

October 10, 2025, Civil Tentative Rulings

1. CU0000512 eCapital Asset Based Lending v. Nicole Medina, et al.

No appearances are required.

Before the court is a petition for final distribution of the estate of David Freeman and for statutory fees pursuant to Probate Code section 11640, and a petition to terminate probate proceedings in the estate of Tracy Freeman for lack of assets pursuant to Probate Code section 12252.

Regarding the estate of David Freeman, the court determines the estate is in a condition to be closed and waives the requirement for appointment of a new personal representative for the sole purpose of distribution. The petition is granted as prayed, and any remaining estate assets after the payment of statutory fees shall be distributed in equal shares to petitioner and her brother.

The Estate of Tracy Freeman is terminated as prayed, and the personal representative is discharged from further duties.

2. CU0001661 Deborah Wagner vs. George McKnight et al

Defendant Wellpath Management, Inc.'s motion to dismiss is denied.

As an initial matter, plaintiff's unopposed requests for judicial notice are granted. *See Evid. Code* §§ 452, 453

A section 524(a) discharge injunction in bankruptcy does not prevent creditors from proceeding against a debtor's liability insurer to establish the insurer's liability. 11 USC § 524(e). Furthermore, it does not prevent establishing the insurer's liability by proceeding against the discharged debtor to the extent that such action is solely for the purpose of recovering from the insurer. *Forsyth v. Jones* (1997) 57 Cal.App. 4th 776, 782. A discharge injunction does not affect the liability of third-party insurers, nor does it prevent a claimant from establishing an insurer's liability by proceeding nominally against a discharged debtor. *Id.*

The Bankruptcy Court held that "[n]othing contained in the Plan shall constitute or be deemed a waiver of any Causes of Action that the Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers." Mot. to Dismiss, Ex. A, p. 66. Moreover, in its prior ruling lifting the automatic stay, the Bankruptcy Court explicitly granted plaintiff permission to "proceed solely against Wellpath Management, Inc.'s employment practices liability insurance." RJN #4.

Pursuant to the Bankruptcy court's order, plaintiff may proceed against Wellpath Management, Inc.'s employment practice liability insurance with Wellpath Management, Inc. continuing as a nominal defendant only.

Defendant argues in reply that “[w]hile the termination of the bankruptcy stay and orders of the bankruptcy court permit Defendant to be treated as a nominal defendant for purposes of this lawsuit,” Wellpath Management is not a proper party to this case and should be dismissed. Reply, 1:25-27. This issue, which is contested by plaintiff, is not properly resolved by way of a motion to dismiss.

3. CU0001942 James S. Grill v. Foremost Insurance Company

Defendant’s motion for judgment on the pleadings as to plaintiff’s first amended complaint (“FAC”) is granted.

Requests for Judicial Notice

Defendant’s unopposed requests for judicial notice are granted.

Standard of Review

In considering a motion for judgment on the pleadings, courts consider whether properly pled factual allegations, assumed to be true and liberally construed, are sufficient to constitute a cause of action. *Stone Street Capital, LLC v. Cal. State Lottery Com’n* (2008) 165 Cal.App.4th 109, 116; *Fire Ins. Exchange v. Sup. Ct.* (2004) 116 Cal. App. 4th 446, 452-53. “The grounds for a motion for judgment on the pleadings must appear on the face of the complaint or from a matter of which the court may take judicial notice.” *Richardson-Tunnell v. School Ins. Program for Employees* (2007) 157 Cal.App. 4th 1056, 1061; *see also Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1202; *Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5.

If the moving party is a defendant, the defendant must show that the complaint does not state facts sufficient to constitute a cause of action against the defendant. Code Civ. Proc. § 438(c)(1). The burden is then on the complainant to show the court that a pleading can be amended successfully, in order to obtain an order allowing leave to amend. *McKenney v. Purepac Pharmaceutical Co.* (2008) 167 Cal.App.4th 72, 78

