CONTRA COSTA SUPERIOR COURT

MARTINEZ, CALIFORNIA

DEPARTMENT: 07

HEARING DATE: 09/03/21

INSTRUCTIONS FOR CONTESTING TENTATIVE RULINGS IN DEPT. 07

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the Court day preceding the hearing. Counsel or self-represented parties must email Department 07 to request argument and must specify, in detail, what they intend to argue. Counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of his or her decision to appear to argue and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (Pursuant to Local Rule 3.43(2).)

Department 07's email address is: dept07@contracosta.courts.ca.gov

ALL APPEARANCES TO ARGUE WILL BE IN PERSON PROVIDED TIMELY EMAIL NOTIFICATION IS RECEIVED BY THE DEPARTMENT AS PER THE ABOVE

1. TIME: 9:00 CASE#: MSC18-00209
CASE NAME: SAFECO INS VS SEENO HOMES
HEARING ON MOTION TO/FOR FILE AMENDED COMPLAINT FILED BY SAFECO INSURANCE COMPANY OF ILLINOIS
**** TENTATIVE RULING: ****

There is no proof of service on file for the motion. Assuming a copy can be forthwith provided, unopposed motion is granted.

In the event that this ruling is timely contested, the hearing will be on Wednesday September 8th, 2021, at 9 a.m.

2. TIME: 9:00 CASE#: MSC18-00980
CASE NAME: MORRISON VS BNSF RAILWAY CO
HEARING ON MOTION TO/FOR LEAVE TO AMEND RESPONSE TO BNSF'S REQ FOR FILED BY HEIDI MORRISON
**** TENTATIVE RULING: ****

Unopposed motion granted. The response is deemed withdrawn. The response will now be served no later than 9/10/21.

In the event that this ruling is timely contested, the hearing will be on Wednesday September 8th, 2021, at 9 a.m.

3. TIME: 9:00 CASE#: MSC19-01650
CASE NAME: PIPPINS VS WILLIAMS
HEARING ON MOTION TO/FOR: COMPEL RESP TO 1ST SET OF FORM INTERROGS/SANCTN, FILED BY JEREMY D WILLIAMS
**** TENTATIVE RULING: ****

Unopposed motion granted, response to be served no later than 10/4/21.

In the event that this ruling is timely contested, the hearing will be on Wednesday September 8th, 2021, at 9 a.m.

4. TIME: 9:00 CASE#: MSC19-01650
CASE NAME: PIPPINS VS WILLIAMS
HEARING ON MOTION TO/FOR: COMPEL RESPONSES TO 1ST SET OF REQ FOR PRODUCTN OF, FILED BY JEREMY D WILLIAMS
**** TENTATIVE RULING: ****

Unopposed motion granted, response to be served no later than 10/4/21.

In the event that this ruling is timely contested, the hearing will be on Wednesday September 8th, 2021, at 9 a.m.

5. TIME: 9:00 CASE#: MSC19-01650
CASE NAME: PIPPINS VS WILLIAMS
HEARING ON MOTION TO/FOR: DEEM ADMITTED DEFT'S 1ST SET OF REQ FOR ADMISSIONS, FILED BY JEREMY D WILLIAMS
**** TENTATIVE RULING: ****

Unopposed motion granted, response to be served no later than 10/4/21.

In the event that this ruling is timely contested, the hearing will be on Wednesday September 8th, 2021, at 9 a.m.

6. TIME: 9:00 CASE#: MSC19-01650
CASE NAME: PIPPINS VS WILLIAMS
HEARING ON MOTION TO/FOR: COMPEL RESPONSES TO 1ST SET OF SPECIAL INTERROGS, FILED BY JEREMY D WILLIAMS
**** TENTATIVE RULING: ****

Unopposed motion granted, response to be served no later than 10/4/21.

In the event that this ruling is timely contested, the hearing will be on Wednesday September 8th, 2021, at 9 a.m.

7. TIME: 9:00 CASE#: MSC19-02269
CASE NAME: ABDALLAH VS CANEL
HEARING ON MOTION TO/FOR BE RELIEVED AS COUNSEL FILED BY INGRID ISABEL CANEL
**** TENTATIVE RULING: ****

Hearing dropped at the request of the moving party.

8. TIME: 9:00 CASE#: MSC20-00009
CASE NAME: ZANGANEH VS. BEHYMER
HEARING ON MOTION FOR SUMMARY JUDGMENT FILED BY MICHAEL BEHYMER D.C.
**** TENTATIVE RULING: ****

Defendant Michael Behymer, D.C.'s motion for summary judgment is **denied**.

