

**Tentative Rulings for December 3, 2024**

**Department 501**

**For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)**

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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).) *The above rule also applies to cases listed in this "must appear" section.*

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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.

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(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 501**

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(24)

**Tentative Ruling**

Re: **Martinez v. A Touch of Angels LLC**  
Superior Court Case No. 24CECG03657

Hearing Date: December 3, 2024 (Dept. 501)

Motion: Defendant A Touch of Angels, LLC's Motion to Quash Service of Summons

**Tentative Ruling:**

To order off calendar.

**If oral argument is timely requested, such argument will be entertained on Friday, December 6, 2024, at 10:00 a.m., in Department 501.**

**Explanation:**

The court cannot review the merits of this motion because defendant is not represented by counsel. The moving papers are presented by Jayke Ancheta on behalf of defendant A Touch of Angels, LLC, and Mr. Ancheta says he is "the owner, officer and registered service agent for process" for the entity. However, this status does not give him the right or ability to bring this motion on behalf of defendant without the representation of counsel. A corporation is not a natural person, and therefore cannot appear in an action *in propria persona*, but instead must appear only through counsel. (*Merco Construction Engineers, Inc. v. Mun.Ct.* (1978) 21 Cal.3d 724, 731.) This rule prevents the corporate representative from engaging in the unauthorized practice of law. (See, e.g., *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284, fn. 5.) This also applies to LLCs, since as an entity whose rights and liabilities are distinct from the persons composing it, an LLC must appear through an agent, and a layperson agent cannot practice law. (See, e.g., *Clean Air Transport Systems v. San Mateo County Transit Dist.* (1988) 198 Cal.App.3d 576, 578-579 (applying rationale to unincorporated associations).) The fact that plaintiff addressed the merits of the motion in her opposition does not waive the defect of defendant's lack of legal representation.

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: DTT on 11/27/2024.  
(Judge's initials) (Date)

(36)

**Tentative Ruling**

Re: ***Elderberry on the Bluff Homeowners Association v. Chatman, et al.***  
Superior Court Case No. 24CECG02170

Hearing Date: December 3, 2024 (Dept. 501)

Motion: by Plaintiff/Cross-Defendant Elderberry on the Bluff Homeowners Association Demurring to the Cross-Complaint

**Tentative Ruling:**

To overrule the demurrer to each cause of action. (Code Civ. Proc., § 430.010, subds. (e), (f).)

***If oral argument is timely requested, such argument will be entertained on Friday, December 6, 2024, at 10:00 a.m., in Department 501.***

**Explanation:**

Plaintiff and cross-defendant Elderberry on the Bluff Homeowners Association ("the Association") demurs to the first, second and fourth causes of action of the Cross-Complaint, on the grounds that defendants and cross-complainants Poursha Chatman and Ray Chatman, Jr. ("the Chatmans") fail to state a cause of action and for uncertainty.

Request for Judicial Notice

Each of the Association's requests for judicial notice are granted to the extent that such records exist and not for the truth of their factual findings. (Evid. Code, § 452, subd. (c); *O'Neill v. Novartis Consumer Health, Inc.* (2007) 147 Cal.App.4th 1388, 1405.)

Breach of Contract and Breach of Fiduciary Duty

The Association contends that the Cross-Complaint fails to identify the specific provisions of the Davis-Stirling Act or the Governing Documents that were breached and, thus, the Cross-Complaint fails to state a claim and is uncertain as to both the breach of contract and breach of fiduciary duty causes of action.

As an initial matter, notwithstanding the breadth of the request stated in the Notice of Demurrer, the Association's memorandum of points and authorities only actually makes argument regarding the uncertainty ground, and thus, this discussion is limited only to that ground.

"If the action is based on an alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written instrument must

be attached and incorporated by reference." (*Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 459, citations omitted.)

Also, " '[t]he elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach." (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 432, citations omitted.)

However, " ' "[d]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond." ' ' "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." ' ' ' (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695, citations omitted.) " ' "[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend." (*Ibid.*, citations omitted.) "A demurrer for uncertainty should be overruled when the facts as to which the complaint is uncertain are presumptively within the defendant's knowledge." (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822.)

Here, the Association's demurrer and request for judicial notice demonstrates that it knows which contract(s) are at issue, is in possession of them, and thus, the contractual terms as relevant to the alleged breach of contract and breach of fiduciary claims are presumed to be within the Association's knowledge. (Request for Judicial Notice ("RJN"), Ex. B.) Although the Association presents authority to show the pleading must either set forth the terms of the contract verbatim, or attach a copy of the contract, no authority is presented to suggest that the pleading must identify each provision of the contract that is alleged to have been breached.

Nor is any authority presented to indicate that the pleading must expressly indicate the specific statutes under the Davis-Stirling Act that are implicated. Further, the Association's Reply seems to suggest that it is sufficiently apprised of the issues it is being asked to defend against, since it specifies the exact statute at issue—California Civil Code section 5100, subdivision (a), to support its argument that it has not breached its fiduciary duty pertaining to its alleged election procedures. Regarding the Association's argument that the Cross-Complaint fails to include allegations that it deviated from the election procedure described in the statute, California Civil Code section 5100, subdivision (a) requires an association to hold an election for a seat on the board of directors at the expiration of the corresponding director's term and at least once every four years. (*Id.*) The Cross-Complaint sufficiently alleges that the Association has not held an election for over four years despite the expiration of one or more directors' two-year terms. (Cross-Compl., ¶ 25.)

Accordingly, the demurrer to the first and second causes of action is overruled.

### Equitable Easement

The doctrine of equitable easement requires a showing that "(1) [the] trespass was 'innocent' rather than 'willful or negligent,' (2) the public or the property owner will not be 'irreparabl[y] injur[ed]' by the easement, and (3) the hardship to the

