

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED**

2260 N Street, Merced  
627 W. 21<sup>st</sup> Street, Merced  
1159 G Street, Los Banos

Friday, January 31, 2025

**NOTE: Merced Superior Court will no longer be consolidating Courtroom 8 and Courtroom 10.**

**Tentative Rulings are provided for the following Courtrooms and assigned Judicial Officers with scheduled civil matters:**

**Courtroom 8 – Hon. Stephanie Jamieson**

**Courtroom 9 – Commissioner David Foster**

**Courtroom 12 – Hon. Jennifer O. Trimble**

**Courtroom 10 will continue to post separate Probate Notes that are not included in these tentative rulings.**

**IMPORTANT: Court Reporters will NOT be provided; parties must make their own arrangements. Electronic recording is available in certain courtrooms and will only be activated upon request.**

**The specific tentative rulings for specific calendars follow:**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Civil Law and Motion  
Hon. Stephanie Jamieson  
Courtroom 8  
627 W. 21<sup>st</sup> Street, Merced

Friday, January 31, 2025  
8:15 a.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4111 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call (the court's telephonic appearance provider) of your intent to appear does not satisfy the requirement of notifying the court.

**IMPORTANT: Court Reporters will NOT be provided; parties wanting a hearing transcript must make their own arrangements.**

Case No.	Title / Description
19CV-03971	S.C. Anderson, Inc. v. Golden State Construction and Framing, Inc., et al.

Demurrer by Defendants Nuovo Re, LLC and Nuovo Land Development, LLC to the First, Third, Fourth, Fifth, Eighth, Ninth, Tenth, Eleventh, Twelfth, & Thirteenth Causes of Action of the Second Amended Complaint

**Negligent Interference with Contract**

**The demurrer to the eighth cause of action asserting failure to state a cause of action is SUSTAINED WITHOUT LEAVE TO AMEND.**

**The cause of action of negligent interference with a contract does not exist in California. (*Fifield Manor v. Finston* (1960) 54 Cal.2d 632, 636.) Because this demurrer is sustained without leave to amend, the remaining demurrers to the eighth cause of action on other grounds are moot and will not be individually addressed.**

**Stranger to the Contract**

**The demurrer to the ninth cause of action on the grounds that defendant was not a stranger to the contract is SUSTAINED WITHOUT LEAVE TO AMEND.**

**A cause of action for intentional interference with a contract may only be maintained against one who is not a party, or is a stranger, to the contract. (*Applied Equip. Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 513-514.) An alter ego or agent of a**

contracting party is not a stranger to a contract. (See, *PM Group v. Stewart* (2007) 154 Cal.App.4th 55, 65; *Minz v. Blue Cross of California* (2009) 172 Cal.App.4th 1594, 1598.)

Paragraphs 5 and 8 of the second amended complaint, alleging “that at all times relevant to this action, NUOVO, NLD, and EL CAPITAN and Does 1-50 were acting in concert and with a unity of interest[,]” and that “each defendant, including those fictitiously named, was the agent [ . . . ] of the other defendants and was acting within the scope of said agency,” constitute a judicial admission that NUOVO and NLD, in their capacity as “OWNER,” were either parties, or agents thereof, to the El Capitan contract that forms the basis of the ninth cause of action.

The allegations of paragraphs 5 and 8 are expressly incorporated into the ninth cause of action, yet preclude liability for intentional interference with a contract. Thus, the alternative pleading language of paragraph 107 is insufficient to overcome the demurrer. Leave to amend is denied under the sham pleading doctrine, as the only way to overcome this deficiency in pleading would be for plaintiff to omit facts which make the second amended complaint defective, or to add facts inconsistent with those of previous pleadings. (*Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 425, citing *Hendy v. Losse* (1991) 54 Cal.3d 723, 742-743; *Colapinto v. County of Riverside* (1991) 230 Cal.App.3d 147, 151.)

Because this demurrer is sustained without leave to amend, the remaining demurrers to the ninth cause of action on other grounds are moot and will not be individually addressed.

#### Statute of Limitations

The demurrers to the first, third, fourth, fifth, tenth, eleventh, twelfth and thirteenth causes of action on the grounds that the claims are barred by the applicable statute of limitations are SUSTAINED WITH LEAVE TO AMEND.

The Nuovo Entities (Nuovo Re, LLC and Nuovo Land Development, LLC) were neither named defendants, nor fictitiously designated parties to the original complaint. Therefore, their addition to a new complaint after the statute of limitations has run is barred. (*Ingram v. Superior Court* (1979) 98 Cal.App.3d 483, 492; see also *Woo v. Superior Court* (1999) 775 Cal.App.4th 169, 176; *Stephens v. Berry* (1967) 249 Cal.App.2d 474, 478.)

