**Tentative Rulings for December 1, 2021**
**Department 503**

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**There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)**

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**The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.**

**21CECG01482** ***Hans v. State of California Hospital – Coalinga*** **is continued to Thursday, December 16, 2021, at 3:30 p.m. in Department 503**

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**(Tentative Rulings begin at the next page)**

# Tentative Rulings for Department 503

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(03)

**Tentative Ruling**

Re: ***Camarillo v. Topete***
Superior Court Case No. 19CECG02252

Hearing Date: December 1, 2021 (Dept. 503)

Motion: Plaintiff's Application for Default Judgment Against Defendant Porfirio Topete

**Tentative Ruling:**

To deny the application for default judgment against defendant Porfirio Topete, without prejudice, for failure to provide sufficient evidence to support the requested special damages and court costs. (Code Civ. Proc., §§ 585-587.)

**Explanation:**

Plaintiff is seeking over $417,000 in special medical damages, but she has only proven up approximately $314,000 in special damages. It is unclear why she is entitled to an additional $103,000 in special damages. Plaintiff is presumably entitled to some additional damages for future medical care and therapy, but it is not clear how she calculated the additional special damages. Therefore, plaintiff has not proven up her request for $417,000 in special damages.

Also, plaintiff's request for court costs of $416.90 lacks evidentiary support. She seeks $205.20 in costs for filing fees, $64.17 for service of process fees, and "other costs" of $147.23. (See Request to Enter Default, Item 7, Memo of Costs, filed November 16, 2021.) However, it is not clear what the "other costs" are. Since defendant Porfirio Topete was defaulted fairly early in the litigation, plaintiff should not have had to incur many costs to prosecute her claims against him. Also, while plaintiff did file a motion to deem requests for admissions admitted against defendant Porfirio Topete, that motion was denied because he had already been defaulted. As a result, the motion did not have to be brought, and plaintiff should not be able to recover any costs related to the motion. Consequently, to the extent that plaintiff is seeking costs that were not necessary for the prosecution of the case against defendant Porfirio Topete, the request for costs may be excessive. However, it is impossible to determine which costs plaintiff is actually seeking here, as her counsel has not submitted any evidence regarding the requested costs.

Consequently, the court denies the request to enter default judgment without prejudice for lack of sufficient evidence supporting the requested damages and costs.[1]

[1] It is also strange that plaintiff has filed a conditional settlement of the entire action, but has nevertheless kept the application for default judgment on calendar. If the parties have settled the entire case, the application for default judgment would seem to be moot. In any event, as discussed above, the application is not adequately supported by the evidence that has been provided, so the court denies it without prejudice.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**
**Issued By: KAG on 11/17/2021 .**
(Judge's initials) (Date)

(20) **Tentative Ruling**

Re: ***Ringgold et al. v. Dow et al.***
Superior Court Case No. 20CECG01282

Hearing Date: December 1, 2021 (Dept. 503)
**In the event oral argument is timely requested, it will be heard on December 1, 2021, at 3:00 p.m., in Dept. 503.**

Motion: Demurrer and Motion to Strike re Second Amended Complaint

**Tentative Ruling:**

To sustain the demurrers to the Second Amended Complaint's ("SAC") fifth and sixth causes of action without leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

To grant the motion to strike, in part, and strike paragraph 36, p. 10:8-10; to deny as to the remainder of the items. (Code Civ. Proc., § 436.)

Defendants shall file their answer to the SAC within 10 days of the date of service of the order by the clerk.

**Explanation:**

**Demurrer**

*Fifth Cause of Action*

The fifth cause of action is for intentional interference with prospective economic advantage. The cause of action vaguely alleges that plaintiffs and the parties identified in paragraph 17 were in economic relationships that "probably" would have resulted in economic benefits to plaintiffs, and that the Dow defendants "knew of these relationships or became aware of these relationships on or before July 30, 2019." (SAC ¶ 42.) Paragraph 43 alleges a series of events – the Dow defendants failed to maintain the diversion ditch, which resulted in the flood, which resulted in the Division of Safety of Dams ("DSOD") inspection, which resulted in the remediation order and the County "red flagging" plaintiffs' property, which disrupted the aforementioned relationships; and the Dow defendants lied and misrepresented to plaintiffs, DSOD and the public that they would comply with the DSOD order.

