

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

Monday, August 13, 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

LINES: 1 - 20

16-CIV-02377 CONSUMER ADVOCACY GROUP, INC. VS. ROSS STORES, INC., ET AL.

CONSUMER ADVOCACY GROUP, INC.
ROSS STORES, INC.

REUBEN YEROUSHALMI
THOMAS N. FITZGIBBON

1. MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET NUMBER ONE FROM BURLINGTON COAT FACTORY OF TEXAS, INC., AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

2. MOTION FOR AN ORDER COMPELLING FURTHER RESPONSES TO PLAINTIFF CONSUMER ADVOCACY GROUP, INC.'S REQUESTS FOR ADMISSION, SET ONE, FROM DEFENDANT BURLINGTON COAT FACTORY OF TEXAS, INC. AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

3. MOTION FOR AN ORDER COMPELLING FURTHER RESPONSES TO FORM INTERROGATORIES, SET NUMBER ONE, FROM ROSS STORES, INC., AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,535.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

4. MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET NUMBER ONE, FROM ROSS STORES, INC. AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

Plaintiff CONSUMER ADVOCACY GROUP, INC.'s Motion to Compel Further Responses to Special Interrogatories (Set One), propounded on Defendant ROSS STORES, INC., is GRANTED as to Interrogatory Nos. 17-22, 31, 34, and 36, and DENIED as to Interrogatory No. 32.

The scope of discovery is broad, and includes "any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." Code Civ. Proc. § 2017.010.

Here, Defendant ROSS seeks to unilaterally limit many of Plaintiff's discovery requests to the Avia 65cm fitness ball that was listed as an *exemplar* in Plaintiff's 60-day Notice of Violation. However, a review of this document indicates that Plaintiff gave notice of the presence of DEHP in the product category of "Exercise Equipment, specifically Fitness Balls" sold in ROSS stores. (Decl. Shannon Royster, Exhibit A at p. 2.)

Proposition 65 does not limit Plaintiff to a specific product identified by UPC code, but rather the 60-Day Notice need only describe the "type of product". 27 CCR § 25903(b)(2)(D). Discovery regarding the sale and distribution of fitness balls by ROSS, including but not limited to those manufactured by Defendant LIFEWORCS TECHNOLOGY GROUP, LLC, is therefore within the scope of discovery for this action.

Interrogatory 17: This interrogatory seeks the name and contact information of all "entities" who purchased fitness balls from ROSS during a specified period. ROSS objects on the ground that this constitutes personal, private information of third-party consumers. With respect to privacy, the California Constitution "protects the individual's reasonable expectation of privacy against a serious invasion." *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 370. Any purported privacy interests are not absolute, and must be balanced against the relevance of the information sought and whether the defendant would be prejudiced if not permitted to discover this evidence. *Vinson v. Superior Court* (1987) 43 Cal.3d 833, 842-43.

Here, providing the names and contact information of customers who purchased potentially dangerous fitness balls from ROSS is not a serious invasion into a reasonable expectation of privacy. Plaintiff states that it seeks this information in order to inquire as to the types of warnings the consumers may or may not have received, and what kind of contact consumers made with the products.

Interrogatories 18-22: These interrogatories seek the results of ROSS's investigation into the products at issue: Where was the DEHP found on the product? How much DEHP was contained in each component? What kind of tests did ROSS perform? What were the results of those tests? Who is the person most knowledgeable about the amount of DEHP present in each product?

ROSS responded to all of these interrogatories with the uniform statement that investigation was ongoing and not yet complete. ROSS takes the position that its responses, served in May 2017, were accurate statements of where its investigation was at that time, and that ROSS need not update these responses with any results that have been made since that time. ROSS contends that Plaintiff must now serve supplemental interrogatories to get any updated information.

This argument is disingenuous and is rejected. Part of the reason why we are here, over a year later, with these discovery disputes still unresolved is because ROSS has failed to comply with its obligations and the parties have been at a stalemate. ROSS is, therefore, compelled to provide full and complete, *current* responses to these interrogatories.

Interrogatories 31 and 34: These interrogatories seek the identification of persons most knowledgeable about ROSS's products and about DEHP screening. ROSS states that it does not object to these interrogatories and will provide a response.

Interrogatory 32: Plaintiff seeks the batch numbers of Fitness Balls sold in ROSS stores. ROSS argues that this information is outside of its control. As a national off-price retailer, it did not manufacture or distribute the products at issue. ROSS did not put Fitness Balls into batches, and so has no information about product batches but only style and/or SKU numbers, which have already been provided to Plaintiff. The motion as to this interrogatory, as ROSS has provided as full and complete a response as possible given that the Fitness Balls were not in "batches" as defined, is denied.

