

NOTICE:

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-7858 (Department 53) by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 3.04.

Judge McMaster discloses that attorneys appearing in cases on today's calendar may have donated to the Committee for Judicial Independence which was formed to oppose the attempted recall of Judge McMaster. A list of donors and amounts donated is under the custody of court executive officer Jody Patel and can be reviewed at room 611, sixth floor, courthouse, 720 Ninth Street.

**Department 53
Superior Court of California
800 Ninth Street, 3rd Floor
LOREN E. MCMASTER, Judge
T. West, Clerk
D. Calmes V, IV. Carroll, CA, Bailiff**

Tuesday, March 27, 2007, 2:00 PM

Item 1 **04AS03028 RUBEN LOPEZ, ET AL VS. DAIMLER CHRYSLER CORP., ET AL**
Nature of Proceeding: Application for Order Sealing Petition for Minor's Compromise & Motion to
Filed By: Wilcoxon, Daniel

This matter is continued to 4/2/2007 at 02:00PM in this department. Mr. Wilcoxon is not available this date.

Item 2 **04AS03028 RUBEN LOPEZ, ET AL VS. DAIMLER CHRYSLER CORP., ET AL**
Nature of Proceeding: Compromise Claim of a Minor
Filed By: Wilcoxon, Daniel

This matter is continued to 4/2/2007 at 02:00PM in this department. Mr. Wilcoxon is not available this date.

Item 3 **04AS03028 RUBEN LOPEZ, ET AL VS. DAIMLER CHRYSLER CORP., ET AL**
Nature of Proceeding: Motion to Expunge and/or Reduce Lien
Filed By: Wilcoxon, Daniel

This matter is continued to 4/2/2007 at 02:00PM in this department. Mr. Wilcoxon is not available this date.

Item 4 **05AS00595 SACTO HOTEL PARTNERS, LLC VS. SWINERTON BUILDERS, INC., ET AL**
Nature of Proceeding: Summary Judgment
Filed By: Turken, James H.

Cross-defendant Bruskin International LLC's Motion for Summary Judgment on

Swinerton Builders' Cross-complaint is granted.

The Court rules on Cross defendant Bruskin's evidentiary objections as follows: the objections to Stein Dec., paras. 11 -13 are sustained; the remaining objection is overruled.

Cross-defendant did not comply with all of the requirements of California Rules of Court, Rule 3.1354 (as amended January, 2007). Defendant shall provide a separate document in compliance with such rule, including a space for the Court's ruling on each objection and the Court's signature.

Exhibits submitted by moving party do not comply with California Rules of Court, Rule 3.1110 (former Rule 311) as they are not separated by hard tabs, which is required notwithstanding it was filed by Fax and File.

The underlying complaint by Sacramento Hotel Partners, LLC against Swinerton Builders alleges breach of settlement agreement, breach of construction agreement, negligence and breach of express and implied warranties.

Swinerton Builders' Cross complaint alleges five causes of action against cross-defendant Bruskin: the 1st cause of action for comparative negligence, the 2nd cause of action for equitable indemnity, the 5th cause of action for breach of express warranties, the 6th cause of action for breach of implied warranties and the 7th cause of action for declaratory relief.

Bruskin moves for summary judgment on the grounds that cross-complainant Swinerton cannot establish that Bruskin is the legal successor of Belstone Marble & Granite.

Bruskin purchased some assets from Tile & Stone Sales, Inc. d.b.a. Belstone Marble, another cross-defendant in this action. Bruskin asserts that it is not the successor in interest to Belstone, should not have been sued, and should have been dismissed by Swinerton a long time ago.

The action arises out of the construction of the Embassy Suites Hotel in Sacramento. (UMF 1.) Swinerton was the general contractor on the project. (UMF 2.) In July 2001, Swinerton entered into a purchase agreement with Belstone to supply stone and other materials, including planter and fountain caps. (UMF 3.)

Bruskin was involved in the Embassy project in any capacity. Bruskin was not formed until April 25, 2003. (UMF 9-10.)