In *JRS Products, Inc. v. Matsushita Electric Corp. of America* (2004) 115 Cal.App.4th 168, 179, the court addressed the issue of "whether damages can be recovered for interference with prospective economic advantage by one contracting party against another based on conduct that would otherwise constitute a breach of the parties' contract." The court answered in the negative, grounding its reasoning in the principle that "a party to a contract cannot recover damages in tort for breach of contract." (*Ibid*.) In evaluating these claims, the proper question for courts to determine is "whether

the essence of the claim is fundamentally based on conduct that sounds in contract or in tort." (*Id*. at p. 181.)

This court noted in sustaining the demurrer to the First Amended Complaint ("FAC") that "the essential nature of the conduct sounds in contract," as the principal conduct plaintiffs complain of is the Dow defendants' breach of the Grant Deed restriction, of which plaintiffs are clear beneficiaries. Now, in the SAC, plaintiffs add some allegations sounding more in fraud – that defendants misrepresented that they would comply with the DSOD order.

In ruling on the demurrer to the FAC, the court also noted that plaintiffs also alleged an obligation to remedy the condition imposed by the DSOD. That obligation does seem to exist independent of the Grant Deed. The DSOD order was, based on the allegations of the FAC, based on the risk to life and property that the dam posed. (FAC ¶ 16.) This order was not dependent on the Dow defendants' contractual obligation.

However, the court in *JRS Products* reasoned,

> Although superficially seductive, if accepted, the argument would convert any wrongful termination of a franchise agreement into a tort claim. [¶] JRS cites no authority to support its novel proposition that the breach of a franchise agreement exposes a franchisor to tort liability based on its "independent duty" to adhere to its "social obligation not to violate franchise laws or engage in unfair competition." *Although JRS would have us expand tort liability to allow for a tortious breach of contract as long as the breach violates a statute*, it fails to consider the dangers implicit in such a radical departure from well-established limits to commercial recovery. "Because ours is a culture firmly wedded to the social rewards of commercial contests, the law usually takes care to draw lines of legal liability in a way that maximizes areas of competition free of legal penalties."

(*JRS Products, Inc. v. Matsushita Electric Corp. of America*, *supra*, 115 Cal.App.4th at p. 182, citing *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 392, emphasis added.)

Thus, where there is an underlying contractual obligation between the parties, a cause of action for interference will not lie simply because the conduct also violates a statute or obligation of some other source (such as a DSOD directive).

The SAC primarily merely adds to the fifth and sixth causes of action allegations that defendants fraudulently misrepresented that they would comply with the DSOD order. However, the fact is that the basis of the claim arises out of the breach of the Grant Deed. The SAC provides:

> That defendants Fred and Cindy Dow *failed to maintain the Diversion Ditch*, which resulted in the flood described herein. As a result of the flood, DSOD inspected the dam on June 25, 2018 that was adjacent to the Diversion Ditch. DSOD then on September 11, 2018 found that the dam was unsafe,

> declared the risk category as "High" and ordered remediation. As a result of the September 11, 2018 order, the County of Fresno "red tagged" the Ringgold Property.

(SAC ¶ 43, emphasis added, bold text in original omitted.)

These added allegations (that defendants subsequently misrepresented that they would comply with the DSOD order) do not change the nature of the source of the obligation to maintain the diversion ditch. The allegation that defendants lied about their intent to remediate the matter does not give rise to a fraud claim. Plaintiffs identify no manner in which they relied on these post-alleged-wrong representations, or how they were damaged by such representations. (See *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974.) Plaintiffs point out that they have alleged that "the Dows have refused to make repairs and take remedial action directed by the DSOD." (Opposition, p. 5, lines 25-27.) However, the refusal to take remedial action consists of the alleged interference itself. Plaintiffs must plead and prove the existence of an independently wrongful act separate and apart from the interference itself. (See *National Medical Trans. Network v. Deloitte & Touche* (1998) 62 Cal.App.4th 412, 439-440.)

