

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

Law and Motion Calendar
Judge: HONORABLE SUSAN GREENBERG
Department 3

400 County Center, Redwood City
Courtroom 2B

Monday, May 21, 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

9:00

LINE: 1

17-CIV-00361 STEVE PETERSON, ET AL. VS. TERILYNN LANGSEF, ET AL.

STEVE PETERSON
TERILYNN LANGSEF

LOUIS A. BASILE
DOMINIC V. SIGNOROTTI

HEARING ON DEMURRER

TENTATIVE RULING:

This matter is dropped from calendar at the request of the moving party.

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.

9:00

LINE: 2

17-CIV-00361 STEVE PETERSON, ET AL. VS. TERILYNN LANGSEF, ET AL.

STEVE PETERSON
TERILYNN LANGSEF

LOUIS A. BASILE
DOMINIC V. SIGNOROTTI

JOINDER

TENTATIVE RULING:

This matter is dropped from calendar at the request of the moving party.

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9:00

LINE: 3

17-CIV-00361 STEVE PETERSON, ET AL. VS. TERILYNN LANGSEF, ET AL.

STEVE PETERSON
TERILYNN LANGSEF

LOUIS A. BASILE
DOMINIC V. SIGNOROTTI

HEARING ON JOINDER

TENTATIVE RULING:

This matter is dropped from calendar at the request of the moving party.

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.

9:00

LINE: 4

17-CIV-00778 JOY RAMOS VS. OCWEN LOAN SERVICING, LLC, ET AL.

JOY RAMOS
OCWEN LOAN SERVICING, LLC

JOHN E. STRINGER
ALISON V. LIPPA

HEARING ON DEMURRER

TENTATIVE RULING:

The demurring party failed to file a declaration, as required by CCP §430.41(a)(3), showing that the parties met and conferred, in person or by telephone, for the purpose of determining whether an agreement could be reached to resolve the objections to be raised in the demurrer. The declaration of Anthony Kohrs indicates only that he sent an email to plaintiff's counsel. Consequently, the hearing on the demurrer is continued to June 25, 2018 at 9:00 a.m. in the Law and Motion Department so that the parties may meet and confer. The demurring party is required to file, no later than 7 days prior to the new hearing date, a code-compliant declaration stating either (1) the parties have met and conferred and (a) the parties have resolved the objections raised in the demurrer, which shall be taken off calendar or (b) the parties did not reach an agreement resolving the objections raised in the demurrer or (2) the party who filed the pleading subject to demurrer failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. If the parties fail to file and serve the declaration demonstrating compliance with the requirements of Section 430.41, the demurrer will be stricken as procedurally improper.

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.

9:00

LINE: 5

17-CIV-00778 JOY RAMOS VS. OCWEN LOAN SERVICING, LLC, ET AL

JOY RAMOS
OCWEN LOAN SERVICING, LLC

JOHN E. STRINGER
ALISON V. LIPPA

MOTION TO STRIKE PUNITIVE DAMAGES

TENTATIVE RULING:

Defendant has failed to file a declaration, as required by CCP §435.5(a)(3), showing that the parties met and conferred in person or by telephone for the purpose of determining whether an agreement could be reached to resolve the objections to be raised in the motion to strike. The declaration of Anthony Kohrs indicates only that he sent an email to plaintiff's counsel. Consequently, the hearing on the motion is continued to June 25, 2018 at 9:00 a.m. in the Law and Motion Department so that the parties may meet and confer. Defendant is required to file, no later than 7 days prior to the new hearing date, a code-compliant declaration stating either (1) the parties have met and conferred in person or by telephone and (a) the parties have resolved the objections raised in the motion, which shall be taken off calendar or (b) the parties did not reach an agreement resolving the objections raised in the motion or (2) the party who filed the pleading subject to motion failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. If defendant fails to file and serve the declaration demonstrating compliance with the requirements of CCP §435.5, the motion will be stricken as procedurally improper.

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.

9:00

LINE: 6

17-CIV-02767 CARYL RUSSO-MEYER VS. MICHAEL HAMMER, ET AL.

CARYL RUSSO-MEYER
MICHAEL HAMMER

RETT D. BERGMARK
MARTIN W. MERTES

MOTION FOR ORDER

TENTATIVE RULING:

The hearing on the Motion to Compel Further Responses to Special Interrogatories and for Monetary Sanctions brought by defendants Michael Hammer and Lourdes Hammer (collectively, “Defendants”) is continued to **Monday, July 2, 2018 at 9:00 a.m. in the Law and Motion Department.** The parties (Defendants and plaintiff Caryl Russo-Meyer) are ORDERED to meet and confer in person on or before Friday, June 1, 2018.

If the parties are unable to informally resolve all the issues pending in this discovery motion by that time, the parties are ORDERED to contact the courtroom clerk in the Law & Motion Department on or before Monday, June 4, 2018 to set an informal discovery conference with the Law & Motion judge, which shall take place on or before Friday, June 22, 2018.