The second amended complaint does not relate back to parties that were not a named party or fictitiously designated party to the previous complaints. (*Ibid.*) Parties that are alleged to be alter egos of a party named in an earlier pleading are nonetheless new parties as of the pleading in which they are first named or fictitiously added. (*Hennessey's Tavern, Inc. v. American Filter Co.* (1988) 204 Cal.App.3d 1351, 1357-1359.)

Leave to amend is granted to allege facts establishing a theory tolling the accrual of the statute of limitations.

#### Alter Ego Liability

The demurrers to the first, third, fourth, fifth, tenth, eleventh, twelfth, and thirteenth causes of action on the grounds that the claims do not adequately plead alter ego liability are SUSTAINED WITH LEAVE TO AMEND.

The second amended complaint fails to adequately allege a unity of interest and ownership between the corporation and the shareholder, such that the two no longer exist as separate entities. (*Watson v. Commonwealth Ins. Co. of N.Y.* (1936) 8 Cal.2d 61, 68, *inter alia*.) The bare conclusory allegation of such alleged in paragraphs three through five of the second amended complaint is insufficient to satisfy this requirement. (*Vasey v. Cal. Dance Co.* (1970) 70 Cal.App.3d 742, 749.)

Furthermore, the seconded amended complaint wholly fails to allege the second element necessary to establish alter ego liability: that failure to disregard the corporation would result in fraud or injustice. (*Watson, supra*.)

Leave to amend is granted to allege facts necessary to establish the necessary elements for alter ego liability.

#### **Failure to Plead Fraud With Specificity & Economic Loss Rule**

Defendants demur to the eleventh, twelfth, and thirteenth causes of action for failure to plead fraud with the required specificity and failure to satisfy the economic loss rule. The demurrer on these grounds is SUSTAINED WITH LEAVE TO AMEND. The second amended complaint fails to plead with sufficient particularity the fraud allegation, as it does not plead “facts which show how, when, where, to whom, and by what means the representations were tendered.” (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) Furthermore, the second amended complaint fails to allege the necessary elements to overcome the economic loss rule, having not asserted any demonstrable “harm above and beyond a broken contractual promise.” (*Robinson Helicopter Co. v. Dana Corp.* (2004) 34 Cal.4th 979, 988-990.)

#### **Leave to Amend**

The amended complaint shall be filed by February 28, 2025.

Demurrer by Defendant El Capitan Hotel Merced, LLC to the Tenth, Eleventh, Twelfth, and Thirteenth Causes of Action of the Second Amended Complaint

Defendant El Capitan Hotel Merced LLC’s demurrers to the tenth, eleventh, twelfth, and thirteenth causes of action alleged in the second amended complaint are SUSTAINED WITH LEAVE TO AMEND.

Plaintiff has failed to plead the facts necessary to overcome the economic loss rule, having failed to plead physical or property damages that distinguish the tort claims from an action for breach of contract. (*Robinson Helicopter Co. v. Dana Corp.* (2004) 34 Cal.4th 979, 988-990; see also, *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 38 [economic loss rule bars tort recovery for breach of contract unless plaintiff demonstrates violation of a duty independent of the contract and that the injury was not reasonably contemplated at the time the contract was formed].) Furthermore, plaintiff has failed to plead fraud with sufficient and required particularity, specifically failing to allege actual and justifiable reliance on specific misrepresentations that actually and proximately resulted in economic injury. (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 326-327; see also *Chapman v. Skype, Inc.* (2013) 220 Cal.App.4th 217, 228.) The same lack of particularity in pleading applies to the alleged design deficiencies.

---

## Motion for Terminating Sanctions

**Defendant Mariela Perez' unopposed motion for a terminating sanction is GRANTED. The motion is based upon plaintiff's failure to respond to form interrogatories and a request for production of documents, and failure to obey this court's orders issued December 20, 2024, granting defendant's unopposed motions to compel, and ordering plaintiff to provide responses to form interrogatories, respond to requests for production of documents, and pay monetary sanctions of \$912.50 as to each motion to compel. Defendant served plaintiff with notice of entry of order on December 26, 2024. Plaintiff has provided no excuse for the willful failure to comply with the court orders and has failed to respond to defendant's instant motion.**

