

Tentative Rulings

Law & Motion and Family Law Calendar for February 22, 2021

Department Two – Judge Douglas Prouty

To request a hearing on any matter on this calendar, you must call the Court at 530/283-6305 by 12:00 noon, February 19, 2021, and 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.

PLEASE NOTE –ANY REQUIRED APPEARANCE BY COUNSEL MUST BE DONE BY USING COURT CALL (1-800-882-6878) – UNLESS OTHERWISE STATED IN THESE TENTATIVE RULINGS. ANY REQUIRED APPEARANCE BY A PARTY APPEARING WITHOUT AN ATTORNEY MUST BE DONE BY CALLING THE COURT'S CONFERENCE LINE AT 1-877-336-1829 AND ENTER THE ACCESS CODE 4023142. THE PARTY MUST THEN WAIT ON THE LINE AND MUTE THEIR PHONE UNTIL THE COURT CALLS THEIR CASE.

PROBATE CALENDAR – 9:00 a.m.

Case No. PR15-00039 Conservatorship of Mason, M.

Tentative Ruling: **Appearance required.** This case was continued for receipt of investigative report. To date, no report has been received.

Case No. PR19-00001 Conservatorship of Moura, Betty

Tentative Ruling: **Telephonic appearance only required.** The Court has received the Declaration of the Conservator. The Court will discuss if there has been a conservator/fiduciary established by the Veteran's Administration for VA monies. Counsel can appear by telephone at that time and date by calling 1-877-336-1829 and enter the access code 4023142. The party must then wait on the line until the Court calls their case. The parties are to mute their phone until the case is called.

Case No. PR21-00002 Estate of Terhorst, Judy

Tentative Ruling: **No appearance required.** The Court finds that notices have been given as required by law, and no opposition to either the Petition for Probate and the Notice of proposed sale of real property has been received. The Court grants the Petition for Probate and will sign a proposed order and have Letters issued.

Case No. PR17-00052 Guardianship of Donahue, Thomas

Tentative Ruling: **No appearance required.** Proper notice has not been given to counsel for the annual review. The matter will be continued to March 15, 2021, at 9 a.m. for continued hearing.

Case No. PR15-00052 Guardianship of Durler, Angela

Tentative Ruling: **Appearance by conference call is required.** The Court has not received the Confidential Guardianship Status Report from the Guardian and orders the review hearing continued to March 22, 2021 at 9 a.m. The Court Clerk is to mail a copy of this minute order to the Guardian. The guardian is ordered to file the Status Report prior to the next hearing. The Guardian is to appear by telephone at that time and date by calling 1-877-336-1829 and enter the access code 4023142. The party must then wait on the line until the Court calls their case. The parties are to mute their phone until the case is called. All prior orders shall remain in full force and effect until the next hearing date.

Case No. PR09-00005 Guardianship of Rouse, James

Tentative Ruling: **Appearance by conference call is required.** The Court has not received the Confidential Guardianship Status Report from the Guardian and orders the review hearing continued to March 22, 2021, at 9 a.m. The Court Clerk is to mail a copy of the minute order to the Guardian. The guardian is ordered to file the Status Report prior to the next hearing. The Guardian is to appear by telephone at that time and date by calling 1-877-336-1829 and enter the access code 4023142. The party must then wait on the line until the Court calls their case. The parties are to mute their phone until the case is called. All prior orders shall remain in full force and effect until the next hearing date.

CIVIL LAW AND MOTION CALENDAR – 9:30 a.m.,

Case No. CV16-00095 Hudson, Orva v Hudson, Joshua

Tentative Ruling: **Appearance required.** Defendant Joshua Hudson has brought a motion to expunge three lis pendens. Defendant refers to three purported lis pendens as Exhibits A-C, however there are no exhibits attached to the Notice of Motion. Additionally, Defendant has failed to file a declaration under penalty of perjury stating the facts in support of his Motion. If Defendant intends to continue to seek the expungement, the Motion will be continued to March 22, 2021, at 9:30 a.m. for Defendant to file and serve the required documents. The documents are to be served and filed by March 8, 2021.

