

"Civility allows for zealous representation, reduces clients' costs, better advances clients' interests, reduces stress, increases professional satisfaction, and promotes effective conflict resolution."

-- [OCBA Civility Guidelines](#)

**TENTATIVE RULINGS**  
**Judge Nathan Scott, Dept. W2**

- The court encourages remote appearances to save time and reduce costs: <https://www.occourts.org/media-relations/civil.html>. Click on the yellow box.
- All hearings are open to the public. The courtroom doors are open.
- You must [provide](#) your own court reporter (unless you have a [fee waiver](#) and request one in advance).
- **Call the other side** and ask if they will submit to the tentative ruling.

If **everyone** submits, then call the clerk. The tentative ruling will become the order.

If anyone does not submit, there is no need to call the clerk. The court will hold a hearing. The court may rule differently at the hearing. (See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

**Hearing Date: Fri. 5/10/24 at 10 am**

Posted Thu. 5/9/24 at 2 pm

1	Jilany v. Interinsurance Exchange	Brad A Mokri's motions to be relieved as counsel for plaintiffs Farzad Jilany and Arezoo Jalalianpour is granted, effective upon filing proof of service of the signed order.  Moving counsel shall give notice.
2	BC&D Services v. QT Golden Marketplace	Gilbert & Nguyen and Jonathan T. Nguyen's motions to be relieved as counsel for defendants QT Golden Marketplace and Food Court, Thomas Nguyen, and Hien Nguyen is granted, effective upon filing proof of service of the signed order.  An order to show cause is set for 7/18/24 at 2 pm. At the hearing, the court will strike defendant QT Golden Marketplace and Food Court's answer for its failure to appear through counsel unless it (1) substitutes in new counsel before the hearing or (2) appears at the hearing and shows good cause otherwise. (See <i>CLD Construction, Inc. v. City of San Ramon</i> (2004) 120 Cal.App.4th 1141, 1145)  Moving counsel shall give notice.

3	Sotelo v. General Motors	<p>Plaintiff Manuel Sotelo's motion to compel compliance is granted.</p> <p>Defendant General Motors LLC shall submit its person(s) most knowledgeable to deposition on a date and time selected by plaintiff between 5/15/24 and 5/20/24. (See Code Civ. Proc. § 2025.450, subd. (h); see also 11/3/23 order compelling deposition.)</p> <p>The court declines plaintiff's request to impose prospective monetary sanctions.</p> <p>Plaintiff shall give notice.</p>
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5	Kort v. Lee	Motion to quash subpoenas is taken off calendar. (See 5/8/24 notice.)
6	Duncan v. Duncan Kitchen Grips	<p>Defendant's motion in limine is denied. (See 2/20/24 stipulation to get early ruling.)</p> <p>As plaintiff notes (see Opp. at p. iii), a motion to "exclude Plaintiff from presenting evidence and argument concerning damages incurred on or before September 3, 2019" sounds more like a summary adjudication motion than a motion in limine.</p> <p>Courts must "be wary when choosing to decide an in limine motion that, no matter how captioned, functions as a" dispositive motion – that can be "a recipe for reversal." (<i>Tung v. Chicago Title Co.</i> (2021) 63 Cal.App.5th 734, 740 [reversing in limine ruling that in essence granted judgment on the pleadings].)</p> <p>Putting that caution aside, res judicata bars only "causes of action that were litigated or that could have been litigated in the first action." (<i>Allied Fire Protection v. Diede Construction, Inc.</i> (2005) 127 Cal.App.4th 150, 155.)</p> <p>Here, the parties expressly agreed that trial of the 2014 action would "be limited to an accounting . . . from January 20, 2009 until completion of the [2017] audit." (Good decl. Ex. A ¶ 1.)</p> <p>Judge Crandall accepted this stipulation, reviewed the 2017 audit, considered plaintiff's claim that defendant deprived plaintiff of royalties "for years 2009 to 2016," and awarded damages "for the years 2009 to [the first] half of 2016." (Grant decl. Ex. D at pp. 1:24, 2:1-17, 3:22, 6:1-15.)</p>