First Cause of Action: Promissory Estoppel

Promissory estoppel applies when a promise which a promisor should reasonably expect to induce action or forbearance on the part of the promisee does indeed induce such action or forbearance, and there would be injustice if the promise were not enforced. *Advanced Choices, Inc. v. State Dept. of Health Services* (2010) 182 Cal.App.4th 1661, 1671-1672. To prevail on a cause of action for promissory estoppel, plaintiff must prove: 1) a promise clear and unambiguous in its terms; 2) reliance by plaintiff on the promise; 3) the reliance was reasonable and foreseeable; and 4) plaintiff was injured by his reliance. *Aceves v. U.S. Bank, N.A.* (2011) 192 Cal.App.4th 218, 225. There must be a showing that a promise, clear and unambiguous in its terms, had been made upon which a plaintiff has relied to his prejudice. *Garcia v. World Savings, FSB* (2010) 183 Cal.App.4th 1031, 1044. In order to be enforceable, the promise must be definite enough that a court can determine the scope of the duty. *Id.* Additionally, the limits of

performance must be sufficiently defined to provide a rational basis for the assessment of damages. *Id.*

Defendant argues plaintiff's claim for promissory estoppel fails because defendant did not make a "clear and unambiguous" promise it would renew the policy indefinitely; plaintiff's reliance on a purported promise made by HUB is unreasonable; and HUB is not defendant's agent. The court agrees in large part.

First, plaintiff's allegations fail to establish any sort of clear and unambiguous promise that the policy would continue to be renewed indefinitely. None of the allegations of the FAC establish a promise of indefinite coverage or promise to renew the policy as long as wildlife risk conditions were met by plaintiff. See FAC ¶ 2 ("subsequent renewal would extend the Policy for an indefinitely reasonable time...."); ¶ 8 ("there were no reasons the Policy would not continue, particularly relative to any fire risk issues...."). Second, even if plaintiff could allege a clear and unambiguous promise, plaintiff's reliance on such a promise would be unreasonable. Such promise would contradict the terms of plaintiff's policy, which expressly reserves defendant's right of nonrenewal and expressly disclaims any automatic extension of terms. See RJN Ex. 1.

Plaintiff's allegations, assumed to be true and liberally construed, are not sufficient to constitute a cause of action for promissory estoppel.

Second Cause of Action: Unconscionable Contract

The unconscionability doctrine has both a procedural and substantive element. The procedural element addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to the unequal bargaining power of the parties; the substantive element pertains to the fairness of the agreement's actual terms and whether they are overly harsh or one-sided. *Barrera v. Apple American Group LLC* (2023) 95 Cal.App.5th 63, 87. Both elements must be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine. *Fisher v. MoneyGram Intern., Inc.* (2021) 66 Cal.App.5th 1084, 1093.

Defendant asserts plaintiff's cause of action fails because plaintiff does not ask the court to refrain from enforcing the policy, so there is nothing for the court to remedy. Defendant additionally argues defendant's right of non-renewal does not render it unconscionable. The court agrees with both contentions. Plaintiff has failed to allege any unconscionable provision in the policy for which the court can grant any recognized relief.

Third Cause of Action: Breach of the Implied Covenant of Good Faith and Fair Dealing

"There is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement." *Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654, 658. To establish an insurer's "bad faith" liability, the insured must show the insurer withheld benefits due under the policy, and that such a withholding was unreasonable or without proper cause. *Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1209. "[A]n insurer has no legal duty to renew an

insurance policy when its term has expired.” *Travelers Ins. Co. v. Lesher* (1986) 187 Cal.App.3d 169, 194, citing *Greene v. Safeco Ins. Co. of America* (1983) 140 Cal.App.3d 535, 538.

Defendant contends that the bad faith cause of action has no merit for three reasons: (1) plaintiff cannot show that defendant withheld benefits due under the express provisions of the policy (2) bad faith arising from early cancelation of an insurance policy as set forth in *Jonathan Neil & Assoc., Inc. v. Jones* (2004) 33 Cal.4th 917, 941, does not apply in the present circumstances; and (3) the moratorium on non-renewal relating to the Dixie Fire did not apply to Plaintiff’s residence. The court agrees.

Plaintiff’s allegations do not set forth any cognizable allegations of bad faith. Moreover, as plaintiff concedes, the moratorium did not apply to his property. Opposition, 10:26-11:1; RJN Exhibit 4.

Plaintiff was previously given an opportunity to amend his complaint following defendant’s first motion for judgment on the pleadings. Plaintiff failed to remedy the defects therein and has made no persuasive showing at this juncture that he can do so. Leave to amend is denied.

