

Calaveras Superior Court Civil Law & Motion Calendar
Friday, April 9, 2021; Hon. David M. Sanders, Courtroom 2

LINCH v MALAVAZOS et. al.

20CV44554

DEFENDANT MALAVAZOS' DEMURRER TO THE FIRST AMENDED COMPLAINT

On October 26, 2020, the first amended complaint was filed. On March 5, 2021, defendant Malavazos demurred.

Malavazos' is not named as a defendant in the first cause of action. Therefore, she lacks standing, and her demurrer to the first cause of action is OVERRULED.

As to the second cause of action, to sufficiently allege a cause of action, a complaint must allege all the ultimate facts, i.e., all facts necessary to establish each element of the cause of action pleaded. (Committee on Children's TV, Inc. v General Foods Corp. (1983) 35 Cal.3d 197, 212.) A pleading does not sufficiently state a cause of action when any facts necessary to establish an essential element of a cause of action are missing. (Baldwin v Marina City Props., Inc. (1978) 79 Cal.App.3d 393, 410.)

Although plaintiff incorporated by reference all prior paragraphs of the complaint into the second cause of action, plaintiff still failed to plead all essential elements set forth in CACI Number 4901 for a cause of action for Prescriptive Easement. Therefore, based on the foregoing, Malavazos' demurrer to the second cause of action is SUSTAINED, WITH twenty (20) days leave to amend.

Finally, as to the third cause of action, plaintiff concedes the complaint is legally deficient. Based on this concession, the demurrer to the third cause of action is SUSTAINED, WITH twenty (20) days to leave to amend.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant Malavazos to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

VITTON v JOHNSON

20CV44876

DEFENDANT'S MOTION FOR TERMINATING SANCTIONS

On September 4, 2020, defendant (hereinafter "Ms. Johnson") served Interrogatories – Form, Set One, and Special, Set One, Requests for Production of Documents, Set One, and Requests for Admission, Set One, on plaintiff (hereinafter "Mr. Vitton.") On October 14, 2020, a letter was sent to Mr. Vitton advising him that responses were to be served no later than October 23, 2020. After receiving no responses, Ms. Johnson filed a motion to compel that the Court granted on December 11, 2020, and ordered plaintiff to fully answer both sets of interrogatories and produce all requested documents (included proper verification) by the close of business on January 8, 2021.

On December 21, 2020, Mr. Vitton's responses to both sets of interrogatories and request for production of documents were found at the front door of Ms. Johnson's attorney's office. The responses were not verified. When a party does not sign a response under oath as required, the answers in the response are legally tantamount to no response at all or as if they were served after the deadline to respond. (Steven M. Garber & Assocs. v Eskandarian (2007) 150 Cal.App.4th 813, 817 n.4 (unverified answers to interrogatories); Food 4 Less Supermks., Inc. v Superior Ct (1995) 40 Cal.App.4th 651, 657 – 58 (unverified response to demand to produce.)) A handwritten note was found stating "delivered 12-19-2020 8:00 pm", which was a Saturday. Ms. Johnson's attorney sent a letter to Mr. Vitton advising him to verify the responses by January 8, 2021, or this motion would be filed. After having received no verification by the Court's deadline, this motion was filed.

Based on Mr. Vitton's failure to provide any verified responses as ordered by the Court, this motion is GRANTED.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant to prepare a formal Order and Judgment pursuant to Rule 3.1312 in conformity with this ruling.