

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 05/04/2018

TIME: 09:00:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Ryan A Willis

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2017-00037524-CU-BT-CTL** CASE INIT.DATE: 10/06/2017

CASE TITLE: **Beck vs Point Loma Patients Consumer Cooperative Corporation [E-File]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Karl Beck

CAUSAL DOCUMENT/DATE FILED: Motion for Judgment on the Pleadings, 03/23/2018

APPEARANCES

No Appearance by all parties

All parties previously submit(s) on the Court's tentative ruling.

The Court confirms the tentative ruling as follows:

The Motion (ROA # 84) of Plaintiff Karl Beck ("Plaintiff"), pursuant to Code of Civil Procedure Sections 430.20 and 438(c)(1)(A) , for judgment on the pleadings to the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, and Sixteenth Affirmative Defenses pled in the Joint Answer (ROA # 47) of Defendants Adam Knopf, Justus Henkes IV and 419 Consulting, Inc. ("Defendants") to Plaintiff's Complaint, is GRANTED IN PART and DENIED IN PART.

The Motion is GRANTED as to affirmative defense numbers 1, 6 - 8, 10, 12 and 16. The Motion is DENIED as to affirmative defense numbers 2 - 5, 11 and 13 - 15.

Defendants are permitted leave to file and serve a First Amended Answer within twenty (20) days of this hearing re-alleging affirmative defense number 10. However, leave to amend is not permitted as to affirmative defense numbers 1, 6 - 8, 12 and 16.

An Answer must contain "[t]he general or specific denial of the material allegations of the Complaint controverted by Defendant [and] ¶ ...[a] statement of any new matter constituting a defense." Code Civ. Proc. 431.30(b). The phrase "new matter" refers to something relied on by Defendant which is not put in issue by Plaintiff. State Farm Mut. Auto. Ins. Co. v. Superior Court (1991) 228 Cal. App. 3d 721, 725 (defense of advice of counsel in "bad faith" litigation was not new matter and need not be specifically pleaded in the Answer). Thus, where matters are not responsive to essential allegations of

the Complaint, they must be raised in the Answer as new matter. *Id.* Where, however, the Answer sets forth facts showing some essential allegation of the Complaint is not true, such facts are not new matter, but only a traverse or denial. *Id.* Such "new matter" is also known as an affirmative defense. *In re Quantification Settlement Agreement Cases* (2011) 201 Cal. App. 4th 758, 812; see also *Advantec Group, Inc. v. Edwin's Plumbing Co., Inc.* (2007) 153 Cal. App. 4th 621 (defense based on nonlicensure of Plaintiff contractor is responsive to an essential allegation of the Complaint, and does not constitute new matter).

Affirmative defenses must not be pled as terse legal conclusions, but rather with as much detail as the facts which constitute the cause of action alleged in the complaint. *In re Quantification Settlement Agreement Cases*, *supra* at 812, 813. However, an affirmative defense need only plead "ultimate facts," not evidentiary matters. See Edmon & Karnow, *Cal. Prac. Guide: Civ. Pro. Before Trial* (The Rutter Group 2017) at ¶¶ 6:123-6:124 and 6:459. Although pleading conclusions of law is not sufficient, the distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree. *Doheny Park Terrace Homeowners Ass'n, Inc. v. Truck Ins. Exchange* (2005) 132 Cal. App. 4th 1076, 1098, 1099. What is important is that the pleading as a whole contain sufficient facts to apprise the adverse party of the basis upon which relief is sought. *Id.*

Affirmative Defense Numbers 1, 6 - 8, 12, 15 and 16: Allegation of New Matter?

Affirmative defense numbers 1, 6 - 8, 12 and 16 do not allege "new matter," and as a result are not appropriate affirmative defenses. Instead, these defenses are encompassed within the general denied. On the other hand, affirmative defense number 15 may encompass new matter

Affirmative Defense Numbers 3 - 5, 10, 11, 12 and 15: Applicable to UCL Claim?

Plaintiff argues that this Motion should be granted as to affirmative defense numbers 3 - 5, 10, 11, 12 and 15, but only as these affirmative defenses apply to the second cause of action "because such equitable defenses are not available for UCL claims." Moving Brief at page 4, lines 11-15. This argument lacks procedural merit. Each affirmative defense has potential application to any and all of the causes of action asserted in the Complaint. An affirmative defense cannot be stricken if it is potentially proper as to any of the asserted causes of action. See, e.g. *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal. 4th 26, 38 (if 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). An affirmative defense cannot be dismissed unless it lacks all potential merit. Given this finding, the Court does not address the substantive merit of this argument.

Affirmative Defense Numbers 2-5, 10, 11, 13 and 14: Plead Sufficient Facts?

Sufficient ultimate facts are alleged with respect to affirmative defense numbers 2 - 5, 11, 13 and 14. The allegations are minimally sufficient to apprise Plaintiff of the basis for the defenses asserted. Although the affirmative defenses are somewhat vague, the Court anticipates that detailed facts will be provided through the pre-trial discovery process. On the other hand, sufficient ultimate facts are not alleged with respect to affirmative defense number 10. This conduct must be minimally alleged.

Joel R. Wohlfeil

Judge Joel R. Wohlfeil