

**JOHN A. VOS, TRUSTEE OF THE VOS FAMILY TRUST DATED  
8/31/2011, ET AL. V. KRISTAN E. EVANS, ET AL.**

**23CV46959**

**MOTION FOR INTERLOCUTORY  
JUDGMENT OF PARTITION AND  
APPOINTMENT OF REFEREE**

This action seeks partition of the real property located at 10777 Walker Trail, Lost City, CA 95222, Calaveras County Assessor's Parcel Numbers 050-008-053-000, 050-021-018-000, 050-007-008-000, 050-007-009-000, 050-007-010-000, 050-007-011-000 (the "Property").

This motion seeks to resolve a co-ownership dispute by appointing referee Matthew L. Taylor, Esq. as referee to market and partition the Property.

All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3.3.7 Tentative Rulings (Repealed Eff. 7/1/06; As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system.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.

Based on the foregoing, the motion is **DENIED** without prejudice to renew the motion complying with Rule 3.3.7. after the court rules on Defendants' Motion to Set-Aside Default.

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

# PAUL v. DHALIWAL

23CV46672

## PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS and MOTION TO COMPEL SPECIAL INTERROGATORIES

Plaintiff, on her own behalf and behalf of all other Subway employees, filed the Class Action Complaint for failure to pay minimum wages, provide rest and lunch periods, maintain accurate wage statements, pay wages upon termination, reimburse expenses, theft, conversion, unfair employment competition, and Private Attorney General Action ("PAGA"). Plaintiff served discovery and is now moving to compel further responses.

All matters noticed for the Law & Motion calendar shall include the following language in the notice:

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:

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

Based on the foregoing, the motion is **DENIED** without prejudice to renew the 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.

# McDANIEL v. VULCAN MATERIALS COMPANY (CALMAT)

23CV47087

## DEFENDANT'S DEMURRER and MOTION TO STRIKE PORTIONS OF PLAINTIFFS' COMPLAINT

Plaintiff filed a complaint against Calmat (erroneously named as Vulcan Materials Company) claiming negligence, intentional infliction of emotional distress and exemplary damages. Defendant filed a Demurrer and Motion to Strike on April 16, 2024. Plaintiff filed her opposition to the Demurrer and Motion to Strike along with a First Amended Complaint on April 29, 2024.

When a plaintiff amends their complaint after a defendant has filed a demurrer, the amended complaint becomes the operative pleading and is the complaint analyzed in light of the demurrer. (*Barton v. Khan* (2007) 157 Cal. App. 4th 1216.)

A demurrer presents an issue of law regarding the sufficiency of the allegations outlined in the complaint. The challenge is limited to the "four corners" of the pleading (which includes exhibits attached and incorporated therein), or from matters outside the pleading which are judicially noticeable. The complaint is read as a whole. Material facts properly pleaded are assumed true, but contentions, deductions or conclusions of fact/law are not. In general, a pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. (California Code of Civil Procedure §§ 430.10 *et seq.*; *Blank v. Kirwan* (1985) 39 Cal.3<sup>rd</sup> 311, 318; *Gray v. Dignity Health* (2021) 70 Cal.App.5<sup>th</sup> 225, 236 n.10.)

In ruling on a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff. (*Clauson v. Superior Court* (1998) 67 Cal.App.4<sup>th</sup> 1253, 1255.) "The mere allegation that an intentional tort was committed is not sufficient to warrant an award of punitive damages. Not only must there be circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim." (*Grieves v. Superior Ct.* (1984) 157 Cal.App.3<sup>rd</sup> 159, 166, fn. omitted.)

In analyzing the First Amended Complaint, and comparing it to the initial complaint, the amended complaint does not state facts concerning the incident in sufficient detail to hold defendant liable for Intentional Infliction of Emotional Distress or Exemplary Damages. There are no allegations of ultimate facts that the demurring party is liable for intentional acts or exemplary damages.

Where facts pleaded show no more than simple negligence and allegations added in the amended complaint plead no additional facts, but merely characterize defendant's post-incident conduct are not sufficient to state a cause of action for punitive damages. (See Civil Code, § 3294)

Defendant's Demurrer to Second Cause of Action for Intentional Infliction of Emotional Distress is **SUSTAINED**, with leave to amend.