On June 24, 2003, Bruskin purchased certain assets of Tile & stone Sales d.b.a. Belstone. (UMF 11.) That Bill of Sale provides that Bruskin "shall not assume or become obligated with respect to, and Seller shall be solely responsible for, all liabilities and obligations of [Seller], including all claims relating to activities of [Seller] prior to the date hereof. . . ." (UMF 12.)

On Feb 7, 2005 Sacramento Hotel Partners sued Swinerton for failing to rectify construction defects, including issues with the planter and fountain caps supplied by Belstone. (UMF 13.) On May 3, 2005, Swinterton filed its cross-complaint against a number of contractors. Bruskin was not specifically named in the cross-complaint, but

added as Roe 84 in Dec. 2005. (MF 14-16.) The summons states that Bruskin is named as "successor in interest to Belstone Marble & Granite" (UMF 17.) Bruskin's division Project Stone by Belstone was added as Roe 83. (UMF 20.)

Counsel for Bruskin provided counsel for Swinerton (Shuey) with a copy of the Bill of Sale of assets by Bruskin from Belstone. (UMF 21.) Shuey acknowledged that after review of the Bill of Sale "it does not appear to link Bruskin with any prior liabilities of Belstone." (UMF 23.)

The rule ordinarily applied to the determination of whether a corporation purchasing the principal assets of another corporation assumes the other's liabilities states that the purchaser does not assume the seller's liabilities unless (1) there is an express or implied agreement of assumption, (2) the transaction amounts to a consolidation or merger of the two corporations, (3) the purchasing corporation is a mere continuation of the seller, or (4) the transfer of assets to the purchaser is for the fraudulent purpose of escaping liability for the seller's debts. *Ray v. Alad Corp.* (1977) 19 Cal. 3d 22, 28.

The Bill of Sale expressly excludes any assumption of liabilities, the transaction does not amount to a merger, as Belstone continues to exist, and in fact have recently been adversaries in litigation against each other, and have been sued separately in this action. (UMF 26-27.)

As none of the *Ray* factors are present here, moving party has met its initial burden of proof on summary judgment.

No opposition has been submitted by cross-complainant Swinerton, which is taken as a concession to the motion on its merits.

Opposition is submitted only by co-cross-defendant Belstone. Belstone's opposition papers, however, concede that Bruskin is not a successor in interest to Belstone. (Oppo, 1:6-7.)

Belstone requests additional time to complete discovery prior to the Court's decision on this motion, asserting that at the March 2, 2007 deposition of the Swinerton project manager, Wiggins, the manager was unable to recall who performed repairs to the caps on fountains and planters in the hotel. However, the sole evidence presented as to the testimony of the manager is Belstone's counsel's hearsay summary, which is inadmissible.

Belstone also asserts that the workmanship of the repairs is "apparently at issue" in this case, although the deposition transcript of the manager Wiggins, submitted in reply, reflects that the repairs were made as agreed, thus the repairs are not at issue in the litigation.

Further, in reply, the declaration of Bruskin's Chief Executive Officer, Albert Barry Smith, establishes that Bruskin never performed any repairs to the stone caps, was never involved in any such repairs, never caused any such repairs to be done, never retained anyone to do such repairs, and has no knowledge regarding such repairs.

The Court finds that no genuine issue of disputed material fact remains for

determination at trial, and opposing party has failed to make a sufficient showing to justify a continuance for further discovery. The motion is granted in its entirety.

The prevailing party cross-defendant, Bruskin International LLC, including the erroneously sued Bruskin International, Inc. and Project Stone by Belstone are directed to prepare an order and judgment of dismissal for the Court's signature pursuant to C.C.P. section 437c(g) and C.R.C., Rule 3.1312.

Item 5 **05AS01777** **CHRISTOPHER BLAKELEY, ET AL VS. SUTTER MEMORIAL HOSPITAL,ET**

Nature of Proceeding: Motion To Withdraw Atty of Record (Shelley Blakeley)

Filed By: Meyer, Greg A.