Moreover, an essential element of the interference cause of action is "the defendant's knowledge of the relationship." (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.) The SAC does not set forth any *facts* supporting the conclusory allegation that "defendants Fred and Cindy Dow knew of these relationships or became aware of these relationships on or before July 30, 2019." (SAC ¶ 42.)

As this cause of action does not fit the circumstances supporting viable claims for relief, leave to amend will not be granted to further pursue this cause of action.

*Sixth Cause of Action*

> The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage.

(*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.)

"Wrongfulness independent of the inducement to breach the contract is not an element of the tort of intentional interference with *existing* contractual relations . . . ." (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 55.) "[it is not necessary that the defendant's conduct be wrongful apart from the interference with the contract itself." (*Ibid.*)

The SAC alleges at paragraph 51:

> That there was a contractual relationship between plaintiffs and Southern California Edison that was entered into on May 1, 2019 **and was terminated by Southern California Edison due to the Dows wrongful acts**. In addition, plaintiffs had a contractual relationship that began approximately in 2012 with ReneSola. In or about January 2020, ReneSola elected not to renew or continue the contract because of the "red tag" on the Ringgold property and uncertain status of the remediation at that time. Finally, plaintiffs entered into a lease with Sierra Resource Conservation District (SRCD) on September 1, 2018 for the purpose of developing a biomass use campus. SRCD then applied for a conditional use permit for ten acres on the Ringgold property for the purpose of creating the campus. The application for this conditional use permit was delayed due to the "red tag". After the removal of the "red tag" on or about August 14, 2020, SRCD has renewed its pursuit to obtain the conditional use permit. However, the delay caused by the defendants may preclude SRCD from being able to complete the project of the campus due to funding difficulties caused by the delay.

(SAC ¶ 51, bold text highlights new allegations.)

Plaintiffs then allege that defendants knew of these contractual relationships because defendants can observe everything that goes on at plaintiff's property (including presence of Southern California Edison trucks and vehicles) and everybody in Auberry knows everybody else's business. "Finally, the Dows were repeatedly informed of the existence of these contractual relationships by plaintiffs and/or their agents, including at the July 30, 2019 meeting." (SAC ¶ 52.) Plaintiffs go on to allege, in conclusory fashion, the remaining elements of the cause of action – that the Dows' conduct prevented performance or made performance more difficult, intended to disrupt the performance of this contract or knew that disruption of performance was certain or substantially certain to occur, and plaintiffs were harmed. (SAC ¶¶ 53-56.)

Defendants contend that plaintiffs fail to plead sufficient facts to allege the existence of a contract with a third party. Defendants maintain, "In order to establish intentional interference based upon a contract, a party is required to: (1) set out the written contract in verbatim in the complaint; (2) attach the contract as an exhibit; or (3) plead in full in accordance with the contract's legal effect. *Golden v. Sound Inpatient Physicians Medical Group, Inc.* 93. F.Supp.3d 1171, 1176 (citing *Staples v. Arthur Murray* (1967) 253 Cal.App.2d 507, 513)." (MPA 9:18-23.) While this is what the federal district judge stated in his decision, *Staples* imposes no such pleading requirement. *Staples* had nothing to do with interference with contract claims. Defendants cite to no California authority imposing this requirement.

Defendants contend that the SAC fails to establish any valid and existing contract at the time that defendants' actions allegedly began, i.e., September 2018. That is not accurate. First, plaintiffs do not allege that defendants' wrongful conduct began in September 2018. That is just when the DSOD stepped in, and defendants allegedly falsely promised that they would take care of the issue. The flood occurred on March 22, 2018.

Plaintiffs allege that the Southern California Edison and ReneSola contracts were entered into well before that, and terminated after September 2018. And the lease with SRCD was entered into September 1, 2018, within the relevant time period, even according to defendants' position. Even if the SRCD lease is too vague (with the SAC inferring that the lease was conditioned on the issuance of a conditional use permit and only that the "delay caused by defendants may preclude SRCD from being able to complete the project"), there are two other contracts alleged. Insufficiency of one of them would not render the entire cause of action deficient.