		<p>Thus, by stipulation of the parties, damages from mid-2016 through 2019 could not have been litigated in the first action.</p> <p>In any event: "Res judicata is not a bar to claims that arise after the initial complaint is filed. . . . The general rule that a judgment is conclusive as to matters that could have been litigated 'does not apply to new rights acquired pending the action which might have been, but which were not, required to be litigated.'" (<i>Allied Fire, supra</i>, 127 Cal.App.4th at p. 155.)</p> <p>Defendant shall give notice.</p>
7	Witham v. Engle	<p>The CMC and defendants' demurrer are continued to 6/14/24 for the parties to meet and confer "in person, by telephone, or by video conference." (Code Civ. Proc., § 430.41, subd. (a); but see Gutenplan decl. ¶¶ 7-8 &amp; Ex. D [written meet-and-confer].) The meet and confer should address all challenged causes of action. (See Code Civ. Proc., § 430.41, subd. (a)(1).)</p> <p>Defense counsel shall file and serve a meet and confer declaration no later than 6/5/24.</p> <p>To assist the parties, the court offers some authorities for their consideration:</p> <ul style="list-style-type: none"> <li>(1) <i>Blank v. Kirwan</i> (1985) 39 Cal.3d 311, 318 [demurrer challenges only the face of the pleading];</li> <li>(2) <i>Gould v. Maryland Sound Industries, Inc.</i> (1995) 31 Cal.App.4th 1137, 1145 [court cannot take judicial notice of a contract];</li> <li>(3) <i>FPI Development, Inc. v. Nakashima</i> (1991) 231 Cal.App.3d 367, 383 [a breach of contract claim must allege "terms which establish the obligation in issue"];</li> <li>(4) <i>Lazar v. Superior Court</i> (1996) 12 Cal.4th 631, 638, 645 [intentional misrepresentation claim requires allegations showing "how, when, where, to whom and by what means the representations were tendered"];</li> <li>(5) <i>Small v. Fritz Companies, Inc.</i> (2003) 30 Cal.4th 167, 173-174, 184 [same for negligent misrepresentation claims]; and</li> <li>(6) <i>Salahutdin v. Valley of California, Inc.</i> (1994) 24 Cal.App.4th 555, 562 [constructive fraud claim may be based on nondisclosure by a fiduciary].)</li> </ul> <p>The court will entertain any stipulation the parties might reach about the pleadings.</p> <p>Defendants shall give notice.</p>
8	Leffers Real Estate Holdings v.	<p><b><u>Case Management Conference</u></b></p> <p>The CMC is continued to 7/25/24 at 2 pm.</p> <p><b><u>Demurrer</u></b></p>

	Campbell	<p>Defendants CKW Enterprises LLC, Travis Campbell, and Keith Kesler's demurrer is overruled. Defendants shall file and serve their answers, if at all, within 15 days.</p> <p>Defendants have not shown contend the complaint is "so incomprehensible that a defendant cannot reasonably respond." (<i>Lickiss v. Financial Industry Regulatory Authority</i> (2012) 208 Cal.App.4th 1125, 1135.) It identifies the three defendants by name and alleges they are each other's agents and alter egos. (Compl. ¶¶ 3-8.) Each cause of action refers to "defendants," plural. (See, e.g., Compl. ¶¶ 33, 42, 48, 55, 66, 74, 80, 87.)</p> <p>Read liberally, the complaint asserts every cause of action against every defendant. (See Code Civ. Proc., § 452.) Any "ambiguities can be clarified under modern discovery procedures." (<i>Lickiss, supra</i>, 208 Cal.App.4th at p. 1135.)</p> <p><b><u>Motion to Strike</u></b></p> <p>Defendants' motion to strike is granted without leave to amend as to Paragraph 46 and otherwise denied.</p> <p><u>Paragraph 46.</u> "[W]ith the exception of bad faith insurance cases, a breach of the covenant of good faith and fair dealing permits a recovery solely in contract' . . . [¶] Since a party 'may not recover in tort for . . . breach of the implied covenant of good faith and fair dealing,' an 'award of punitive damages' is not permitted on such a claim." (<i>Spinks v. Equity Residential Briarwood Apartments</i> (2009) 171 Cal.App.4th 1004, 1054.)</p> <p><u>Punitive Damages.</u> The implied covenant claim aside, the complaint alleges facts and tort claims (e.g., breach of fiduciary duty) sufficient to support punitive damages. (See Civ. Code, § 3294 [malice, oppression, or fraud]; <i>College Hospital, Inc. v. Superior Court</i> (1994) 8 Cal.4th 704, 725 [despicable conduct]; see also Compl. ¶¶ 8-31.)</p> <p><u>Constructive Trust.</u> The complaint adequately alleges "a res, an 'identifiable kind of property or entitlement in defendant's hands.'" (<i>Korea Supply Co. v. Lockheed Martin Corp.</i> (2003) 29 Cal.4th 1134, 1150; accord Compl. ¶¶ 9, 15 [19% ownership interest], 16 [withheld distribution].)</p> <p><u>Injunctive Relief.</u> The complaint adequately alleges bases for an injunction against selling the business and plaintiff's alleged 19% interest. (See Code Civ. Proc., § 526, subd. (a)(1)-(3), (7) [injunction available when complaint alleges irreparable injury, violation of rights, money damages would be inadequate, or violation of trust]; see also Compl. ¶¶ 49-50.)</p> <p>Defendants shall give notice.</p>
9	StepHouse Recovery	<b><u>Woolls Peer Anti-SLAPP Motion</u></b>

