

Tentative Rulings for May 31, 2016 Department PS2

**To request oral argument you must notify
Judicial Secretary Barbara Berg 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 and motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at <http://www.riverside.courts.ca.gov/tentativerulings.shtml>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, not later than 4:30 p.m. on the court day before the hearing, you must (1) notify the judicial secretary for Department PS2 at (760) 904-5722 and (2) inform all other parties. 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.

1.

PSC 1502585	Teri Allen v. Mary J. Begole, M.D., et al.	Plaintiff Teri Allen's Motion for Leave to File Amendment to Complaint to Name Madison Allen and Mark Allen as Nominal Defendants
----------------	---	--

Tentative Ruling: Motion granted. No opposition filed or received. Amended pleading to be filed within 10 days. Moving party to give notice.

2.

PSC 1505572	Andrzej Luczynski et al. v. Anthony Liu, et al.	Defendants Brandon Linch and Yi Dan Li's Demurrer to Portions of Plaintiffs' Complaint
----------------	--	--

Tentative Ruling: Demurrer sustained with 30 days' leave to amend as to the 3rd and 15th causes of action.

Plaintiffs Andrzej Luczynski and Z & M Trading, Inc. dba Desert Ice Castle (collectively "Plaintiffs") filed their complaint on 12/5/15, alleging 17 causes of action essentially alleging that Defendants Anthony Liu, Ice Castle, Inc., Desert Ice Castle, LLC, Magic Ice, Inc., Danhua Liu, Ikaika Young, Yi Dan Li, Brandon Linch, Big Zhao and Yang Liu (collectively "Defendants") wrongfully terminated a joint venture agreement concerning the operation of an ice skating rink.

Defendants Brandon Linch and Yi Dan Li (“Linch and Li”) demur to the 3rd and 15th causes of action in the Complaint on the basis that they fail to state facts sufficient to constitute causes of action and fail for uncertainty.

3rd Cause of Action for Aiding and Abetting Breach of Fiduciary Duty: Plaintiffs name two defendants who are relatives and employees of Defendant Anthony Liu, Brandon Linch and Yi Dan Li, alleging that these two individuals aided and abetted in the breach of a purported fiduciary duty owed to Plaintiffs by Anthony Liu and Z&M Trading. Linch and Li assert that aiding and abetting breach of fiduciary duty requires allegations that these defendants had the specific intent to aid and abet and had actual knowledge that a breach of fiduciary duty was occurring. Further, Linch and Li assert that the allegations in the Complaint are conclusory and simply state that the defendants “know of the conduct that constituted a breach of fiduciary duties” and “lent substantial assistance or encouragement to defendant Liu in breaching his fiduciary duties.”

“Liability may...be imposed on one who aids and abets the commission of an intentional tort if the person...knows the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act.” (*Schulz v. Neovi Data Corp.* (2007) 152 Cal.App.4th 86, 93.) “The elements of a claim for aiding and abetting a breach of fiduciary duty are: (1) a third party’s breach of fiduciary duties owed to plaintiff; (2) defendant’s actual knowledge of that breach of fiduciary duties; (3) substantial assistance or encouragement by defendant to the third party’s breach; and (4) defendant’s conduct was a substantial factor in causing harm to plaintiff.” (*Nasrawi v. Buck Consultants, LLC* (2014) 231 Cal.App.4th 328, 343.) In addition, “some cases suggest that a plaintiff also must plead specific intent to facilitate the underlying tort. A defendant can be held liable as an aider and abettor...only if he or she knew that a tort had been, or was to be, committed, and acted with the intent of facilitating the commission of that tort. Aiding and abetting...necessarily requires a defendant to reach a conscious decision to participate in tortious activity for the purpose of assisting another in performing a wrongful act.” (*Id.* at 345.)

Plaintiffs assert that the cases cited by Linch and Li support the finding that the Complaint has been sufficiently pled. However, a review of the cases reflects that is not the case. For instance, in *Schulz*, the court found that the complaint contained facts that supported the elements of aiding and abetting, then the court went on to state what those specific facts were. (*Schultz, supra*, 152 Cal.App.4th at 94.) No such “facts” are alleged in Plaintiffs complaint. Furthermore, in *Nasrawi* the court laid out what the defendants did to provide substantial encouragement and assistance. (*Nasrawi, supra*, (2014) 231 Cal.App.4th 328, 344.) Here the complaint is deficient of specific allegations as to the individual conduct of Linch and/or Li that constituted substantial encouragement and assistance. Accordingly, the court sustains with leave to amend as to the 3rd cause of action as it relates to Defendants Linch and Li.

///
///

15th Cause of Action for violation of Business and Professions Code section

17200: Plaintiffs name two defendants who are relatives and employees of Defendant Anthony Liu, Brandon Linch and Yi Dan Li, alleging that these two individuals engaged in unfair business practices. Linch and Li assert that a cause of action pursuant to Business and Professions Code section 17200 is inappropriate as neither individual is a “business” nor were they “engaged in a business practice within the meaning of § 17200.” Plaintiffs assert that as employees who engaged in the conduct alleged in the complaint that section 17200 is applicable. Plaintiffs assert that Plaintiffs failed to point to any authority that immunizes employees from liability under section 17200. However, Plaintiffs fail to cite authority to the contrary. A review of section 17200 does not provide that its provisions are limited to “businesses,” but rather looks at wrongful conduct or business practices, which arguably are attributable to employees or agents of a business.

California’s Unfair Competition Law is sweeping, embracing anything that can properly be called a business practice and that at the same time is forbidden by law. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1143.) The complaint states that “[b]y reason of the fraudulent, deceptive, unfair and other wrongful conduct as herein alleged, the Defendants have violated the California Business and Professions Code section 17200, designed to deprive the Plaintiffs of substantial property, corporate and contractual rights.” In an action in which the plaintiff alleges an unlawful business act or practice, the complaint must state facts that show that the act or practice violates the law, and those facts must lay out the individual conduct of Linch and/or Li that constituted such unlawful business practice. Without supporting facts demonstrating the illegality of the actions of each defendant, an allegation that it is in violation of a specific statute is purely conclusionary and insufficient. Accordingly, the court sustains with leave to amend the 15th cause of action as it relates to Defendants Linch and Li.