

Tentative Rulings

Law & Motion and Family Law Calendar for September 27, 2021

Department Two – Judge Douglas Prouty

To request a hearing on any matter on this calendar, you must call the Court at 530/283-6305 by 12:00 noon, September 24, 2021, and 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 becomes the order of the court.

If you do appear and want the matter reported by a court reporter in unlimited civil, family law or probate, you must contract with and provide your own court reporter. The Court does not provide an official reporter for these calendars.

PLEASE NOTE –ANY REQUIRED APPEARANCE BY COUNSEL MUST BE DONE BY USING COURT CALL (1-800-882-6878) – UNLESS OTHERWISE STATED IN THESE TENTATIVE RULINGS. ANY REQUIRED APPEARANCE BY A PARTY APPEARING WITHOUT AN ATTORNEY MUST BE DONE BY CALLING THE COURT'S CONFERENCE LINE AT 1-877-336-1829 AND ENTER THE ACCESS CODE 4023142. THE PARTY MUST THEN WAIT ON THE LINE AND MUTE THEIR PHONE UNTIL THE COURT CALLS THEIR CASE.

PROBATE CALENDAR – 9:00 a.m.

Case No. PR21-00032 Conservatorship of Hall, Jacob

Tentative Ruling: **No appearance required.** The Court has appointed Kathleen Wickman as the investigator. The case is continued to October 25, 2021, at 9:00 a.m. for receipt of the report.

Case No. PR20-00034 Conservatorship of Hall, Joshua

Tentative Ruling: **No appearance required** The Court has appointed Kathleen Wickman as the investigator. The case is continued to October 25, 2021, at 9:00 a.m. for receipt of the report. The Court finds it is in the best interests of the Conservatee to continue the Temporary Conservatorship of the Person to that date.

Case No. PR21-00024 Conservatorship of Humprey Carol

Tentative Ruling: **Appearance required.** The Court will discuss possible reimbursement for the cost of Investigator's Report.

Case No. P21-00043 Conservatorship of Lovins, Jesse

Tentative Ruling: **No appearance required.** The Court has appointed Kathleen Wickman as the investigator. The case is continued to November 22, 2021, at 9:00 a.m. for receipt of the report. The Court finds it is in the best interests of the Conservatee to continue the Temporary Conservatorship of the Person to that date.

Case No. PR21-00037 Estate of Beaver, Noel

Tentative Ruling: **No appearance required.** Notice has been given as required by law and no opposition to the Petition has been filed. The Court will grant the Order for Probate. Petitioner needs to submit the proposed Order for Probate for signature of the Court.

Case No. PR21-00039 Estate of Connolly, Adam

Tentative Ruling: **No appearance required.** Notice has been given as required by law and no opposition to the Petition has been filed. The Court will grant the Order for Probate. The Court will sign the proposed Order for Probate and the Letters will be issued.

Case No. PR20-00061 Estate of Fehrman, Kathleen

Tentative Ruling: **No appearance required.** The Court has reviewed the Waivers of Account, Report and Petition for Distribution and notice has been given as required by law. No opposition to the Petition has been filed and the Court grants the Petition for Distribution and will sign the proposed Order.

Case No. PR20-00044 Estate of Homen, Gerald

Tentative Ruling: **Appearance required.** It does not appear that posting of the Notice of Hearing of the Petition has been completed as required by this Court's Administrative Order filed on May 19, 2020 and a declaration has not been filed for that posting. This matter will be continued to November 8, 2021, at 9:00 a.m. to allow for that posting. Counsel can appear telephonically by CourtCall for this hearing date.

Case No. PR20-00046 Estate of Karagan, Marian

Tentative Ruling: **No appearance required.** Notice has been given as required by law and no opposition to the Petition has been filed. The Court will grant the Order for Probate. The Court will sign the proposed Order for Probate and the Letters will be issued.

Case No. PR20-00011 Guardianship of Brown, Bret

Tentative Ruling: **Appearance required.** The Court will discuss with Petitioners Megan Joa and Natalie Petersen the Order to Show Cause for them to show why they should not be obligated to pay the fees of the Court investigator for the costs of the report.

Case No. PR07-6356 Guardianship of Merkley, Kyli

Tentative Ruling: **Appearance is required.** The Court has not received the Confidential Guardianship Status Report from the Guardian and orders the review hearing continued to October 25, 2021, at 9 a.m. The Court Clerk is to mail a copy of the minute order to the Guardian. The guardian is ordered to file the Status Report prior to the next hearing. The Guardian is to appear by telephone at that time and date by calling 1-877-336-1829 and enter the access code 4023142. The party must then wait on the line until the Court calls their case. The parties are to mute their phone until the case is called. All prior orders shall remain in full force and effect until the next hearing date.

Case No. PR21-00041 Conservatorship of Whitman, Patricia

Tentative Ruling: **No appearance required.** This case is set for hearing on the Petition for Conservatorship. The Court has appointed Kathleen Wickman as the investigator. The case is continued to November 22, 2021, at 9:00 a.m. for receipt of the report. The Court finds it is in the best interests of the Conservatee to continue the Temporary Conservatorship of the Person to that date. All prior orders will remain in full force and effect to that date. Counsel can appear telephonically by CourtCall for this hearing date.