However, the allegations of defendants' knowledge of the contracts are insufficient. In paragraph 52, plaintiffs basically just allege that defendants could or would have known based on proximity to the property and the fact that everybody in town knows everybody else's business. That allegation is insufficient to allege knowledge of the contracts. The SAC alleges that "the Dows were repeatedly informed of the existence of these contractual relationships by plaintiffs and/or their agents, including at the July 30, 2019 meeting." This meeting occurred *after* defendants' actions creating the hazardous condition. Because defendants did not have knowledge at the time that the allegedly tortious acts began, the sixth cause of action fails. Moreover, the allegations earlier in the SAC detailing the meeting make no mention of defendants being informed of these contracts. (See SAC ¶¶ 17a, 17b.)

**Motion to Strike**

"The court may, upon a motion made pursuant to [Code of Civil Procedure] Section 435, or at any time in its discretion, and upon terms it deems proper: [¶] (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. [¶] (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.)

Generally, where a court grants leave to amend after sustaining a demurrer, the scope of permissible amendment is limited to the causes of action to which the demurrer has been sustained: "[S]uch granting of leave to amend must be construed as permission to the pleader to amend the cause of action which he pleaded in the pleading to which the demurrer has been sustained." (*People v. Clausen* (1967) 248 Cal.App.2d 770, 785–786.) A plaintiff can add new causes of action, however, if the new causes of action directly respond to the court's reason for sustaining the earlier demurrer. (*Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1016.)

The Court's order sustaining on the attacks on the FAC provided that plaintiffs were only to amend the fifth cause of action for intentional interference with prospective economic advantage, the sixth cause of action for intentional interference with contractual relations; and the punitive damages and prayer. Plaintiffs were not granted leave to add a new cause of action for fraud. They made this amendment without seeking leave of court. The eighth cause of action will therefore be stricken.

A motion to strike may be used to remove a claim for punitive damages that is not adequately supported by the facts alleged in the complaint. (*Cryolife, Inc. v. Superior Court* (2003) 110 CalApp.4th 1145; *Kaiser Foundation Health Plan, Inc. v. Superior Court* (2012) 203 Cal.App.4th 696.) Vague and conclusory allegations are not enough to justify

a prayer for punitive damages. The plaintiffs must allege facts showing fraud, malice or oppression. (*G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29-30.) In addition, simply alleging conscious disregard is not enough to recover punitive damages. The plaintiffs must also allege that defendant acted despicably. (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 719-720.)

Defendants contend that the SAC's factual allegations are insufficient to support the required findings of malice, oppression, and despicable conduct. The court concludes at this point that the allegations are sufficient. As plaintiffs note, despite the fact that the public and private nuisance resulted in the flood, defendants did not eliminate the nuisance by repairing the dam, demonstrating a conscious disregard for plaintiffs and for the public. The allegations indicate an awareness by defendants of their obligation and the need to repair the dam, and their failure to do so. The SAC is replete with allegations of improper motives done with intent to harm plaintiffs. These allegations are pertinent to the punitive damages allegations, and provide the factual allegations needed to seek punitive damages. The motion is denied as to paragraphs 16, 17c, 34, 39, and paragraph 2 of the prayer for relief.

Defendants also move to strike as "irrelevant matter" allegations in SAC paragraphs 16a and 36 regarding other properties. The allegation of paragraph 16a describes the widespread impact of the flood and failure to maintain the diversion ditch, which the SAC alleges is a public nuisance (see SAC ¶ 32). This is relevant to the cause of action for public nuisance.

Paragraph 36 references other parcels owned by defendants. Plaintiffs maintain that this sentence is simply a factual statement relating to the Dow defendants being able to observe work, including work performed by contractors on plaintiffs property. Inasmuch as plaintiffs do not show that this is essential or pertinent to any cause of action, the motion to strike this allegation is granted.

In light of the court's ruling on the demurrer, the motion is moot as to paragraphs 43, 44, 49, 51, 52 and 58.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**
**Issued By: KAG on 11/24/2021 .**
(Judge's initials) (Date)