

Tentative Rulings

Law & Motion and Family Law Calendar for Dec. 22, 2014

December 18, 2014, 4:00p.m.

Department Two

To request a hearing on any matter on this calendar, you must call the Court at 530-283-6305 by 12:00 noon, December 19, 2014, 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.

If you do appear and want the matter reported by a court reporter in unlimited civil, family law or probate, you must contract with and provide your own court reporter. The Court does not provide an official reporter for these calendars.

Probate – 9:00 a.m.

Case No. PR14-00023 – Estate of Harris

Tentative Ruling: **Approved.** The court finds that notice has been given as required by law. Petitioner's First and Final Account and Report of Executor and Petition for its Settlement is approved.

Case No. PR97-5981- Estate of Guidici

Tentative Ruling: **Approved.** The court finds that notice has been given as required by law. Petitioners' Petition for Final Distribution; for Approval of Report; for Confirmation of Acts Reported; for Withhold and Order Directing Distribution on Waiver o Notice and Account is granted. Petitioners are to prepare the order.

Civil – 9:30 a.m.

Case No. CV14-00102 – Stevenson vs. Hildebrandt

Tentative Ruling: **General demurrers sustained in part; motion to strike denied.** The general demurrers by Kenneth Enzey ("Enzey") and Brian Hildebrandt ("Hildebrandt") are sustained as to the fourth and sixth causes of action of the First Amended Complaint ("FAC"), with leave to amend; the general demurrers by Enzey to the first through third and seventh, and by Hildebrandt to the seventh, causes of action are over-ruled.¹ The motion to strike by Enzey, in which Hildebrandt has joined, is denied in full.

¹ The Court treats Hildebrandt's demurrer to the fifth and eighth causes of action as being directed at the fourth and seventh causes.

General Demurrers

The first, second and third causes of action, for assault, battery and intentional infliction of emotional distress, are asserted against Scott and Logan Hildebrandt (“Co-defendants”) only. As discussed below, these causes also constitute the “wrongful acts” element of the seventh cause of action, for civil conspiracy and aiding and abetting, which is asserted against both demurring defendants. Hence, if these causes were legally insufficient as against the Co-defendants, the seventh cause of action would also fail. (See, *Richard B. LeVine, Inc. v. Higashi* (2005) 131 Cal.App.4th 566, 574 (liability for conspiracy or aiding and abetting depends on actual commission of tort).) However, whether these causes, standing alone, are legally sufficient as against Enzey is irrelevant, and his general demurrers to them are over-ruled.²

The fourth cause of action, for negligence, fails to allege facts establishing the existence of a legal duty, owed by either Enzey or Hildebrandt, to control the conduct of the Co-defendants, whose criminal acts are alleged to have caused plaintiffs’ injuries. (4 *Witkin, California Procedure* (5th Ed. 2008), *Pleading*, section 576 (elements of negligence cause of action); see, *Roman Catholic Bishop of San Diego v. Superior Court* (1996) 42 Cal.App.4th 1556, 1564 (when duty may arise); see, also, *Romero v. Superior Court* (2001) 89 Cal.App.4th 1068, 1079 (no “duty to aid” rule).)³ Accordingly, the demurrer to the fourth cause of action is sustained, with leave.

Multiple defendants may be jointly and severally liable for a single injury to a plaintiff (4 *Witkin, California Procedure*, *supra*, section 65); however, there appears to be no legal support for the imposition of “accessory” liability in a civil action, and the demurrer to the sixth cause of action is sustained, with leave.

Civil conspiracy is “. . . a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration.” (*Applied Equipment Corporation v. Litton Saudi Arabia Limited* (1994) 7 Cal.4th 503, 510-511.) “Tacit consent as well as express approval will suffice to hold a person liable as a coconspirator.” (*Wyatt v. Union Mortgage Company* (1979) 24 Cal.3d 773, 785.) The allegations necessary to state a cause of action for civil conspiracy are “. . . (1) the formation and operation of the conspiracy, (2) the wrongful act or acts of any of the conspirators pursuant to the conspiracy, and (3) the resulting damage.” (5 *Witkin, California Procedure* (5th Ed. 2008) *Pleading*, section 922.)