<p>v. CPH &amp; Associates Ins. Agency</p>	<p>Defendant Woolls Peer Dollinger &amp; Scher APC's anti-SLAPP motion is granted. (See Code Civ. Proc. § 425.16)</p> <p>Defendant has met its initial burden to show the claims asserted against it in the FAC (the 2nd and 6th causes of action) arise from protected conduct. (See Code Civ. Proc., § 425.16, subds. (e)(1), (f); see also <i>Navellier v. Sletten</i> (2002) 29 Cal.4th 82, 92.)</p> <p>All of the challenged claims arise from the protected conduct of enforcing a judgment. (See <i>Rusheen v. Cohen</i> (2006) 37 Cal.4th 1048, 1052, 1055-1056 [holding trial court correctly granted anti-SLAPP motion]; <i>Weeden v. Hoffman</i> (2021) 70 Cal.App.5th 269, 286-287 [obtaining and recording an abstract of judgment is protected conduct].)</p> <p>Plaintiffs fail to show defendant's conduct fell within the narrow anti-SLAPP exception for illegal conduct. (See <i>Flatley v. Mauro</i> (2006) 39 Cal.4th 299.) Defendant does not concede that nor does the "evidence conclusively establish[]" the conduct was "illegal as a matter of law." (<i>Id.</i> at p. 320.)</p> <p>To the contrary, the evidence shows defendants obtained a writ of execution and recorded abstracts of judgment issued by the U.S. District Court pursuant to a document entitled "Judgment" signed by a U.S. District Court judge. (See Pl. 4/26/24 RFJN (ROA #276) Ex. C [Pl. prior RJJN Exs. 3, 8-9, 11].)</p> <p>While the U.S. District Court has since vacated the judgment, abstract of judgment, and writs of execution, the court did not find any illegality. It did not find defendant or anyone else acted fraudulently or in bad faith. It assigned no blame at all. The order says the documents were simply "issued in error." (See Pl. 4/26/24 RFJN (ROA #276) Ex. A at pp. 2-3.)</p> <p>Plaintiffs also fail to meet their shifted burden to show the challenged allegations have merit. (See <i>Baral v. Schnitt</i> (2016) 1 Cal.5th 376, 384-385 [plaintiff's evidentiary burden].)</p> <p>If anything, the undisputed evidence defeats the 2nd cause of action as a matter of law by establishing the litigation privilege. (See <i>Rusheen, supra</i>, 37 Cal.4th at pp. 1062-1065; <i>Weeden, supra</i>, 70 Cal.App.5th at p. 289.)</p> <p>In any event, an insurer's counsel cannot be held liable for bad faith. (See <i>Gruenberg v. Aetna Ins. Co.</i> (1973) 9 Cal.3d 566, 576 ["the non-insurer defendants . . . are not . . . subject to an implied duty of good faith . . . they cannot be held accountable on a theory of conspiracy"].) And plaintiffs fail to offer evidence showing defendant is a "debt collector" and the judgment reflects a "consumer debt." (16 U.S.C. § 1692a(3), (5), (6).) Defendant's evidence shows otherwise. (See Def. 2/13/24 RFJN [ROA #200] Exs. A-B [MSJ was based on insurance policy</p>
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payout]; see also 2/13/24 Darling Alderton decl. [ROA #215] ¶¶ 2, 7.)

