

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, June 26, 2024 3:00 p.m.
Courtroom 17 – Hon. Bradford DeMeo
3035 Cleveland Avenue, Santa Rosa**

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN ZOOM ONLINE:

D17 – Law & Motion

Meeting ID: 161 126 4123

Passcode: 062178

<https://sonomacourt-org.zoomgov.com/j/1611264123>

TO JOIN ZOOM BY PHONE:

By Phone (same meeting ID and password as listed for each calendar):

+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge DeMeo’s Judicial Assistant by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom, by 4:00 p.m. the court day immediately preceding the day of the hearing.**

1. 23CV00731, Security National Insurance Company v. Bartolomei Tommervik Bartolomei Properties LLC

The Court twice continued Plaintiff’s motion to appoint a receiver to sell the liquor licenses so that Plaintiff could propose a qualified receiver for the task described in the motion. As Plaintiff has not yet proposed a qualified receiver, the Court **DENIES** the motion.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

2. 23CV00916, Flow Tec, Inc. v. Morris

Defendant Morris's demurrer to Flow Tec, Inc.'s ("Plaintiff" of "Flow Tec") Complaint is **SUSTAINED with leave to amend.**

PROCEDURAL HISTORY

Plaintiff filed the Complaint against Defendant related to statements Defendant made in violation of a non-disparagement clause in a written "Stock Redemption Agreement" (the "Agreement"). The Complaint alleges three causes of action for breach of contract, unfair competition in violation of Business and Professions Code section 17200, and injunctive relief under Civil Code sections 3368 and 3422.

After the parties met and conferred and were unable to resolve issues that Defendant found with the Complaint, Defendant filed this demurrer to all three causes of action in the Complaint arguing that Plaintiff has failed to state facts sufficient to constitute a cause of action under Code of Civil Procedure ("C.C.P.") section 431.10(e). Plaintiff opposes the demurrer.

ANALYSIS

Legal Standard

Demurrer

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim" and it is sufficient for plaintiff to "simply plead the evidence by which he hopes to prove such ultimate facts." (*Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal. App. 3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367, 384.)

Demurrer

Breach of Contract

In order to state a breach of contract cause of action, plaintiff must plead legally actionable damages. (*Gautier v. General Tel. Co.* (1965) 234 Cal.App.2d 302, 305.) The plaintiff will not be entitled to damages for injury to name, character, or personal reputation. (*Ibid.*) Damages for loss of profits on account of breach of contract are generally the subject of evidence rather than pleading unless some special loss is claimed. (*Brunvold v. Johnson* (1939) 36 Cal.App.2d 226, 231.) To claim special damages, plaintiff must state facts and the amount of damages with particularity. (*Shook v. Pearson* (1950) 99 Cal.App.2d 348, 352.) If special damages depend on proof of different circumstances than general damages, the grounds of each claim must be alleged. (*Ibid.*)

Defendant argues that the breach of contract cause of action fails because Plaintiff failed to plead legally recoverable damages in the Complaint. Plaintiff argues that the Agreement provides that violation of the non-disparagement clause will cause irreparable harm so damages may be presumed. As stated above, California law does not provide for recovery of damage to name, character, or personal reputation.

Plaintiff has failed to allege any damage, but rather has alleged that Defendant intended to cause reputational damage, which is not recoverable. Therefore, the demurrer as to the first cause of action is **SUSTAINED with leave to amend**.

Unfair Competition Law (“UCL”)

Business & Professions Code section 17200 prohibits “unlawful, unfair or fraudulent” business practices. A party may bring a section 17200 claim only if the plaintiff suffered injury in fact and lost money or property as a result of the defendant’s unfair competition in violation of the UCL. (Bus. & Prof. Code § 17204.) Violation of almost any federal, state, or local law may serve as the “unlawful” basis for a UCL claim. (*Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839.) Where plaintiff’s UCL claim is entirely derived from plaintiff’s other fatally flawed causes of action, the UCL claim also fails. (*Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 277.)

A UCL claim can be based on a breach of contract claim if the breach of contract claim constitutes conduct that is “unlawful, or unfair, or fraudulent.” (*Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 645.) A UCL fraud claim can be shown without allegations of actual deception, reasonable reliance, and damage, as long as plaintiff pleads facts that show that members of the public are likely to be deceived by defendant’s conduct. (*Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 258.)

