

Tentative Rulings

Law & Motion and Family Law Calendar for October 28, 2019

October 24, 2019, 4:00 p.m.

Department Two

To request a hearing on any matter on this calendar, you must call the Court at 530-283-6305 by 12:00 noon, October 25, 2019. 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 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.

Probate – 9:00 a.m.

Case No. PR11-00042 Conservatorship of Goings, Patsy Sue

Tentative Ruling: **Appearance required.** The Court has received and reviewed the Investigator's Report.

Case No. PR11-00031 Conservatorship of Griffith, Nicholas Roland

Tentative Ruling: **No appearance required.** The Court has not received the Investigative Report and orders the review hearing to be continued to November 25, 2019, at 9:00 a.m. for receipt of the Report. The Conservatorship shall remain in full force and effect to that next court date.

Case No. PR09-00044 Conservatorship of Sherod, Rachele Laura

Tentative Ruling: **Appearance required.** The Court finds notice has been given as required by law and the Court has received and reviewed the Investigator's Report.

Case No. PR18-00009 Conservatorship of Tavis, Fern Irene

Tentative Ruling: **No appearance required.** The Court has not received the Investigative Report and orders the review hearing to be continued to November 25, 2019, at 9:00 a.m. for receipt of the Report. The Conservatorship shall remain in full force and effect to that next court date.

Case No. PR05-6265 Conservatorship of Melvin James Taylor

Tentative Ruling: **No appearance required.** The Court finds that notice has been given as required by law. The Court has reviewed the Sixth Account and Report of the Conservator and grants the Petition for Attorney's fees for the Conservator. The Court will modify and sign the proposed Order to correctly refer to the Sixth Account.

Case No. PR4382 Conservatorship of Vinton John Pearce

Tentative Ruling: **Appearance required.** The Court finds notice has been given as required by law and the Court has received and reviewed the Investigator's Report.

Case No. PR19-00042 Estate of Norline, Monica

Tentative Ruling: **No appearance required.** The Court finds that notice has been given as required by law and no opposition has been filed. The Court grants the Petition Determining Succession to Real Property and will sign the proposed Order.

Case No. PR19-00049 Estate of McKnight, Sue Ann

Tentative Ruling: **No appearance required.** It does not appear that the Amended Notice of Petition has been published. This hearing on the Petition will be continued for proof of publication to November 25, 2019, at 9 a.m.

Case No. PR19-00031 Estate of Tebaldi, Harold Thomas Jr

Tentative Ruling: **Appearance required.** The Court will discuss the status of a copy of the Will which is in the file and publication of the Petition.

Case No. PR13-00024 Guardianship of Juden, Windy Rayanne

Tentative Ruling: **No appearance required.** The Court has not received the Guardianship Status Report and orders the review hearing continued to November 25, 2019, at 9:00 a.m. for receipt of the Report from the guardians. A copy of the minute order for this date shall be mailed to the guardians. The guardianship shall remain in full force and effect to that next court date.

Case No. PR08-6412 Guardianship of Kelley, Jayde J.

Tentative Ruling: **No appearance required.** The Court has not received the Guardianship Status Report and orders the review hearing continued to November 25, 2019, at 9:00 a.m. for receipt of the Report from the guardians. A copy of the minute order for this date shall be mailed to the guardians. The guardianship shall remain in full force and effect to that next court date.

Case No. PR14-00028 Guardianship of Tuell, Destiny and Tuell, Faith

Tentative Ruling: **No appearance required.** The Court has not received the Guardianship Status Report and orders the review hearing continued to November 25, 2019, at 9:00 a.m. for receipt of the Report from the guardians. Guardians are ordered to personally appear and a copy of the minute order for this date shall be mailed to the guardians. The guardianship shall remain in full force and effect to that next court date.

Case No. PR14-00027 Guardianship of Tuell, Honisty and Zimmerman, Tyler

Tentative Ruling: **Appearance required.** The Court will discuss the status of Tyler's father refusing to return Tyler to the Guardians.

Case No. PR00-05935 Conservatorship of Kevin W. Schager

Tentative Ruling: **Appearance required.** The Court has received and reviewed the Investigative Report for this Limited Conservatorship. Based upon that report the Court finds it is in the best interests of the conservatee to continue the conservatorship. The Conservator is reappointed and all prior orders are to remain in full force and effect. This matter is set for a 2 year review on October 25, 2021, at 9:00 a.m. The Court Clerk is reminded to notify the investigator that she will need to prepare a report for that hearing one month before that hearing date.

Case No. 10866 In the Matter of the Charitable Trust Created by Truman W. Collins on 12/26/1945

Tentative Ruling: **No appearance required.** Notice has been given as required by law and no opposition has been filed. The Court will grant the Petition and sign an order as requested.

