Tentative Rulings
Law & Motion and Family Law Calendar for January 14, 2013

January 10, 2013, 4:00p.m.

Department Two

To request a hearing on any matter on this calendar, you must call the Court at 530/283-6305 by 12:00 noon, January 11th, notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

If you do appear and want the matter reported by an official court reporter in unlimited civil, family law or probate, you must pay the $30.00 court reporter appearance fee as provided by GC§68086(a)(1)(A) before the hearing begins.

Probate – 9:00 a.m.

Case No. PR12-00033 – Estate of Clark

Tentative Ruling: **No appearance required.** If proof of publication, and the Declination, as referred to in the Petition, are filed prior to the hearing, the court intends to grant the Petition for Probate. Petitioner is to prepare the Order.

Case No. PR12-00024 – Estate of Schmidt

Tentative Ruling: **Appearance required.** The court has not received the Inventory and Appraisal or a copy of the Will.

Case No. PR11-00026 – Estate of Seaman

Tentative Ruling: **Approved.** The court finds that notice has been given as required by law. Petitioner's First and Final Account and Report, for Final Distribution and for Payment of Extraordinary Fees, is approved.

Case No. PR02-6028 – Guardianship of McRae

Tentative Ruling: **No appearance required.** The court has reviewed the confidential guardianship status report and finds that continued guardianship is in the best interests of the minor. The matter is set for an annual review hearing on January 13, 2014, at 9:00a.m. The clerk of the court is reminded to send notice to the guardian one month prior to this date, informing the guardian of the duty to file a confidential status report prior to the review hearing.

Case No. PR03-6098 – Guardianship of Vaughn

Tentative Ruling: **No appearance required.** The court has reviewed the confidential guardianship status report and finds that continued guardianship is in the best interests of the minor. The matter is set for an annual review hearing on January 13, 2014, at 9:00a.m. The clerk of the court is reminded to send notice to the guardian one month prior to this date, informing the guardian of the duty to file a confidential status report prior to the review hearing.

Civil – 9:30 a.m.

Case No. CV09-00093 – Bauer vs. Almanor Mfg.

Tentative Ruling: **Sustained, without leave.** The demurrers to the second and third causes of action in the Third Amended Complaint, filed herein on October 1, 2012 ("TAC"), are sustained, without leave.

The defendants do not challenge the first cause of action, which seeks recovery under the power press exception in *Labor Code section 4558*. The second cause of action, for negligence, reincorporates the allegations of the first, and further alleges, *inter alia*, that the defendants were negligent in the maintenance of the power press, as well as in the supervision and training of plaintiff on its use. (*See*, TAC, paras.18-21.) A plaintiff may not "bootstrap" a negligence claim to a cause of action under *Labor Code section 4558.* (*Award Metals, Inc. v. Superior Court* (1991) 228 Cal.App.3d 1128, 1134.) Additionally, the exclusivity rule of *Labor Code section 3602(a)* bars causes of actions for negligence, even in the face of "serious and willful misconduct and reckless disregard" by the employer. (*Arendell v. Auto Parts Club, Inc.* (1994) 29 Cal.App.4th 1261, 1263.)

The third cause of action asserts that Walter Schaefer ". . . manufactured, installed and/or distributed . . ." the power press and is strictly liable for plaintiff's injuries. (TAC, para. 27.) Before the TAC was filed, this Court granted defendants' motion for summary adjudication as to the strict liability cause of action in the Second Amended Complaint. (*See*, Ruling on Motion for Summary Judgment, filed September 20, 2012.[1]) That ruling, relief from which has not been sought by plaintiff, removed the legal theory of strict liability from this case. (*Code of Civil Procedure section 437c(n)(1)*; *see*, *Raghavan v. Boeing Company* (2005) 133 Cal.App.4th 1120, 1137(summary adjudication of cause of action removes theory of liability from case); *see, also, Pitzer v. Security Pacific National Bank* (1984) 155 Cal.App.3d 979, fn. 10 (summary adjudication order for which no writ sought is "law" of case for purposes of trial).)

[1] Plaintiff did not seek leave to amend prior to the hearing on the summary adjudication motion; nor did plaintiff's counsel suggest, at the hearing on the motion, that he would seek leave to plead facts for which evidence proffered by plaintiff in opposition created a triable issue. (*See, Distefano v. Forester* (2001) 85 Cal.App.4th 1249, 1264-1265 (opposing party to seek leave to amend, to plead facts for which evidence raises triable issue, before hearing on summary judgment motion).)

Case No. CV09-00243 – Owens vs. Kerns

Tentative Ruling: **Denied.** Plaintiffs' filed a motion to compel requests responses by Almanor Lakefront Village, LLC, to produce certain documents. More specifically, plaintiffs request additional insurance policies, that they claim directly relate to coverage for damages suffered by plaintiffs, and to plaintiffs' claims regarding ALV's unauthorized and unreasonable lease increases. It appears to the court that the defense has made reasonable and diligent efforts to

obtain ALV's general liability insurance information, and have produced all of the relevant policies. The relevance of other types of policies, such as auto and health, is not apparent to the court. Nor does it appear these additional insurance documents would lead to the discovery of admissible evidence. Plaintiffs and defendants have stipulated and agreed that the court would not award sanctions, and therefore, no discovery sanctions are ordered.

