

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Monday, November 16, 2020

TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. 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 WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.

05-CVC-03846 KINNE, JOHN VS.

DEFENDANT'S MOTION TO VACATE OR SET ASIDE JUDGMENT

TENTATIVE RULING:

On the court's own motion, Defendant's Motion to Vacate Renewal of Judgment is continued to December 7, 2020 at 8:30 a.m. in Department 1.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

18-CVC-10852 JIMI ROMERO ON BEHALF OF HERSELF VS. GIANNINI, LISA
AND ALL OTHER SIM

CIVIL MISCELLANEOUS REVIEW HEARING

TENTATIVE RULING:

The court is in receipt of the Notice of Compliance filed October 14, 2020.

The Compliance Hearing is reset to June 14, 2021 at 8:30 a.m. in Department 1.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

19-CVC-11425 SCHNEIDER, CHRISTOPHER VS. BANK OF AMERICA NA

MOTION TO STRIKE

TENTATIVE RULING:

Request for Judicial Notice

Defendant requests the court take judicial notice of two documents:

1. Deed of Trust, recorded in Official Records of the Amador County Recorder's Office.
2. Short Form Deed of Trust.

Defendant's request for judicial notice is GRANTED.

Motion to Strike

CCP §436 permits a court to strike from a complaint any matter it deems irrelevant, false or improper. (CCP §436(a))

Defendant's Motion to Strike is GRANTED:

The following sections of Plaintiff's Complaint are stricken:

- 1) Any reference to "acting under the color of law". (Compl. ¶ 4)
- 2) Any reference to a "declaration" and an "RJN". (Compl. ¶¶ 10, 14, 17, 24 and p. 1 footnote (2); ¶ 25)
- 3) Claim for unjust enrichment. (Compl. ¶¶ 22-26)
- 4) Improper prayer(s) for relief. (Compl. Prayer ¶¶ 4, 7)

Demurrer

Demurrers are authorized by CCP § 430.10, which provides a party may demur to a complaint on several grounds, including failure to state facts sufficient to constitute a cause of action. (CCP §430.10(e)) The demurrer may be based on matters appearing on the face of the complaint or from which the court may take judicial notice. (CCP §430.30(a)) The court accepts as true all material facts properly pleaded but does not consider conclusions of law or facts, opinions, speculation, or allegations contrary to law or facts which are judicially noticed. (Blank v. Kirwan (1985) 39 Cal. 3d 311, 318.)

Defendant's Demurrer to all five (5) causes of action in Plaintiff's Complaint is SUSTAINED.

A trial court may sustain a demurrer without leave to amend if there is no reasonable possibility the complaint can be cured by amendment. (Leyva v. Nielsen (2000) 83 Cal.App.4th 1061, 1063) The burden is on the plaintiff to show in what manner he can amend his complaint and how that amendment would change the legal effect of his pleading. (Goodman v. Kennedy (1976) 18 Cal.3d 335)

Plaintiff has not filed an opposition to Defendant's Demurrer and has not met his burden.

Judgment of dismissal shall enter forthwith. Defendant is directed to prepare an order that complies with the court's ruling.

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19-CVC-11425

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BANK OF AMERICA NA

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Defendant's Demurrer to all five (5) causes of action in Plaintiff's Complaint is SUSTAINED.

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