Motion to Withdraw as Attorney of Record for plaintiff is unopposed by the clients but is denied without prejudice since there is no proof of service of the motion in the file. CRC 3.1300(c). The clients live in Hawaii, so, if they are served by mail, they must be served at least 16 court days and 10 calendar days before the hearing. CCP 1005(b) See *Barefield v Washington Mutual Bank* (2006) 136 Cal. App. 4th 299, 303.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 6 **05AS01777** **CHRISTOPHER BLAKELEY, ET AL VS. SUTTER MEMORIAL HOSPITAL,ET**

Nature of Proceeding: Motion To Withdraw Atty of Record (Christopher Blakeley)

Filed By: Meyer, Greg A.

Motion to Withdraw as Attorney of Record for plaintiff is unopposed by the clients but is denied without prejudice since there is no proof of service of the motion in the file. CRC 3.1300(c). The clients live in Hawaii, so, if they are served by mail, they must be served at least 16 court days and 10 calendar days before the hearing. See *Barefield v Washington Mutual Bank* (2006) 136 Cal. App. 4th 299, 303.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 7 **05AS03141** **DAVID SMITH, II, ETAL VS. SO SACRAMENTO LODGE #225, ETAL**

Nature of Proceeding: Motion to Compel Discovery Responses

Filed By: Seeger IV, Martin L.

Defendants' Motion to Compel plaintiffs to respond to Supplemental Interrogatories and Supplemental Requests for Production of Documents is unopposed and is granted. Compliance to be without objections on or before April 6, 2007.

Sanctions are denied because the Motion was not opposed. Although CRC 3.1030 purports to authorize sanctions if a Motion is unopposed, the Court declines to do so, as the specific statute governing this discovery (CCP 2031.300(c)) authorizes sanctions only if the Motion was unsuccessfully made or opposed. Any order imposing sanctions under the CRC must conform to the conditions of one or more of the statutes authorizing sanctions. *Trans-Action Commercial Investors, Ltd. v. Firmater Inc.* (1997) 60 Cal.App.4th 352, 355. However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. See *Laguna Auto Body v. Farmers Insurance Exchange* (1991) 231 Cal.App.3d 481.

Moving party shall comply with Local Rule 3.04(D) in the future, which requires including a notice of the tentative ruling system in the notice of motion.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 8 **05AS05485** **ROBERT VANDERVEEN VS. CORDOVA RECREATION & PARK DIST**

Nature of Proceeding: Summary Judgment

Filed By: Schmidt, William J.

Defendant Cordova Recreation Park District's Motion for Summary Judgment is denied.

Plaintiff was injured when he stepped into a hole on the golf cart path near the 9th hole at the golf course at Cordova Recreation Park District. Plaintiff was standing on the cart path looking behind him towards the golf marshal, and when he turned around to continue walking on the path, he stepped into the hole near the edge of the path (approximately one foot in diameter and 3-4 inches deep) and fell, injuring himself and later undergoing surgery.

Defendant contends that the golf cart path is subject to the governmental immunity set forth in Government Code section 831.4 which provides, in pertinent part, that "a public entity... is not liable for an injury caused by a condition of: (a) Any unpaved road which provides access to fishing, hunting, camping, hiking, riding, including animal and all types of vehicular riding, water sports, recreational or scenic areas and which is not a (1) city street or highway or (2) county, state or federal highway or (3) public street or highway of a joint highway district, boulevard district, bridge and highway district or similar district formed for the improvement or building of public streets or highways. (b) Any trail used for the above purposes.

The only evidence in support of the contention that the cart path is such an unpaved road or trail is the Declaration of the District's golf superintendent wherein he states that one can see ducks, geese, pheasants and peacocks on a daily basis at the Cordova golf course. (Declaration Williams, paragraph 11) Most of the declaration is

irrelevant to the immunity issue, as it focuses on the high cost of maintaining a golf course, the tendency to spend most of the money maintaining the greens, and the public policy considerations favoring inexpensive public courses so more people can afford to golf.

Defendant has not met its burden to show that the cart path is entitled to the immunity in section 831.4. The cart path is not a road or path providing access to any of the enumerated activities in the statute. The cart path does not provide access to a recreational or scenic area. Rather the cart path is a maintained path within the public golf course providing access to the different holes on the course. If the legislature had meant to immunize public golf courses from liability for injuries arising from defects in the cart path, it would have so provided in the statute. The golf cart path does not fall into the catch all provision of the statute that refers to other "recreational and scenic area[s]."