Defendant's Motion to Strike the Exemplary Damages attachment and Punitive Damage Prayer (14(a)(2)) are **GRANTED**, with leave to amend.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant is to submit a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.

**ARIZA v. LAKESIDE VENTURES, LLC, et al**

**22CV46059**

**PLAINTIFF'S MOTION FOR COMPLAINT FOR  
CONVERSION, UNJUST ENRICHMENT AND  
MISAPPROPRIATION OF FUNDS [sic] AND MOTION FOR  
ORDER TO SHOW CAUSE FOR INDIRECT CONTEMPT OF  
COURT**

This is a contract dispute involving a proposed transaction for the sale of a mobile home park in Mokelumne Hill.

All matters noticed for the Law & Motion calendar shall include the following language in the notice:

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.

In the instant matter, the Court finds that plaintiff ultimately included the statement in the Reply Brief filed on May 7, 2024. Although not placed in any of the notices filed, the court will consider the inclusion as sufficient compliance in the hopes that its ruling on these

matters may clarify the January 26, 2024 Order that directed “Defendants to operate the Park pending resolution of this litigation.”

There are two matters before the court - a “Motion for Complaint” (“Motion”) and “Motion for Order to Show Cause for Indirect Contempt of Court” (“OSC”). These documents were separately filed on April 5, 2024. There is also a document entitled “PLAINTIFF HELEN ARIZA DEMAND FOR BILL OF PARTICULARS UNDER C.C.P.454” that was filed contemporaneously with the other two.

## **EVIDENTIARY REQUESTS AND OBJECTIONS**

### **REQUESTS FOR JUDICIAL NOTICE**

Each party is asking the Court to take judicial notice and consider various court documents that support their respective positions. There are also objections to two declarations of plaintiff.

Regarding the "Request For Judicial Notice in Support of Opposition of Scott Nordyke and Arthur Trillo to Helen Ariza's Motion for Order to Show Cause for Indirect Contempt of Court", the Court **GRANTS** the request as to:

1. Order Granting and Denying Motion for Preliminary Injunction [of Nordyke Defendants] signed January 26, 2024; and
2. Order Denying Plaintiff Helen Ariza’s Motion for Preliminary Injunction signed April 30, 2024.

Regarding the "Request for Judicial Notice In Support Of Opposition of Scott Nordyke and Arthur Trillo to Plaintiff Helen Ariza’s Motion for Complaint for 1. Conversion 2. Unjust Enrichment, 3 Misappropriation of Funds by Scott Nordyke, Arthur Trillo and Bonnie K Tuckerman-Aho” the Court **GRANTS** the request as to:

1. Order Granting and Denying Motion for Preliminary Injunction [of Nordyke Defendants] signed January 26, 2024; and
2. Order Denying Plaintiff Helen Ariza’s Motion for Preliminary Injunction signed April 30, 2024.

Regarding the “Requests For Judicial Notice in Support for Plaintiff Helen Ariza’s Motion for Complaint 1. Conversion, 2. Unjust Enrichment, 3. Misappropriation of Funds . . . “ the Court **DENIES** the following requests:

- “1. Payments to Defendant Bonnie K. Tucheran-Aho (Aho) loan payments from August 1, 2021, through November 2022, totalling \$37,382.23 ;
- “2. Contract of Sale, Recorded Agreement of Sale, Addendum to the Contract of Sale;
- “3. Chicago Title;
- “4. Subpeona for documents;
- “5. Tenant letters;
- “6. Altered check made out to Beach Lake Village altered Aho on December 5, 2021; and
- “7. Expenditures paid by Ariza while Aho was under suspension until August 2022” .

Facts in the judicial record that are subject to dispute, such as allegations in affidavits, declarations, and probation reports, are not the proper subjects of judicial notice even though they are in a court record. (*Richtek USA, Inc. v uPI Semiconductor Corp.* (2015) 242 Cal.App.4<sup>th</sup> 651, 659.) Judicial notice is not the proper method for the introduction of these seven requested categories of documents.

