

TENTATIVE RULINGS—FEBRUARY 20, 2009

To request a hearing on any matter on this calendar, you must call the Court at (209) 257-2692 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.

FICHTENKORT V. CREASON: 08CV5342

Defendants' Demurrer to Complaint

Defendants failed to comply with Local Rule 4.03 (D). If there are any further violations of Rule 4.03 (D), any subsequent motions will be dropped from calendar until proper notice is provided.

Defendants' demurrer to the complaint is overruled, in part, and sustained, in part, with leave to amend.

The demurrer to the first cause of action is overruled. The first cause of action is not so uncertain that the defendants cannot reasonably respond to the same. (Khoury v. Maly's of California, Inc. (1993) 14 Cal.App.4th 612.)

The demurrer to the second cause of action is overruled, as the complaint is pled sufficiently to withstand a demurrer for failure to state a cause of action.

The demurrer to the third cause of action is hereby sustained, on the basis of failure to state a cause of action, with leave to amend. The third cause of action fails to state facts to support an estoppel cause of action.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

FENNELLY V. THAYER: 07CV4990

Defendant's Motion to Compel and Request for Sanctions

Defendant's unopposed motion to compel responses to form and special interrogatories is hereby granted.

Defendant's counsel failed to include in her declaration any information to support the amount of attorney's fees requested. The amount requested in the motion appears excessive for the length and standard nature of the motion. Therefore, the defendant is awarded sanctions in the amount of \$540.00.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

COUNTY OF AMADOR V. ESPOSITO: 06CV4593

Plaintiff's Motion to Enforce Settlement Agreement

Plaintiff's motion to enforce the settlement agreement, entered on October 31, 2008, is hereby granted. The settlement reached is enforceable under Code of Civil Procedure section 664.6. (see Assemi v. Assemi (1994) 7 Cal.4th 896.)

The Courts, however, that the waiver and release was intended by both parties to be mutual. Thus, there was an error in the recitation of the settlement on the record. As the parties both agreed the waiver and release would be mutual, the settlement is amended to reflect the same. (see Osumi v. Sutton (2007) 151 Cal.App.4th 1355, 1360 (noting the Court may determine what terms the parties actually agreed upon, but cannot add new material terms to the agreement upon ruling on a Code of Civil Procedure section 664.6 motion).)

Pursuant to the terms of the settlement, the prevailing party in any enforcement action is entitled to attorney's fees and costs. Therefore, Plaintiff is awarded attorney's fees in the amount of \$1,250.00. Although the notice of motion may not have been in strict compliance with Rule of Court 3.110 (a), the defendants clearly had notice of the request for attorney's fees, as they responded to the same in their opposition. Moreover, it would best serve the interests of justice and judicial economy to award the fees to which the plaintiff is entitled in the scope of the instant motion instead of requiring the plaintiff to file a separate motion.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

Defendant's' Motion for Clarification of Settlement

Defendants' Motion for Clarification of Settlement is hereby granted, in part, and denied, in part.

As noted in the tentative addressing the plaintiff's motion to enforce settlement, the settlement required clarification regarding the mutuality of the waiver and release. So, to that extent, and as noted in the ruling on the Motion to Enforce Settlement, the motion is granted.

The remainder of the motion is denied. Defendants are requesting the Court add new material terms to the valid settlement agreement. This is impermissible. The terms suggested by the defendants regarding the pipe and rocks were not terms of the settlement agreement.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.