Interrogatory 36: This interrogatory seeks ROSS's consumer product safety measures as related to whether any "PRODUCTS" (defined as "Fitness Balls") complied with California and federal toxic chemical control laws. ROSS's opposition to this interrogatory was on the ground that Plaintiff was seeking consumer product safety measures as

to *all* of the products sold in its stores, which clearly is not the case. The term "PRODUCTS" is limited to the item at issue in this action, e.g. Fitness Balls. The motion is, therefore, granted as to this interrogatory.

ROSS is ordered to provide full and complete, verified responses to Special Interrogatory Nos. 17-22, 31, 34, and 36 no later than August 24, 2018. Plaintiff's request for monetary sanctions is GRANTED in the amount of \$2,760.00, which must be paid no later than August 24, 2018.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

5. MOTION FOR AN ORDER COMPELLING FURTHER RESPONSES TO PLAINTIFF CONSUMER ADVOCACY GROUP, INC.'S REQUESTS FOR ADMISSION, SET ONE, FROM DEFENDANT ROSS STORES, INC. AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

6. MOTION TO COMPEL COMPLIANCE AND TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET NUMBER ONE FROM ROSS STORES, INC., AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

Plaintiff CONSUMER ADVOCACY GROUP, INC.'s Motion to Compel Further Responses to Request for Production of Documents (Set One), propounded on Defendant ROSS STORES, INC., is GRANTED as to Request Nos. 1-33.

The Discovery Act requires a responding party to respond to each request for production of documents with (1) a statement that the party will comply; (2) a statement that the party lacks the ability to comply; or (3) an objection. Code Civ. Proc. § 2031.210.

- Where a statement of *compliance* is made, the party must state whether it will comply with a demand in whole or in part, and that all documents or things in the demanded category that are in the possession, custody or control of the party will be produced. Code Civ. Proc. §§ 2031.220.
- Where a responding party is *unable to comply* with a particular demand, it must state that a diligent search and reasonable inquiry was made in an effort to comply, and state whether the inability to comply is because the particular item never existed, has been destroyed, lost, misplaced, stolen, or has never been in the possession, custody or control of the responding party. If the documents are in the possession, custody or control of others, the responding party must state their names and addresses. Code Civ. Proc. § 2031.230.
- If an *objection* is made to a demand, the responding party must identify the documents to which the objection is being made, and set forth clearly the specific ground for the objection. Code Civ. Proc. § 2031.240. Where the objection is based on a claim of privilege or a claim that the information sought is protected work product, the response must provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log. Code Civ. Proc. § 2031.240(c).

ROSS's attempt to limit Plaintiff's document demands to the specific Avia 65cm fitness ball identified as an exemplar in its 60-Day Notice of Violation is improper. Proposition 65 does not limit Plaintiff to a specific product identified by UPC code, but rather the 60-Day Notice need only describe the "type of product". 27 CCR § 25903(b)(2)(D).

RFP 1-15 seeks basic discovery regarding how many of the "PRODUCT" (e.g. Fitness Balls) ROSS purchased from July 7, 2013 to the present, how many were sold, who the manufacturers / distributors / retailers were, and what ROSS's gross revenue from the sales of these products is. ROSS's responses seek to limit the requests to only those documents pertaining to specific Avia 65cm fitness ball identified by UPC code in the Notice of Violation. As discussed above, such limitation is improper. Plaintiff has put ROSS on notice that the offending products are Fitness Balls, regardless of the specific make or model. Therefore, the courts GRANTS the motion as to these requests.

RFP 16-22 asks whether ROSS knew of the presence of DEHP in its Fitness Balls, whether it conducted any testing, and whether any warnings were given to consumers. ROSS's responses state that it is "not aware of any non-privileged documents in its possession, custody

or control". Such a response fails to comply with the Discovery Act, which requires the responding party to state that "a diligent search and reasonable inquiry was made in an effort to comply, and state whether the inability to comply is because the particular item never existed, has been destroyed, lost, misplaced, stolen, or has never been in the possession, custody or control of the responding party." Code Civ. Proc. § 2031.230. Simply stating that ROSS is "unaware" is insufficient and the motion as to these requests is GRANTED.

RFP 23-26 seeks information regarding ROSS's efforts to comply with State and federal toxic chemical laws. ROSS's responses either limit production to just those documents involving the Avia 65cm fitness ball, or state that that it is "not required and will not produce responsive materials". A further response is compelled.

RFP 27-30 seek documents relied upon by ROSS in responding to the other sets of discovery propounded on it by Plaintiff. Again, ROSS attempts to limit these requests to the specific Avia fitness ball, which is inappropriate. A further response is compelled.

RFP 31-33 seek documents related to ROSS's procedures for responding to a Proposition 65 notice, its procedures for issuing product recalls, and correspondence between ROSS any entity that functions to provide guidance on compliance with California law governing consumer products. ROSS responds that it is not required to produce any documents in response. This discovery appears to be within the scope allowable for Plaintiff's action and thus further responses are compelled.