The history of this discovery dispute includes the following:

- Defendants served interrogatories on Plaintiff on February 6, 2018.
- Plaintiff responded on March 12, 2018.
- Defendants sent a meet and confer letter on March 21, 2018.
- Plaintiff’s did not respond to that meet and confer letter.

Plaintiff expressly argues that “due to a clerical error and oversight” her counsel did not see the letter until it was attached to the instant motion. Opposition (f: 05/08/18), p. 2:19-20. There is no evidence that Plaintiff’s counsel made any efforts to correct this “error” or contact defense counsel upon discovering this “oversight.” On the other hand, defense counsel sent a single letter in its attempt to meet and confer. Notably, efforts to meet and confer telephonically or face-to-face are often more effective (see Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group 2017) ¶¶ 8:1158-8:1158.1). The Court finds that both parties’ actions here do not meet the standard of making a reasonable and good faith attempt to meet and confer before filing the motion, as required by statute. C.C.P. § 2030.300(b). Accordingly, both parties are ordered to meet and confer in-person.

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.

9:00

LINE: 7

17-CIV-03245 NENAD A. SKENDZIC VS. ALEKSANDAR SKENDZIC, ET AL.

NENAD A. SKENDZIC
ALEKSANDAR SKENDZIC

DAVID C. WINTON

HEARING ON DEMURRER

TENTATIVE RULING:

The Demurrer of Defendants Qiang “John” Zeng, individually and as Trustee of the Zx2015 Trust Dated May 8, 2015, Yanqing “Kathy” Xiao, individually and as Trustee of the Zx2015 Trust Dated May 8, 2015, and Connie Xiao Zeng (collectively, “Defendants”) to Plaintiff Nenad Skendzic 8-2-17 First Amended Complaint (FAC) is OVERRULED, as set forth below.

To avoid further delay, the Court finds that the meet and confer requirement set forth in Code Civ. Proc. Sect. 430.41 is satisfied. The hearing on this Demurrer was previously continued because defense counsel’s (Ms. Chang’s) prior declaration did not indicate any attempt to actually speak with Plaintiff’s counsel regarding the issues raised in the Demurrer (as opposed to merely exchanging correspondence), which is required by Sect. 430.41. Defense counsel, Ms. Chang, then filed a 4-2-18 supplemental declaration stating that in addition to exchanging correspondence, she *spoke* with Plaintiff’s counsel, Mr. Winton, on the phone in early October 2017, *over seven months ago*. Mr. Winton disputes the conversation ever took place (see 5-9-18 Winton Decl., ¶ 4), and also argues Ms. Chang’s 4-2-18 declaration does not mention any phone call, which it clearly does. (5-9-18 Winton Decl., ¶ 3). In March 2018, Plaintiff dismissed several of the disputed causes of action. Assuming the October 2017 conversation took place, it occurred many months ago and was rendered largely moot by Plaintiff’s later dismissal of several claims. Particularly given this Court’s prior order continuing the hearing on this Demurrer for lack of compliance with Sect. 430.41, defense counsel should have picked up the phone and initiated another conversation, rather than rely on a call that may have taken place seven months ago. Counsel’s obvious reluctance to participate in phone calls is bewildering. On the other hand, Mr. Winton’s correspondence strongly suggests a phone call would not have been fruitful. (See Mr. Winton’s 3-7-18 email). Accordingly, the Court, in its discretion, will address the Demurrer on the merits.

As to the Second, Sixth, Seventh, and Eighth Causes of Action, the Demurrer is OFF CALENDAR AS MOOT. As to the demurring Defendants, Plaintiff has dismissed each of these claims. (See Request for Dismissal filed 3-19-18).

The Demurrer to the FAC’s First Cause of Action for quiet title is OVERRULED. The FAC alleges that “Plaintiff obtained title to the Subject Real Property from Aleksandr in 2009” (FAC, ¶ 17, citing the March 2009 Grant Deed), and alleges “At all times since the

execution and recordation of the March 2009 Deed, [Plaintiff] has been the sole owner and title holder of the Subject Real Property.” (FAC, ¶ 18). These allegations provide sufficient notice/clarity that Plaintiff seeks to quiet title to the Property in his name since the date of the March 2009 Grant Deed.

The Demurrer to the FAC’s Fifth Cause of Action for trespass is OVERRULED. The FAC sufficiently alleges the elements for trespass. See CACI 2000. A plaintiff alleging trespass is not required to prove actual damages; nominal damages may be awarded. (See annotations to CACI 2000). Further, a party may commit a technical trespass even where acting in good faith. Thus, while the trespass claim may not add anything of value to the Complaint, its elements are sufficiently alleged.

The parties’ respective requests for judicial notice of recorded documents are GRANTED. Evid. Code Sect. 452(c). Judicial notice is taken of their recording dates and contents, but not the truth of allegations therein.

As an aside, the Court finds Plaintiff’s counsel Mr. Winton’s written communications with defense counsel, Ms. Chang, to be unnecessarily combative and rude, and reminds him of his obligation as a member of the State Bar to exhibit decorum when dealing with fellow members of the Bar.