The seventh cause of action, which incorporates by reference all previous allegations of the FAC, sets forth facts establishing the formation and operation of a conspiracy to physically harm plaintiffs (*id.*, paras. 14-17, 19-24, 60, 62, 66), the wrongful acts taken pursuant thereto (*id.*, paras. 19-24, 32-36 (assault), 38-41 (battery), 43-45 (intentional infliction)), and resulting damage to plaintiffs. (*Id.*, paras. 23, 27, 29, 45.)

² Enzey has not demurred to these causes as asserted against the Co-defendants, which, the Court notes, are legally sufficient. (See, *Lowry v. Standard Oil Company of California* (1944) 63 Cal.App.2d 1, 6-7 (assault); *Rains v. Superior Court* (1984) 150 Cal.App.3d 933, 938 (battery); *Kiseskey v. Carpenters’ Trust for Southern California* (1983) 144 Cal.App.3d 222, 229-231 (intentional infliction).)

³ Although a defendant may not owe a legal duty of care under a negligence theory, the defendant may still be liable for civil conspiracy to commit an intentional tort. (*Fuller v. First Franklin Financial Corporation* (2013) 216 Cal.App.4th 955, 967.)

“Liability may also be imposed on one who aids and abets the commission of an intentional tort if the person (a) knows the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act . . .” (*Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 846.) It is alleged that Enzey incited Hildebrandt and either authorized the use of force, or entered into a tacit understanding to create a threat of violence, against Lepage (FAC, para. 60), and that both he and Hildebrandt “. . . provided necessary information and encouragement . . .” to the Co-defendants, who acted in Enzey’s and Hildebrandt’s interests when they assaulted plaintiffs. (*Id.*, at paras. 15, 17, 67, 69.) The demurrer to the seventh cause of action is thus over-ruled.

Motion to Strike

The allegations that the Co-defendants’ actions were carried out with malice (FAC paras. 35, 40) are supported, at a minimum, by the alleged facts of assault and battery. (*Id.*, paras. 20-23.) It has long been held that punitive damages are allowed for assault. (*Bundy v. Maginess* (1888) 76 Cal. 532, 534.) Further, Enzey and Hildebrandt, as alleged aiders and abettors of, or co-conspirators with, Co-defendants, may be held liable for all recoverable damages. (See, *Ayer v. Robinson* (1958) 163 Cal.App.2d 424, 427-429 (punitive damages against aider and abettor of assault and battery); see, *Wyatt v. Union Mortgage Company, supra*, 24 Cal.3d at 790, 791 (punitive damages for fraud awarded against all coconspirators).) Accordingly, the motion is denied in full.

Request for Judicial Notice

Hildebrandt’s request for judicial notice is denied. While the Court may take judicial notice of records in its files (*Evidence Code section 452(d)*), it may not consider the truth of the facts contained therein, unless the facts are either in an order, statement of decision or judgment, or are undisputed. (*Joslin v. H.A.S. Insurance Brokerage* (1986) 184 Cal.App.3d 369, 374-375; see, also, *In re: Vicks* 56 Cal.4th 274, 314 (court may not take judicial notice of the truth of hearsay statements in its files).)

Case No. CV14-00194 – Matter of Singh

Tentative Ruling: **Approved, upon proof of publication.** If the court receives the proof of publication, the court intends to grant the petition.

Family Law – 10:30 a.m.

Case No. FL14-00195 – Conine vs. Sarmento

Tentative Ruling: **Appearance required.** The court will order the parties to mediation.

Case No. FL11-00166 – Elston vs. Mendez

Tentative Ruling: **Appearance required.**

Case No. FL12-00016 – Elston vs. Castillo

Tentative Ruling: **Appearance required.** The court will review the custody and visitation orders with the parties.

Case No. FL14-00219 – Mar. of Miranda

Tentative Ruling: **No appearance required.** This matter is continued to January 26, 2015, at 10:30a.m., to allow respondent to be served.

Case No. FL11-00018 – Mar. of Sheldon

Tentative Ruling: **Appearance required.** The court will order the parties to mediation.