

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Civil Law and Motion Tentative Rulings
Hon. Donald Shaver
Courtroom 8

627 W. 21st Street, Merced

August 9, 2018
8:15 a.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4240 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call of your intent to appear does not satisfy the requirement of notifying the court.

Case No. Title / Description

15CV-02741 Jose Palomares vs. County of Merced, et al.

Petition to Approve Compromise of Minor's Claim

Appearance required.

17CV-04359 Frank Duclo, et al. vs. Blair Gladwin, et al.

Demurrer to First Amended Cross Complaint

A demurrer challenges only defects appearing on the face of the pleading or from matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; Code Civ. Proc., § 430.30.) For purposes of testing the sufficiency of a cause of action, the demurrer admits the truth of all material facts properly pleaded. (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966-967.) The Court must construe the complaint "liberally ... with a view to substantial justice between the parties." (Code Civ. Proc., § 452.)

The general demurrer by cross-defendants Frank Duclo, Paula Duclo, and Frank Duclo, Jr. to the first cause of action for breach of contract in the first amended cross-complaint

is **OVERRULED**. “A cause of action for damages for breach of contract is comprised of the following elements: (1) the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the resulting damages to plaintiff.” (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1388.) The amended cross-complaint alleges sufficient facts constituting all the necessary elements of a cause of action for breach of contract. The Court sustained cross-defendants’ previous demurrer to the first cause of action in the original cross-complaint because the cross-complaint did not allege the required element of performance or excuse of nonperformance. The amended cross-complaint corrects this pleading defect with the addition of the allegations in paragraphs 28 and 48.

The general demurrer to the second cause of action for intentional misrepresentation and third cause of action for negligent misrepresentation is **OVERRULED**. The Court sustained cross-defendants’ previous demurrer to these causes of action on the ground that the original cross-complaint did not allege any misrepresentations by cross-defendants with sufficient specificity. The amended cross-complaint corrects this pleading defect by the addition of the allegations in paragraphs 51 through 55.

The special demurrer for uncertainty as to each cause of action is **OVERRULED**. The Court notes that the demurrer and supporting memorandum of points and authorities does not specify the uncertain aspects of the pleading. (See *Fenton v. Groveland Community Services Dist.* (1982) 135 Cal.App.3d 797, 809.)

Cross-defendants shall file their answer within ten days of notice of entry of order.

The prevailing party is directed to prepare a written order consistent with the Court’s ruling for the Court’s signature, pursuant to California Rules of Court, rule 3.1312, and to provide notice thereof to the opposing party/counsel as required by law and the California Rules of Court. The order is to be submitted by electronic filing to Hon. Donald Shaver.

18CV-01468 James Gilmore vs. James Scroggins

Request for Civil Harassment Restraining Orders

Appearance required.

18CV-02503 Petition of: Eric Nation

Petition for Name Change

Appearance required.
