Tentative Rulings
Law & Motion and Family Law Calendar for Oct. 27, 2014

October 23, 2014, 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, Oct. 24, 2014, 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 No. PR07-6398 – Conservatorship of White

Tentative Ruling: **No appearance required.** The court has received and reviewed the investigator's report. The court has also received and reviewed the Third Account and Report of Conservator and Petition for Allowance of Fees to Attorney for the Conservator. The court finds that the conservatorship continues to be necessary and the conservator is acting in the best interests of the conservatee. A review hearing is scheduled for October 12, 2016, at 9:00a.m.

Case No. PR13-00052 – Estate of Bang

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioner's Waiver of Accounting and Petition for Allowance of Compensation to Attorney for Ordinary Fees and for Final Distribution is granted. Petitioner is to prepare the order.

Case No. PR14-00048 – Estate of Davis

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioner's Petition to Determine Succession to Real Property and Personal Property is granted. Petitioner is to prepare the order.

Case No. PR14-00050 – LPS Conservatorship

Tentative Ruling: **Appearance required.**

Case No. PR14-00049 – Matter of Kaiser

Tentative Ruling: **Appearance required.** The court notes the Notice of Hearing does not include the date of mailing. If an amended notice is filed prior to the hearing, the court intends to grant the Petition to Determine Succession to Real Property.

Case No. PR14-00047 – Matter of Vernon

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. The Petition for Order Transferring Assets and Income for Medi-Cal Spousal Support Purposes, enlarging Community Spouse Resource Allowance and Authorizing Actions Regarding Vernon Family Trust, with Retroactive Application is granted.

Civil – 9:30 a.m.

Case No. CV14-00041 – AVP v. Labbe

Tentative Ruling: **No appearance required.** The court has signed a stipulation for allowance of defendants' leave to file first amended cross complaint.

Case No. CV11-000175 – Barron vs. Borrego

Tentative Ruling: **Appearance required.** If there is no appearance and no objection, the court intends to approve the sale of real property, as requested by the trustee.

Case No. CV12-00103 – First American Title Insurance vs. Business Factors

Tentative Ruling: **Appearance required.**

Case No. CV13-00149 – Seneca Gold vs. Preim

Tentative Ruling: **Overruled.** The general and special demurrers of Dane J. Shields and Jon N. Shields (collectively "Shields") to the causes of action asserted against them in the first amended complaint, filed herein on January 7, 2014 ("FAC"), are overruled.

The elements of a cause of action for quiet title are (1) a description of the property that is the subject of the action; (2) the title of the plaintiff as to which a determination is sought; (3) the claims adverse to plaintiff's title; and (4) the date as of which title is sought. (*Code of Civil Procedure section 761.020*; *see, also, 5 Witkin, California Procedure (5th Ed. 2008), section 663*.) Plaintiff has alleged all facts necessary to state a cause of action for quiet title against the Shields. (*See*, FAC, paras. 12 (property description), 44 (claims adverse to plaintiff's title) and 45 (nature of title and date).)

Whether the Shields were, or currently are, in possession of the property under the oral agreement between plaintiff and the Preims (FAC, para. 21) does not vitiate the cause of action. (*See, Warren v. Atchison, Topeka and Santa Fe Railway Company* (1971) 19 Cal.App.3d 24, 34 (plaintiff may maintain action to quiet title even if defendant has valid interest in property).) Further, if the Shields do not claim any title adverse to plaintiff's, they may file a disclaimer. *Code of Civil Procedure section 761.030(b).*) Accordingly, the general demurrer to the second cause of action is overruled.

Similarly, even if plaintiff orally consented to the Shields' possession of the property, " '. . . a trespass may occur if the party, entering pursuant to a limited consent, . . . exceeds those limits . . ..' " (*Cassinos v. Union Oil Company of California* (1993) 14 Cal.App.4th 1770,1778 (quoting *Civic Western Corporation v. Zila Industries, Inc.* (1977) 66 Cal.App.3d 1).) The general demurrer to the eighth cause of action is thus overruled.

The special demurrer to the eighth cause of action, for uncertainty, is also overruled. Plaintiff has alleged its right to possession of the property (FAC, para. 39) and the defendants' physical invasion, which interfered with that right. (*Id.*, paras. 18, 105-106). These allegations are ". . . sufficient to acquaint [the] defendant[s] with the nature, source and extent of [plaintiff's] cause of action." (*Youngman v. Nevada Irrigation District* (1969) 70 Cal. 2d 240, at 245.)

Defendants are to answer the First Amended Complaint within 20 days.