**This court exercises its discretion to grant the motion for a terminating sanction and finds that a less drastic sanction is unwarranted under the totality of the circumstances. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796; see also, *Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1246.) Plaintiff has failed to comply with two court orders that included lesser, monetary sanctions. These lesser sanctions have been ignored and have not encouraged plaintiff to comply with the court's orders or to respond to subsequent discovery requests and motions from defendant. In fact, on January 16, 2025, this court granted a third unopposed motion from defendant Mariela Perez for an order that requests for admission be deemed admitted and issuing further monetary sanctions of \$880.00.**

**In accordance with Code of Civil Procedure section 2023.030, subdivision (d)(3), plaintiff's action against defendant, Mariela Perez, is DISMISSED WITH PREJUDICE.**

**The court will sign the proposed order submitted with the moving papers.**

Motion by Defendant Vieira Agricultural Enterprises LLC and Defendant Manuel E. Vieira, Inc. to Compel Arbitration, Dismiss Proposed Class Claims, and Stay Proceedings

**The motion by defendants to compel arbitration, dismiss proposed class claims, and stay proceedings is GRANTED.**

**The court finds that there is an executed arbitration agreement between the parties, and that the Federal Arbitration Act applies to that agreement by its express language. The agreement is enforceable on its face and includes a waiver of class claims.**

**The agreement is neither procedurally nor substantively unconscionable. The court finds that the agreement is clear and unambiguous in its terms, without conflicts or uncertainties, and that it means the minimum standards for an arbitration agreement. (See, e.g., *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83.) Plaintiff's assertion that she was required to sign the agreement as a condition of employment contradicts the express language of the agreement.**

**Contrary to plaintiff's arguments, the agreement contains provisions for discovery. Any claims that further discovery should be permitted and the effect that has on the enforceability of the agreement must be raised with the arbitrator pursuant to the terms of the agreement.**

**Plaintiff's limited understanding of the English language and lack of recollection of signing the agreement also do not operate to invalidate the agreement or to render it procedurally unconscionable. The court finds based upon the evidence that plaintiff was provided with a Spanish translation of the arbitration agreement as it applies to both defendants. Furthermore, plaintiff was given a reasonable opportunity to review the terms of the arbitration agreement prior to signing. Pursuant to the parole evidence rule, plaintiff may not contradict the express terms of the agreement by way of extrinsic evidence.**

**Class claims are DISMISSED and all proceedings STAYED pending arbitration.**

**There having been no objection, the court GRANTS plaintiff's request for judicial notice of the JAMS Employment Arbitration Rules & Procedures. The court further GRANTS defendants' request for judicial notice of defendant's answer, filed September 9, 2024, and the first amended class and representative class action complaint.**

**In light of this court's grant of defendants' motion, the evidentiary objections raised in defendants' reply brief are MOOT.**

**The court will sign the order lodged with the court on December 23, 2024.**

---

25CV-00077

Joe Narcie Padilla v. Gregory Benton Myers

Order to Show Cause re: Restraining Order

**Appearance required. Remote appearances are permitted. Parties who wish to appear remotely must contact the clerk of the court at (209) 725-4111 to arrange for a remote appearance. The court notes that proof of service was filed January 17, 2025, showing timely service of process on respondent.**

---

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Ex Parte Matters  
Hon. Stephanie Jamieson  
Courtroom 8  
627 W. 21<sup>st</sup> Street, Merced

Friday, January 31, 2025  
1:15 p.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4111 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call (the court's telephonic appearance provider) of your intent to appear does not satisfy the requirement of notifying the court.

**IMPORTANT: Court Reporters will NOT be provided; parties wanting a hearing transcript must make their own arrangements.**

Case No.	Title / Description
----------	---------------------

There are no Ex Parte matters scheduled.	
--	--

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Ex Parte Matters  
Commissioner David Foster  
Courtroom 9  
627 W. 21<sup>st</sup> Street, Merced

Friday, January 31, 2025  
1:15 p.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4111 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call (the court's telephonic appearance provider) of your intent to appear does not satisfy the requirement of notifying the court.

**IMPORTANT: Court Reporters will NOT be provided; parties wanting a hearing transcript must make their own arrangements.**

Case No.	Title / Description
----------	---------------------

There are no Ex Parte matters scheduled.	
--	--



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Ex Parte Matters  
Hon. Jennifer O. Trimble  
Courtroom 12  
1159 G Street, Los Banos

Friday, January 31, 2025  
1:15 p.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4111 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call (the court's telephonic appearance provider) of your intent to appear does not satisfy the requirement of notifying the court.

**IMPORTANT: Court Reporters will NOT be provided; parties wanting a hearing transcript must make their own arrangements.**

Case No.	Title / Description
----------	---------------------

There are no Ex Parte matters scheduled.	
--	--