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7 Jeffrey J. Ciachurski, Captiva Verde Industries, LTD, Captiva Verde Farming Corp., and
Greenbriar Capital Corp.

ELECTRONICALLY FILED

Superior Court of California,
County of Orange

09/30/2016 at 06:05:00 PM

Clerk of the Superior Court
By e Clerk, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

10 JOSHUA ABEL DBA ABEL LAW
11 OFFICES,

12 Plaintiff,

13 v.

14 JEFFREY J. CIACHURSKI, CAPTIVA
15 VERDE INDUSTRIES, LTD, CAPTIVA
16 VERDE FARMING CORP., GREENBRIAR
17 CAPITAL CORP., and DOES 1 through 50,
inclusive,

18 Defendants.

Case No. 30-2016-00841335-CU-CL-CJC

Assigned for all purposes to:
Hon. Craig Griffin (Dept. C17)

NOTICE OF RULING

Date: September 26, 2016

Time: 2:00 p.m.

Dept.: C17

19 **JEFFREY J. CIACHURSKI, CAPTIVA**
20 **VERDE INDUSTRIES, LTD, CAPTIVA**
21 **VERDE FARMING CORP., GREENBRIAR**
22 **CAPITAL CORP.,**

23 Cross-Complainants,

24 v.

25 JOSHUA ABEL DBA ABEL LAW
26 OFFICES, AND ROES 1 through 20,
inclusive

27 Cross-Defendant.

1 **TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

3 PLEASE TAKE NOTICE that on September 26, 2016, the Court issued a Tentative Ruling
4 on Cross-Defendant's Demurrer to Cross-Complainant's Second Amended Cross-Complaint;
5 Request for CCP Section 128.5 Monetary Sanctions in the Amount of \$11,390 Against Angelo &
6 White and All Cross-Complainants.

7 The Court's Tentative Ruling also addressed Cross-Defendant's Request for Judicial
8 Notice in Support of Demurrer to Cross-Complainant's Second Amended Cross-Complaint;
9 Request for CCP Section 128.5 Monetary Sanctions in the Amount of \$11,390 Against Angelo &
10 White and All Cross-Complainants.

11 The Court's Tentative Ruling also addressed Cross-Defendant's Objection to Jeffrey J.
12 Ciachurski's Declaration and Cross-Complainant's Late-Filed Amended Opposition, Cross-
13 Complainant's Late-Filed Objection to Judicial Notice.

14 Prior to the time set for the hearing, all parties agreed to submit to the Court's Tentative
15 Ruling. The Court issued the following Orders:

- 16 1. Plaintiff/Cross-Defendant's Request for Judicial Notice is DENIED.
- 17 2. Plaintiff/Cross-Defendant's Objections to the Declaration of Jeffrey J. Ciachurski and the
18 late-filed Amended Opposition are SUSTAINED.
- 19 3. Plaintiff/Cross-Defendant's Objections to the late-filed Objection to Request for Judicial
20 Notice is DENIED.
- 21 4. Plaintiff/Cross-Defendant Joshua Abel dba Abel Law Offices' Demurrer to the Second
22 Amended Cross-Complaint is OVERRULED.
- 23 5. Plaintiff/Cross-Defendant Joshua Abel dba Abel Law Offices is to answer the Second
24 Amended Cross-Complaint within 15 days.
- 25 6. Plaintiff/Cross-Defendant's request for sanctions under C.C.P. section 128.5 is DENIED.
- 26 7. Cross-Complainant to give notice.

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1 A true and correct copy of the Court's tentative ruling is attached hereto and incorporated
2 herein by reference, marked as Exhibit "A".

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Dated: September 30, 2016

ANGELO & WHITE

By: 

JOSEPH ANGELO, ESQ.
Attorneys for Defendant/Cross-
Complainants Jeffrey J. Ciachurski,
Captiva Verde Industries, LTD, Captiva
Verde Farming Corp., and Greenbriar
Capital Corp.

EXHIBIT A

TENTATIVE RULINGS

DEPT C17

Judge Craig L. Griffin

Date: September 26, 2016

Please read rules carefully. Do not call department unless submitting on the tentative.