Case No. CV14-00102 – Stevenson vs. Hildebrandt

Tentative Ruling: **No appearance required.** Plaintiffs and defendant have requested the court vacate defendant Ensey's Motion to Strike and Demurrer, as the plaintiffs have filed a first amended complaint. The request is granted.

Case No. CV11-00064 – Stutsman vs. The Schomac Group, Inc.

Tentative Ruling: **No appearance required.** The court has received and reviewed counsel's declaration regarding the release of undertaking to the Schomac Group, Inc. If there is no objection filed, the court intends to grant the defendant's request. Defendant's counsel is to prepare the order.

Case No. CV12-00268 – Warner vs. Randy Hill Construction

Tentative Ruling: **Overruled.** The demurrer filed by defendant Mark Anthony Basham ("Basham") to the causes of action asserted against him in the first amended complaint, filed herein on August 11, 2014 ("FAC"), are overruled.

First, the court agrees with plaintiff that the demurrer is untimely, and can be overruled on that ground alone. However, the court will also analyze the demurrer as if it were filed in a timely manner.

Negligence allegation. The elements of a cause of action for negligence are duty, breach, causation and damages. All such allegations are present in the FAC, along with the allegation that in performing the negligent acts, Bruce Fields was in the course and scope of his employment with defendant Tough Company, Inc. and defendant Basham. The demurrer to the first cause of action is thus overruled.

Alter ego allegation. The FAC alleges defendant Basham is a suitable subject of alter ego liability for the acts of Tough Company. Plaintiff asserts Tough Company was a mere shall and sham without capital, assets, stock, or stockholders, and inadequately capitalized, in order to insulate itself from liability. The allegations are clear and no more detailed factual allegations are necessary at this stage of litigation. Therefore, the demurrer to the second cause of action is overruled.

Defendant Basham is to answer the First Amended Complaint within 20 days.

Family Law – 10:30 a.m.

Case No. FL14-00066 – Mar. of Aswad

Tentative Ruling: **Appearance required.** Review hearing on visitation issues.

Case No. FL14-00187- Campbell vs. Fairbanks

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

Case No. FS04-24933- County of Plumas vs. Hudson

Tentative Ruling: **Appearance required.** The court will order the parties to mediation.

Case No. FL14-00110 – Mar. of Dunnington

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

Case No. FL12-00116 – Elston vs. Castillo

Tentative Ruling: **Appearance required.**

Case No. FL14-00053 – Mar. of Furtado

Tentative Ruling: **Appearance required.**

Case No. FL14-00186 – Mar. of Henry

Tentative Ruling: **Appearance required.**

Case No. FL12-00224 – Mar. of Judd

Tentative Ruling: **Appearance required.** The court notes petitioner has not filed a Findings and Order after hearing, as ordered by the court on June 13, 2014.

Case No. FL11-00174 – Mar. of Morris

Tentative Ruling: **No appearance required.** This matter is taken off calendar, as the parties have reached an agreement regarding custody and visitation.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. LC08-27994 – Ford Motor Credit vs. Goodson

Tentative Ruling: **No appearance required.** The court has received counsel's declaration and the previously ordered sanctions, and will not impose any additional sanctions. A judgment having been entered, this case is closed.

Case No. LC14-00022 – Unifund vs. Retallack

Tentative Ruling: **No appearance required.** The court notes this is a collections case. This matter is continued to January 26, 2015, at 1:30p.m., pursuant to Rule 3.740(f). If the plaintiff has not obtained a default judgment by said date, this matter will be set for an order to show cause and sanctions may be imposed.

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

Tentative Ruling: **Appearance required.** The court will set a trial date.

Case No. CV13-00059 – Corey vs. Brown

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

Case No. CV13-00187 – CSAA Insurance Exchange vs. Electrolux Home Products

Tentative Ruling: **Appearance required.** The court will discuss ADR options with the parties.

Case No.. CV14-00044 – Decrona vs. Smith & Nephew, Inc.

Tentative Ruling: **No appearance required.** The court has received a notice of removal to federal court. This matter is taken off calendar.

Case No. CV12-00070 – Hessel vs. Forderhase

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

Case No. CV14-00023 – Liberty Mutual Insurance vs. Bi-State Propane

Tentative Ruling: **Appearance required.**

Case No. CV13-00149 – Seneca Gold vs. Preim

Tentative Ruling: **No appearance required.** The court will continue the case management conference to November 24, 2014, at 2:00p.m., to allow the defendants to answer the first amended complaint.

Case No. FL12-00199 – Mar. of Welch

Tentative Ruling: **Appearance required.** The court will set this matter for a contested hearing.