

# Tentative Rulings for October 19, 2020

## Department PS2

**To request oral argument you must notify  
Judicial Secretary Carol Delfosse-Kidd 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: <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no 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 of the request and of their need to appear telephonically, as stated below. 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.**

**IN LIGHT OF THE CORONAVIRUS PANDEMIC; AND UNTIL FURTHER NOTICE, COUNSEL AND SELF-REPRESENTED PARTIES MUST APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS. IN-PERSON APPEARANCES WILL NOT BE PERMITTED.**

**TELEPHONIC APPEARANCES:** On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number (followed by #):

- Call-in Numbers: 1 (213) 306-3065 or 1 (415) 655-0001
- Meeting Number: **285-766-515#**
- Press **#** again

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at: <https://riverside.courts.ca.gov/PublicNotices/Webex-Appearances-Public-Access.pdf?rev=05-29-2020-09:54:48am>

1.

PSC1804377	ROJAS VS MAGNOLIA AUTO INSURANCE SERVICES	HEARING RE MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION OF ISSUES ON 2ND AMENDED COMPLAINT OF RAMIRO ROJAS BY INSURANCEBEACON.COMINC, ERIK AGUILAR
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**Tentative Ruling:** Denied as triable issues of fact exists as to all causes of action. See declaration of Maria Carranza which provides in part, that Maria Carranza, Plaintiff Rosa's wife and Plaintiff Rivera's mother, at their specific request, met with Defendant Erik Aguilar at Magnolia Auto Insurance Services for the specific purpose of adding both the Chrysler 300 and Plaintiff Rivera to Plaintiff Rojas' existing policy with Infinity Insurance. Although Defendants assert that there was no legal duty to place greater coverage than is expressly requested, Ms. Carranza met with Defendant Aguilar for the specific purpose of adding both the car and Plaintiff Rivera to the policy.

The material facts are as follows:

On May 1, 2015, Plaintiff Ramiro Rojas ("Rojas") first submitted a signed auto insurance application to Defendant Infinity Insurance Co., and obtained automobile Policy No. 104631171100001 (effective May 2015 – May 2016), through Defendant InsuranceBeacon.com, Inc. dba Magnolia Auto Insurance Services ("Magnolia"), which is an independent insurance broker. (UMF 12; UMF 14; Plaintiff's NoL, Ex. 2.) via Magnolia Auto Insurance Services household at that time. The policy's definition section defined "You" and "Your" to mean "...the named insured as shown in the declarations page and includes your spouse, if living in the same household." (Ramirez Depo, Ex. 12.) As part of the application, Rojas was required to list all individuals in the household over the age of 15. (UMF 12.) Rojas listed his daughter Angelica Rivera, but not Plaintiff Gustavo Rivera ("Rivera") as he was not living with his parents at the time. (Carranza Depo. 116:17-20; Rivera Depo. 114:16-19.) At the time of the original policy, Rojas signed a document titled "Agreement Voiding Automobile Insurance While a Certain Person is Operating Your Insured Car", which specifically excluded his daughter Angelica Rivera from coverage under the policy. (UMF 19.)

At the time that Rojas was issued the insurance policy, the policy did not list a Chrysler 300C as a scheduled/insured vehicle and did not list Plaintiff Gustavo Rivera ("Rivera") as an identified insured-operator nor as an excluded driver. (UMF 14.) On or about April 6, 2016 and April 25, 2016, Infinity sent Rojas renewal notices for the period May 2016 to May 2017 written in both English and Spanish, which notice did not include a Chrysler 300C and did not list Rivera as an insured or excluded driver. (UMFs 16-17.)

Plaintiffs allege that Rivera, Rojas' adult son, was intended to be an identified driver under Rojas' auto policy with Infinity Insurance Co. via an endorsement dated May 25, 2016 under which addition of a third vehicle, a 2006 Chrysler 300C (whose registered owner was Jose Martinez), was made to policy number 104-63117-1100-001. (UMF 1; UMF 25.) Plaintiff Rojas alleges that on or about May 25, 2016 he asked his wife, Maria Carranza, to go to the office of Magnolia Auto Insurance Services to add a recently acquired 2006 Chrysler 300C to his auto policy with Infinity Insurance Company and to list his son as a named operator/insured under his policy. (UMF 3.) Ms. Carranza met with Defendant Erik Aguilar ("Aguilar") to make the changes. (Carranza Decl. ¶5.) Ms. Carranza states that

she advised Aguilar that her son Gustavo Rivera had taken over payments on the 2006 Chrysler 300C from her son-in-law Jose Martinez and that her son was to be listed as the primary driver. (Carranza Decl. ¶5.) Ms. Carranza states that Aguilar then prepared documents for her and directed her to sign her husband's name telling her that it was okay to sign her husband's name and that everything had been prepared the way she requested. (Carranza Decl. ¶6.) Everything had been prepared in English, without being provided a Spanish translation, and Ms. Carranza states she only knows how to read Spanish. (Carranza Decl. ¶6.)