OBTAINING TENTATIVE RULINGS: All rulings will normally be posted on the internet at www.occourts.org/tentativerulings/cgriffinrulings.htm **by 12:00 noon on Monday, the day of the hearing.**

APPEARANCES: The Court will hear oral argument on all matters at the time noticed for the hearing. **If you wish to submit on the tentative** and do not want to appear, please inform the clerk by calling **(657) 622-5217**, and inform opposing counsel. Unless otherwise indicated in the tentative, the prevailing party will give Notice of Ruling or prepare an Order if appropriate per CRC 3.1312.

NOTICE TO COUNSEL: Upon filing a motion, moving party shall provide a copy of this procedural notice to opposing counsel. If opposing counsel appears at the scheduled hearing unnecessarily because of moving party's failure to provide this notice, sanctions may be imposed. Upon posting of ruling prevailing party shall give notice of the ruling. Prevailing party shall prepare an Order/Judgment for the Court's signature if the motion is dispositive of a cause of action, a party or the case.

DO NOT CALL the clerk or the courtroom assistant for clarification of rulings or additional information. If you do not have internet access, you may call the courtroom assistant or clerk after 8:30 am on the day of the scheduled hearing and the ruling will be read to you.

Case Name	Tentative
[REDACTED]	[REDACTED]
Abel v. Ciachurski	<p>As presented by the parties, the only issue is the statute of limitations (SOL).</p> <p>For an attorney's professional negligence the SOL is one year after plaintiff discovers, or through reasonable diligence should have discovered, the wrongful act or omission, whichever occurs first, or four years from the wrongful act or omission, whichever occurs first. CCP §340.6(a). The period is tolled when plaintiff has not sustained actual injury [CCP §340.6(b)(1) or where representation continues regarding the specific matter in which the wrongful act or omission occurred.</p> <p>The SACC alleges that in 10/14, new counsel was <u>substituted</u> in, presumably ending the attorney-client relationship with Ciachurski. [SACC ¶23] A settlement of the action in 05/15 was unfavorable, due to Abel's "incompetent representation." [SACC ¶24] They didn't actually learn about professional negligence until 03/16 when they were discussing the matter with counsel [apparently new].</p> <p>Abel attempts to use excerpts from Ciachurski's deposition, taken 07/16/16, to refute the date of knowledge and actual harm. He attempts to put this evidence before the Court through a 129-page request for judicial notice. It is objected to as being disputed and inadmissible hearsay. On the face of it, without analyzing each piece of testimony, the hearsay objection is without merit. Anything Ciachurski said about the topics identified would be a party admission.</p> <p>Plaintiff cites several cases to support the notion that the Court may consider</p>

deposition testimony in ruling on the legal sufficiency of the allegations of the Cross-Complaint. One of them, *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3rd 369, 375, sets forth the basic rule:

Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning. (See *Middlebrook-Anderson Co. v. Southwest Sav. & Loan Assn.* (1971) 18 Cal.App.3d 1023, 1038, 96 Cal.Rptr. 338.) On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. (*Marina Tenants Assn. v. Deauville Marina Development Co.* (1986) 181 Cal.App.3d 122, 127, 226 Cal.Rptr. 321.) "A demurrer is simply not the appropriate procedure for determining the truth of disputed facts." (*Ramsden v. Western Union* (1977) 71 Cal.App.3d 873, 879, 138 Cal.Rptr. 426.) The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. (See *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 605, 176 Cal.Rptr. 824.)

However, the court noted that there are cases that have "suggested that the court may accept the truth of statement made by the party whose pleadings are being challenged but not statements of an opponent or third party," citing the other two cases relied on by *Abel*, *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3rd 593 and *Able v. Van Der Zee* (1967) 256 Cal.App.2nd 728. Another approach, and the one used by the *Joslin* court, is to take judicial notice of matters where there is or cannot be a factual dispute concerning what is sought to be judicially noticed. *Id.*, at p. 375.