Two tests exist to determine whether conduct is “unfair” under the UCL. The first “tether test,” public policy that is a predicate to plaintiff’s UCL claim brought under the “unfair” prong of the UCL must be tethered to “specific constitutional, statutory, or regulatory provisions.” (*Bardin v. DaimlerChrysler Corp.* (2006) 136 Cal.App.4th 1255, 1260–1261.) The second “Section 5 test” states that the factors that define unfairness are that: “(1) the consumer injury must be substantial; (2) the injury must not be outweighed by any countervailing benefits to consumers or competition; and (3) it must be an injury that consumers themselves could not reasonably have avoided.” (*Davis v. Ford Motor Credit Co. LLC* (2009) 179 Cal.App.4th 581, 597–598.)

Here, Defendant demurs to Plaintiff's UCL claim for failure to state facts sufficient to constitute standing under the UCL. Plaintiff opposes the demurrer and cites to *In re Yahoo! Inc. Customer Data Security Breach Litigation* (N.D. Cal. 2018) 313 F.Supp.3d 1113, 1131 ("Yahoo"), a federal case which argues that benefit of the bargain losses is sufficient to show standing for a UCL claim. The facts of that case are distinguishable from the facts presented here as Plaintiff has not alleged any economic damage or monetary damage, whereas in the *Yahoo* case there was a clearly stated annual fee that was being claimed. Plaintiff has also not sufficiently established here that any loss to money or property was caused by Defendant's unfair competition. No causal connection has been shown between Defendant's alleged breach of the Agreement and any loss to money or property.

Based on the above, the demurrer is **SUSTAINED with leave to amend** as to the UCL claim.

Civil Code Sections 3368 and 3422

Civil Code section 3368 allows preventive relief by "prohibiting a party from doing that which ought not to be done." The court may grant a final injunction to prevent the breach of an existing obligation: "1. Where pecuniary compensation would not afford adequate relief; 2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief..." (Civ. Code § 3422.) Injunctive relief is a remedy, not a cause of action. (*City of South Pasadena v. Department of Transportation* (1994) 29 Cal.App.4th 1280, 1293.)

Defendant accurately states that Plaintiff's third cause of action for injunctive relief is merely a remedy. Furthermore, Plaintiff did not particularly allege any facts to support the request for injunctive relief. For these reasons, the demurrer is **SUSTAINED with leave to amend** as to the injunctive relief cause of action.

CONCLUSION

Based on the foregoing, the demurrer is **SUSTAINED with leave to amend**. Plaintiff shall file an amended complaint within twenty (20) days of notice of entry of the order on this Demurrer. Defendant's counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

3. SCV-264723, Addington v. Ridgeway Distribution, LLC

Counsels Daniel S. Raff and Edwin Bradley's unopposed motion to be relieved as counsel for Defendants Ridgeway Distribution, LLC, NACC, Inc., and Anthony Pizzarelli ("Clients") is **GRANTED**, per California Code of Civil Procedure section 284(2).

Counsels declare Clients are in breach of the attorney-client fee agreement and have stopped communicating with Counsels altogether. (Declaration of Counsel, ¶ 2.) Counsel timely served notice of this motion to all other parties by email. (Proof of Service dated May 24, 2024.) Per the declaration of Counsel's paralegal Mr. Sandhu, Counsels contracted with a process server to serve Client NACC, Inc. at their last known address, but the process server was unable to

effectuate service either personally or by subservice after three attempts and left the documents by posting them on the door. (Sandhu Declaration, ¶¶ 4-6.) Mr. Sandhu later discovered that NACC, Inc. is now a suspended corporation per the Secretary of State’s website. (*Id.* at ¶ 8.) A registered process server again tried to serve suspended NACC, Inc. at an updated address found on their most recent Statement of Information on the Secretary of State’s website, but the server was denied entrance to building. (*Id.* at ¶ 10.) Client Ridgeway Distribution, LLC, was served by a registered process server by subservice on May 8, 2024. (*Id.* at ¶ 11, Exhibit 7.) Client Pizzarelli was also served at his last known email address and at his last known mailing address by U.S.P.S. Priority Mail. (*Id.* at ¶ 15.)

No oppositions or objections have been filed. As communication has broken down between Clients and Counsels and the fee agreement has been breached, Counsel’s unopposed motion is **GRANTED**. Unless oral argument is requested, the Court will sign the proposed order lodged with the motion.

4. SCV-269875, Varela Rodriguez v. Maners

APPEARANCES REQUIRED. The Court previously continued the hearing on this petition because no proof of service had been filed as to the proposed order and counsel requested an opportunity to review it. The Court ordered the parties to file any objections or replies prior to the hearing. No proof of service or objections have been filed.

5. SCV-270482, Barton v. General Motors LLC

Motion **CONTINUED** to July 10, 2024, at 3:00 p.m. in Department 17 by stipulation of the parties.