Plaintiff sued Michael Behymer, D.C. and Jackie Steel, D.C. for negligently causing him injuries during chiropractic treatment. Plaintiff has settled his case against Steel. Defendant Behymer filed a motion for summary judgment. Defendant's theory is that Behymer did not cause Plaintiff's injury.

Defendant's evidence shows that Behymer treated Plaintiff on May 10, July 31 and August 9, 2019. (Behymer decl. ¶¶7-9.) During the May 10 visit, Behymer did not see any signs that Plaintiff was experiencing pain and Plaintiff told Behymer that he felt relief after the visit. (Behymer decl. ¶7.) Defendant's evidence also shows that during the first visit, Plaintiff had been complaining of neck pain seven years. (Behymer decl. ¶5.) Steel treated Plaintiff on May 17, 2019. (Steel decl. ¶5.)

On June 3, 2019, Dr. Isho, a primary care doctor, saw Plaintiff and Plaintiff did not complaint about neck pain during that visit. (Isho depo. 41:21-42:1, 14:2-15:2, 16:24-17:5, 19:9-17.) Isho saw Plaintiff on July 18, 2019 and again there was no indication that Plaintiff was experiencing pain in his neck. (Isho depo. 22:22-25:21.) Later, Isho saw Plaintiff on August 12, 2019 and found a muscle spasm in his neck. (Isho depo. 41:5-19.)

Dr. Bogado, another primary care doctor, saw Plaintiff on August 9, 2019. (Bogado depo. 15:3-6 and ex. B to depo.) Bogado's notes from that visit state that Plaintiff's left sided neck pain started a month ago. "After the first session he did well but on the second session of the from chiropractor took care of him and after the adjustment he felt an immediate pain on the left side." (Bogado depo. ex. B.) Bogado explains that the actual statement made by Plaintiff was that on the he experienced pain during his second session, which was from a different chiropractor. (Bogado depo. 16:21-17:9.)

Plaintiff testified that his first two chiropractor visits were both with Behymer. (Zanganeh depo. 41:25-42:8.) Plaintiff also testified that he did not let Behymer crack his neck during his

last visit. (Zanganeh depo. 148:21-149:3.) In discovery responses, Plaintiff stated that Steel treated Plaintiff on May 17, 2019 and that Plaintiff experienced pain during this visit. (Defendant's Ex. D: Response to Interrogatories 7 and 8.)

Defendant's evidence is insufficient to shift the burden. Defendant is attempting to shift the burden on causation in a medical malpractice case without an expert. "[M]edical causation can only be determined by expert medical testimony." (*Salasguevara v. Wyeth Labs.* (1990) 222 Cal.App.3d 379, 385.)

Even if, however, Defendant had shifted the burden there are also a triable issue of material fact. Plaintiff testified that Bogado's notes from the August 2019 visit are incorrect. (Zanganeh depo. 76:15-77:12.) Plaintiff testified that he felt pain after the first session of chiropractic treatment with Behymer and that he complained of pain to Behymer. (Zanganeh depo. 51:5-11, 77:14-18, 122:19-20.) Plaintiff also testified that Behymer apologized for Plaintiff's pain and said he would take care of it next time. (Zanganeh depo. 51:9-12, 122:21-123:5.)

Plaintiff's testimony is consist with his discovery responses where Plaintiff stated that he was treated by Behymer on May 10, 2019. During that visit, Behymer twisted Plaintiff's neck and then "Plaintiff felt immediate and severe neck pain". (Defendant's Ex. D: Response to Interrogatories 5 and 6.)

Based upon Plaintiff's testimony there are triable issues of material fact as to whether Behymer injured Plaintiff during the May 10, 2019 visit.

There is also a triable issue of material fact as to whether Plaintiff was experiencing neck pain before the first visit with Behymer. Behymer stated that Plaintiff had been complaining of neck pain seven years. (Behymer decl. ¶5.) Yet, Plaintiff testified that he was not experiencing neck pain prior to seeing Behymer. (Zanganeh depo. 32:12-15.)

Objections

Plaintiff's objects to Behymer and Steel's declarations based on lack of expert qualifications. From their statements, it is clear that these declarations are being offered as percipient witnesses, not as expert witnesses. In reply, Defendant confirms these declarations are offered as percipient witnesses. The Court overrules Plaintiff's objection as the Behymer and Steel declarations are not offered as expert witnesses.