## **DEFENDANTS’ “OBJECTIONS TO DECLARATION OF HELEN ARIZA ATTACHED TO NOTICE OF MOTION AND MOTION FOR ORDER TO SHOW CAUSE FOR INDIRECT CONTEMPT OF COURT”**

## **DEFENDANTS’ “OBJECTIONS TO DECLARATION OF HELEN ARIZA FILED SEPARATELY IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE FOR INDIRECT CONTEMPT OF COURT”**

Defendants filed two separate pleadings objecting to plaintiff’s declarations in support of the Motion and OSC.

There are three (3) objections to plaintiff’s “DECLARATION OF HELEN ARIZA” filed as one pleading with Notice of Motion, Motion for OSC, and Points and Authorities, these are all **SUSTAINED**. The averments in the declaration lack relevance and foundation, are opinions, and legal conclusions.

There are eight (8) objections to plaintiff’s “DECLARATION REGARDING CONTEMPT OF COURT BY SCOTT NORDYKE AND ARTHUR TRILLO filed separately on April 5, 2024, these are all **SUSTAINED**. The averments in the declaration lack relevance and foundation, are opinions, and legal conclusions.

## **SUBSTANTIVE MOTIONS**

### **PLAINTIFF’S MOTION FOR COMPLAINT FOR CONVERSION, UNJUST ENRICHMENT AND MISAPPROPRIATION OF FUNDS**

It is unclear what this document is seeking; the document, despite its title, appears to be an attempt to file an amended verified complaint. The complaint has limited factual allegations and a vague prayer. The “Motion” contains no language requesting leave to amend. To amend a complaint where an answer has been filed plaintiff is to either receive the consent of the other party or obtain leave of court through a noticed motion to file an amended complaint. (California Code of Civil Procedure § 472; *Barton v. Kahn* (2007) 157 Cal.App.4<sup>th</sup> 1216.)

A motion is an application made to the court for an order. The movant has the burden to support their motion by proof. (*Mills Land & Water Co. v. Golden W. Ref. Co.* (1986) 186 Cal. App. 3<sup>rd</sup> 116, 135.) Giving plaintiff every benefit of doubt, the motion can be viewed as a request for leave to amend; but even under that generous interpretation plaintiff fails because she has not provided any facts to support an inference that she can overcome Defendant’s defenses if given such permission. (See *Goodman v. Kennedy* (1976) 18 Cal.3<sup>rd</sup> 335, 349.)



The “Motion” is **DENIED**.

## **PLAINTIFF’S MOTION FOR ORDER TO SHOW CAUSE FOR INDIRECT CONTEMPT OF COURT**

Plaintiff, the enjoined party in Court’s January 26, 2024 Order, is bringing a motion to enforce that Order against defendants.

As explained in *Koshak v. Malek* (2011) 200 Cal. App. 4<sup>th</sup> 1540, 1548-49, an indirect contempt proceeding is commenced by the presentation of an affidavit setting forth the alleged contemptuous acts. The affidavit is in effect a complaint framing the issues before the court, and is a jurisdictional prerequisite to the court’s power to fashion an appropriate remedy.

The Declaration of Helen Ariza does not allege violations of existing court orders. The declaration contains three numbered allegations of defendants participating in Unlawful Detainer actions and one allegation of defendants serving 60-day Notices to Terminate Tenancy. (Defendants’ objections to these allegations in the Declaration in Support of the OSC were sustained.) Even if this Court was to consider the declaration, these statements reflect the type of park management activity by defendants contemplated by this Court’s Order of January 26, 2024.

The Motion for Order to Show Cause is **DENIED**. There is no showing of a violation of any court order.

## **PLAINTIFF’S DEMAND FOR BILL OF PARTICULARS**

There is a single “Common Count for Money Had and Received” in the Cross-Complaint filed January 31, 2023. However, a demand for a bill of particulars is not a document normally filed with the Court. The provisions of Code of Civil Procedure § 454 have long been regarded as akin to discovery and the period within which a bill of particulars is to be delivered is to be liberally construed by the court where delivery beyond the statutory deadline does not prejudice a party (*McCarthy v. Tecarte Land & Water Co.* (1896) 110 Cal. 687, 692–693).

The Court does not rule on the Bill of Particular as the filing makes no request and the procedure is not one for Court decision as framed.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendants are to submit a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.

