IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar

Judge: HONORABLE V. RAYMOND SWOPE

Department 23

400 County Center, Redwood City

Courtroom 8A

Monday, December 5, 2022

IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR YOU MUST DO ONE OF THE FOLLOWING:

1. **EMAIL Dept23@Sanmateocourt.org BEFORE 4:00 P.M. CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING**

2. **YOU MUST CALL (650) 261-5123 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.**

3. **You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).**

Failure to do both items 1 or 2 and 3 will result in no oral presentation.

At this time, *all appearances will be by Zoom*. No personal appearances will be allowed.

Zoom Video/Computer Audio Information:

https://sanmateocourt.zoomgov.com/

Meeting ID: 161 435 0369
Password: 188130

Zoom Phone-Only Information Please note: You must join by dialing in from a telephone; credentials will not work from a tablet or PC

Dial in: +1 (669)-254-5252

(Meeting ID and passwords are the same as above)

TO ASSIST THE COURT REPORTER, the parties are ORDERED to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case	Title / Nature of Case

14:00
LINE:1
20-CIV-03314 OLE VENTURES INC. VS. TIMOTHY HAROLD ALEXANDER

OLE VENTURES INC.	CEDRIC SEVERINO
TIMOTHY HAROLD ALEXANDER	AMY A. LAUGHLIN

MOTION TO COMPEL FURTHER DEFENDANT'S FURTHER RESPONES TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS SET ONE AND REQUEST FOR SPECIAL INTERROGATORIES BY PLAINTIFFS OLE! TRAVEL INC. AND OLE VENTURES, INC.
TENTATIVE RULING:

A. Motion to Compel Further Responses to Request for Production of Documents

Plaintiffs' motion to compel further responses to Request for Production of Documents, categories 1 through 4 and 6 through 16 is GRANTED as to all categories.

Defendant's responses on March 1 and April 5, 2021, were blatantly insufficient. Defendant's May 20, 2022, response states that he conducted a diligent search and reasonable inquiry, but is "unable to comply" because the requested documents either never existed, had been destroyed/lost/stolen/misplaced, or has never been or no longer is in Defendant's custody.

However, Defendant's Opposition states that he "produced everything he had" in the family law action and that no "further" documents were in his possession. (Opp. P&A at 3:17-20.) This statement implies that, at some point, Defendant possessed documents responsive to the current discovery and he produced them in the family law action. The statement appears to contradict his discovery response that he has no records to produce. Therefore, a further response is necessary to clarify Defendant's apparent contradiction. Defendant's production of document in one legal action does not relieve him of the obligation to comply with discovery in another action.

Defendant shall supplement all responses to document categories 1 through 4 and 6 through 16. For all documents that Defendant contends he does not presently possess, responses must identify what documents Defendant produced in the family law action and why he no longer possesses any originals or copies of those documents.

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B. Sanctions (Document Requests)

Plaintiffs' motion for sanctions is DENIED. Sanctions are warranted for Defendant's misuse of the discovery process and for failing to comply with the Court's order to engage in an Informal Discovery Conference. Defendant's counsel Erin Stratte was present in court when the IDC was ordered, but refused to attend. Further, all three sets of responses are deficient, more than a year after the responses were due in February 2021. Defendant does not show that his deficient responses or his opposition to this motion was substantially justified.

However, "a request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought . . . ." (Code of Civ. Proc. § 2023.040.) Plaintiffs' motion does not comply with this statutory notice requirement.

C. Motion to Compel Further Responses to Special Interrogatories

Plaintiffs' motion to compel further responses to Special Interrogatories is ORDERED OFF CALENDAR. The interrogatory responses subject to this motion were served on May 20, 2022, and Plaintiffs filed this motion on May 23, 2022, without first engaging in an Informal Discovery Conference (Local Rule 3.700), and without first meeting and conferring. (Code of Civ. Proc. § 2030.300, subd. (b)(1).) The motion may be re-noticed, if necessary, after the conclusion of an Informal Discovery Conference.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiffs Ole! Travel Inc. and Ole Ventures Inc. shall 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 provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

2:00
LINE:2
21-CIV-00632 FRANK SHEE VS. ALBERTO BOLANOS, M.D., ET AL.