ROSS is ordered to provide full and complete, verified responses to Request for Production Nos. 1-33 that comply with the requirements set forth above, no later than August 24, 2018. To the extent that ROSS's initial responses to Request Nos. 1, 2, 4-8, 10-14, 24, 27-29, and 32 indicated that it would produce documents, and ROSS failed to do so, ROSS is ordered to comply no later than August 24, 2018. To the extent that any documents are withheld on attorney-client privilege or attorney work product grounds, ROSS is ordered to provide a privilege log no later than August 24, 2018.

Plaintiff's request for monetary sanctions is GRANTED in the amount of \$2,760.00, which must be paid no later than August 24, 2018.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is contested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

7. MOTION FOR AN ORDER COMPELLING FURTHER RESPONSES TO FORM INTERROGATORIES, SET ONE, FROM BURLINGTON COAT FACTORY OF TEXAS, INC., AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,535.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

8. MOTION TO COMPEL COMPLIANCE AND TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET NUMBER ONE FROM BURLINGTON COAT FACTORY OF TEXAS, INC., AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

9. MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET NUMBER ONE FROM T.J. MAXX OF CA, LLC, AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

10. MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET NUMBER ONE FROM THE TJX COMPANIES, INC. AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

11. MOTION FOR AN ORDER COMPELLING FURTHER RESPONSES TO PLAINTIFF CONSUMER ADVOCACY GROUP, INC.'S REQUESTS FOR ADMISSION, SET ONE, FROM DEFENDANT T.J. MAXX OF CA, LLC AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

12. MOTION FOR AN ORDER COMPELLING FURTHER RESPONSES TO PLAINTIFF CONSUMER ADVOCACY GROUP, INC.'S REQUESTS FOR ADMISSION, SET ONE, FROM DEFENDANT TJX COMPANIES, INC. AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

13. MOTION FOR AN ORDER COMPELLING FURTHER RESPONSES TO FORM INTERROGATORIES, SET NUMBER ONE FROM T.J. MAXX OF CA, LLC, AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,535.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

14. MOTION FOR AN ORDER COMPELLING FURTHER RESPONSES TO FORM INTERROGATORIES, SET NUMBER ONE FROM THE TJX COMPANIES, INC., AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,535.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

15. MOTION TO COMPEL COMPLIANCE AND TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET NUMBER ONE FROM T.J. MAXX OF CA, LLC, AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

16. MOTION TO COMPEL COMPLIANCE AND TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET NUMBER ONE, FROM THE TJX COMPANIES, INC., AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

17. MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET NUMBER ONE FROM BURLINGTON COAT FACTORY DIRECT CORPORATION AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

18. MOTION FOR AN ORDER COMPELLING FURTHER RESPONSES TO PLAINTIFF CONSUMER ADVOCACY GROUP, INC.'S REQUESTS FOR ADMISSION, SET ONE, FROM DEFENDANT BURLINGTON COAT FACTORY DIRECT CORPORATION AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars

for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

19. MOTION FOR AN ORDER COMPELLING FURTHER RESPONSES TO FORM INTERROGATORIES, SET ONE, FROM BURLINGTON COAT FACTORY DIRECT CORPORATION, AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,535.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

20. MOTION TO COMPEL COMPLIANCE AND TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET NUMBER ONE FROM BURLINGTON COAT FACTORY DIRECT CORPORATION, AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$2,760.00 BY CONSUMER ADVOCACY GROUP, INC.

TENTATIVE RULING:

This matter is dropped from calendar without prejudice to bringing it back before the court. The parties have agreed that the court's rulings on lines 4 and 6 of today's calendar shall act as exemplars for this matter and the parties will use the exemplar rulings in resolving this matter between themselves.

9:00

LINE: 21

16-UDL-00076 CAPITAL ONE, N.A. VS. OSCAR BRAUN, ET AL.

CAPITAL ONE, N.A.
OSCAR BRAUN

ADAM N. BARASCH
JULIA M. WEI

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON JEANETTE BRAUN'S CLAIM TO POSSESSION

TENTATIVE RULING:

The hearing on Plaintiff Capital One, N.A.'s Motion for Summary Judgment on Defendant Jeanette Braun's Claim of Possession is continued to Sept. 12, 2018 at 9 a.m. in the Law & Motion Department. The Court has not had sufficient time to review Plaintiff's Reply papers which were just filed on August 9, 2018.

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: 22

17-CIV-02147 TREMIN CORPORATION VS. WARM CORPORATION WEST, ET AL.

TREMIN CORPORATION
WARM CORPORATION WEST
SUNTEK INDUSTRIES, INC.