# TRYON v. ANGELS GUN CLUB, INC.

17CV42160

## CROSS-DEFENDANTS' DEMURRER AND MOTION FOR JUDGMENT ON THE PLEADINGS

The Fourth Amended Complaint ("4AC") added Cross-Defendants John Tryon, Elizabeth Tryon, Denise Tryon, and Mary Tryon to the litigation. On March 27, 2024, cross-defendants John and Elizabeth Tryon filed a demurrer to the 4AC.

The FAC introduced four new parties: Denise Tryon, Mary Tryon, John Tryon, and Elizabeth Tryon. The other added defendants separately answered the FAC on March 4, 2024. Three cross-defendants, Thomas Tryon, Denise Tryon, and Mary Tryon, moved for a Judgment on the Pleadings on April 19, 2024.

### DEMURRER TO FOURTH AMENDED COMPLAINT

A demurrer presents an issue of law regarding the sufficiency of the allegations outlined in the complaint. The challenge is limited to the "four corners" of the pleading (which includes exhibits attached and incorporated therein), or from matters outside the pleading which are judicially noticeable. The complaint is read as a whole. Material facts properly pleaded are assumed true, but contentions, deductions or conclusions of fact/law are not. In general, a pleading is adequate if it contains a reasonably precise statement of the ultimate facts. in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. (California Code of Civil Procedure (CCP) §§ 430.10 *et seq.*; *Blank v. Kirwan* (1985) 39 Cal.3<sup>rd</sup> 311, 318; *Gray v. Dignity Health* (2021) 70 Cal.App.5<sup>th</sup> 225, 236 n.10.)

### The First Cause of Action in the Fourth Amended Complaint.

The demurrer of John Tryon and Elizabeth Tryon has been mooted by the dismissal of the Fourth Amended Complaint's First Cause of Action.

### The Fourth Cause of Action for Breach of Contract is Barred Under the Statute of Limitations.

The demurrer of John Tryon and Elizabeth Tryon to the cross-complainant's fourth cause of action turns on equitable considerations to the tolling of the four-year statute of limitations. (See Code of Civil Procedure section 337.)

The court has been continually cited to a document labeled "Land Swap Agreement" by all parties throughout this dispute. Both parties have referred to this document in their respective complaints and cross-complaints, as well as citing it in law and motion matters. The Agreement is at the very core of the litigation, as all parties allege ongoing violations by the others to justify bringing suit beyond the statutory period.

Equitable tolling is a judicially created doctrine in California that can suspend or extend a statute of limitations to ensure fundamental practicality and fairness. This doctrine is applied in carefully considered situations to prevent the unjust technical forfeiture of

causes of action, where the defendant would suffer no prejudice. (*In re Marriage of Zimmerman* (2010) 183 Cal App.4<sup>th</sup> 900.) The doctrine is not a cure-all for non-compliance with a statute of limitations, but rather is a narrow remedy that applies only occasionally and in special situations. (*State Comp. Ins. Fund v. Department of Ins.* (2023) 96 Cal.App.5<sup>th</sup> 227.)

The application of equitable tolling requires the presence of three elements: (1) timely notice, (2) lack of prejudice to the defendant, and (3) reasonable and good faith conduct on the part of the plaintiff. (*Saint Francis Memorial Hospital v. State Dept. of Public Health* (2020) 9 Cal.5<sup>th</sup> 710; *McDonald v. Antelope Valley Community College Dist.*(2008) 45 Cal. 4<sup>th</sup> 88; *Hopkins v. Kedzierski* 92014) 225 Cal. App. 4th 736; *State Comp. Ins. Fund v. Department of Ins.*, *supra.*) These requirements are designed to balance the injustice to the plaintiff occasioned by the bar of his or her claim against the effect upon the important public policy expressed by the operative limitations statute (*Id.*).

Equitable tolling and the delayed discovery rule, argued by cross-complainant, are two distinct doctrines that can affect the running of the statute of limitations in California. Equitable tolling is a procedural rule adopted by the courts that operate independently of the Code of Civil Procedure. It is designed to relieve a plaintiff from the bar of a statute of limitations when they, in good faith, pursue a legal remedy designed to lessen the extent of their injuries or damage. The application of equitable tolling requires timely notice, lack of prejudice to the defendant, and reasonable and good faith conduct on the part of the plaintiff. (*Mills v. Forestex Co.* (2003) 108 Cal.App.4<sup>th</sup> 625; *Saint Francis Memorial Hospital, supra.*)

It is important to note that the application of these doctrines can vary depending on the specific facts of a case and the cause of action involved. (*Vaca v. Wachovia Mortgage Corp.* (2011) 198 Cal. App. 4th 737.)