Plaintiff objects to the deposition transcripts of Dr. Isho, Dr. Bogado and the Plaintiff and to the special interrogatories and responses in this case because these documents have not been authenticated with a declaration. Plaintiff does not argue that these transcripts or the discovery documents are not accurate copies. In addition, Plaintiff also submitted deposition transcripts in from Plaintiff and Dr. Isho. Based upon the circumstances in which these

documents were provided and the lack of any good faith argument about authenticity, these objections are overruled.

Defendant's objection no. 1 is sustained. Plaintiff stated in his discovery responses that Steel treated him on May 17, 2019. Plaintiff cannot contradict he admission that Steel treated him on May 17, 2019. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21.)

Defendant's objection no. 2 is sustained. Plaintiff's description of what he was told by doctors is hearsay.

Other Matters

Plaintiff's opposition evidence was not properly tabbed as required by California Rules of Court, Rule 3.1110(f) and Local Rule 3.42(3). In addition, the deposition testimony submitted by Plaintiff was not "marked in a manner that calls attention to the testimony." (Rule 3.1116.) Finally, both sides' objections to evidence were not in the proper form and were not referred in the parties' separate statement. (See, Rule 3.1354.)

In the event that this ruling is timely contested, the hearing will be on Wednesday September 8th, 2021, at 9 a.m.

9. TIME: 9:00 CASE#: MSC20-00480
CASE NAME: RIVERO VS THE SAVE MART
HEARING ON DEMURRER TO 2nd Amended COMPLAINT of RIVERO FILED BY SUTTER BAY HOSPITALS
**** TENTATIVE RULING: ****

Dropped from calendar by Court. A Dismissal of this Defendant was filed on 8/26/21.

10. TIME: 9:00 CASE#: MSC20-01220
CASE NAME: DENT-BESHEARS VS NELSON, ET, A
HEARING ON MOTION TO/FOR BE RELIEVED AS COUNSEL FILED BY EGYPT A. DENT-BESHEARS
**** TENTATIVE RULING: ****

Appearance is required by the Guardian ad litem on Wednesday 9/8/21 at 9 a.m. Thereafter the motion will be ruled on.

In the event that this ruling is timely contested, the hearing will be on Wednesday September 8th, 2021, at 9 a.m.

11. TIME: 9:00 CASE#: MSC21-00589
CASE NAME: LINETSKAYA VS ORINDA CARE CENT
HEARING ON MOTION TO/FOR: COMPEL DEFENDANTS RESPONSE TO PLAINTIFFS REQ., FILED BY LYUDMILA LINETSKAYA, REGINA LINETSKAYA
**** TENTATIVE RULING: ****

Postponed to 10/29/21 at 9 a.m.

In the event that this ruling is timely contested, the hearing will be on Wednesday September 8th, 2021, at 9 a.m.

12. TIME: 9:00 CASE#: MSC21-00680
CASE NAME: LAW OFFICE OF JOHN PRENTICE VS
HEARING ON DEMURRER TO CROSS COMPLAINT of CASAS FILED BY JAVIER CASAS, JOHN F. PRENTICE
**** TENTATIVE RULING: ****

Hearing dropped by Court. A dismissal of the cross-complaint has been delivered to the Court.

13. TIME: 9:00 CASE#: MSC21-00739
CASE NAME: JOHNSON VS DUYEE
HEARING ON MOTION TO/FOR COMPEL ARBITRATION & STAY PROCEEDINGS FILED BY CLARK DUYEE, RIDERS SHARE, LLC
**** TENTATIVE RULING: ****

Dropped from calendar. Stipulation to submit case to Arbitration & stay case signed 8/30/21.

14. TIME: 9:00 CASE#: MSC21-00819
CASE NAME: BARKER VS WILSON
HEARING ON DEMURRER TO COMPLAINT of BARKER FILED BY JUNGLE JAMES ANIMAL ADVENTURES, LLC, MONIQUE WILLSON, JAMES WILLSON
**** TENTATIVE RULING: ****

Defendants James Willson and Monique Willson, individually, and as Trustees of the Willson Family Trust and Jungle James Animal Adventures, LLC demurrer to the complaint **is sustained with leave to amend.**

Plaintiffs shall file and serve any amended complaint on or before September 24, 2021.