4. CU0002275 Marcia Willardson v. Ensen Mason, et al.

Before the court is the petition of Marcia Willardson to command respondents, including the San Bernardino County Auditor-Controller/Treasurer/Tax Collector, to “withdraw and vacate the Notice of Power to Sell Tax-Defaulted Property” regarding real property located in San Bernardino California. The proper venue for a dispute concerning real property located in San Bernardino County is the Superior Court for San Bernardino County. See Code Civ. Proc. §392. The court, on its own motion, transfers this matter to the Superior Court in San Bernardino County. See Code Civ. Proc §397. The parties are directed to contact said court for the scheduling of all further proceedings. The clerk is directed to transfer this matter forthwith to the Superior Court for San Bernardino County.

5. CU0002207 Deborah J. Carver vs. Michael W. Horner

Defendant Michael Horner’s demurrer to plaintiff’s complaint is sustained without leave to amend.

Request for Judicial Notice

Defendant’s unopposed request for judicial notice is granted in its entirety. This court may take judicial notice of the documents and orders in the prior case. Evid. Code § 452(d). “In ruling on a demurrer based on res judicata, a court may take judicial notice of the official acts or records of any court in this state.” *Frommhamen v. Board of Supervisors* (1987) 197 Cal.App.3d 1292, 1299 (citations omitted).

Plaintiff’s request for judicial notice is untimely. Moreover, while styled a request for judicial notice, in fact, it is an unauthorized supplemental brief referencing authorities in opposition to

the demurrer. This notwithstanding, the court, in the exercise of its discretion, has considered the authorities cited by plaintiff. Plaintiff is admonished to not file supplemental briefing absent leave of the court.

Standards on Demurrer

The court's task in ruling on a demurrer is to determine whether the complaint states a cause of action. *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 300. A demurrer admits the truth of all material facts properly pleaded, *Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966-967, no matter how unlikely or improbable they may be, *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604, or how unlikely it will be that plaintiff will be able to prove the claim. *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214. The court also assumes the truth of all reasonable inferences that may be drawn from the properly pleaded facts. *Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1083. The assumption of truth does not apply, however, to contentions, deductions, or conclusions of law or fact. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. A demurrer tests the pleadings alone and not the evidence or other extrinsic matters; a demurrer therefore lies only where the defects appear on the face of the pleading or are judicially noticed. *Id.*

Demurrer Based on Res Judicata

The doctrine of res judicata precludes parties or their privies from relitigating an issue that has been finally determined by a court of competent jurisdiction. *Levy v. Cohen* (1977) 19 Cal.3d 165, 171. Any issue necessarily decided in such litigation is conclusively determined as to the parties or their privies if it is involved in a subsequent lawsuit on a different cause of action. *Id.* Application of the doctrine depends upon an affirmative answer to three questions: (1) Was the issue decided in the prior adjudication identical with the one presented in the action in question? (2) Was there a final judgment on the merits? (3) Was the party against whom the plea is asserted a party to or in privity with a party to the prior adjudication? *Id.*

"Res judicata" describes the preclusive effect of a final judgment on the merits, and prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896. Collateral estoppel, or issue preclusion, precludes relitigation of issues argued and decided in prior proceedings. *Id.* "Under [the res judicata] doctrine, all claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date. " "Res judicata precludes piecemeal litigation by splitting a single cause of action or relitigation of the same cause of action on a different legal theory or for different relief. " " *Id.* at 897.

The res judicata doctrine is based on the primary right theory under which a cause of action is comprised of a 'primary right' of the plaintiff, a corresponding 'primary duty' of the defendant, and a wrongful act by the defendant constituting a breach of that duty. A primary right is indivisible—its violation gives rise to but a single cause of action. *Mycogen Corp.*, 28 Cal.4th at 904, quoting *Crowley v. Katleman* (1994) 8 Cal.4th 666, 681-682. Even where there are multiple

legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief. *Id.* The primary right theory is invoked when a party attempts to divide a primary right and enforce it in two suits. The theory prevents this result when the first suit has terminated in a judgment on the merits adverse to one party, the defendant in the second suit may set up that judgment as a bar under the principles of res judicata. *Id.*

“[A] demurrer based on res judicata is properly sustained only if the pleadings and judicially noticed facts conclusively establish the elements of the doctrine.” *Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal. App. 4th 210, 231.