Case No. PR19-00054 In Re Anthony & Dorothy Fernandes Family Trust

Tentative Ruling: **Appearance only by CourtCall.** The Court has reviewed the various pleadings file in support of and in opposition to the Respondent's Motion for Protective Order and will hear argument of counsel by CourtCall.

Case No. CV20-00164 Petition of Shaughnessy, Thomas

Tentative Ruling: **No appearance required.** It appearing that notice has been given as required by this Court’s Order for Publication, the Court will grant and sign the Name Change Decree.

Case No. CV20-00156 Singletary, Lonna v DC Construction

Tentative Ruling: **Appearance only CourtCall, if requested.** Defendant Dennis Crites has filed a general demurrer against all three causes of action alleged in Plaintiff’s Complaint on the grounds that the 2 year statute of limitations for wrongful death and negligence causes of action in Code of Civil Procedure §335.1 had run when Plaintiff’s Complaint was filed on October 9, 2020. Plaintiff argues that the three causes of action for wrongful death, gross negligence and negligence are premised upon Labor Code §3706 and therefore, the 3 year statute of limitations for causes of actions based upon statute in C.C.P. §338(a) applies to each of these causes of action.

First, in considering a general demurrer to a cause of action, it has long been held that all material facts alleged in the complaint are assumed to be true. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. A court may sustain a demurrer based on the statute of limitations only when the facts alleged in the complaint or matters of which the judge has taken judicial notice disclose clearly and affirmatively that the cause of action is barred. *Mitchell v. State Dep’t of Public Health* (2016) 1 CA5th 1000, 1007.

Here, the Complaint alleges the decedent died while driving for Defendant DC Construction which is owned by Defendant Dennis Crites, on July 17, 2018. There is no question that the Complaint was filed on October 2, 2020. In the Complaint, there are three causes of action for negligence, gross negligence, and wrongful death alleged pursuant to Labor Code §3706, regarding the failure of an employer to pay for worker’s compensation. §3706 states in pertinent part as follows:

“If any employer fails to secure the payment of compensation, any injured employee or his dependents may bring *an action at law against such employer for damages...*”(emphasis added.)

In the allegations of each cause of action in this Complaint, Plaintiff has alleged that the decedent was an employee of Defendants and further, that Defendants failed to pay for worker’s compensation as required by the provisions of Labor Code §3706. Therefore, Plaintiff alleges each cause of action comes within the purview of §3706. *Coleman v. Silverberg Plumbing Co.* (1968) 263 CA2d 74.

It has been held that “an action of law” as against this Defendant employer under §3706, includes personal injury causes of action, including causes of action for negligence and wrongful death, as alleged by Plaintiff in this Complaint. *Valdez v. Himmelfarb* (2006) 144 CA4th 1261; *Leung v. Chinese Six Co.* (1992) 2 CA4th 801; *Logan v. Masters* (1981) 120 CA3d 145. Therefore, since each of these causes of action for negligence and wrongful death have alleged the requisite facts against this employer who allegedly failed to pay worker’s compensation, they are brought pursuant to the Labor Code §3706 statute and the 3 year statute of limitations for a statutory cause of action applies, as set forth in Code of Civil Procedure §338(a).

Since this Complaint pursuant to Labor Code §3706 was filed before the running of the 3 year period on July 17, 2021, the statute of limitations does not preclude these causes of action, and Defendant Dennis Crites’ general demurrer is overruled. Defendants are to file their answer pursuant to Rule of Court 3.1320(g).

Case No. CV20-00146 Wing, Tony v Eastern Plumas Health Care

Tentative Ruling: **Appearance only by CourtCall.** The Court has reviewed the various pleadings file in support of and in opposition to the Defendant's Demurrer to the First Amended Complaint. The Court will hear argument by CourtCall.

FAMILY LAW CALENDAR - 10:30 a.m.

Case No. FL20-00022 Coronado, Tami v Coronado-Lopez, Hector

Tentative Ruling: **Appearance required.** This case was set for a hearing on the status of visitation for 2/1/21 and neither party appeared. If the parties do not appear on this date, the status review hearing will be taken off-calendar. Additionally, the Respondent's Request for child support, and a modification of child custody and child support will be vacated if the Respondent has not paid the \$85 filing fee as previously ordered.

