

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar  
Judge: HONORABLE RICHARD H. DUBOIS  
Department 16

400 County Center, Redwood City  
Courtroom 7A

Friday, August 17, 2018

**NOTICE TO ALL COUNSEL**

Until further order of the Court, no endorsed-filed "courtesy copy" of pleadings is required to be provided to the Law and Motion Department.

IF YOU **INTEND TO APPEAR** ON ANY CASE ON THIS CALENDAR YOU MUST DO THE FOLLOWING:

1. YOU MUST CALL (650) 261-5019 BEFORE 4:00 P.M. TO INFORM THE COURT OF YOUR INTENT TO APPEAR.
2. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do both items 1 and 2 will result in no oral presentation.

**Notifying CourtCall with your intent to appear is not an alternative to notifying the court.**

All Counsel are reminded to comply with California Rule of Court 3.1110. The Court will expect all exhibits to be tabbed accordingly.

Case

Title / Nature of Case

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9:00

LINE: 1

17-CIV-03119 HARBHAJAN GILL VS. KAREN FINLEY, ET AL.

HARBHAJAN GILL  
KAREN FINLEY

TERRY BULLER  
MARK L. DAWSON

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MOTION TO BE RELIEVED AS COUNSEL

**TENTATIVE RULING:**

The motion is dropped from calendar as MOOT. On July 19, 2018, plaintiff filed a substitution indicating that he is now represented by attorney James O'Gallagher.

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9:00

LINE: 2

17-CIV-03647 MERCEDITA VERADOR, ET AL. VS. SERVIS ONE, INC., ET AL.

MERCEDITA VERADOR  
SERVIS ONE, INC. dba BSI FINANCIAL

JESSICA GALLETTA  
JARLATH M. CURRAN

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MOTION TO STRIKE PORTIONS OF PLAINTIFFS' THIRD AMENDED COMPLAINT  
**TENTATIVE RULING:**

The motion to strike by Defendant BSI Financial Services is GRANTED as follows, but only as to Defendant BSI Financial Services and not any other Defendant:

1. Request for injunctive relief against BSI at Prayer paras. 2, 3, 4; +The only allegations which seek injunctive relief are contained in the Third Cause of Action which does not include BSI as a defendant.
2. Request for disgorgement as to BSI at Prayer at para. 5;
3. Request for punitive damages against BSI at Prayer para. 6 and allegations that BSI is guilty of "malice, fraud and/or oppression" at para. 53. Plaintiff's argument for punitive damages lacks merit. The complaint contains no allegations supporting punitive damages against BSI, which is a corporate employer. The failure to comply with the requirements of the Homeowner's Bill of Rights does not, by itself, show fraud, oppression, or malice.
4. Requests for attorneys' fees against BSI at Prayer at para. 6. There was no opposition to this request.

The motion is denied as to "restitution." (See Notice of Motion at 2:2). No claim or request for restitution exists.

The Court strikes matters 1 through 4 above to the extent they are asserted against Defendant BSI. Plaintiff need not file an amended complaint omitting the stricken matters, since the Court makes no finding or ruling on whether the stricken matters are improper as to any other Defendant.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 is required as the tentative ruling affords sufficient notice to the

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parties. Prevailing party shall provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

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9:00

LINE: 3

17-CIV-04365 TANFORAN INDUSTRIAL PARK, LLC VS. PACIFIC GAS AND  
ELECTRIC COMPANY, ET AL.

TANFORAN INDUSTRIAL PARK, LLC  
PACIFIC GAS AND ELECTRIC COMPANY

JEFFREY H. LOWENTHAL  
MARK J. HANCOCK

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DEFENDANTS' DEMURRER TO THE FIRST AMENDED COMPLAINT

**TENTATIVE RULING:**

The hearing on Defendants' Demurrer to the First Amended Complaint is continued to September 21, 2018 at 9 a.m. in the Law & Motion Department in order for the parties to properly meet and confer either in person or by telephone. (Code Civ. Proc. section 430.41, subd. (a).) This requirement is not intended to be an exercise in futility. Oftentimes an actual conversation can be more effective in facilitating an agreement than an impersonal exchange of email correspondence. (See Hancock Dec., para. 5.)

