

Tentative Rulings for January 6, 2022 Department 5

**To request oral argument, you must notify Judicial Secretary
Amy Norton at (760) 904-5722
and inform all other counsel no later than 4:30 p.m.**

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 5 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

IN LIGHT OF THE CORONAVIRUS PANDEMIC; AND UNTIL FURTHER NOTICE, COUNSEL AND SELF-REPRESENTED PARTIES MUST APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS. **IN-PERSON APPEARANCES WILL NOT BE PERMITTED.**

TELEPHONIC APPEARANCES: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number (followed by #):

- Call-in Numbers: 1 (213) 306-3065 or 1 (844) 621-3956 (Toll Free)
- Meeting Number: 805-741-970#
- Press # again

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at <https://riverside.courts.ca.gov/PublicNotices/Webex-Appearances-Public-Access.pdf?rev=05-29-2020-09:54:48am>

Effective May 3, 2021, official court reporters will not be available in unlimited civil for any pretrial proceedings, law and motion matters, case management hearings, civil restraining orders, and civil petitions. (See General Administrative Order No. 2021-19-1)

1.

CVRI2100590	JLTH ENTERPRISES, LLC vs HAGEN	Defendants' Notice of Demurrer and Demurrer to Plaintiffs' First Amended Complaint
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Tentative Ruling: Sustained with 20 days leave to amend as the causes of action are uncertain and Plaintiffs have not sufficiently pled alter ego liability. On the Court's own motion, the Case Management Conference is continued to 3/11/22 at 8:30 a.m., Department 5.

Factual and procedural background: Factual and procedural background: Plaintiffs allege to have made an initial capital contribution of \$2,000,000 into a cannabis business, which funds were to be used towards the construction and improvement of a commercial property located at 480 Third Street, Lake Elsinore, California 92530 ("Subject Property"), out of which the parties would operate their business. The First Amended Complaint (FAC) alleges causes of action for (1) Account Stated; (2) Money Had and Received; (3) Action for Rescission; (4) Breach of Contract; (5) Breach of Fiduciary Duty; (6) Fraud; and (7) Declaratory Relief.

Defendants Hagen, Trump, the McMinns, THT Group, NC & DH, Trio Investment, Conoco, Reliable Works, Full Spectrum Bottling, HC Holdings, 480 Third Street, Nelson Campbell Investment Group, Vicky Campbell, Vicky J., Campbell Sep. Prop. Trust and PT Consulting (Defendants) demurrer to the entirety of the FAC claiming the FAC fails to state facts sufficient and uncertain. They contend the alter ego allegations are insufficient and that Plaintiffs have failed to properly plead a claim for breach of contract, breach of fiduciary duty and fraud. In addition, they contend the account stated, money had and received and declaratory relief causes of action are duplicative and rescission and money had and received are remedies and not independent causes of action.

Plaintiffs oppose the Demurrer contending they have properly pled alter ego liability and the breach of contract, breach of fiduciary duty, fraud and account stated causes of action are properly pled. In addition, they claim the declaratory relief cause of action is not duplicative. In their Opposition, Plaintiffs contend that they have acquired additional discovery including bank records which show that money was being deposited into certain Defendant's bank accounts and that money was being used to write checks to individual defendants. Plaintiffs further assert that there are records showing investments by unnamed companies and "that money was spent to pay for Defendant's legal fees." (Opposition 1:10-20.) This offer of proof provides that there is reasonable possibility that the pleading defects might be cured by amended.

Legal authorities: A demurrer can be used only to challenge defects that appear on the face of the pleading under attack, or from matters outside the pleading that are judicially noticeable (Blank vs. Kirwan (1985) 39 Cal.3d 311, 318.) In evaluating a complaint under the general demurrer standards, if there is any valid cause of action stated, even if not the one intended, the complaint is sufficient. (Saunders v. Cariss (1990) 224 Cal.App.3d 905, 908.) The sufficiency of the cause of action is tested by presuming all of the material factual allegations in the complaint are true. (Aubry v. Tri-City Hosp. Dist. (1992) 2 Cal.4th 962, 966-967.) If judicially noticeable records disclose an absolute defense to the action or deficiency in the complaint, the matter can be adjudicated at the demurrer hearing. (Bistawros v. Greenberg (1987) 189 Cal.App.3d 189, 192.)

"The alter ego doctrine arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff's interests." (Mesler v. Bragg Management Co. (1985) 39 Cal.3d 290, 300.) In order to pierce the corporate veil on an alter ego theory, a plaintiff must allege sufficient facts to show a unity of interest and ownership and an unjust result if the corporation is treated as the sole actor. (Leek v. Cooper (2011) 194 Cal.App.4th 399, 415 [citing Vasey v. California Dance Co. (1977) 70 Cal.App.3d 742, 749].) An allegation that a person owns all of the corporate stock and makes all of the management decisions is insufficient to cause the court to disregard the corporate entity. (Id. [citing Meadows v. Emmett & Chandler (1950) 99 Cal.App.2d 496, 499].) Rather, the conditions to invoke the alter ego doctrine

are (1) a unity of interest and ownership and (2) if the acts are treated as the corporations alone, an inequitable result would follow. (See *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.) Factors that are considered when determining if the doctrine of alter ego applies are commingling of funds, holding out by one entity that it is liable for the debts of another, identical equitable ownership, use of the same offices and employees, use of one as a mere shell for the other, inadequate capitalization, disregard of corporate formalities, and identical directors and officers. (Id. at 538-39.) No one characteristic governs, and a court must examine all the circumstances to determine whether the doctrine should apply. (Id. at 539.) Alter ego can be used for contractual liability if the corporation is a shell to avoid personal liability. (*Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 814.) The alter ego doctrine applies to members of limited liability companies in the same manner as shareholders of corporations. (*People v. Pacific Landmark, LLC* (2005) 129 Cal.App.4th 1203, 1212.)

Here, the first six causes of action in the FAC are alleged against twelve separate defendants. The seventh cause of action for declaratory relief is alleged against over twenty defendants. However, each cause of action, while incorporating preceding paragraphs makes general allegations against “Defendants” without differentiating the actions of each Defendant. Further problematic, the alter ego allegations are insufficiently pled. In paragraphs 25-29 of the FAC, Plaintiffs generally attempt to plead alter ego by stating that certain defendants are “merely instrumentalities and alter egos” of other defendants and the recognition of the legal fiction of separate existences between the defendants would promote injustice if allowed to hide behind the corporate veil. These allegations are insufficient.

2.

RIC1902014	SERVICE EMPLOYEES INTERNATIONAL UNION, vs WOODS	Motion to be Relieved as Counsel
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Tentative Ruling: The unopposed motion is granted. The order is effective upon the filing of the proof of service of the signed order on the client. The proposed order will be signed at the time of the hearing.

3.

RIC2003006	I-10 IMPORTS vs RIVERSIDE PREMIER MOTORS INC	Motion to Compel
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Tentative Ruling: The unopposed motion by Plaintiff to Compel the Deposition of Defendant’s Person Most Knowledgeable (PMK) is granted and Defendant’s PMK is to appear for deposition within 45 days of the date of this order at the specific date, location and time as noticed by Plaintiff. Defendant is ordered to pay to Plaintiff as for monetary sanctions, the sum of \$760, (\$350 X 2 hrs. + \$60 filing fee), which amount the court finds reasonable.