Background

Plaintiffs Michelle Barker and Stuart Barker are the owners of real property located at 59A Saddle Road in Walnut Creek. Defendants James Willson and Monique Willson are the owners of real property located at 59 Saddle Road. The Barker Property and Willson Property

share a driveway and property line at the Willson Property's southern border. There were two easements that burdened the Willson Property, benefitting the Barker Property.

Plaintiffs allege Defendants made certain misrepresentations that led Plaintiffs to modifying the access easement and terminating the drainage easement. Plaintiffs also allege Defendants trespassed on their property. Plaintiffs filed this action for Rescission of the Easement Modification Agreement, Rescission of Easement Termination Agreement, Declaratory Relief, Quiet Title, Intentional Misrepresentation, Promissory Fraud, Trespass, Public Nuisance, and Private Nuisance.

Demurrer

Defendants demur to the First Cause of Action (Rescission of the Easement Modification Agreement); Second Cause of Action (Rescission of Easement Termination Agreement); Seventh Cause of Action (Trespass); and Eighth Cause of Action (Public Nuisance) on the ground each of these causes of action fail to allege facts sufficient to state a cause of action. (CCP § 430.10(e).)

Legal Standard

The limited role of a demurrer is to test the legal sufficiency of a complaint. It raises issues of law, not fact, regarding the form or content of the opposing party's pleading. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) For purposes of a demurrer, all properly pleaded facts are admitted as true. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) On demurrer the complaint must be liberally construed with a view to substantial justice between the parties. (Code of Civil Procedure § 452.)

A demurrer lies only for defects appearing on the face of the complaint or from matters of which the court must or may take judicial notice. (Code of Civil Procedure § 430.40; see *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "If the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a demurrer." (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38.)

1st C/A (Rescission of the Easement Modification Agreement) and 2nd C/A (Rescission of Easement Termination Agreement)

Demurrer to the First and Second Causes of Action **is sustained with leave to amend.**

In the First Cause of Action, Plaintiffs allege the Barker Property and Willson Property are subject to an "Access and Utilities Slopes Agreement," recorded on October 3, 1988. The easement established private access, utility and draining easements that burdened the Willson Property and benefitted the Barker Property. In August 2019, James Willson allegedly approached Ms. Barker about modifying the easement, stating that the changes concerned an "inaccurate representation of the driveway." Plaintiffs consented to the modification but allege they were fraudulently induced in consenting to the Easement Modification Agreement and now seek a rescission.

In the Second Cause of Action, Plaintiff alleges that prior to August 30, 2019, there was a 10-feet wide private storm drain easement that burdened the Willson Property and benefitted the Barker Property. Defendants represented the drainage easement was "unused" and requested the Barkers to sign and Easement Termination Agreement, which they did on February 5, 2020. Plaintiffs allege the consent was given by mistake.

Defendants demur to the First and Second Causes of Action on the ground they fail to allege facts sufficient to constitute a cause of action. (CCP § 430.10(e). "Rescission is *not* a cause of action; it is a remedy. (Civ. Code, § 1689."" (*Nakash v. Superior Court* (1987) 196 Cal.App.3d 59, 70.) Defendants argue the proper cause of action is intentional misrepresentation, which Plaintiffs have already alleged in the Fifth Cause of Action. Defendants argue that if the Court finds the cause of action is not duplicate, Plaintiffs fail to allege a cogent theory of recovery, only a remedy. Although Plaintiffs allege some elements of fraud, they fail to allege all the elements.

In the Opposition, Plaintiffs argue that since *Nakash*, multiple California courts have recognized there is an independent cause of action for rescission. (See (*Little v. Pullman* (2013) 219 Cal.App.4th 558 and *Marzec v. Public Employees' Retirement System* (2015) 236 Cal.App.4th 889, 914.) Plaintiffs argue their rescission claims are not duplicative of the misrepresentation claim and they have properly asserted rescission as an alternative remedy to their Intentional Misrepresentation Cause of Action. Plaintiffs seek rescission based on mistake, lack of consideration, the fact that the agreement is unlawful, and the agreement is contrary to the public interest.