Aguilar states that he provided Ms. Carranza a quote on May 25, 2016 to add Rivera to his father's policy, but the quote is shown as cancelled as the offer was not taken. (Aguilar Decl. ¶2.) Further, Aguilar states that as shown by the Infinity "Policy Notes" for 05/25/2016 at 6:31:50, approximately 10 minutes later, based on his conversation with the customer I processed an endorsement change to exclude Gustavo Rivera to his father's existing auto policy with Infinity and provided another exclusion naming Jose Martinez based on the customer's request. (Aguilar Decl. ¶3.) Along with the noted exclusions pursuant to the customer's request, Aguilar states he processed the "Agreement Voiding Automobile Insurance While a Certain Person Operating Your Insured Car", Form#00540 R1004 and secured the required signature of the party authorized to bind changes under the policy which would be either the named insured Rojas or his spouse living in the same household, Ms. Carranza. (Aguilar Decl. ¶3.)

Aguilar states he does not recall whether it was Mr. Rojas or Ms. Carranza who came in on May 25, 2016, or both, but that he always explained everything in Spanish to Ms. Carranza. (Aguilar Decl. ¶4.)

On May 25, 2016 a change endorsement was made to Rojas' auto insurance policy, which endorsement bears a signature "Ramiro Rivera Rojas" with hand-written circles around excluded drivers Jose Martinez and Gustavo Rivera. (UMF 18.) At the time the change was made, Ms. Carranza signed her husband's name to an "Agreement Voiding Automobile Insurance While a Certain Person is Operating Your Insured Car" showing excluded drivers Jose Martinez and Gustavo Rivera. (Defendants' Ex. 15.) The summary of changes noted in the endorsement showed the addition of the Chrysler 300C and the excluded drivers Jose Martinez and Gustavo Rivera. (UMF 18.) The premium increase due to adding the Chrysler 300C was \$591, but would have been substantially higher if Rivera had been added to the policy due to his suspended driver's license status at the time. (Aguilar Depo. 29:11- 25; 31:17- 24; 33:11-23; 36:12-25; 37:3-23; 40:5- 25; 41:1; 42:10- 20; 46: 24- 25; 47:1- 25; 48:1- 14; 60:1- 13; 63:8- 24; 71: 3-13, 19- 24; 72: 1- 5; 73:5- 25.) Rather, Carla Rivera, Plaintiff Rivera's younger sister, was listed as the primary driver of the Chrysler 300C in the May 25, 2016 endorsement. (UMF 26.) Plaintiff Rivera never communicated with Aguilar or anyone else at Magnolia on May 25, 2016 during the transaction handled by his mother. (UMF 27.) After adding the Chrysler 300C to the policy, Ms. Carranza handed her son Rivera the proof of insurance card, which Rivera placed in the car glovebox. (UMF 28.) Rivera testified that he looked at the card and noticed that the Chrysler 300C had been added to his father's policy, but did not notice that he was not a listed driver. (Rivera Depo 61:14-25.)

On April 6, 2017 and April 24, 2017, Infinity sent a renewal notices, in both English and Spanish, to Rojas for the policy period May 2017 to May 2018, which included the Chrysler 300C as vehicle #3 and confirmed that Angelica Rivera, Jose Martinez and Gustavo

Rivera were excluded drivers . (UMFs 21-22.) Rivera stated that each time his mother gave him the proof of insurance, but without looking at it, he placed it in the car's glove box. (Rivera Depo. 61:14-25.)

On July 24, 2017, Plaintiff Rivera was involved in a motor vehicle incident on July 24, 2017 while driving the 2006 Chrysler 300. (UMF 4.) Plaintiffs allege that Infinity Insurance improperly denied coverage for the accident. (UMF 5.) Maria Carranza went to Magnolia Auto Insurance Services on May 25, 2016 without her husband, Plaintiff Rojas, and admits she signed the change endorsement in her husband's name to add the recently acquired 2006 Chrysler 300 to their family auto liability insurance policy with Infinity Insurance Company. (UMF 6.) The registered owner of the 2006 Chrysler 300 at the time of Plaintiff Rivera's accident on July 24, 2017 was Jose Martinez son-in-law to Rojas and Carranza. (UMF 7.) Plaintiff Rojas states that his wife told him that the Chrysler 300C and their son were added to the policy as he requested and that at no time did he agree to exclude his son from his policy nor did he authorize his wife to do so. (Rojas Decl. ¶7.)