Defendant's 2/14/24 request for judicial notice [ROA #200] is granted.

Plaintiffs' 4/26/24 request for judicial notice [ROA #276] is granted as to Exhibits A-E. It is denied as to Exhibits F & G, which purport to be correspondence between counsel.

Any request to recover attorney fees may be made by noticed motion. (See Code Civ. Proc. § 425.16, subd. (c)(1).)

**Philadelphia Anti-SLAPP Motion**

Defendant Philadelphia Insurance Indemnity Company's anti-SLAPP motion is granted.

These allegations of the FAC are stricken:

- General allegations ¶¶ 25 at 8:17-29; 34 at 11:20-22, 34 at 11:26-27, 38, 41, 50, 51, 52, 54, 55, 56, 69-81
- 2nd cause of action ¶¶ 121(f) & (g), 122(a), 125-127
- 3rd cause of action ¶¶ 135(a), (b), & (h), 145, 147-148
- 4th cause of action ¶ 152
- 5th cause of action ¶ 171
- 6th cause of action ¶¶ 182(f)-(i) & (o), 184.

The court previously granted defendant's anti-SLAPP motion to the initial complaint. (See 3/8/24 order.)

The prior order requires "automatic dismissal of the amended claims. Requiring the trial court to analyze the amended claims under section 425.16 simply because the claims were amended before the court ruled on the first motion to strike would cause all of the evils identified in *Simmons* [*v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068] and would undermine the legislative policy of early evaluation and expeditious resolution of claims arising from protected activity." (*Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1294; accord 1/11/24 order.)

In any event, the anti-SLAPP motion defeats the FAC for the same basic reasons the Woolls Peer motion is granted. The challenged allegations arise out of protected litigation and collection activity that is not conclusively illegal as a matter of law. Plaintiff has not shown the challenged allegations have merit. To the contrary, they are protected by the litigation privilege.

		<p>Defendant's 2/6/24 requests for judicial notice [ROA #166, 168] are granted.</p> <p>Plaintiffs' 4/26/24 request for judicial notice [ROA #276] is granted as to Exhibits A-E. It is denied as to Exhibits F &amp; G, which purport to be correspondence between counsel.</p> <p>Plaintiffs' suggestion the court reconsider the 3/8/24 order granting the anti-SLAPP motion to the initial complaint is denied. (See <i>Le Francois v. Goel</i> (2005) 35 Cal.4th 1094, 1108.) As noted above, the U.S. District Court found no illegality in obtaining the collection-related documents.</p> <p>Any request to recover attorney fees may be made by noticed motion. (See Code Civ. Proc. § 425.16, subd. (c)(1).)</p> <p><b><u>Benson Anti-SLAPP Motion</u></b></p> <p>Defendant Benson Legal APC's anti-SLAPP motion is granted for the same basic reasons as Philadelphia's and Wools Peer's motions.</p> <p>Defendant's 1/19/24 request for judicial notice [ROA #143] is granted.</p> <p>Plaintiffs' 4/26/24 request for judicial notice [ROA #276] is granted as to Exhibits A-E. It is denied as to Exhibits F &amp; G, which purport to be correspondence between counsel.</p> <p>Plaintiffs' suggestion the court reconsider the 3/8/24 order granting the anti-SLAPP motion to the initial complaint is denied. (See <i>Le Francois v. Goel</i> (2005) 35 Cal.4th 1094, 1108.)</p> <p>Any request to recover attorney fees may be made by noticed motion. (See Code Civ. Proc. § 425.16, subd. (c)(1).)</p> <p>Wools Peer shall give notice of all rulings.</p>
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