In the First and Second Causes of Action Plaintiffs seek to extinguish the agreements by rescission. (Civ. Code, § 1688.) "'Rescission not only terminates further liability but restores the parties to their former position by requiring each to return whatever he or she received as consideration under the contract, or, where specific restoration cannot be had, its value. [Citations.]' [Citation.] The court does not rescind contracts but only affords relief based on a party-effected rescission." (*Marzec v. Public Employees' Retirement System* (2015) 236 Cal.App.4th 889, 913-914.) Rescission is technically a remedy, but Plaintiffs attempt to establish the circumstances for rescinding the contracts. "Both the grounds for rescission and the means by which parties may rescind their contract are governed by statute." (*Marzec v. Public Employees' Retirement System* (2015) 236 Cal.App.4th 889, 914.) Civil Code 1689 provides:

> **(b)** A party to a contract may rescind the contract in the following cases:
> **(1)** If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party.
> **(2)** If the consideration for the obligation of the rescinding party fails, in whole or in part, through the fault of the party as to whom he rescinds.
> **(3)** If the consideration for the obligation of the rescinding party becomes entirely void from any cause.
> **(4)** If the consideration for the obligation of the rescinding party, before it is rendered to him, fails in a material respect from any cause.

(5) If the contract is unlawful for causes which do not appear in its terms or conditions, and the parties are not equally at fault.
(6) If the public interest will be prejudiced by permitting the contract to stand.

Here, Plaintiffs argued that the bases entitling them to rescission in the First and Second Causes of Action are circumstances other than fraud, so as to distinguish these two causes of action from the intentional misrepresentation claim, but Plaintiffs have not alleged facts establishing these bases. The complaint contains no facts showing mistake, failed consideration or duress, etc. The demurrer is therefore sustained.

7th Cause of Action (Trespass)

The Demurrer to the Seventh Cause of Action for Trespass **is sustained with leave to amend.**

Plaintiffs allege that on April 30, 2016, without advance notice or permission from the Barkers, the Willsons bulldozed a portion of the Barker Parker approximately 45 long, 15 feet wide, and up to 5 feet high. Plaintiffs also allege the Willsons trespassed by having a large shipping container on the easement for a period of years. Plaintiff alleges the damage is continuing.

Defendants demur to the Seventh Cause of Action for Trespass on the ground Plaintiffs failed to state a cause of action because the action is barred by the statute of limitations set forth in CCP § 338(b). "The general rule for defining the accrual of a cause of action sets the date as the time 'when, under the substantive law, the wrongful act is done,' or the wrongful result occurs, and the consequent 'liability arises.' [Citation.] In other words, it sets the date as the time when the cause of action is complete with all of its elements." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.)

Here, Defendants argue the cause of action accrued on April 30, 2016 and not postponed by the discovery rule. The verified complaint alleges the Barkers suffered and suspected injury on the date of excavation. On the that date, the complaint alleges Mr. Barker told the drive to stop the excavation and sent an email to the Willsons expressing concern that the excavation was on the property line and there were potential issues of erosion. (Complaint, ¶19.) Under the three-year statute of limitations, the complaint should have been filed on or before April 30, 2019. The verified complaint was filed almost two years later on April 28, 2021.

Plaintiffs argue the claim for trespass is not barred by the statute of limitations based on the continuing trespass theory, the discovery rule, and estoppel. The continuing trespass is applicable because "the cut slope area…continues to erode." The discovery rule because claim did not run until December 12, 2018, when James Willson first disclosed he had trespassed on the property. Finally, the statute of limitations was tolled by the estoppel doctrine. The Barkers relied on Willson's promise build a retaining wall.

A trespass may be continuing or permanent. (*Starrh & Starrh Cotton Growers v. Aera Energy LLC* (2007) 153 Cal.App.4th 583, 592.) "A permanent trespass is an intrusion on property under circumstances that indicate an intention that the trespass shall be permanent. In

these cases, the law considers the wrong to be completed at the time of entry…. The cause of action accrues and the statute of limitations begins to run at the time of entry. (*Ibid*.)

"A continuing trespass is an intrusion under circumstances that indicate the trespass may be discontinued or abated…. Continuing trespasses are essentially a series of successive injuries, and the statute of limitations begins anew with each injury." (*Ibid*.) "The principal assumption underlying continuing trespass and continuing nuisance theories is that the activity causing the injury can be abated." (*Santa Fe P'ship v. Arco Prods. Co.* (1996) 46 Cal.App.4th 967, 980.) The California Supreme Court adopted the opinion of the appellate court that "'abatable' means that the nuisance can be remedied at a reasonable cost by reasonable means." (*Mangini v. Aerojet-General Corp.* (1996) 12 Cal.4th 1087, 1103.)

In order for Plaintiffs' trespass claim to survive, Plaintiff must allege facts showing the trespass was continuing, rather than permanent. That is, Plaintiffs must allege facts showing the trespass could have been abated or discontinued. Here, Plaintiffs have simply alleged the damage to the Barker Property is continuing." (Complaint, ¶ 113.) There a no factual allegations to support the conclusion that the trespass was continuing.