Plaintiff has submitted evidence that the golf cart path is maintained by the District and monitored by the marshal, who duty is to inform the superintendent of any defects in the course, including the path. The District had a supply of decomposed granite on hand to fill holes such as the one involved in plaintiff's fall. The cases cited by defendant holding that bike paths and dog parks are entitled to the immunity are distinguishable on their facts. Defendant's interpretation of the statute's language of "recreational or scenic area" is overbroad and goes beyond the intent of the statute which is to encourage recreational activities on public property over which the public entities exercise little or no supervision. See CEB, Van Alstyne, Government Tort Liability Practice, 4th Ed. Vol. 2, Section 12.88.

The prevailing party is directed to prepare a formal order complying with C.C.P. §437c(g) and C.R.C. Rule 3.1312.

Item 9 **06AS02341** **RONALD A. BROWN VS. AMERICAN EXPRESS PROPERTY, ET AL**

Nature of Proceeding: Demurrer

Filed By: Galt, H. Douglas

Defendant Amex Insurance Co.'s Demurrer to Plaintiff's Complaint is sustained with leave to amend.

Defendant's Request for Judicial Notice is granted.

Plaintiff's form complaint alleges a 1st cause of action for breach of contract, a 2nd cause of action for fraud (intentional and negligent misrepresentation, concealment and promise made without intent to perform) and a 3rd cause of action for intentional tort against AMEX, his automobile insurance company, in connection with an auto accident between plaintiff and another driver, Cisson. Defendant demurs to each cause of action on the grounds that it fails to state facts sufficient to constitute a cause of action and for uncertainty, and to the 2nd cause of action for fraud for lack of specificity.

The demurrer to the 1st cause of action is sustained, as plaintiff has failed to

allege the essential terms of the policy or attach it, and has failed to allege which provision was breached.

The demurrer to the 2nd cause of action is sustained, as in California, fraud must be pled specifically; general and conclusory allegations do not suffice. *Small v. Fritz Companies, Inc.* (2003) 30 Cal. 4th 167, 184.

The demurrer to the 3rd cause of action is also sustained, on the grounds of uncertainty.

The Court cannot find on the record before it that the small claims court judgment is sufficient to collaterally estop plaintiff's complaint on demurrer.

The Court declines to consider the extrinsic evidence provided by Brown's declaration on demurrer. As plaintiff requests leave to amend, the demurrer is essentially unopposed.

Plaintiff may have leave to file and serve his First Amended Complaint not later than Friday, April 6, 2007. The responsive pleading shall be due filed and served 10 calendar days thereafter (15 days if service is by mail). Although not required by California Rules of Court, or Local Rule, should the responsive pleading be a demurrer, moving party is requested to attach a courtesy copy of the amended complaint.

This minute order is effective immediately. No formal order nor further notice is required, the tentative ruling providing sufficient notice.

Item 10 **06AS02529** **DAVID ASHFORD VS. ARCHIBALD SCHLUTER, DOROTHY SCHLUTER**

Nature of Proceeding: Motion To Withdraw Atty of Record

Filed By: Sahlin, Russell C.

Motion to Withdraw as Attorney of Record for plaintiff is denied without prejudice. Since the client cannot be located at his last known address, counsel is required to serve the Court clerk with the motion pursuant to CCP 1011(b) and CRC 3.252.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 11 **06AS03425** **DAVID J. BENDAHAN ET AL VS. DAVID J. DOVICH ET AL**

Nature of Proceeding: Demurrer

Filed By: Stefanki, John E.

Demurrer to the 8th cause of action for elder abuse is sustained without leave to amend.

On ruling on the first demurrer the court found that there was no physical abuse,

neglect, abandonment or isolation alleged. As to financial elder abuse, the court found that the placement of the urn on the easement did not constitute financial elder abuse. Plaintiffs were given leave to amend, although the Court expressed doubt as to their ability to do so.