CIVIL LAW AND MOTION CALENDAR – 9:30 a.m.

Case No. LC21-00070 Bank of America N.A. v Bowden, Robert

Tentative Ruling: **Appearance required.** Plaintiff has filed a motion for judgment on the pleadings pursuant to Code of Civil Procedure §438. No opposition to the Motion has been filed by the Defendant Robert Bowden. The Court has reviewed the Complaint, Answer, Motion and Declarations filed in support of the Motion.

The Court finds that the Complaint properly sets out all necessary allegations for common count causes of action against this Defendant. Further, the Defendant admits all the allegations of the Complaint including the allegation that he owes this debt. Defendant does not allege any valid affirmative defense to the Complaint.

Therefore, Plaintiff's Motion for Judgment on the Pleadings is granted and judgment for Plaintiff Bank of America in the sum of \$3,670.16 and court costs of \$352.00, for a total judgment in the \$4,022.13, is entered against Defendant Robert E. Bowden. The Court will sign the proposed Judgment.

The parties can appear telephonically by CourtCall.

Case No. LC21-00022 Discover Bank v Smith, Donata

Tentative Ruling: **No appearance required.** The Court has reviewed the Plaintiff's Motion for Order Admitting the Truth of the Request for Admissions, set. 1 and supporting Declarations and Memorandum of Points and Authorities. No opposition has been received from Defendant Donata Smith. Plaintiff has submitted the matter pursuant to Rule of Court 3.1304(C).

The Court finds that Defendant has failed to timely respond to the Request for Admissions and therefore pursuant to *Code of Civil Procedure 2033.280(b)*, each Request for Admission is admitted as fact and the Court will sign the proposed Order.

Case No. CV20-00061 **Durkee, Timothy v Durkee, Tobin**

Tentative Ruling: Plaintiff Timothy F. Durkee (hereinafter referred to as “Plaintiff”) has filed a Motion for Judgment Pursuant to Terms of Settlement. No opposition to the Motion has been filed by any Defendant.

The Court has reviewed Plaintiff’s Motion, Memorandum of Points and Authorities, and supporting Declarations. Based upon the evidence presented in those moving papers, pursuant to *Code of Civil Procedure §664.6*, this Court grants Plaintiff’s Motion and will sign the proposed Order submitted by Plaintiff.

The Court will also hear the Order to Show Cause why reasonable monetary sanctions should not be imposed for the failure of counsel to appear on September 13, 2021 for the Case Management Conference in this case.

Case No. LC21-00137 **Knope, John v Preckwinkle, Raymond**

Tentative Ruling: Defendants Raymond and Amanda Preckwinkle (hereinafter referred to “Preckwinkle”) have filed a Demurrer to the Plaintiff’s unlawful detainer Complaint on the basis that the 60 day Notice of Termination of Tenancy fails to comply with the requirements of Civil Code §1946.2 on two issues. First, there is no just cause under subparagraph (a) and secondly, there is no allegation of an amount or type of relocation assistance as required by §1946.2(d). In Plaintiffs’ opposition, they contend that based upon the attached Exhibits 1 and 2, the Plaintiffs are exempt from having to comply with §1946.2(d).

First, Unlawful detainer proceedings are summary in nature and statutory procedures must be strictly followed in those actions. *Underwood v. Corsino* (2005) 133 C.A.4th 132, 135. In ruling on a demurrer, a judge may not consider any evidence other than what has been alleged on the face of the Complaint or attached exhibits and what is subject to judicial notice. *Code of Civil Procedure §§ 430.30, 430.70*. In their Opposition to the Demurrer, Plaintiff has attached two documents which have not been alleged in the Complaint nor are they attached thereto, and Plaintiffs go on to say they create an exemption that this landlord does not need to comply with §1946.2(d) and otherwise have to state in the 60 day notice the amount or type of relocation assistance. Without those facts being alleged in this Complaint or in the 60 day Notice attached to this Complaint, the 60 day Notice would appear to not comply with §1946.2(d). It is clear that the only exhibit attached the Complaint on file is the 60 day Notice itself and no other documents. This Court cannot consider those two exhibits submitted with the Opposition since a demurrer to this Complaint goes only to the allegations on its face, exhibits attached to the unlawful detainer complaint, and/or by judicial notice.

Accordingly, the Demurrer to the Complaint should be denied with leave to amend. Counsel can appear telephonically by CourtCall if requested.

Case No. CV21-00032 **Labbe’, Lane v Raynal, David**

Tentative Ruling: Defendant David Raynal (hereinafter referred to as “Defendant”) has filed a Motion to Transfer Action and Change Venue. No opposition to the Motion has been filed by Plaintiff.

The Court has reviewed Defendant's Motion, Memorandum of Points and Authorities, and supporting Declarations. Based upon the evidence presented in those moving papers, pursuant to *Code of Civil Procedure* §§395(a) and 397(c), and based upon the convenience or witnesses and the proper venue of this action being the City and County of San Francisco, Plaintiff is ordered to transfer this action to San Francisco and to take all steps and pay all fees as are necessary for its transfer thereto. Plaintiff is to prepare the proposed order pursuant to Rules of Court.