Case No. FL16-00174 Cuccia, Jade v Gomez, Martin

Tentative Ruling: **Appearance required.** This matter is on calendar for the return from mediation on the Requests for Orders filed by each party and appearance on the Order to Show Cause re: Contempt filed by the Respondent. The Court notes the Respondent has not filed a proof of personal service on Petitioner.

Case No. FL20-00072 Hatfield, Michael v Gilpin, Aya

Tentative Ruling: **Appearance required.** Petitioner's Request for Temporary Emergency Orders filed on 1/19/21 was denied, but his Request for modification of visitation was set for this date. The Court does not see a proof of service for the Request for Order on the Respondent.

Case No. FL10-00158 Hauner, Angela v McGinley, Benjamin

Tentative Ruling: **Appearance required.** Petitioner filed her Request for modification of custody and Temporary Emergency Orders were also issued. There is no proof of service filed.

Case No. FL15-00163 Kibble, Michael v Kibble, Karen

Tentative Ruling: **Appearance required.** Petitioner's Request for Order for sale of the pharmacy business was continued to this date for status review. Counsel can appear telephonically by CourtCall.

Case No. FL16-00165 Kiedrowski, Khristopher v Kiedrowski, Lissa

Tentative Ruling: **Appearance required.** Petitioner has served his Request for modification of visitation and child and spousal support has been served on Respondent as ordered. Respondent has not filed any opposition to the Request to date.

Case No. FL20-00045 Quiring, Donald v Quiring, Savannah

Tentative Ruling: **Appearance required.** This case is on calendar for the Respondent's Request to modify custody and visitation. Counsel can appear telephonically by CourtCall.

Case No. FL18-00119 Rice Audrey v Rice, Bradley

Tentative Ruling: **Appearance required.** Respondent has filed opposition to the Petitioner's request for attorney's fees for filing the Request for distribution of pension funds.

CASE MANAGEMENT CONFERENCE/OTHER CASES

1:30 p.m.

Case No. LC20-00120 CVI SGP Acquisition Trust v Mangum, Karrie

Tentative Ruling: **No appearance required.** Matter on calendar for initial Case Management Conference. Plaintiff's Request for Dismissal was not entered as incomplete. Plaintiff failed to provide any means to return conformed copy. Case Management Conference is continued to April 26, 2021, at 2 p.m. for status of correction of dismissal. Counsel can appear telephonically by CourtCall. If dismissal has been entered, no appearance is necessary.

Case No. LC20-00117 Midland Credit Management Inc. v Merrifeild, Katie

Tentative Ruling: **Appearance required.** This matter is on calendar for the initial Case Management Conference. Defendant has not been timely served and Plaintiff has not filed a case management statement as required by Rule of Court 3.725(a) and must cause why monetary sanctions should not be imposed. Counsel can appear telephonically by CourtCall.

Case No. LC20-00119 NBT Bank v Teague, Shelly

Tentative Ruling: **No appearance required.** Plaintiff's Request for Dismissal without prejudice was entered.

CASE MANAGEMENT CONFERENCE/OTHER CASES
2:00 P.M.

Case No. CV19-00011 Bank of America v American Valley Aviation

Tentative Ruling: **Appearance required.** The Court will discuss whether the remaining parties have settled the outstanding issue of indemnification for attorney's fees. If not settled, the Court will be referring the matter for mediation.

Case No. CV19-00138 Eckmeyer, Pamela v Girdner, James

Tentative Ruling: **Appearance required.** Plaintiff is ordered to show cause why sanctions should not be imposed for failure to appear and file a case management statement for the January 11, 2021 Case Management Conference.

Case No. LC19-00138 LVNV Funding LLC v Tucker, James

Tentative Ruling: **Appearance required.** Plaintiff's Request for Dismissal was not entered because it was incomplete. Case Management Conference is continued to April 26, 2021, at 2 p.m. for status of dismissal. Counsel can appear telephonically by CourtCall. If dismissal has been corrected and entered, no appearance is necessary.

Case No. CV16-00146 Turenne, Ronald v Miller, Jeffrey

Tentative Ruling: **Appearance required.** The Court will discuss setting dates for court trial. Counsel can appear telephonically by CourtCall.