Civil Law and Motion - 9:30 a.m.

Case No. LC19-00038 Cha-Dor Realty, Inc. vs. Greg Lopez Constr, et al.

Tentative Ruling: **No appearance required.** The Court has received a request from attorney Ralph for accommodation based upon his documented health issues with copies to opposing counsel. On that ground, the Court grants a one-time continuance of the hearing on the Demurrer and Case Management Conference to November 25, 2019, at 9:30 p.m. Attorney Ralph can appear by CourtCall for that hearing.

Case No. CV18-00076 Franke, Jeffrey, et al vs. Rose, Albert J., et al

Tentative Ruling: The Demurrer of Defendants Albert J. and Marilyn J. Rose(“Roses”) to the sixth and seventh causes of action of the First Amended Complaint(“FAC”) is overruled. The Motion to Strike §§ 24, 30, 43 and §4 of the prayer for punitive damages is denied.

Summary of the Case. This case involves a fire on Lake Almanor property owned by the Plaintiffs Jeffrey Franke and Constance Brenton(“Plaintiffs”) in 2015, which was allegedly caused by the Roses, who are Plaintiffs’ neighbors. The Complaint alleges the fire destroyed the Plaintiffs’ home and personal property. Additionally, Plaintiffs’ allege that since the fire the Roses have continued to trespass on their property and caused another fire on Plaintiffs’ property earlier this year.

Plaintiffs’ filed this lawsuit and in the sixth and seventh causes of action of their First Amended Complaint alleged intentional and negligent infliction of emotional distress and prayed for punitive damages. The Roses have now demurred to those two causes of action on the basis that those two causes of action are barred by the applicable statute of limitations. Defendant Roses also filed a motion to strike portions of the FAC relating to those causes of action and the prayer for punitive damages.

Demurrer.

A complaint that shows on its face(or by matters subject to judicial notice) that the cause of action alleged is barred by the applicable statute of limitations is subject to a general demurrer for failure to state a cause of action. (See *Webb v. City of Riverside* (2018)23 CA5th 244, 256.)

A demurrer based on the statute of limitations will be sustained only when the facts alleged in the complaint, or FAC in this instance, disclose clearly and affirmatively that the cause of action is barred. (*Mitchell v. State Dep't of Public Health*(2016)1 CA5th 1000, 1007.)

As to these two causes of action for infliction of emotional distress, there is no question that the applicable statute of limitations is two years pursuant to Code of Civil Procedure §335.1. In para. 7 of the FAC, Plaintiffs allege that the fire which destroyed their home and damaged their personal and real property occurred on April 24, 2015. Therefore, based on those allegations on the face of the FAC, the Roses argue the two year statute of limitations began to run from that date and both causes of action were barred at the time of the filing of the FAC on June 5, 2019.

However, in paragraphs 17, 18, and 19, Plaintiffs allege on multiple occasions after the 2015 fire, the Roses trespassed on their property with repair equipment, planted trees without permission, and in 2019, burned another pile of debris on Plaintiffs' property. It has long been held that a cause of action for emotional distress does not accrue until the physical manifestations of the emotional trauma first appear, which can be a significant period of time from the wrongful conduct.(*Aldaco v. Tropic Ice Cream Co.*(1980)110 CA3d 523, 526.) That rule applies to both intentional, and negligent, infliction of emotional distress.(*Aldaco v. Tropic Ice Cream Co.*, *supra*, at 526; *Kiseskey v. Carpenters' Trust for So. Cal.*(1983) 144 Cal.App.3d 222, 226 – 231.)

Accordingly, in this case, where there is alleged a continuous course of conduct by the Roses, the April 24, 2015, date of the fire does not determine the beginning date for the running of the two year statute of limitations in these two emotional distress causes of action.

Moreover, as previously stated, the general demurrer is solely based on the alleged facts which **clearly and affirmatively** disclose the dates applicable to the running of the statute of limitations period. (*Mitchell v. State Dep't of Public Health*, *supra*, at 1007.) Where, as in this case, the sixth and seventh causes of action do not allege when the physical effects of the Plaintiffs' emotional trauma developed, the bar of the statute of limitations does not appear on the face of the FAC, and this Court cannot sustain the Roses' Demurrer.(*Aldaco v. Tropic Ice Cream Co.*, *supra*, at 527-528.) Any ambiguity or uncertainty regarding the date of the alleged wrong, which triggers the running of the statute, is a question of fact that may be resolved on a motion for summary judgment, but not on a demurrer. (*Childs v. State*(1983) 144 CA3d 155, 160.)

Therefore, for the foregoing reasons, Defendants Rose's demurrer is overruled.

Motion to Strike.

The Defendants Rose seek to strike the prayer for punitive damages. Defendants argue that the First Amended Complaint fails to set forth the necessary allegations to support a claim for punitive damages.

