

Monday, November 23, 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.

18-CVC-10701 BAILEY, JANICE VS. SUTTER CREEK BUSINESS AND PROFESSIONAL ASSOCIATION

MOTION TO AMEND COMPLAINT

TENTATIVE RULING:

The court granted Plaintiff's Motion for Leave to Amend the Complaint and file a Second Amended Complaint on October 26, 2020.

Therefore, this matter is dropped from calendar.

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.

20-CVC-11632 VILLELLA, MICHAEL VS. FOGAL, HEATHER

DEMURRER - DEFENDANT'S

TENTATIVE RULING:

Meet and Confer

Defendant's Memorandum in Support of Demurrer indicates that Defendant met with Plaintiff and counsel on December 5, 2019, prior to the Complaint being filed, and attempted to call counsel on August 19, 2020 but was not permitted to leave a message. (Memorandum p. 4 lines 4-11)

However, Defendant's efforts to meet and confer are insufficient under CCP § 430.41(a) requiring "the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer". Further, the Memorandum is unsigned by Defendant and was improperly served under CCP § 1013.

DEMURRER

The function of a demurrer is to test the legal sufficiency of a pleading. (Rakestraw v. Cal. Physicians' Service (2000) 81 Cal.App.4th 39, 42) In reviewing the sufficiency of a complaint against a general demurrer, the court treats the demurrer as admitting all material facts properly pleaded, as well as matters which may be judicially noticed. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.) However, contentions, deductions or conclusions of fact or law are insufficient to constitute a cause of action. (Id.)

Defendant appears to be demurring to the first cause of action for Partition under CCP § 430.10(e), failure to state a cause of action. However, Defendant does not set forth a basis under 430.10(e), but instead objects to the facts alleged as being untrue. Defendant's demurrer to the first cause of action is OVERRULED.

Defendant is ordered to file an Answer within ten (10) days of the date of this ruling.

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.

20-CVC-11775 YOCHHEIM, TASH VS. DEPARTMENT OF MOTOR VEHICLES OF THE STATE OF CALIF

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:

On the court's own motion, Petitioner's Writ of Mandamus is continued to December 28, 2020 at 8:30 a.m. in Department 1.
The court will issue a tentative ruling.

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.