**. Defendant Olan is ordered to comply with the Stipulation and Order by removing the pipes that drain onto Plaintiff's property and either removing the new fencing or moving it to the property line and removing the wrought iron fencing left on Plaintiff's property. Although CCP Section 664.6 provides for an award of reasonable attorney's fees associated with a motion to enforce, plaintiff's counsel failed to provide the requisite declaration detailing hourly rate and hours spent on the motion; based upon this shortcoming, the Request for Attorney's Fees is **DENIED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to CRC 3.1312 in conformity with this Ruling.

# HUSTED v. COUNTY OF CALAVERAS BEHAVIORAL AND MENTAL HEALTH, et al

20CV44568

## DEFENDANT COUNTY OF CALAVERAS' DEMURRER AND MOTION TO STRIKE PLAINTIFF'S FIFTH AMENDED COMPLAINT

This action seeks wrongful death damages concerning plaintiff's son. Plaintiff filed a Fifth Amended Complaint (5AC) on January 16, 2024. Defendant County of Calaveras timely Demurred and filed a Motion to Strike.

The court **GRANTS** the defendant's Request for Judicial Notice.

### DEMURRER

The primary question revolves around whether the allegations in the 5AC, "fairly describe what [the] entity is alleged to have done." (*Stockett v. Association of Cal. Water Agencies Joint Powers Ins. Authority* (2004) 34 Cal.4<sup>th</sup> 441, 446.) While a government claim need not match the specificity of a pleading in a civil action, it must still provide a reasonable account of what the entity is alleged to have done. When a civil action follows the rejection of a government claim, the complaint can expand upon or provide additional details, but it cannot fundamentally alter the allegations from those specified in the government claim. (*Stockett*, at p. 447; see *Brownell v. Los Angeles Unified School Dist.* (1992) 4 Cal.App.4<sup>th</sup> 787, 794.) In essence, the factual basis for recovery in the complaint should be consistent with what was presented in the government claim. (*Stockett*, supra at p. 447)

Defendant argues that the claim presented by plaintiff does not: (1) mention Government Code section 815.6; (2) use the term "duty;" (3) use the phrase "mandatory duty"; (4) use the terms "enactment" or "statute," (5) identify any enactment or statutory basis for defendant's liability; (6) cite to a single statute or regulation now identified in the 5AC that set forth mandatory duties; (7) identify any mandatory duty imposed by any enactment; (8) assert that the defendant breached any mandatory duty outlined in any enactment, or (9) state that any breach of a mandatory duty outlined in an enactment was the proximate cause of plaintiff's injuries.

The court's analysis of the "fairly reflects" test reveals that the various sentences in the claim ultimately gave rise to specific acts of negligence and did not merely "shift the allegations." In other words, the claim initially asserted defendant's failure to assess, adequately staff, and to provide proper oversight. Subsequently, more specific allegations emerged. The court concludes that the 5AC does indeed "fairly reflect" the broad, general assertions made in the original claim.

However, certain portions of 5AC concerning alleged violations of Government Code §§ 815.2, 815.4, and 815.6, which pertain to an MOU between co-defendants and regulatory violations, extend beyond the scope of the initial claim. The Government Claims Act (Gov. Code, § 810 et seq.) serves the purpose of allowing the agency to investigate and evaluate its potential liability. When appropriate, it also facilitates the resolution of meritorious claims to avoid litigation. Consequently, the prudent approach is to permit the elements of the 5AC, which accurately reflect the claim, to proceed, particularly in light of California's liberal pleading public policy. Moreover, relief for the overreach is alternately available and provided in this Court's ruling below on the Motion to Strike.

Defendant's demurrer is **OVERRULED**.

### **DEFENDANT'S MOTION TO STRIKE 5AC**

A Motion to Strike appropriately considers and takes into account matters that can be judicially noticed. In the case of *Moran v. Prime Healthcare Management, Inc.* (2023) 94 Cal.App.5th 166, 174, when a plaintiff combines multiple theories of liability into a single cause of action and one of those theories is legally invalid, the defendant has the right to move to strike the invalid theory. This situation aligns with the principles established in *PH II, Inc. v. Super. Ct.* (1995) 33 Cal.App.4th 16 and subsequent decisions, confirming a court's ability to strike defective portions of a cause of action.

