Tentative Rulings
Law & Motion and Family Law Calendar for March 23, 2015

March 19, 2015, 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, March 20, 2015 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 a court reporter in unlimited civil, family law or probate, you must contract with and provide your own court reporter. The Court does not provide an official reporter for these calendars.

Probate – 9:00 a.m.

Case Nos. AD14-00004 and AD14-00003– Adoption Petition of Hopper

Tentative Ruling: **No appearance required.** This matter is continued to September 28, 2015, at 9:00a.m., to allow the Department of Social Services to prepare a report.

Case No. PR15-00010 – Estate of Griffin

Tentative Ruling: **Appearance required.** The court notes there is no proof of publication in the file.

Case No. PR15-00007 – Estate of Kroencke, O

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioner's Petition for Probate is granted. Petitioner is to prepare the Order.

Case No. PR15-00006 – Estate of Kroencke, P

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioner's Petition for Probate is granted. Petitioner is to prepare the Order.

Case No. PR13-00004 - Guardianship of Miles

Tentative Ruling: **No appearance required.** The court has received the confidential guardianship status report and finds that continued guardianship is in the best interest of the minor. The court schedules the annual review for March 28, 2016, 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. PR05-6265 – Conservatorship of Taylor

Tentative Ruling: **Approved.** The court finds that notice has been given as required by law. Petitioner's Fourth Account and Report of Conservator, Petition for Allowance of Fees to Conservator of Estate and Attorney for Conservator is approved, and the Petition for Authority to Invest Funds.

Civil – 9:30 a.m.

Case No. CV13-00168 – O'Brien vs. Albrecht

Tentative Ruling: **Appearance required.** The court intends to grant the Motion to be Relieved as Counsel.

Case Nos. LC14-Q0108, 0106, 0101, 0100, 0105, 0107 – Pinnacle Management vs. Puccinelli, Hilton, Rzeplinski, Santos, Haws and Owens

Tentative Ruling: **Overruled, in part and Sustained, in part.** The demurrer of Defendants to the First Amended Complaint is overruled, in part, and sustained, in part.

Standard of Review

A demurrer admits the truth of all material facts alleged in the pleading, but not the contentions, deductions or conclusions of law or fact. (*Adelman v. Associated Int'l Ins. Co.* (2001) 90 Cal.App.4th 352, 359.) Demurrers are permitted in unlawful detainer actions, and a defendant may file a demurrer, instead of an answer, on the grounds that the complaint fails to state a cause of action or is otherwise "facially" defective. (CCP section 1170, 430.10.)

Standing to Sue

The demurrer as to plaintiff's lack of standing to sue, because it is not the "real party in interest" is **sustained**, with leave to amend. (CCP section 430.10(e).) A complaint fails to state a cause of action if the specific plaintiff is the property manager, because it has no landlord-tenant relationship. Property managers must allege that it is a party to the lease or rental agreement, or assignee of the principal's interest.

Defective Notice

The demurrer for defective notice to terminate is **overruled**. The defendants' demurrer is based on the 3-day notice served on the defendants, which they claim is defective because a 60 day notice is required under the Mobilehome Residency Law. Defendants, however, concede this is a disputed fact.

In a somewhat similar case, *Parsons v. Superior Court* (2007) 149 Cal.App.4th Supp. 1, the tenants moved to quash service of summons on the ground that a 60-day notice to terminate tenancy was required rather than a 30 day notice. The trial court denied the motion, finding the defendants' remedy was a demurrer to the complaint, not a motion to quash service. The

appellate division directed the trial court to vacate its order denying the motion to quash, and to hold further proceedings on the merits of that motion. The appellate court discussed the holdings in *Delta Imports, Inc. v. Municipal Court* (1983) 146 Cal.App.3d 1033, and *Greener v. Workers' Compensation Appeals Board* (1993) 6 Cal.4th 1028, and the confusion and uncertainty these cases presented as to the difference between the procedures. The court stated: "In general, the difference between the procedures is that a motion to quash attacks service of the summons and complaint for lack of personal jurisdiction, while a demurrer tests the legal sufficiency of the allegations in the complaint." (*Id.,* at p. 5.) The court further held: "Where, as here, the challenge to the notice extends beyond the face of the complaint to the issue whether a 30-day notice or a 60-day notice is required under the Floating Home Residency Law, the issue can and must be resolved by resort to competent evidence, and a motion to quash is the proper procedure for doing this." (*Id.*, at p. 7.)

Therefore, defendants' demurrer as to the defective notice is overruled.

Violation of Fair Debt Collection Practices Act

Defendants' general demurrer on the grounds that the 3-day notice violates the Federal Fair Debt Collection Practices Act ("FDCPA") is **overruled**, for the same reasons above, on the grounds of defective notice.

Failure to Attached Noticed Increases in Rent

Defendants' demurrer on the grounds that plaintiff failure to attach the noticed increases that form the basis of the rental rate plaintiff is claiming in its First Amended Complaint is sustained, with leave to amend. Pursuant to CCP Section 1166(d)(1)(B) and (d)(2), plaintiff "shall" attach to the complaint any addenda or attachments to the lase or written agreement that forms the basis of the complaint, and failing to do so requires that the court grant leave to amend the complaint for a five-day period in order to include the required attachments.

Family Law – 10:30 a.m.

Case No. FL09-00175 – Gilmore vs. Kolosick

Tentative Ruling: **Appearance required.** The court will reset the contested hearing.

Case No. FL13-00058 – Norton vs. Harrison

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

Case No. FL11-00108 – Mar. of Sheldon

Tentative Ruling: **Appearance required.**

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. FL14-00066 – Mar. of Aswad

Tentative Ruling: **Appearance required.**

Case No. LC14-00179 – Dickens Drilling vs. Linder

Tentative Ruling: **No appearance required.** The court notes that a default has been entered.

Case No. CV14-00149 – McLaughlin v. JP Morgan Chase Bank, N.A.

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

Case No. CV09-00065 – Adams vs. Dept. of Fish & Game

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

Case No. CV13-00158 – Gomez vs. Walter

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

Case No. CV13-00202 – Nichols vs. Stark

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

Case No. FL04-24640 – Mar. of Quinn

Tentative Ruling: **Appearance required.** The court will set a contested hearing on the motion for attorney fees and costs.

Case No. CV14-00083 – Rondon vs. Ruschhaupt

Tentative Ruling: **Appearance required.**