FRANK SHEE	PRO SE
ALBERTO BOLANOS	JAMES J. ZENERE

MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION BY DEFENDANT ALBERTO BOLANOS, M.D.
TENTATIVE RULING:

Defendant Alberto Bolanos' Motion for Summary Judgment is GRANTED for the reasons discussed below.

The Complaint asserts, in narrative fashion without separately stating them, two causes of action against Bolanos—medical negligence and failure to obtain informed consent—arising out of a shoulder surgery and bicipital tenodesis procedure performed by Bolanos on Plaintiff in 2019. (February 8, 2021 Complaint, p. 4.) By this Motion, Bolanos moves for summary judgment with respect to the action—and, in the alternative, summary adjudication with respect to these causes—on the grounds that Plaintiff cannot establish the elements of either claim and that the claims are time-barred.

A. Legal Standard for Summary Judgment & Adjudication

Any party may move for summary judgment if he or she contends an action has no merit. (Code of Civ. Proc., § 437c, subd. (a).) The motion shall be granted only if the papers submitted show by admissible evidence that there is no triable issue of material fact and that the moving party is entitled to judgment as a matter of law. (Id., at subd. (c); Lipson v. Superior Court (1982) 31 Cal.3d 362, 374.)

A party may also move for summary adjudication in the alternative with respect to a cause of action if he or she contends it has no merit. (Id., at subd. (f).) A cause of action has no merit if one or more of its elements cannot be established or if the defendant establishes an affirmative defense to it. (Id., at subd. (o).)

Whether the motion is one for summary judgment or adjudication, the moving party bears the burden of persuasion. (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 845, 850.) This burden is not affected by the strength or weakness of the showing in opposition. (Scalf v. D.B. Log Homes , Inc. (2005) 128 Cal.App. 4th 1510, 1519.) Along with the burden of persuasion, the moving party also bears an initial burden to make a prima facie showing by admissible evidence

that no triable issue of material facts exists. (Aguilar v. Atlantic Richfield Co., supra, 25 Cal.4th at pp. 845, 850.) Once such a showing is made, the burden of production shifts to the opposing party though the burden of persuasion remains with the movant. (Id., at p. 850.)

A grant of summary judgment denies an adverse party his or her right to trial, and thus "doubts as to the propriety of summary judgment should be resolved against granting the motion." (Huynh v. Ingersoll-Rand (1993) 16 Cal.App.4th 825, 830.) The same is true of summary adjudication. (See's Candy Shops, Inc. v. Superior Court (2012) 210 Cal.App.4th 889, 900.)

B. Medical Malpractice

The elements of a claim for medical malpractice or medical negligence are: (1) the defendant was negligent in the provision of medical services; (2) the plaintiff was harmed; and (3) the defendant's medical negligence was a substantial factor in causing the plaintiff's harm. (See Flowers v. Torrance Memorial Hospital Medical Center (1994) 8 Cal.4th 992, 997–998; Code of Civ. Proc., § 340.5; Civ. Code, §§ 3333.1–3333.2.)

On negligence, the plaintiff must establish the defendant physician breached the standard of care, which is "the reasonable degree of skill, knowledge, and care ordinarily possessed and exercised by the members of the medical profession under similar circumstances." (Avivi v. Centro Medico Urgente Medical Center (2008) 159 Cal.App.4th 463, 470–471.)

On causation, the plaintiff must establish it is more probable than not the negligent act was a cause-in-fact of the plaintiff's injury. A possible cause only becomes "probable" when, in the absence of other reasonable causal explanations, it becomes more likely than not that the injury was a result of its action. Causation in actions arising from medical negligence must be proven within a reasonable medical probability based on competent expert testimony, i.e., something more than a 50-50 possibility. The evidence must be sufficient to allow the jury to infer that in the absence of the defendant's negligence, there was a reasonable medical probability the plaintiff would have obtained a better result.

(Belfiore-Braman v. Rotenberg (2018) 25 Cal.App.5th 234, 247 [quotation marks omitted].)