The sheer volume of deposition testimony submitted shows that *Abel* is turning this into an evidentiary motion. Further, if the deposition testimony is to be considered, so, too, must the Opposition Ciachurski Declaration, despite the objection. In other words, if the deposition is considered, other extrinsic evidence should be, as well. Ciachurski says at the time the Borndt litigation was ongoing, he was not aware that *Abel* was committing malpractice, despite his "bold assertions" in his deposition. He was "angered and disappointed" in the services rendered and decided to switch counsel. His statements at deposition were based on his current knowledge, not what he knew at the time. [Ciachurski Declaration, Ex. 8 - 9] Since the knowledge of professional negligence is the basis for accrual of the SOL, and is disputed, the Court cannot take judicial notice of the deposition testimony on the issue of knowledge. Under the rule that any viable claim defeats a demurrer, the testimony about when harm occurred is immaterial to the ruling on the demurrer.

While Chiachurski should have known of professional negligence at the time the underlying matter was settled in mid-05/15, the Cross-Complaint was filed in early 05/16. *Abel* is not arguing that if the 05/02/15 filing date is too late if the settlement date is used. He is saying knowledge of professional negligence happened much sooner.

The demurrer does not challenge the sufficiency of the pleading as to anything other than the SOL. In the P&A, Attorney *Abel* makes arguments about judicial admissions being conclusively deemed true against the pleader and the doctrine of sham pleading. It appears *Abel* is saying that admissions made in the deposition implicate these two doctrines. He also argues that Ciachurski hasn't properly alleged delayed discovery. This may be correct, but it is not material based upon the allegation that timely filing occurred.

As to *Abel's* request for CCP §128.5 sanctions, again, the finding required rests on the deposition testimony. Without it, there is no basis for finding the SACC is frivolous or in bad faith.

Plaintiff's/Cross-Defendant's Request for Judicial Notice is DENIED. Whether or not authority supports the Court taking judicial notice of deposition testimony to establish facts outside the pleadings, its recognition is limited to matters that are not, and cannot reasonably be, in dispute. *Joslin v. H.A.S. Ins. Brokerage* (1986) 184

Cal.App.3rd 369, 375 This is consistent with Evidence Code §452(h), which says the Court "may" take judicial notice of "facts and propositions that are not reasonably subject to dispute." Plaintiff/cross defendant has not established the facts are not reasonably subject to dispute.

Plaintiff's/Cross-Defendant's Objections to the Opposition Ciachurski's Declaration and the late-filed Amended Opposition, are SUSTAINED, except as to the objection to the Request for Judicial Notice.

Plaintiff/Cross-Defendant Joshua Abel dba Abel Law Offices' Demurrer to the Second Amended Cross-Complaint is OVERRULED. Plaintiff/cross-defendant is to answer within 15 days.

The request for sanctions under CCP §128.5 is DENIED.

Cross-Complainant to give notice.

[REDACTED]

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) SS
4 COUNTY OF ORANGE)

5 I am employed in the County of Orange, State of California. I am over the age of 18 and
6 not a party to the within action. My business address is 610 Newport Center Drive. Ste. 830,
7 Newport Beach, CA 92660.

8 On **September 30, 2016**, I served the following document(s) described as follows:

9 **NOTICE OF RULING**

10 On the following interested parties in this action:

11 Martin Greenbaum, Esq. Greenbaum Law Group LLP 840 Newport Center Drive, Suite 720 Newport Beach, CA 92660	Attorney for Plaintiff: Joshua Abel, dba Abel Law Offices
12 Joshua H. Abel, Esq. Abel Law Offices 1201 Dove Street, Suite 475 Newport Beach, CA 92660	Cross-Defendant, In Pro Per: Joshua Abel, dba Abel Law Offices

13 [X] VIA FIRST CLASS MAIL—By placing a true copy thereof enclosed in a sealed
14 envelope(s) addressed as above, and placing each for collection and mailing on the date
15 following ordinary business practices. I am readily familiar with my firm's business
16 practice and collection and processing of mail with the United States Postal Service and
17 correspondence placed for collection and mailing would be deposited with the United
18 States Postal Service at Newport Beach, California, with postage thereon fully prepaid that
19 same day in the ordinary course of business.

20
21 I declare under penalty of perjury, under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed on **September 30, 2016** at Newport Beach, California.

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26 _____
Stephen Gonzales