Financial elder abuse occurs when a person "takes, secretes, appropriates or retains real or personal property of an elder or dependent adult to a wrongful use or with the intent to defraud, or both. Welfare & Institutions Code section 15610.30(a)(1). The only new relevant allegations in the 1st amended complaint are alleged in paragraphs 53-58. The new conduct supporting this cause of action relates only to the property boundary and easement dispute. Plaintiffs contend defendants are asserting a property right in the same general area as the claimed easement, where the urn had been placed. This is the same general area that was the subject of the preliminary injunction and mutual restraining orders. As the Court previously ruled on the first demurrer, interference with an alleged easement right does not constitute a "taking" or "appropriating" real or person property. Neither the interference with the easement or the defendants claim that the property line ran under plaintiffs' air conditioner constitutes either financial abuse or "other treatment with resulting...mental suffering" within the meaning of EDAPCA.

Defendants to serve and file an Answer to the remaining claims on or before April 6, 2007.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 12 **06AS03425** **DAVID J. BENDAHAN ET AL VS. DAVID J. DOVICH ET AL**

Nature of Proceeding: Motion To Strike

Filed By: Barnes, Brigit

Defendants' (Dovichi) Motion to Strike causes of action for intentional and negligent infliction of emotional distress and elder abuse in Plaintiff's (Bendahan) Verified First Amended Complaint is granted. CCP section 425.16.

Plaintiffs and defendants are involved in a boundary dispute in which both parties claim the other is encroaching on their property. The court has ordered mutual relief in the form of a preliminary injunction that requires both sides to maintain the status quo, including allowing each side to landscape their strip of grass on either side of the property line in the front yard. Defendants contend that plaintiffs filed this action in retaliation for defendants' exercising their right to free speech and right to petition for the redress of grievances under the United States and California Constitutions.

Defendants contend that plaintiffs brought the 6th - 8th causes of action in retaliation for Dovichis' contacting the City of Sacramento Building Department and filing a complaint against the plaintiffs due to their refusal to remove backyard improvements which encroached onto Dovichis' property. Plaintiffs' verified complaint refers to the conduct which defendants contend is protected. Plaintiffs allege that

defendants destroyed portions of two fences on the property line, trespassed into plaintiff's yard, photographed plaintiffs and their employees, placed a large terra cotta urn on the easement, turned their sprinklers on plaintiffs' lawn and plaintiffs' yard maintenance personnel, filed a false claim with the City of Sacramento regarding the air conditioner, filed a false claim with the Contractor's State Licensing Board, called the Sacramento Police Department to complain that plaintiff's subcontractor had blocked access to defendants' property, and threatened to build a permanent fence along the common property line. (See 1st amended complaint at paragraph 14)

A cause of action against a person arising from any act of that person in furtherance of the person's constitutional right of petition or free speech in connection with a public issue is subject to a special motion to strike unless plaintiffs establish there is a probability that plaintiffs will prevail on the claim. CCP 425.26(b). Once defendants make a threshold showing that plaintiffs' suit arises from defendants' acts in furtherance of its rights of petition and free speech under the United States or California Constitutions, Plaintiffs are required to show with admissible evidence a reasonable probability of success on the merits of the challenged causes of action. *Equilon Enterprises LLC v Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 58-59.

This action was filed after the defendants complained to the City Building Department that plaintiffs were illegally building on their property in the back yard against defendants' garage. Defendants have met their burden to establish that the conduct that gave rise to the allegations in the complaint arose in part from a statement made before, or in connection with an issue under consideration by a legally authorized official proceeding. Therefore, defendants need not separately demonstrate that the statement concerned an issue of public significance. *Briggs v Eden Council for Hope and Opportunity* (1999) 19 Cal.4th 1106, 1123.

In opposition to the motion, plaintiffs do not challenge the applicability of the anti SLAPP statute, but they contend that the Declaration of David Bendahan is sufficient to make a prima facie showing of facts that would, if proved at trial, support a judgment in plaintiffs' favor. *Dixon v Superior Court* (1994) 30 Cal.App.4th 733, 744. Even accepting all of the allegations of the amended verified complaint and the facts set forth in David Bendahan's declaration, plaintiff has not produced evidence sufficient to support his claims of intentional and negligent infliction of emotional distress and elder abuse.