Analysis

Defendant demurs to the current complaint, arguing that the partition order in the prior partition action (Case No. CU21-086089) between the same parties bars the claims in the present complaint under the doctrine of res judicata. The court agrees.

As a preliminary matter, the parties in this action are the same as the prior partition action. In this case Deborah Carver (“Carver”) is plaintiff; George and Michael Horner are defendants. In the former case, Horners were plaintiffs and Carver was defendant. In addition, the judgment in the partition action was a final judgment on the merits, which was later affirmed on appeal. *See Starcevic v. Pentech Financial Services, Inc.* (2021) 66 Cal.App.5th 365, 375–376, *quoting Pista v. Resetar* (1928) 205 Cal. 197, 199 (“ ‘An interlocutory decree in an action for the partition of real property, although preliminary to the final judgment of conformation, is conclusive as to the matters determined therein.’ ”)

The court must thus decide if the same primary right is at issue in the present action, such that it bars plaintiff’s claim. In its demurrer, defendants contend that the primary right at issue in the partition case is the same as the primary right at issue in the present complaint, and that action was resolved on its merits in favor of the Horners. In opposition, Carver argues that she is asserting new causes of actions and remedies. Defendant Horner has the better argument.

The issue in conducting a res judicata analysis is not whether specific facts were mentioned in the earlier case; rather, it is whether plaintiff is asserting a violation of the same primary right or a different primary right from that asserted in the earlier action, regardless of the legal theory upon which recovery is predicated. *See Mycogen, supra*, 28 Cal.4th at 904. The complaint at bar concerns real property located at 10727 E. Lime Kiln Road, Grass Valley, Nevada County, California, and alleges causes of action for: 1. Fraud and Intentional Misrepresentation; 2. Fraudulent Concealment (Fraud by Omission); 3. Unjust Enrichment; 4. Civil Conspiracy to Defraud; 5. Declaratory Relief (Quiet Title) and Cancellation of Fraudulent Instruments; 6. Independent Action in Equity to Set Aside and Vacate Judgment (Void on its Face); and 7. For Related Relief. The complaint seeks, among other things: damages associated with plaintiff’s investments in and labor and improvements for the property; a declaration of plaintiff’s ownership interest in the property; and cancellation of various property deeds and instruments negatively effecting plaintiff’s ownership interest. Lastly, a review of the allegations of the complaint as a whole reveal that plaintiff’s current causes of action are all based on her assertion of the same primary right: namely, her ownership interest in the property. This is precisely the same primary right that was the subject of the previous partition action. Consequently, even if

plaintiff now alleges different theories of liability all associated with her purported ownership interest in the property, all such causes of action are barred by res judicata. Res judicata precludes piecemeal litigation including relitigation of the same cause of action on a different legal theory or for different relief.

Plaintiff has not demonstrated that the defects of the instant complaint can be cured. All of the facts alleged in her complaint are barred by the doctrine of res judicata. Consequently, the court denies leave to amend.

6. CU0001671 Kelly Collin vs. Cascade Living Group Management, LLC, et al

Appearances are required. This matter was set by visiting Judge Hammer for an early evaluation conference under Labor Code section 2699.3(f) before Judge Tice-Raskin, the assigned judge for all purposes including trial. Judge Tice-Raskin has *not* read any of the early evaluation statements of the parties at this time. Before this judicial officer will serve as the neutral evaluator the court needs to know whether the parties will enter into the following three stipulations: 1. Judge Tice-Raskin can serve as the neutral evaluator for the early evaluation conference; 2. Judge Tice-Raskin can meet with the parties as necessary to facilitate the early evaluation and consider the confidential submissions of the parties; and 3. Neither party will challenge Judge Tice-Raskin's ability to serve as the trial judge based on his service as the neutral evaluator. It is up to the parties and counsel to decide whether they wish to enter into the noted stipulations or respectfully decline the same. Should the parties respectfully decline, the court will designate another judicial officer to serve as the neutral evaluator. The court is happy to serve as the neutral evaluator and also happy to designate another judicial officer to serve as the neutral evaluator. The parties shall be prepared to state their views regarding the above at the scheduled hearing. Further proceedings will be scheduled thereafter.

7. CU0001683 County of Nevada vs. Michael James Taylor

The court issued a written ruling. The hearing for purposes of ruling is vacated.