In *Hernandez v. City of Stockton* (2023) 90 Cal.App.5th 1222, 1225, Plaintiff's government claim specifically and solely identified an "uplifted sidewalk" as the dangerous condition that caused his injuries. By contrast, in the subsequent action, liability was premised on a different dangerous condition—a hole created by an empty tree hole.

Plaintiff's 5AC is susceptible to a motion to strike because of the lengthy nature of combining multiple legal theories within the "single" negligence cause of action. Plaintiff's claims based on the MOU, Government Code §§815.4 and 815.2 theories, and allegations of regulatory violations under Gov. Code §815.6 reflect the *Hernandez* situation of adding new theories beyond the scope of the governmental claim.

Defendant's Motion to Strike is **GRANTED**. Specifically, the following portions of 5AC are stricken:

1. Paragraph 2, lines 13-15, ending with the word "Regulations" in line 15;
2. Paragraph 2, lines 15-27, beginning with the phrase "As for Collum..." in line 15;
3. Paragraph 14;
4. Paragraph 15;
5. Paragraph 16;
6. Paragraph 17;
7. Paragraph 19, lines 19-20, beginning with the word "and" at the end of line 19;
8. Paragraph 24;
9. Page 7, line 28;
10. Page 8, lines 1-2;
11. Paragraphs 31-76.

12. Page 20, line 17;
13. Paragraphs 77- 80;
14. Page 20, line 25; and
15. Paragraphs 81-82.

Additionally, the Court on its own motion reschedules the Mandatory Settlement Conference to July 29, 2024, at 8:30 a.m. in Dept. 2; updated MSC Statements are to be filed by 3:00 p.m. on July 19, 2024.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant County of Calaveras to prepare a formal Order pursuant to CRC 3.1312 in conformity with these Rulings.

# TORMEY, et al. v. JENNINGS, et al.

22CV46038

## PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT

### (TRIAL SETTING CONFERENCE)

This is a quiet title action involving an easement for ingress and egress between two adjoining parcels. Before the Court is plaintiffs' motion for leave to amend the complaint. (Additionally, the court will reset Trial Confirmation and Court Trial dates.)

Courts have long exercised liberality in permitting amendments to pleadings, particularly amendments to answers. (*Permalab-Metalab Equipment Corp. v. Maryland Cas. Co.* (1972) 25 Cal.App.3<sup>rd</sup> 465. 472.)

In this case, plaintiffs have submitted a copy of the proposed Verified First Amended Complaint (FAC) and argue that indispensable parties must be added. Additionally, through the discovery process, plaintiffs have learned facts supporting a cause of action for an easement by necessity. The FAC introduces two new causes of action (quiet title and declaratory relief) based on easement by necessity. The defendants have not provided any persuasive reasons for denying the amendment.

Plaintiffs' Motion for Leave to Amend Complaint is **GRANTED**.

Regarding trial dates, the matter currently has the following schedule:

- Friday, April 5, 2024: Due date for trial briefs, exhibit/witness lists, and pre-trial motions.
- Tuesday, April 9, 2024: Pre-trial conference (remote appearances are acceptable).
- Wednesday, April 17, 2024: First day of bench trial at 8:30 AM in Department 2.
- Thursday, April 18, 2024: Second day of bench trial at 1:30 PM in Department 2.

Based on both the addition of new parties in the FAC all these dates are vacated and will be reset at a Trial Setting Conference on July 16, 2024, at 11:30 a.m. in Dept. 2.

The Clerk shall provide notice of this Ruling to the parties forthwith. The FAC is deemed filed as of the date of the signing of a formal Order. Plaintiff to prepare a formal Order pursuant to CRC 3.1312 in conformity with this Ruling.