WILLIAM C. LAST
EDWIN S. NAKAGAWA
BRYAN AGHAKHANI

DEFENDANT SUNTEK INDUSTRIES, INC.'S DEMURRER TO WARM CORPORATION'S
CROSS COMPLAINT

TENTATIVE RULING:

The Demurrer of Cross-Defendant Suntek Industries, Inc. ("Suntek") to the Cross-Complaint of Warm Corporation West ("Warm Corporation") is **OVERRULED**. Suntek is to file and serve an Answer to the Cross-Complaint by September 4, 2018.

Suntek demurs to all four causes of action in the Cross-Complaint on the ground that they are barred by the statute of limitations under Code of Civil Procedure section 337.15. However, it is not clear from the face of the Cross-Complaint or from matters that the court may take judicial notice that these claims are time barred. Specifically, there are no facts as to when substantial completion of the improvement occurred.

Suntek's request for judicial notice is **GRANTED** as to the Cross-Complaint, but **DENIED** as to the permit documents. Suntek is asking the court to judicially notice these documents to determine when the work was substantially completed. As Warm Corp. points out, there is no certification from the administrative or state agency that the permit is a true and correct copy of a document from its official files regarding the project. These documents also do not contain facts that are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. In fact, they do not even state a date of completion. Instead, it appears the permit was issued on June 27, 2006.

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: 23

17-CIV-04991 HARTFORD FIRE INSURANCE COMPANY VS. ELIZABETH GLASCOCK
HORTON, ET AL.

HARTFORD FIRE INSURANCE COMPANY
ELIZABETH GLASCOCK HORTON

TODD F. HAINES
JOSEPH R. ZOUCHA

CROSS-DEFENDANT SUSAN KIDWELL INDIVIDUALLY, AND DBA HENSLEY PARTY
RENTALS DBA HENSLEY EVENT RESOURCES' NOTICE OF MOTION AND MOTION TO
STRIKE PORTIONS OF DEFENDANT AND CROSS-COMPLAINANT'S FIRST AMENDED
CROSS-COMPLAINT

TENTATIVE RULING:

**This matter is dropped from calendar as moot. The court has been
advised that the entire matter has been settled.**

9:00

LINE: 24

17-CIV-04991 HARTFORD FIRE INSURANCE COMPANY VS. ELIZABETH GLASCOCK
HORTON, ET AL.

HARTFORD FIRE INSURANCE COMPANY
ELIZABETH GLASCOCK HORTON

TODD F. HAINES
JOSEPH R. ZOUCHA

CROSS-DEFENDANT SUSAN KIDWELL, INDIVIDUALLY AND DBA HENSLEY
PARTY RENTALS DBA HENSLEY EVENT RESOURCES' NOTICE OF DEMURRER TO
DEFENDANT AND CROSSCOMPLAINANT'S FIRST AMENDED CROSS-COMPLAINT;
DEMURRER TO FIRST AMENDED CROSSCOMPLAINT

TENTATIVE RULING:

**This matter is dropped from calendar as moot. The court has been
advised that the entire matter has been settled.**

9:00

LINE: 25

18-CLJ-00923 PORTFOLIO RECOVERY ASSOCIATES, LLC VS. GENA HUNTER

PORTFOLIO RECOVERY ASSOCIATES, LLC
GENA HUNTER

RACHEL NAPIER
PRO/PER

PORTFOLIO RECOVERY ASSOCIATES, LLC'S MOTION FOR ORDER THAT MATTERS IN
REQUEST FOR ADMISSION OF TRUTH OF FACTS BE ADMITTED

TENTATIVE RULING:

The unopposed motion is granted. The genuineness of any documents and the truth of any matters in the requests for admission are deemed admitted.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

9:00

LINE: 26

CIV534431 KERRIGAN CAPITAL, ET AL. VS. DAVID STROHM, ET AL.

KERRIGAN CAPITAL LLC
GREYLOCK XII LP

MARK C. MOLUMPHY
CAROLINE MCINTYRE

MOTION TO FILE UNDER SEAL CERTAIN PORTIONS OF THE RECORD FILED IN
SUPPORT OF DEFENDANT'S MOTION TO MODIFY CLASS BY JAMES GUTIERREZ

TENTATIVE RULING:

**This matter is ordered off calendar. This case has been assigned to
Judge Buchwald for all purposes. The parties are to contact his
department to obtain a hearing date for this motion.**

9:00

LINE: 27

17UDL00864 BRECKENRIDGE PROPERTY FUND 2016 VS. MUNOZ

BRECKENRIDGE PROPERTY
ARNULGO MUNOX
DAVID PARRA MORALES (CLAIMANTS)

RENE ALEJANDRO ORTEGA

MOTION TO QUASH

TENTATIVE RULING:

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

POSTED: 3:00 PM