The complaint is silent on the moving parties' involvement in this matter. John C. Tryon's name is in the caption, the introduction, paragraph 4 as a current owner of real property, and in paragraph 10 and linked footnote referencing his signing the Land Swap Agreement. Elizabeth Tryon's name appears in the caption, the introduction, paragraph 4 as a current owner of real property and the Land Swap Agreement footnote. Any action, including involvement in this litigation, was by Thomas Tryon, Cross-Defendants John Tryon, Elizabeth Tryon, Mary Tryon, and Denise Tryon. Cross-complainant only alleges they own an interest in the property.

As there are no facts to support the tolling of the statute of limitations for cross-defendants, the Demurrer to the Fourth Causes of Action is **SUSTAINED, WITHOUT leave to amend**. Cross-defendants shall have 10-days after the formal ruling on the demurrer to file answers to the Second, Third, and Fifth Causes of Action. (California Rule of Court 3.1320(g).)

## **MOTION FOR JUDGMENT ON THE PLEADINGS**

The Motion for Judgment on the Pleadings by cross-defendants Thomas Tryon, Denise Tryon and Mary Tryon challenges the Fourth Amended Cross-Complaint's First and Fourth Causes of Action.

Both a demurrer and a motion for judgment on the pleadings test the sufficiency of the pleadings based on matters that appear on the face of those pleadings. However, there are some key differences in their analysis.

While a demurrer lies only for defects appearing on the face of the pleadings, and when considering a demurrer, all facts alleged in the complaint are deemed admitted, a motion for judgment on the pleadings tests whether the pleading raises an issue that can be resolved as a matter of law. (*Alameda County Waste Management Authority v. Waste Connections US, Inc.*(2021) 67 Cal. App. 5th 1162.)

### **The First Cause of Action in the Fourth Amended Complaint.**

The motion for judgment on the pleadings of Thomas Tryon, Denise Tryon and Mary Tryon is **DENIED** as moot by the dismissal of the Fourth Amended Complaint's First Cause of Action.

### **The Fourth Cause of Action for Breach of Contract is Barred Under the Statute of Limitations.**

As discussed above for the demurrers of John Tryon and Elizabeth Tryon to the cross-complainant's fourth cause of action, the moving parties Mary Tryon and Denise Tryon's inclusion in the factual allegations is sparse. The fourth amended complaint contains no factual allegations that address a delayed discovery or equitable tolling analysis for these cross-defendants.

The cross-complaint states facts relating to cross-defendant Thomas Tryon, addressing both equitable tolling and delayed discovery. These are two distinct doctrines that can affect the running of the statute of limitations in California.

When applying the three elements of the *Saint Francis Memorial Hospital* case: (1) timely notice, (2) lack of prejudice to the defendant, and (3) reasonable and good faith conduct on the part of the plaintiff, it becomes clear that cross-defendant Thomas Tryon filed the initial complaint in this action on February 2, 2017. He alleged a course of conduct between the parties from 1946 through 2000 and claimed that the cross-complainant's operations were causing damage to his property by "overshooting" and contaminating the property with lead. In his current role as cross-defendant, he cannot complain of prejudice due to the cross-complaint taking up the dispute and seeking its remedies. The cross-complainant has been open to bringing the Land Swap Agreement into litigation, as evidenced by its inclusion as an exhibit to the Amended Cross-complaint filed on January 30, 2019.

The Motion for Judgment on the Pleadings by cross-defendants Denise Tryon and Mary Tryon to the cross-complaint's fourth cause of action is **GRANTED**. The Motion for Judgment on the Pleadings by cross-defendant Thomas Tryon to the cross-complaint's

fourth cause of action is **DENIED**. Answers from these moving parties have previously been filed.

The Clerk shall provide notice of this Ruling to the parties forthwith. Cross-defendants are to submit a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.