6. SCV-27172, Windham v. Stone

Plaintiff Windham moves to enforce the settlement agreement entered into by the parties on January 11, 2024 (“Settlement”). The motion and Plaintiff’s request for sanctions of \$3,630.00 are **GRANTED**.

PROCEDURAL HISTORY

Plaintiff brought this action against Defendant Stone regarding a property boundary line dispute. The parties entered into the Settlement under which Defendant agreed to relocate her fence pursuant to the plan/drawing attached to the Settlement. (Leonard Declaration, Exhibit A.) Defendant has moved the fence away from Plaintiff’s home the required distance, but instead of cutting her deck and continuing the fence-line down to allow Plaintiff access to that side of her home, Defendant “stopped” the fence at the corner of Plaintiff’s home and blocked access. (*Id.* at Exhibits C-G.) Despite attempts by Plaintiff to give notice of the issue, Defendant has not

completed the fence according to the Settlement. Plaintiff now brings this motion to enforce the terms of the Settlement and for fees. Defendant opposes the motion.

EVIDENTIARY OBJECTIONS

“All written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion. Objections to specific evidence must be referenced by the objection number in the right column of a separate statement in opposition or reply to a motion, but the objections must not be restated or reargued in the separate statement.” (C.R.C., Rule 3.1354.)

Defendant objects to Paragraph 14 of Counsel Leonard’s declaration arguing that it lacks foundation, is speculative, is overly ambiguous, and is uncertain. The objection is **OVERRULED**.

Plaintiff objects to the first sentence in Paragraph 5 of Counsel Heffner’s declaration arguing that it lacks personal knowledge and is hearsay. The objection is **OVERRULED**.

ANALYSIS

Legal Standard

When a party seeks to enforce a stipulated settlement entered in writing or orally before the court, the court “may enter judgment pursuant to the terms of the settlement.” (C.C.P. § 664.6.) The court’s discretionary ruling will be upheld if based on “substantial evidence.” (*Fiore v. Alvord* (1985) 182 Cal.App.3d 561, 566.) Furthermore, a court may retain jurisdiction even after dismissal to enforce a settlement if the parties so request either in a signed writing or orally before the court. (*See generally, Hines v. Lukes* (2008) 167 Cal.App.4th 1174.)

Judgment can be entered to enforce a settlement if two prerequisites are met: (1) a contract was formed; and (2) there is a writing signed by the parties with the material terms of the settlement. (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 797.) Where there is no “meeting of the minds” on the material terms of the contract, there can be no formation of the contract. (*Ibid.*) If there is no formation, there exists no settlement agreement which the court may enforce. (*Ibid.*) C.C.P. section 664.6 only applies to agreements made in writing and signed by the parties (as well as their legal representative) or orally before the court. Additionally, signatures by the parties are generally required for enforcement pursuant to this statute, because “settlement so directly affects the party’s ‘substantial rights’ and is considered to be a serious step that requires the party’s knowledge and express consent.” (*Levy v. Superior Court* (1995) 10 Cal.4th 578, 584.)

Moving Papers

Plaintiff requests the Court to enter judgment to enforce the parties’ settlement per C.C.P. section 664.6 and seeks reasonable attorney’s fees and costs of \$3,630.00. The cost is \$60 for filing and the attorney’s fees are broken down as 4.9 hours in preparing the moving papers, 2.5 hours to

prepare a reply brief and attend oral argument, and finally 1 hour to prepare judgment at a rate of \$425 per hour.

Defendant opposes the motion arguing that she is in compliance with the Settlement. Defendant notes that Pacific Gas & Electric Company and the County both approved her fence project in 2022. Defendant's position is that she moved the fence at least 2.5 feet from Plaintiff's windows and side of her home and reduced the width of a large portion of her own parcel by 10%.

In reply, Plaintiff points out that regardless of whether Defendant got approval from the utility company or the County, Defendant agreed to abide by the plans drawn in the Settlement and she did not do so. Plaintiff argues Defendant failed to support the opposition with sufficient evidence.

Application

The parties have signed an enforceable written settlement agreement, which contains a provision referencing C.C.P. section 664.6. The Settlement contained very specific terms and a plan/drawing on how to correct the fence issue, to which Defendant agreed. Defendant has failed to completely abide by the terms of that Settlement because she only partially abided by its terms. As such, the Court will grant the motion and award the attorney's fees as requested by Plaintiff.

CONCLUSION

Based on the foregoing, the motion along with Plaintiff's requests for sanctions are **GRANTED**. Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

7. SCV-271212, Thomen v. Woods

Motion **CONTINUED** to July 31, 2024, at 3:00 p.m. in Department 17 by stipulation of the parties.