Case No. CV19-00001 Wheeler, Frankie v Dewitt, George

Tentative Ruling: **Appearance required.** The Court will hear argument on the Defendant's Motion for Summary Judgment and also hear the Case Management Conference.

FAMILY LAW CALENDAR - 10:30 a.m.

Case No. FL13-00081 Brennan, Thomas v Comeau, Danielle

Tentative Ruling: **Appearance required.** The Court has reviewed the Judgment entered in this action on February 5, 2014, the Request for Order filed by Petitioner and the supporting documents attached thereto. The Respondent was personally served in Texas and no opposition has been filed to date. The Court will grant the Request for Order for an award of the Portola property to the Petitioner pursuant to the terms of the Judgment and the payment by Petitioner of the enumerated expenses on the property and other community debts per the Judgment. The execution of a deed by Elisor is ordered.

Case No. FL21-00100 Hoenig, Levi v Leathers, Jacob

Tentative Ruling: **Appearance required.** The Court will be discussing whether the parties are requesting a contested hearing regarding permanent orders for custody and visitation.

Case No. FL14-00193 Kelley, Shawna v Kelley, Aaron

Tentative Ruling: **No appearance required.** Respondent has requested the Request for Order be continued for service. The Court continues the hearing date to October 25, 2021, at 10:30 p.m. and has signed the Order submitted by Respondent. Respondent is to file a proof of personal service for all documents prior to the next hearing date.

Case No. FL09-00183 Schildman, Selena v Davidson, Brent

Tentative Ruling: **Appearance required.** It does not appear that Respondent's post-judgment Request for Order was personally served on the Petitioner as required by California law.

CASE MANAGEMENT CONFERENCE/OTHER CASES

1:30 p.m.

Case No. LC21-00057 Midland Credit Management Inc. v Kotrc, Heather

Tentative Ruling: **Appearance required.** Plaintiff has failed to timely file the Case Management Statement as required by Rule of Court 3.720. Plaintiff is to show cause why reasonable monetary sanctions should not be imposed. Counsel can appear telephonically by CourtCall if requested.

Case No. LC21-00055 UHG I LLC v Mendez, Santiago

Tentative Ruling: **Appearance required.** Plaintiff has failed to timely file a Case Management Statement as required by Rule of Court 3.720. Plaintiff is to show cause why reasonable monetary sanctions should not be imposed. Counsel can appear telephonically by CourtCall if requested.

CASE MANAGEMENT CONFERENCE/OTHER CASES

2:00 P.M.

Case No. CV20-00163 Bielik, K. Ruby v Hickman, Robert

Tentative Ruling: **Appearance required.** The Court will discuss the status of the case and possible mediation. Counsel can appear telephonically by CourtCall.

Case No. CV19-00138 Eckmeyer, Pamela v Girdner, James

Tentative Ruling: **Appearance required.** The Court will discuss the status of the case and possible mediation. Counsel can appear telephonically by CourtCall.

Case No. CV19-00116 Mercer, David v Portola Junior/Senior High School

Tentative Ruling: **Appearance required.** The Court will discuss the status of the case and possible mediation. Plaintiffs are to show cause why reasonable monetary sanctions should not be imposed for failure to file a case management statement. Counsel can appear telephonically by CourtCall.

Case No. CV19-00116 **Sierra Cascade Aggregate v Lamon Construction Co**

Tentative Ruling: **Appearance required.** The Court will discuss the status of the 10/27/21 mediation date. Counsel can appear telephonically by CourtCall.

Case No. CV20-00156 **Singletary, Lonna v DC Construction**

Tentative Ruling: **Appearance required.** The Court will discuss the status of the case and possible mediation. Counsel can appear telephonically by CourtCall.

Case No. CV16-00146 **Turenne, Ronald v Miller, Jeffrey**

Tentative Ruling: **Appearance required.** The Court will discuss new trial dates and any possible issues re: the effects of the Dixie Fire on the property. Counsel can appear telephonically by CourtCall.

Case No. CV19-00064 **USA Waste of California, Inc v County of Plumas**

Tentative Ruling: **Appearance required.** An Order to Show Cause was issued for the failure of both parties to appear for the Case Management Conference heard on August 9, 2021. Counsel can appear telephonically by CourtCall.

Case No. CV19-00001 **Wheeler, Frankie v Dewitt, George**

Tentative Ruling: **Appearance required.** The Court will hear the Case Management Conference on the 9:30 Law & Motion calendar for this date at the time of the Motion for Summary Judgment. The Court has not received any Case Management Statements from defendants and they are to show cause why reasonable sanctions should not be imposed for failure to file those Statements. Counsel can appear telephonically by CourtCall.

Case No. CV20-00107 **Wolfe, Eric v Simmons, William**

Tentative Ruling: **Appearance required.** The Court will discuss the status of the case and possible mediation. The Court has not received a Case Management Statements from the parties. The parties are to show cause why reasonable sanctions should not be imposed for failure to file those statements. Counsel can appear telephonically by CourtCall.