Here, Bolanos contends that there is no triable issue of material fact regarding the first and third elements and that Plaintiff cannot establish either negligence or causation. In support of these contentions, Bolanos submits the Declaration of Dr. John Kao. (See May

23, 2022 Evidence in Support of Motion ("Evid. in Supp."), Declaration of John Kao ("Kao Decl.").)

Kao is an orthopedist with over three decades' experience practicing as a physician in the Bay Area and Los Angeles. (Kao Decl., ¶ 1, exh. A.) Based upon Kao's review of Plaintiff's medical records and testimony from Bolanos and Bolanos' associate Brittany Hennin, Kao opines that Bolanos was at no point negligent in his treatment of Plaintiff and that no act or omission of Bolanos caused Plaintiff's claimed injuries. (May 23, 2022 Defendant's Separate Statement of Undisputed Material Fact ("D. SSUMF"), nos. 15–16; Kao Decl., ¶¶ 3–7.) This evidence constitutes a prima facie showing sufficient to shift the burden of production to Plaintiff, who must produce evidence showing there is a triable issue as to whether Bolanos was negligent and whether such negligence caused Plaintiff's claimed injuries.

In opposition, Plaintiff submits medical notes signed by Bolanos regarding visits on October 10 and 24 in 2019, along with photographs of himself. (July 29, 2022 Statement of Material Facts ("P. SSMF"), exhs. A, B.) "Opinion testimony from a properly qualified witness is generally necessary to demonstrate the elements for medical malpractice claims." (Borrayo v. Avery (2016) 2 Cal.App.5th 304, 310.) "When a defendant health care practitioner moves for summary judgment and supports his motion with an expert declaration that his conduct met the community standard of care, the defendant is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence." (Ibid.) The alleged negligence is not so obvious as to be determined by a layperson. (See Complaint, p. 4.)Accordingly, these sets of documents are insufficient to show there is a triable issue as to either Bolanos' negligence or that such negligence caused Plaintiff's claimed injuries.

In addition to these exhibits, Plaintiff also contends that the surgery was unsuccessful and notes that surgery performed on his other shoulder and bicep had different results. (P. SSMF, p. 2.) Setting aside the fact that these contentions are not in the form of an admissible declaration (see Code of Civ. Proc., §§ 2003, 2015.5; Common Wealth Ins. Sys., Inc. v. Kersten (1974) 40 Cal.App.3d 1014, 1031), they are insufficient to carry Plaintiff's burden of production. Surgeries are commonly unsuccessful in the absence of negligence and can produce different results based on extrinsic factors. A reasonable trier of fact could not conclude that Bolanos was negligent based on these assertions.

Accordingly, Bolanos has satisfied his burden of persuasion with respect to Plaintiff's medical negligence claim.

C. Failure to Obtain Informed Consent

The elements of a claim for failure to obtain informed consent are: (1) the defendant performed a medical procedure on the plaintiff; (2) the defendant did not disclose to the plaintiff the important potential results, risks, and alternatives to the procedure; (3) a reasonable person in the plaintiff's position would not have agreed to the procedure had he or she been adequately informed; and (4) the plaintiff was harmed by a result or risk that the defendant should have explained. (See Jameson v. Desta (2013) 215 Cal.App.4th 1144, 1164; Cobbs v. Grant (1972) 8 Cal.3d 229, 242; CACI No. 532.)

Bolanos contends that Plaintiff cannot establish the second element. That is, he contends he informed Plaintiff of all the risks, benefits, and alternatives to the surgical tenodesis procedure performed on Plaintiff's bicep. According to Bolanos and Hennin, Plaintiff was fully informed with respect to a possible tenodesis at the October 24, 2019 visit. (D. SSUMF, no. 7; May 23, 2022 Declaration of Alberto Bolanos ("Bolanos Decl."), ¶ 7; May 23, 2022 Declaration of Brittany Hennin ("Hennin Decl."), ¶ 7.) Plaintiff also signed a form specifically stating that he had fully informed of the tenodesis, evidenced by the medical records and testified to by Bolanos. (D. SSUMF., no. 9; May 23, 2022 Declaration of Adam M. Stoddard ("Stoddard Decl."), ¶ 4, exh. C, Bates nos. 000113-000114; Bolanos Decl., ¶ 8.) A subsequent note listing the procedure was also signed by Plaintiff. (D. SSUMF, no. 20; Kao Decl., ¶ 6.5.) And Kao opines as well, based on Bolanos' testimony and the records, that Bolanos provided information sufficient to meet the standard of care in the profession. (Kao Decl., ¶ 6.5.)

