

### **Tentative Rulings – December 11, 2003**

To request a hearing on any matter on this calendar, you must call the Court at (209) 223-6360 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

#### **Partners in Care v. Brower – 03CV2710 – Plaintiff's Motion for Order that Matters in Requests for Admissions be Deemed Admitted**

The plaintiff's unopposed motion Order that Matters in Requests for Admissions be Deemed Admitted is granted. The defendants have failed to provide timely written responses to the Requests

The defendants are also ordered to pay plaintiff t sanctions in the amount of \$153.50 for the attorney fees and costs incurred in bringing this motion. The court reserves the right to increase the amount of sanctions if a hearing is requested and the tentative ruling confirmed.

Plaintiff is ordered to give notice of this ruling.

#### **Grange v. Stolz – 03CV2671 – Plaintiff's Motion for Order Striking the Defendant's Answer**

The plaintiff's unopposed motion for an order striking the defendant's answer is granted. On October 16, 2003, the court ordered the defendant to provide verified answers to interrogatories. The declaration of plaintiff's counsel in support of this motion establishes the defendant failed to comply with the court's order. Pursuant to Code of Civil Procedure Section 2023, the defendant's answer is ordered stricken.

The defendant is also ordered to pay plaintiff t sanctions in the amount of \$650.30 for the attorney fees and costs incurred in bringing this motion.

Plaintiff is ordered to give notice of this ruling.

#### **Hawkins v. Kitayama – 02CV2460 – Defendant's Motion to Compel Response to Interrogatories and Request for Production of Documents**

The defendant's unopposed motion for an order requiring the plaintiff to respond to Interrogatories and a Request for Production of Documents is granted. The plaintiff is ordered to provided verified responses to these discovery requests, without objection, within 10 days of the date of this ruling.

The plaintiff is also ordered to pay defendant sanctions in the amount of \$400.30 for the attorney fees and costs incurred in bringing this motion.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.

**Lawrence v. Podesta – 02CV2179 – Defendant’s Motion to Continue Mandatory Settlement Conference and Trial Date**

The defendant’s motion to continue the mandatory settlement conference and trial date is granted. Trial is continued to March 8, 2004, at 9:00 a.m., in Department 2. The mandatory settlement conference is continued to February 6, 2004, at 2:30 p.m., in Department 2.

This order is conditioned upon the defendant paying a continuation fee of \$110.00 to the clerk of the court pursuant to Government Code Section 26830(d). The order shall not become effective until the fee is paid.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.

**Van Ness Henderson v. Raine- 03CV2970 – Defendant’s Demurrer to First Amended Complaint**

The first, second and third causes of action are based in fraud. The plaintiff alleges the defendant told her that she would pay off the balance of the note (\$40,000.00) within 12 months instead of by 2006 as required by the terms of the note. Plaintiff alleges she relied on this representation in entering into the sales agreement, which transferred the subject property from the plaintiff to the defendant.

The court sustains the defendant’s demurrer to the first, second, and third causes of action, with 10 days leave to amend. In reviewing a complaint challenged by a demurrer the court must accept the allegations of the complaint as true. An exception to this general rule is when the allegations of the complaint directly contradict a matter of which the court may take judicial notice or an exhibit attached to the complaint. In that event the allegations of the complaint will be disregarded. (Freeman v. San Diego Ass’n of Realtors (1999) 77 Cal.App.4th 171.)

The promissory note clearly states that the defendant agreed to pay the plaintiff \$40,000.00 on November 6, 2006. The court finds this note a final expression of the parties’ intent. Therefore, the parol evidence rule bars, as a matter of law, extrinsic statements that vary the terms of the written agreement. There is a fraud exception to the parol evidence rule. However, this exception does not allow extrinsic statements that directly contradict the terms of the written agreement. (Bank of America etc. Assn. v. Pendergrass (1935) 4 Cal.2d 258; Kronsberg v. Milton J. Wershow Co (1965) 238 Cal.App.2d 170.)

The Court sustains the demurrer to the fourth cause of action with 10 days leave to amend. Although the plaintiff alleges there is a controversy regarding the terms of the written agreement, these allegations are not supported by a review of the promissory note. The note sets forth an amount to be paid, a payment date, a payee and indicates the location of the payment is to be designated. Based on the rule that allegations of a complaint that contradict the terms of an exhibit should be disregarded, the complaint fails to state a cause of action against the defendant.

The Court sustains the demurrer to the fifth cause of action for breach of contract with 10 days leave to amend. The plaintiff alleges the defendant breached the agreement by failing to make payments as promised. Again, the note does not call for a payment until November 2006. The court disregards the allegations of breach because they contradict the express terms of the note, which is attached to the first amended complaint as Exhibit B. Because the plaintiff has not adequately alleged breach, no cause of action is stated.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.

**Potter v. Wright- 03CV2996 – Story Winery’s Motion to Quash Subpoena Duces Tecum**

Initially the court notes that a motion to quash is an appropriate procedure to challenge a subpoena issued pursuant to Code of Civil Procedure Section 2020. (Code of Civil Procedure Section 1987.1)

As to the merits of the motion, the court grants the motion to quash to the extent it seeks the financial statements from Story Winery, documents illustrating any impact on Story’s business as described in Item 3, or documents reflecting the number of business visitors to the Story Winery from 1986 to the present as described in Item 8. Financial information is protected by the state constitutional right to privacy. (Valley Bank of Nevada v. Superior Court (1975) 15 Cal.3d 652, 656.) When third party financial information is sought through discovery, the court must first determine if the information is relevant. If relevant, the court must balance the third-party’s right of privacy against the litigants legitimate need for the information. (Babcock v. Superior Court (1994) 29 Cal.App.4th 721.)

The defendants have failed to establish that Story’s financial condition is relevant to any issue raised in the plaintiff’s complaint. Plaintiff sued the defendants for unfair competition under Business and Professions Code Section 72000 et seq, based on the theory the defendants operated a bistro in violation of a county ordinance. Defendants fail to establish how Story’s financial records will be relevant to this claim. Under the theory asserted by the plaintiff, it is not necessary to show that Story or any other winery in the Shenandoah Valley lost revenue or income as a result of the allegedly unfair business practice.

Story’s financial records are not relevant to the issue of what relief plaintiff may receive if successful on its claims. Damages are not recoverable under Business and Professions Code Section 72000. Assuming plaintiff prevails, the court could order the defendants to disgorge any profits it received from the unfair business practice. However, Story’s financial records would not be relevant to this calculation.

As to the remaining categories of documents listed in the deposition subpoena, the motion is denied. Story Winery is ordered to appear at its deposition and produce the documents described in items 2, 4 – 7, of the deposition subpoena. Defendants' counsel is ordered to contact Story's attorney and arrange a date and time for the deposition. Unless the parties agree otherwise, the deposition must be completed within 45 days of the date of this ruling.

Based on the mixed ruling, neither party is entitled to attorney fees, costs or sanctions.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.