Rivera did not contact Aguilar to add him as a listed driver under his father's policy at any time prior to the July 2017 accident. (UMF 36.) Nor did Rojas contact Aguilar to add Rivera as a listed driver under his policy at any time after the Chrysler 300C was added to his insurance policy at any time prior to Rivera's July 2017 accident. (UMF 37.) Nor did Ms. Carranza contact Aguilar after the May 25, 2016 transaction to add Rivera to the auto insurance policy at any time prior to Rivera's July 2017 accident. (UMF 38.)

At all times from May 25, 2016 until after the July 2017 accident, Rojas, Rivera, Ms. Carranza and Mr. Martinez all believed that Rivera was a covered driver under the policy. (Martinez Depo. 19:6-21; Carranza Depo. 26:18-20; Rojas Decl. ¶¶4-5; Rivera Depo. 6:8-21, 62:12-22, 63:1-16, 64:5-14, 66:5-14.)

Both Defendants and Plaintiffs submitted expert declarations on the question of whether or not Defendants' action in handling of the May 25, 2016 endorsement fell below industry standards.

1<sup>st</sup> Cause of Action for Professional Negligence and 2<sup>nd</sup> Cause of Action for General Negligence:

Based on the disputed material facts, there remain triable issues of material facts regarding whether or not Defendants breached the duty of care owed to its insured.

4<sup>th</sup> Cause of Action for Negligent Misrepresentation:

Based on the disputed material facts, there remain triable issues of material facts regarding whether or not Defendants misrepresented that Rivera was covered under his father's policy.

5<sup>th</sup> Cause of Action for Declaratory Relief:

Based on the disputed material facts, there remain triable issues of material facts regarding the rights and duties of the parties.

C.C.P. §437c(q) provides as follows: "In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review." (CCP §437c(q).)

The following objections were deemed relevant to ruling on the motion:

Declaration of Maria Carranza:

Objection 1: OVERRULED

Declaration of Ramiro Rojas:

Objection 1: OVERRULED

Objection 3: OVERRULED

Declaration of Ross Curtis:

Objection 4: OVERRULED

Declaration of David Ezra, Esq.:

Objection 10: OVERRULED

2.

PSC1902390	ALTIZER vs ROBLES PIPELINE	HEARING RE MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION OF ISSUES ON COMPLAINT OF TANNER ALTIZER BY ROBLES PIPELINE LAYING INC, ROBERTO ROBLES
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**Tentative Ruling:** Motion granted as to premises liability third cause of action and otherwise denied as triable issues of fact exist. Robles fails to meet its initial burden to demonstrate that there is no merit to a Plaintiff's second cause of action for negligence or that there is a complete defense to that cause of action.

Court declines to consider evidence submitted in reply and objections submitted with the reply pursuant to CCP Section 437c(q) except objections to declarations plaintiff's experts are overruled.

Plaintiff Tanner Altizer ("Plaintiff") filed the complaint (the "Complaint") in this action on April 5, 2019 against, defendants Robles Pipeline Laying, Inc. ("Robles Pipeline"), Roberto Robles, Coachella Valley Conservation Commission ("CVCC") and various other public entities. (Robles Pipeline and Roberto Robles are together referred to as, "Robles.")

Plaintiff alleges that on June 1, 2018, while driving his motorcycle on a dirt road, he ran into a fence consisting of a single strand of metal cable strung between two metal posts and suffered serious injuries as a result. (Complaint, ¶ 4.) Robles is alleged to be the contractor that constructed the fence. (*Id.*, ¶ 23.) The Complaint sets forth three causes of action: (1) dangerous condition of public property (against CVCC and other public entities); (2) negligence (against Robles); and (3) premises liability (against Robles).

Robles constructed the fence in or around July 2014 pursuant to a public contract with CVCC. (See Plaintiff's Response to Separate Statement of Undisputed Material Facts ("UMF"), ¶¶ 1-2,

6-10, 22-24.) The fence was located on property owned by CVCC and set aside for conservation under the Multi Species Habitat Conservation Plan. (UMF, ¶¶ 3.)<sup>1</sup> The purpose of the fence was to provide a barrier to unauthorized vehicular traffic and discourage dumping while allowing for the passage of wildlife. (UMF, ¶¶ 4-6, 11, 25.) There is no dispute that Robles built the fence in compliance with the plans and specifications provided by CVCC. (UMF, ¶¶ 9-10, 23-24.)