The moving party shall file, no later than seven court days prior to the new hearing date, a declaration stating either: (1) the parties met and conferred and resolved the objections raised in the Demurrer and request the hearing should be taken off calendar; (2) the parties met and conferred regarding the substance of the Demurrer, but did not reach an agreement resolving the objections raised in the Demurrer' or (3) the moving party made a good faith effort to speak in person or by telephone, but the opposing party failed to respond to the request or otherwise failed to meet and confer in good faith. If the moving party fails to file and serve a further declaration demonstrating compliance with Code of Civil Procedure section 430.41, the Court may strike the Demurrer as procedurally improper

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9:00

LINE: 4

18-CIV-00548 LORELL HAMILTON VS. UNITED PARCEL SERVICE, INC., ET AL

LORELL HAMILTON  
UNITED PARCEL SERVICE, INC.

TANYA GOMERMAN  
SUSAN T. KUMAGAI

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PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR  
PRODUCTION OF DOCUMENTS, SET ONE

**TENTATIVE RULING:**

Plaintiff's motion to compel further responses to Requests for  
Production is GRANTED, IN PART, AND DENIED, IN PART.

Defendant UPS is ordered to provide further responses to Plaintiff's  
requests for production of documents. However, the scope of Request  
Number 20 shall be limited to any complaints against Defendant  
Barefield relating to sexual or physical harassment, or threatening  
language or conduct. The scope of Request Number 21 shall be limited  
to any complaints against Defendant Barefield regarding discipline  
relating to violence, verbal or physical threats, or sexual  
harassment.

The motion is granted on the condition that the parties agree that any  
confidential information will be carefully shielded from disclosure  
except to those who have a legitimate need to know. Additionally,  
Defendant UPS shall provide notice of proposed disclosures to affected  
third parties and an opportunity to object to the disclosures.

The request for sanctions is DENIED.

If the tentative ruling is uncontested, it shall become the order of  
the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10,  
effective immediately, and no formal order pursuant to Rule 3.1312 or  
any other notice is required as the tentative ruling affords  
sufficient notice to the parties.

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9:00

LINE: 5

18-CIV-00897 NADER RAEISSI VS. JAMES J. AVEGGIO, ET AL.

NADER RAEISSI  
JAMES J. AVEGGIO

FRANCOIS X. SORBA  
STEPHEN R. PAPPAS

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DEFENDANTS JEFF GLOWNIAK'S AND JAMES AVEGGIO'S MOTION FOR JUDGMENT ON THE PLEADINGS

**TENTATIVE RULING:**

Defendants Jeff Glowniak's and James Aveggio's Motion for Judgment on the Pleadings, directed to Plaintiff Nader Raeissi dba Belmont Auto Repair's First Amended Complaint, filed 4-2-18, is DENIED AS MOOT, given Plaintiffs' 8-9-18 filing of a Second Amended Complaint.

The court in *State Comp. Ins. Fund v. Sup.Ct.* (2010) 184 CA4th 1124, stated:

It is well established that an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading. Thus, an amended complaint supersedes all prior complaints. The amended complaint furnishes the sole basis for the cause of action, and the original complaint ceases to have any effect either as a pleading or as a basis for judgment. Because there is but one complaint in a civil action (*Ford v. Superior Court* (1973) 34 Cal.App.3d 338, 343, 109 Cal.Rptr. 844), the filing of an amended complaint moots a motion directed to a prior complaint. (See *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1054 [filing of first amended complaint rendered moot demurrer to original complaint].) Thus, once an amended complaint is filed, it is error to grant summary adjudication on a cause of action contained in a previous complaint. *Perry v. Atkinson, supra*, 195 Cal.App.3d at pp. 17-18.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 6

18-CIV-01678 PETER A. ANDREWS, ET AL. VS. ROBERT AVILA, ET AL.

PETER A. ANDREWS  
ROBERT AVILA

ANNA C. SHIMKO  
DAVID G. FINKELSTEIN

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DEFENDANTS' DEMURRER TO THE COMPLAINT

**TENTATIVE RULING:**

Defendants' Demurrer to the Complaint is SUSTAINED, WITH LEAVE TO AMEND, as to the eighth cause of action and OVERRULED as to the first through seventh and ninth causes of action.

Defendants' Request for Judicial Notice that is appended to their Memorandum of Points and Authorities is DENIED. "Any request for judicial notice must be made in a separate document listing the specific items for which notice is requested and must comply with rule 3.1306(c)." (Cal. Rules of Court, rule 3.1113(1). See Memo. Pts. Auth. ISO Demurrer, para. 1 - 3, Ex. A - D.) Defendants are admonished for late-filing their reply that also exceeds the 10-page limit on reply. (CCP 1005(b); Cal Rules of Court , rule 3.111(d).