The Complaint asserts that there was "no prior discussion" of the tenodesis and that Bolanos "did not explain to [Plaintiff] that" the tenodesis "would involve permanent removal of [Plaintiff's] bicep." (Complaint, p. 4.) The issues on a motion for summary judgment or adjudication are framed by the pleadings. (Vulk v. State Farm General Ins. Co. (2021) 69 Cal.App.5th 243, 255.) The testimony of Bolanos and Kao are sufficient to demonstrate that no portion of Plaintiff's bicep was removed. (D. SSUMF, no. 21; Bolanos Decl., ¶ 9; Kao Decl., ¶ 6.7.) And the signed documents demonstrate that Plaintiff was aware of the possibility that Bolanos would perform a tenodesis and consented to the procedure. (D. SSUMF, no. 19; Stoddard Decl., exh. C, Bates nos. 000113-000114.) Accordingly, Bolanos has carried his burden of production.

The medical notes submitted by Plaintiff in opposition are insufficient to demonstrate a triable issue regarding whether Plaintiff was informed. (See P. SSMF, exh. A.) The note regarding the October 24, 2019 meeting does not indicate that the tenodesis was discussed with Plaintiff (see ibid.), however this is merely the absence of evidence of a discussion rather than evidence of absence. Plaintiff offers no admissible evidence that could lead a reasonable

trier of fact to determine Plaintiff was not informed of or did not consent to the tenodesis procedure performed by Bolanos.

Accordingly, Bolanos has satisfied his burden of persuasion with respect to Plaintiff's failure to obtain informed consent claim. And, by demonstrating that Plaintiff cannot establish at least one necessary element of each cause of action set forth in the Complaint and that there are no triable issue of material fact, Bolanos has successfully shown that this action has no merit with respect to him and the Court finds he is entitled to judgment as a matter of law, regardless of the statute of limitations.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant Darren Wallace shall 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 provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

2:00
LINE:3
21-CIV-04018 XIANFENG SUN VS. LOVEVITE LLC, ET AL.

XIANFENG SUN PRO SE
JACK SARFATY PRO SE

DEMURRER TO PLAINTIFF'S COMPLAINT BY DEFENDANT AARON TURKSON
TENTATIVE RULING:

Defendant Aaron Turkson's Demurrer to Plaintiff's Complaint is ordered OFF CALENDAR.

Before a demurrer is filed, a the demurring party is required to meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. Cal. Code of Civ. Proc. §430.41(a).

Cal. Code of Civ. Proc. §430.41(a)(3) requires that the demurring party file and serve with the demurrer a declaration stating either of the following:

(A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Here, no declaration has been filed in support of the Demurrer. Defendant Aaron Turkson may place the hearing on the Demurrer back on calendar when meet and confer efforts have been satisfied and a code compliant supporting declaration has been filed. If a code compliant supporting declaration is not filed, the Demurrer will be stricken as procedurally improper.

14:00
LINE:4

21-CIV-05832 PATRICIA MAULDIN VS. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANIES, ET AL.

PATRICIA MAULDIN	PATRICK T. GALLIGAN
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANIES	KATHERINE L. CURTIS

MOTION FOR COURT ORDER APPOINTING AN ARBITRATOR IN THE UNINSURED MOTORIST CLAIM OF PLAINTIFF BY PLAINTIFF PATRICIA MAULDIN
TENTATIVE RULING:

The Motion of Plaintiff Patricia Mauldin for a Court Order Appointing an Arbitrator is DROPPED as MOOT in light of the Stipulation filed by the parties on August 24, 2022 appointing Charles Dyer as arbitrator in this matter.

2:00
LINE:5
22-CIV-00023 THOMAS VARGHESE, ET AL VS. ZBS LAW, LLP, ET AL.