The actions of defendants do not constitute outrageous conduct sufficient to give rise to a claim of infliction of emotional distress as a matter of law. The allegations of the amended complaint (see paragraph 3 of this ruling), pertaining primarily to trespass to property, are insufficient to meet the burden of outrageous conduct required for intentional infliction of emotional distress. Plaintiffs have not established that the complaints to the building department or to the contractor's licensing board were false. This is not conduct that exceeds all bounds of decency usually tolerated in a civilized society. *Potter v Firestone Tire & Rubber Company* (1993) 6 Cal.4th 965, 1001. Mere insults, annoyances, indignities, threats, petty oppressions or trivialities are not actionable "outrageous conduct." *Yurick v Superior Court* (1989) 209 Cal.App.3d 1116, 1128.

The tort of negligent infliction of emotional distress is not an independent tort but the tort of negligence where the traditional elements of duty, breach of duty, causation, and damages apply. Whether defendant owes a duty of care is a question of law.

Damages for serious emotional distress are sought as a result of a breach of duty owed the plaintiff that is assumed by the defendant or imposed on the defendant as a matter of law, or that arises out of a relationship between the two. *Mercado v Leong* (1996) 43 Cal.App.4th 317, 321. Damages for emotional distress when there is no accompanying physical injury are permitted only when the injury is serious and there is some means for assuring the genuineness of the claim. *Mercado*, at page 326. Here, the acts complained of simply do not meet the test. The fact that this lawsuit (which plaintiffs filed) causes plaintiff's emotional distress is not sufficient. The facts upon which this case are based simply do not meet the test to cause severe emotional distress, even if negligently caused. Plaintiffs rely in part on the fact that the Court granted injunctive relief regarding the alleged easement in the front yard. However, these facts relate to property issues and are not sufficient to establish serious emotional distress.

The additional evidence in the Declaration of Bendahan relates primarily to events that arose after the filing of the initial complaint. Those facts, relating to defendants' allegedly traumatizing their own 10 year old daughter by making her sign the declaration filed November 8, 2006 which contains alleged falsehoods, the false accusations against plaintiffs' daughter regarding removal of a survey stake, and the unwillingness of his gardener to continue to work for him do not support the causes of action for negligent or intentional infliction of emotional distress.

The facts set forth in plaintiffs' opposition do not as a matter of law constitute elder abuse, and therefore that claim is also properly stricken. The Court's ruling on the demurrer to the 8th cause of action is incorporated herein.

Defendants may file a motion for attorneys fees pursuant to CCP 425.16(c). The Court is not likely to award fees other than those in connection with this motion only.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 13 **06AS03627** **DONALD JOSEPH ROSA ET AL VS. AYSAR I. ALARAJ ET AL**

Nature of Proceeding: Motion To Compel Discovery Responses

Filed By: Wood, Gerrit W.

Defendant's Motion to Compel plaintiffs to respond to Form Interrogatories and Requests for Production of Documents is unopposed and granted. Compliance to be without objections on or before April 6, 2007.

Sanctions are denied because the Motion was not opposed. Although CRC 3.1030 purports to authorize sanctions if a Motion is unopposed, the Court declines to do so, as the specific statute governing this discovery (CCP 2031.300(c)) authorizes sanctions only if the Motion was unsuccessfully made or opposed. Any order imposing sanctions under the CRC must conform to the conditions of one or more of the statutes authorizing sanctions. *Trans-Action Commercial Investors, Ltd. v. Firmater Inc.* (1997) 60 Cal.App.4th 352, 355. However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. See *Laguna Auto Body v. Farmers Insurance Exchange*

(1991) 231 Cal.App.3d 481.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 14 **06AS04497 CALIFORNIA FRUIT BUILDING CO. VS. GIRARD & VINSON, LLP, ETAL**

Nature of Proceeding: Demurrer & Motion to Strike

Filed By: Mouser, Deanna J.

Defendant Deanna Mouser's Demurrer to Plaintiff California Fruit Building Co.'s Complaint is unopposed and is sustained. Both the Motion to Strike is moot, as the original complaint has been amended.