Plaintiffs have failed to plead sufficient facts to allege the eighth cause of action for quiet title. Plaintiffs have failed to allege the legal description of the property or the title upon which a determination is "sought and the basis of the title." (Code Civ. Proc. sect. 761.020, subd. (a) & (b). See Complaint, para. 5.) In opposition, Plaintiffs do not provide a specific citation to their Complaint to demonstrate that "[t]he Complaint adequately describes the real property in question and the basis for Plaintiffs' title as the current owners of the Andrews Property." (Opp., p. 12:11-14.))

To the extent Defendants assert Plaintiffs claims are barred by the Right to Farm Act (Civ. Code sect. 3482.5), Plaintiffs allege that they "never observed the dogs performing any activity essential or incidental to any agricultural activity." (Complaint, para. 30.) As the allegations are presumed to be true, on its face, the Right to Farm Act is not applicable given this allegation. (See Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (Rutter, Jun. 2018 Update) para. 7:5.) Furthermore, the Right to Farm requires that Defendants maintain local customs and standards in their operation. (Civ. Code, sect. 3482.5, subd. (a)(1). See also *Souza v. Lauppe* (1997) 59 Cal.App.4th 865, 874-875.) This involves a factual inquiry that is not the proper subject of a demurrer.

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The remaining causes of action are sufficiently pled and not uncertain. (Code Civ. Proc. sect. 430.10, subd. (e) and (f).)

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9:00

LINE: 7

18-CIV-02526 SUE SMITH VS. PATRICIA NELSON DOYLE, ET AL.

SUE SMITH  
PATRICIA NELSON DOYLE

VERNON C. GOINS  
JOSE A. MONTALVO

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DEFENDANTS' SPECIAL MOTION TO STRIKE  
**TENTATIVE RULING:**

This matter is continued to August 24, 2018 at 9:00 a.m. in the Law and Motion Department at the request of the parties.

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9:00

LINE: 8

CIV525758 N.A. SALES COMPANY INC. VS. HAE-SUK LEE, ET AL.

N.A. SALES COMPANY, INC.  
BISHOP RANCH GATEWAY INC.

BRIAN H. SONG  
R. KENNETH BAUER

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PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT/ANSWER  
**TENTATIVE RULING:**

Plaintiff's unopposed motion to amend is GRANTED. Plaintiff shall  
file the Third Amended Complaint no later than August 24, 2018.

Plaintiff has provided sufficient proof of service of the motion and  
no opposition has been filed. Leave to amend is generally granted  
liberally and, given the lack of opposition, there is no indication  
that the defendants will be prejudiced by the amendment.

If the tentative ruling is uncontested, it shall become the order of  
the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10,  
effective immediately, and no formal order pursuant to Rule 3.1312 or  
any other notice is required as the tentative ruling affords  
sufficient notice to the parties.

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9:00

LINE: 9

CIV537488 JOANNA Q. CHEN VS. ANDREW CHIU, ET AL.

JOANNA QI CHEN  
MILLENARY INVESTMENTS, LLC

GEORGE KING  
STEVEN A. BOOSKA

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MOTION FOR APPROVAL OF SALE BY RECEIVER, GREG K. WEBSTER

**TENTATIVE RULING:**

The motion to approve sale of property is DENIED.

**A. The Order Authorizing Sale of Property is Stayed.**

An order of sale is required in order to sell a dwelling as a method of enforcing a money judgment. (Code of Civ. Proc. Sect. 704.740(a).) Judgment Creditor obtained that order. (See Order, March 15, 2018 (nunc pro tunc to March 2, 2018.) Judgment debtor appealed the order and perfected the appeal by filing an undertaking in the amount set by the Court. Therefore, the March 2, 2018, Order for Sale of Dwelling is stayed. Judgment Creditor acknowledges this.

**B. The Order Appointing Receiver Is not Stayed.**

The Court granted Judgment Creditors' motion to appoint receiver to sell the property. (Order, May 4, 2018 (filed May 9, 2018). Judgment Debtor has not appealed this order. It is not stayed.

**C. The Order Appointing Receiver Does not Authorize the Sale to Proceed.**

The June 2018 order appointing the receiver was not an order that the property be sold. It was an order only appointing a receiver to carry out the sale that was authorized by the earlier March 2, 2018, order. The March 2 order directed that the property be sold. The May 4, 2018 order (filed May 9, 2018) merely appointed a person to arrange the sale.

Since Judgment Debtors have perfected their appeal of the March 2, 2018, Order for Sale of Property, enforcement of the order is stayed. A receiver can do only what is legally possible. Although the Court appointed a receiver to sell the property, the order permitting the sale is stayed. Without a viable Order for Sale of Dwelling, the receiver cannot sell the property.

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POSTED: 3:00 PM