THOMAS VARGHESE	EYAD YASER ABDELJAWAD
ZBS LAW, LLP	BRADFORD E. KLEIN

MOTION TO COMPEL PLAINTIFFS THOMAS VARGHESE, JULIA MEHTA, AND EZAKADAN REVOCABLE TRUST TO PROVIDE WRITTEN RESPONSES TO DOCUMENT REQUESTS AND MONETARY SANCTION IN THE AMOUNT OF $1,560.00 BY DEFENDANT RUSHMORE LOAN MANAGEMENT SERVICES, LLC
TENTATIVE RULING:

The motion is DENIED WITHOUT PREJUDICE for failure to hold an Informal Discovery Conference prior to filing the motion as required by Local Rule 3.700. The motion may be re-noticed, if necessary, after the conclusion of an Informal Discovery Conference.

2:00
LINE:6

22-CIV-01231 EMILY RAMANS VS. COUNTY OF SAN MATEO

EMILY RAMANS	TONY FRANCOIS
COUNTY OF SAN MATEO	TIMOTHY J. FOX

MOTION FOR JUDGMENT ON WRIT OF MANDATE BY PLAINTIFF EMILY RAMANS
TENTATIVE RULING:

Matter continued to January 30. 2023 at 9:00 a.m.

2:00
LINE:7
22-UDL-00928 KRISS MIRANDA, ET AL VS. KIA JACKSON, ET AL.

KRISS MIRANDA	PRO SE
KIA JACKSON	STACY Y. TOWNSEND

MOTION FOR SUMMARY JUDGMENT BY DEFENDANT KIA JACKSON
TENTATIVE RULING:

Defendant Kia Jackson's unopposed Motion for Summary Judgment is GRANTED for the reasons set forth below.

Defendant seeks summary judgment on the grounds that, by accepting Defendant's October 5, 2022 rent payment, Plaintiff "waived any breaches of covenants or conditions occurring prior to the acceptance of the rent." MPA, p.4-5. Defendant contends that "As such, the Three-Day Notice to Quit upon which Plaintiffs' complaint is deemed waived, unenforceable, and cannot support a later judgment." MPA, p.5. The Court agrees.

Plaintiff's Complaint alleges that, on September 29, 2022, Plaintiff issued a Three-Day Notice to Quit for Breach of Covenant resulting from Defendant's failure to comply with prior notices to cure breaches of the parties' lease agreement. The Three-Day Notice states:

> On November 1, 2021 and March 29, 2022 you were served with a Notice for Lease Violation for excessive waste, substantial accumulation of debris and blocked walkways that cause health, safety and fire hazards for yourself and other residents around you. You were given 30 Days resolve the matter, otherwise, your lease is deemed terminated. To date, you have not done anything to rectify these issues and are causing and continue cause damage to the premises and common areas.

Complaint, Ex. 2, p.1. The Three-Day Notice also alleges that Plaintiff issued a 90-day Notice of Termination of Tenancy on June 23, 2022. The Three-Day Notice further states that Defendant must continue to pay rent:

> Rental obligations and payments are still enforced and are enforceable under the provisions of the Lease Agreement, you must continue to pay rent. Otherwise, Landlord/Agent shall seek possession of premises for non-payment of rent

> concurrently with the termination of the Lease, for causes of violations, nuisance and breach of agreement.

Complaint, Ex. 2, p.2. However, on October 5, 2022, after expiration of the Three-Day Notice, Plaintiff accepted Defendant's payment of October rent. Jackson Decl., ¶¶ 7-8, Ex.1.

According to Defendant, "[Plaintiff's] acceptance of the rent is a clear waiver and repudiation of the previous Ninety-Day Termination Notice and Notice to Quit." MPA, p.5. This conclusion is supported by the decision in Kern Sunset Oil Co. v. Good Roads Oil Co. (1931) 214 Cal. 435, 440-441. In that case, the court noted the "universal rule" that "if the landlord accepts rent from his tenant after full notice or knowledge of a breach of a covenant or condition in his lease for which a forfeiture might have been demanded, this constitutes a waiver of forfeiture which cannot afterward be asserted for that particular breach or any other breach which occurred prior to the acceptance of the rent." Id. at 441. As Plaintiff has not opposed this motion, Plaintiff has provided no reason to depart from this "universal rule."

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall 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 provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

POSTED: 3:00 PM