As to the shipping container, Defendants argue Plaintiffs, as easement owners, cannot state a cause of action for trespass. "Trespass is an invasion of the plaintiff's interest in the exclusive possession of land." (*McBride v. Smith* (2018) 18 Cal.App.5th 1160, 1173.)
A claim for trespass involves interference with a plaintiff's right exclusive possession. "'[T]he owner of an easement is not the owner of the property, but merely the possessor of a 'right to use someone's land for a specified purpose ….' [Citations.][Citation.]" (*McBride v. Smith* (2018) 18 Cal.App.5th 1160, 1174.) "The easement owner has no possessory right in the land beyond the limited use of the land granted by the easement." (*Cody F. v. Falletti* (2001) 92 Cal.App.4th 1232, 1243.) Plaintiffs cannot state a cause of action for trespass based on the interference with their easement burdening Defendants' property.

8th Cause of Action (Public Nuisance)

Demurrer to the Eighth Cause of Action for Public Nuisance **is sustained with leave to amend.**

Plaintiffs alleged Defendants operated on their property Jungle James Animal Adventures, LLC, which housed exotic animals, such as tarantulas, scorpions and pythons. Plaintiffs alleged the operation failed to comply with Ordinance Code and zoning regulations of Contra Costa County. Plaintiffs allege the operation created a condition harmful to health, indecent or offensive to the senses, and interfered with the comfortable enjoyment of life and property.

"A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." (Civ. Code, § 3480.) "[P]ublic nuisances at common law are "offenses against, or interferences with, the exercise of *rights common to the public*," such as public health, safety, peace, comfort, or convenience. [Citation.] To qualify as a

public nuisance, the interference must be both substantial and objectively unreasonable." (*Citizens for Odor Nuisance Abatement v. City of San Diego* (2017) 8 Cal.App.5th 350, 358.)

The essential factual elements of a public nuisance: (1) Defendants created a condition harmful to health, was indecent or offensive to the senses, or interfered with comfortable enjoyment of property; (2) condition affected a substantial number of people at the same time; (3) That an ordinary person would be reasonably annoyed or disturbed by the condition; (4) Plaintiffs suffered harm that was different from the type of harm suffered by the general public; and (5) Defendants' conduct was a substantial factor in causing plaintiff's harm. (1 CACI 2020 (2021).)

"Causation is an essential element of a public nuisance claim. A plaintiff must establish a 'connecting element' or a 'causative link' between the defendant's conduct and the threatened harm." (*Citizens for Odor Nuisance Abatement v. City of San Diego* (2017) 8 Cal.App.5th 350, 359.)

Defendants demur to the Eighth Cause of Action on the ground it fails to state a cause of action. Defendants argue the verified complaint fail to state a nuisance, how the alleged nuisance created harm, and the complaint only makes the conclusory allegation that the "condition affected a substantial number of people."

Here, Plaintiffs have not alleged the causal connection because Defendants' conduct and the alleged harm or identified the harm. Plaintiffs have not alleged facts showing the how the alleged condition affected a substantial number of people at the same time. There are not facts showing the harm or offense was substantial and objectively unreasonable.

In the event that this ruling is timely contested, the hearing will be on Wednesday September 8th, 2021, at 9 a.m.

15. TIME: 9:00 CASE#: MSC21-00972
CASE NAME: FERNANDES VS CAO
HEARING ON DEMURRER TO COMPLAINT of FERNANDES FILED BY ANCHOR GENERAL INSURANCE COMPANY
**** TENTATIVE RULING: ****

Hearing dropped by Court. Anchor General Insurance Co. has been dismissed from the case.

16. TIME: 9:00 CASE#: MSN21-1360
CASE NAME: PETITION OF PATRICIA GONZALEZ
HEARING ON MINOR'S COMPROMISE
**** TENTATIVE RULING: ****

Unopposed motion granted.

In the event that this ruling is timely contested, the hearing will be on Wednesday September 8th, 2021, at 9 a.m.

17. TIME: 10:00 CASE#: MSC16-01492
CASE NAME: BENITEZ VS SALGUERO
COURT TRIAL - SHORT CAUSE/ 5 DAY(S)
**** TENTATIVE RULING: ****

Appearance required on Tuesday 9/7/21 at 10 a.m. for trial.