Defendant Mouser filed a demurrer to the original complaint on the same grounds previously sustained as to other defendants, with leave to amend. Plaintiff has subsequently filed a First Amended Complaint, concedes the merit in Mouser's demurrer to the original complaint, and requests that Mouser be ordered to file a responsive pleading to the First Amended Complaint.

Mouser shall file and serve her responsive pleading to the First Amended Complaint not later than Friday, April 6, 2007.

This minute order is effective immediately. No formal order nor further notice is required, the tentative ruling providing sufficient notice.

Item 15 **06AS04971 WEST & ASSOC ENVRNMNT ENGINRS, INC. VS. NANCY S. UNG, ET AL**

Nature of Proceeding: Demurrer

Filed By: Dufour, James T.

Demurrer to the Complaint is dropped from calendar as moot since plaintiff has elected to file a 1st amended complaint. Plaintiff shall file and serve the first amended complaint forthwith. CCP 472

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 16 **07AS00535 KELLY DAGGETT VS. WL HOMES, LLC ET AL**

Nature of Proceeding: Petition To Compel Arbitration

Filed By:

This matter is continued to 4/24/2007 at 02:00PM in this department.

Item 17 **03AM07263 GASPAR R. GARCIA VS. PAUL BOCANEGRA**

Nature of Proceeding: Motion to Enforce Judgment

Filed By: Garcia II, Gaspar

Motion to Enforce Judgment pursuant to CCP 996.410 is unopposed but is denied.

The court previously denied the same motion on November 22, 2006 on the ground there was no copy of the judgment. (See minute order of November 22, 2006) Plaintiff has not sought reconsideration of the earlier ruling and has not submitted a declaration that complies with CCP 1008(d). Now plaintiff states that a judgment was signed on January 22, 2007 but he did not attach a copy of the judgment to the motion. The Court does not have the court file at this time and the only papers in the Court's possession other than this motion is an unsigned proposed "Final Judgment at Conclusion of Appeal."

Moreover, since this is a motion to enforce liability on the bond, the surety as well as the principal must be served.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 18 **05AM09553 WESTERN UNITED INSURANCE COMPANY VS. RONALD LOUIS HAGERTY**

Nature of Proceeding: Default Hearing

Filed By: Calomino, Allan

Appearance required.

Item 19 **06AM04585 NIKODIM TKACHUK VS. DANNIELLE MILLER**

Nature of Proceeding: Motion To Compel Written Discovery

Filed By: Sato, Kristin

Defendant's Motion to Compel Responses to Form Interrogatories and Requests for Production is granted. Compliance to be without objections on or before April 6, 2007.

Sanctions are denied because the motion was not opposed. Although CRC 3.1030 purports to authorize sanctions if a motion is unopposed, the Court declines to do so, as the specific statutes governing this discovery (CCP 2030.290(c), 2031.300 (c)) authorize sanctions only if the motion was unsuccessfully made or opposed. Any order imposing sanctions under the CRC must conform to the conditions of one or more of the statutes authorizing sanctions. *Trans-Action Commercial Investors, Ltd. v Firmaterr Inc.* (1997) 60 Cal.App.4th 352, 355. However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 20 **06AM06715** **DISCOUNT DRYWALL SUPPLY, INC. VS. CYNTHIA MCDUGALL**

Nature of Proceeding: Motion for Discovery Sanctions

Filed By: Smith, Timothy M.

This matter is transferred to Department 54 for hearing on 3/27/2007 at 09:00AM

Judge McMaster disqualifies himself from hearing this matter pursuant to CCP 170.1(a)(c)(6)(A).

Item 21 **07CS00183** **IN RE: ROBERTA DONNA BOYNTON**

Nature of Proceeding: Petition For Change Of Name

Filed By: Boynton, Roberta Donna

Petition for Name Change is granted.

Item 22 **07CS00185** **IN RE: MIGUEL ANGEL PEREZ GARCIA**

Nature of Proceeding: Petition For Change Of Name

Filed By: Perez, Sabrina

Petition for Name Change is granted.

Item 23 **07CS00187** **IN RE: WILLIAM DONALD KNAPP**

Nature of Proceeding: Petition For Change Of Name

Filed By: Goff, Ronald W.

Petition for Name Change is granted.