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.

9:00

LINE: 8

17-CIV-03245 NENAD A. SKENDZIC VS. ALEKSANDAR SKENDZIC, ET AL.

NENAD A. SKENDZIC
ALEKSANDAR SKENDZIC

DAVID C. WINTON

MOTION TO COMPEL DEPOSITIONS

TENTATIVE RULING:

The motion of Defendants Qiang “John” Zeng, individually and as Trustee of the Zx2015 Trust Dated May 8, 2015, Yanqing “Kathy” Xiao, individually and as Trustee of the Zx2015 Trust Dated May 8, 2015, and Connie Xiao Zeng (collectively, “Defendants”) to compel Plaintiff Nenad Skendzic to travel to California to attend a deposition is DENIED. Code Civ. Proc. Sect. 2025.250(a); *Toyota Motor Corp. v. Sup. Ct.* (2011) 197 Cal.App.4th 1107, 1110 (disagreeing with *Glass v. Sup. Ct.* (1988) 204 Cal.App.3d 1048, and holding that a court may not order a nonresident of California to be deposed here).

Defendants’ related request for additional time to depose Plaintiff (in addition to the seven hours normally permitted by code) is GRANTED-IN-PART. The Court will permit Defendants to depose Plaintiff for a total of 10 hours of on-the-record time. If Defendants choose to conduct the deposition by video-conference or by means other than an in-person deposition in Serbia, Plaintiff and his counsel shall cooperate in good faith to schedule and facilitate the deposition. Additionally, in opposing this motion, Plaintiff notes he intends to appear in person at trial, and that Defendants can depose him at that time (just prior to trial). If Defendants choose, they may split the allotted 10 hours of deposition time into two sessions—a first session consisting of a video or telephonic deposition (or some other means, if they choose) during the normal course of discovery, and a second session, in-person, when Plaintiff comes to California for trial. With respect to Plaintiff’s deposition, the normal discovery cut-off 30 days prior to trial (see Code Civ. Proc. 2024.020) shall not apply, given Plaintiff’s contention that Defendants can depose him in-person near the time of trial.

The requests for sanctions are 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.

9:00

LINE: 9

17-CLJ-04827 CAPITAL ONE BANK (USA), N.A. VS. DORA E. MENDEZ

CAPITAL ONE BANK (USA), N.A.
DORA E. MENDEZ

JAIME RITTON
PRO/PER

MOTION FOR JUDGMENT

TENTATIVE RULING:

The motion for judgment on the pleadings is denied. Plaintiff has not established that the answer fails to state a defense. Defendant generally denied each of the allegations in the complaint. While she may have been deemed to have admitted facts in plaintiff's requests for admission, these facts do not negate her denial that an account was stated.

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.

9:00

LINE: 10

CIV528707 FLETCHER HYLER, ET AL. VS. JAMES IRIZARRY

FLETCHER HYLER
JAMES IRIZARRY

JOHN HUSTER

MOTION FOR ORDER

TENTATIVE RULING:

This motion is dropped from calendar at the request of the moving party.

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.

9:00

LINE: 11

CIV538106 LOUIS A LIBERTY, ET AL. VS. WILLIAM R. SUTTON, ET AL.

KATHY DALY
WILLIAM ROBERT SUTTON

LOUIS A. LIBERTY

MOTION FOR ENTRY OF JUDGMENT

TENTATIVE RULING:

The unopposed motion for entry of judgment is granted pursuant to CCP §438(h)(4)(C). Defendants have established that their motion for judgment on the pleadings was granted as to all causes of action against them with leave to amend and that an amended complaint was not filed within the time specified in CCP §438(h)(2).

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.

9:00

LINE: 12

CLJ501062 CHRYSLER FINANCIAL SERVICES AMERICAS LLC VS. DAMIAN
MENDOZA, ET AL.

CHRYSLER FINANCIAL SERVICES AMERICAS LLC
CELESTINE AGUILAR

TODD A. MACDOWELL

MOTION FOR ORDER

TENTATIVE RULING:

Plaintiff CHRYSLER FINANCIAL SERVICES AMERICAS, LLC's unopposed Motion to Amend Judgment is GRANTED pursuant to Code Civ. Proc. §§ 187 and 116.630. The default Judgment entered on May 3, 2011 in this action is hereby amended to include Defendant CELESTINE AGUILAR's alternate names: Celeste Aguilar; Celestina Aguilar; and Celestina Mendoza.

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.

9:00

LINE: 13

CLJ525643 PAUL G. MINOLETTI VS. MONTGOMERY SANSOME LP, ET AL.

PAUL G MINOLETTI
LEONARD NORDEMAN

PAUL G. MINOLETTI
TRACY N. TUMLIN

MOTION TO BE RELIEVED AS COUNSEL

TENTATIVE RULING:

The motion is denied for failure to provide proof that the motion was served on all parties who have appeared in the action in compliance with CRC 3.1362(d).

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.

POSTED: 3:00 PM