Robles fails to meet its initial burden to demonstrate that there is no merit to Plaintiff's second cause of action for negligence or that there is a complete defense to that cause of action.

In the present case, Robles relies on three cases to support its argument that because it did not deviate from the plans and specifications provided by CVCC and because it provided no input on the design, it owed no duty to Plaintiff or other members of the public. (See Memo., p. 8:20-9:2)

None of the cases support Robles's position; rather, the cases stand for the general proposition that where a contractor faithfully performs work in accordance with plans and specifications provided by an owner, there is no implied warranty that the contractor will supplement the inadequacy of the plans. (See *Sunbeam Constr. Co. v. Fisci* (1969) 2 Cal.App.3d 181, 186-87 [contractors did not assume responsibility for the adequacy of the plans and specifications, which were prepared by the owner's architect and there was thus no implied warranty that the contractors would supplement the inadequacy of the plans where they faithfully performed the work as specified]; *Kurland v. United Pacific Ins. Co.* (1967) 251 Cal.App.2d 112, 117-18 [subcontractor did not guarantee the sufficiency or adequacy of the owner's specifications and plans but, instead, guaranteed only the effectiveness of the work it did under them]; *Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. Cavanaugh* (1963) 217 Cal.App.2d 492, 508 ["There is no basis for an implied warranty of fitness of the installation since the work was done in accordance with the plans and specifications supplied by the owner"].) Stated otherwise, Robles presents no authority to support its position that a contractor that follows an owner's specifications – no matter how inadequate – may avoid liability to third parties who are injured by the completed construction. Robles fails to meet its initial burden with regard to the existence of a duty of care. (See Plaintiff's expert declarations in opposition.)

Robles likewise fails to meet its initial burden with respect to causation.

The question is whether the fence as constructed caused or contributed to Plaintiff's injuries. (See *Union Pacific Railroad Co. v. Ameron Pole Products LLC* (2019) 43 Cal.App.5th 974, 981 [to demonstrate causation, a plaintiff must show that defendant's act or omission was a substantial factor in bringing about the plaintiff's harm].) Robles submits no evidence to demonstrate that it did not recognize that the fence as constructed created a dangerous condition and presents no evidence that it could not have added a sign or other marker to the cable in order to make it more visible to vehicles.

Plaintiff concedes that summary adjudication of the third cause of action for premises liability is appropriate.

3.

PSC1902907	AHERN VS BLC	HEARING RE: MOTION TO/FOR BE RELIEVED FROM WAIVER OF OBJECTIONS BY BLC MIRAGE INCC L P, BROOKDALE SENIOR LIVING COMMUNITIES INC
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**Tentative Ruling:** Motion granted.

4.

PSC1902907	AHERN VS BLC	HEARING RE: MOTION TO/FOR COMPEL RESP TO FORM ROGS/SPECIAL ROGS/AND REQU FOR PRODUCTION FROM DEFS BY VERNON AHERN BY ANDTHROUGH HISSUCCESSOR, FREDERICK AHERN
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**Tentative Ruling:** Moot in light of responses having been provided prior to hearing. Sanctions denied.

5.

PSC1902907	AHERN VS BLC	HEARING RE: MOTION TO/FOR DEEM PLTF REQUEST FOR ADMISSION SET ONE ADMITTED/REQU FOR SANCT BY VERNON AHERN BY ANDTHROUGH HISSUCCESSOR, FREDERICK AHERN
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**Tentative Ruling:** Moot in light of responses having been provided prior to hearing. Sanctions denied.

6.

PSC1903573	THE VILLAGE VS MARK PORCELLO INC	HEARING RE: MOTION TO BE RELIEVED AS COUNSEL FOR MARK PORCELLO INC, MARK A PORCELLO BY SOFONIO & ASSOCIATES INC
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**Tentative Ruling:** Denied. Court does not have a proof of service establishing timely notice of motion. If counsel appears and or files an appropriate POS the court's tentative is as follows.

Grant. Submitted original order will be signed in open court. Order is not effective until proof of service has been filed with the court. Moving party to give notice that complies with Rules of Court, Rule 3.1362(e). Moving party to forthwith give further written notice to corporate client Mark Porcello, Inc. that it must obtain legal representation by 11-12-2020. Court sets an OSC Re Legal Representation or its pleadings to be stricken for 11-12-2020. Counsel to file the proof of service of notice of OSC with the court.