Case No. LC12-C0085 – Poulin vs. Turner

Tentative Ruling: **Denied.** Defendant's Claim of Exemption is denied. The debtor provided no change of circumstances following the court's denial of the debtor's previous claim of exemption. This is the defendant's second claim of exemption. If the defendant files any further claims of exemption without demonstrating a clear change of circumstances, the court will consider ordering sanctions.

Case No. LC12-Q0244 – Wells Fargo Bank vs. Stohlman

Tentative Ruling: **Overruled.** Defendants' demurrer to the complaint is based on two grounds. First, defendants argue that the three-day notice served in this unlawful detainer action is defective because the owner of the subject property is not the named plaintiff in the complaint. However, Wells Fargo Bank, N.A., is the real party in interest, and was named in the three-day notice and the complaint. The fact that plaintiff's successor in interest was incorrectly named in the notice is not misleading, but in fact sufficient for affecting the purpose for which it was served. Second, defendants argue the complaint was not properly verified by the plaintiff. However, the fact that Wells Fargo Bank has offices in several counties in California, does not support defendants' contention that plaintiff's counsel cannot verify the complaint. Code of Civil Procedure section 446 specifically authorizes an attorney to verify a pleading where the party is absent from the county where the attorney has his or her office. As the demurrer is overruled on both grounds, defendants have 5 days to file an answer.

Family Law – 10:30 a.m.

Case No. FL10-00304 – Champlin vs. Hecker

Tentative Ruling: **Appearance required.** The court will review the visitation orders.

Case No. FL09-00203 – Dewey vs. Jay

Tentative Ruling: **Appearance required.**

Case No. FL10-00158 – Hauner vs. McGinley

Tentative Ruling: **Appearance required.** The court has not received the recommendation.

Case No. FL10-00016 – Mar. of Ullrich

Tentative Ruling: The court orders reimbursement of attorneys fees to the County of Plumas in the amount of $390, for representation by Wayne Yates, to be paid by petitioner Kevin Ullrich, at the rate of $25 per month commencing February 1, 2013 until paid in full. Payments are to be made to the Plumas County Treasurer.

Case No. FL09-00320 – Mar. of Leathers

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

Case No. FL03-24182 – Mar. of McCutcheon

Tentative Ruling: **Appearance required.** The court will review the visitation orders, and at the conclusion of the case, the court intends to grant petitioner's motion for change of venue.

Case No. FL10-00264 – Mar. of Patterson

Tentative Ruling: **Appearance required.** If a mediated agreement is provided to the court prior to the hearing, this matter may be taken off calendar.

Case No. FL11-00007 – Rose vs. Lusty

Tentative Ruling: **No appearance required.** The court has not received a request for any further action by the court, and this matter is taken off calendar.

Case No. FL09-00327 – Mar. of Wharton

Tentative Ruling: **Appearance required.**

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. LC12-00158 – FIA Card Services vs. Boyd

Tentative Ruling: **Appearance required.** Plaintiff and defendant have failed to file a case management conference statement. Should there be any further violations of Rule 3.725, this matter will be set for an order to show cause and sanctions may be imposed. The parties should be prepared to discuss ADR options and set a trial date.

Case No. CV12-00070 – Hessel vs. Forderhase

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with counsel.

Case No. LC12-00153 – Liberty Mutual Insurance vs. Keefover

Tentative Ruling: **No appearance required.** The court notes that bankruptcy has been filed by the defendants.

Case No. CV12-00047 – Nat. Collegiate Student Loans Trust vs. Lake

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with the parties.

Case No. LC12-00148 – Read vs. Greenhorn Road Assoc.

Tentative Ruling: **Appearance required.** The court will set a briefing and oral argument schedule.

Case No. CV12-00175 – Wilson vs. Coykendall

Tentative Ruling: **Appearance required.** Plaintiff has failed to file a case management conference statement. Should there be any further violations of Rule 3.725, this matter will be set for an order to show cause and sanctions may be imposed. The court also notes there is no proof of service in the file.

Case No. CV09-00093 – Bauer v. Almanor Mfg.

Tentative Ruling: **Appearance required.**

Case No. FL06-26643 – Buchanan vs. Alhino

Tentative Ruling: **Appearance required of respondent Alhino only.** Minors' counsel's request to be relieved is granted. The court will review respondent's payments.

Case No. PR12-00018 – Estate of Peterson

Tentative Ruling: **Appearance required.** The court will set the matter for trial.

Case No. CV11-00062 – Peerless Insurance Co. vs. Watts Water Technologies

Tentative Ruling: **Appearance required.** The court intends to schedule a mandatory settlement conference prior to the trial.

Case No. CV11-00262 – Vonderau v. Smith

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with counsel.

Case No. LC11-00313 – Deere Credit, Inc. v. Broad

Tentative Ruling: **No appearance required.** At the request of plaintiff's counsel, this case management conference is continued to January 28, 2013, at 2:00p.m. Plaintiff is to give notice to the defendant.