A motion to strike a punitive damage claim will be granted when the complaint fails to set forth the elements stated in the general punitive damage statute, Civil Code §3294. A motion to strike punitive damage claims will be based on the ultimate facts plead, considered as a whole, and the Court must assume those allegations to be true.(*Clauson v. Superior Court* (1998) 67 CA4th 1253, 1255). CC §3294(c) defines malice as: "...despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others."

Case No. LC19-00057 Gossett, Thomas Michael vs. Bennett, Marc, et . al.,

Tentative Ruling: As discussed further below, this is a limited civil case and therefore any discovery is governed and limited by Code of Civil Procedure §§94 and 95. Accordingly, the Defendant's Motion compelling Plaintiff Thomas Michael Gossett(hereinafter referred to as "Plaintiff") to serve answers with objection to the Form Interrogatories is granted. The

Defendant's Motion compelling Plaintiff to serve answers without objection to Special Interrogatories 1-35 is granted. The Defendant's Motion Compelling Plaintiff to respond to Requests for Production of Documents 1-14 without objection is granted. Plaintiff is to serve those responses on or before the close of business on November 29, 2019.

Pursuant to Code of Civil Procedure §2023.020, this Court finds that Plaintiff has failed to meet and confer to discuss these requests for discovery and this Court orders reasonable monetary sanctions in the sum of \$585 to be payable by Plaintiff for his failure to meet and confer and also pursuant to Rule of Court 3.1348(a). Those sanctions are payable on or before the close of business on November 29, 2019.

As to the Order to Show Cause why sanctions should not be imposed for the Plaintiff's failure to appear for the Case Management Conference on September 23, 2019, no response has been filed by the Plaintiff, and this Court imposes sanctions in the sum of \$200 for Plaintiff's unexplained failure to appear.

Summary of Case. Plaintiff filed a limited Civil Complaint for damages which do not exceed \$25,000 and "punitive damages". The case is governed by CCP §§90 et seq. irrespective of Plaintiff's punitive damage claim. Plaintiff's cause of action for "negligence" alleges that the Defendant's paint and body work was incomplete, the Plaintiff's car was damaged while in Defendant's care for 6 months. Defendant filed his Answer and a Cross-Complaint for damages totaling \$510. No answer has been filed by the Plaintiff/Cross-complainant to date.

Defendant's Motions to compel responses to discovery. First, this action was filed as a limited civil action with the requested damages not exceeding \$25,000. All discovery in this action is governed by CCP §94 and pursuant to those provisions any discovery requests other than form interrogatories is limited to any combination of 35 requests or interrogatories. A party can exceed the 35 discovery limit either by court order or by stipulation of the parties, neither of which occurred in this instance. Therefore, any orders to compel Plaintiff's discovery responses are limited by statute.

Defendant's counsel served General Form Interrogatories, which are authorized, and Special Interrogatories which are authorized but clearly exceed the statutory limit. Defendant also served Requests for Production of Documents, which are also authorized by clearly exceed the combined statutory limit of 35 discovery requests. Plaintiff has not responded in any manner whatsoever, not opposed any of the discovery motions, and he has failed to make any attempt to meet and confer regarding the requests as required by statute.

Due to Plaintiff's failure to respond in any manner whatsoever to these discovery requests, any and all objections to the Form Interrogatories, Special Interrogatories, and Requests for Production of Documents are waived. However, in making its decision regarding orders compelling Plaintiff's response, since Defendant has not sought an order for discovery which exceeds the limits imposed by CCP §94 and 95, the Court is limited to ordering discovery beyond those statutory limits.

Accordingly, this Courts orders the following:

1. Plaintiff is to serve verified answers, without objection, to Defendant's Form Interrogatories, Set No. One, on or before the close of business on November 29, 2019;
2. Plaintiff is to serve verified answers, without objection, to Nos. 1 through 35 of Defendant's Special Interrogatories, Set No. One, on or before the close of business on November 29, 2019;
3. Plaintiff is to serve verified responses, without objection, to Nos. 1 through 14 of the Defendant's Demand for Production of Documents, Set No. One, on or before the close of business on November 29, 2019;
4. Plaintiff Thomas Michael Gossett is ordered to pay as monetary sanctions pursuant to CCP §2023.020 and Rule of Court 3.1348(a) attorney's fees and costs incurred by

the Defendant in the total sum of \$585, on or before the close of business on November 29, 2019.

Order to Show Cause for Plaintiff's Failure to Appear.

At the time of the filing of his Complaint, Plaintiff had been given notice that the first Case Management Conference in this case was set for September 23, 2019, at 1:30 p.m. before this Court. At the time the Court called the CMC, the Plaintiff failed to appear and further had failed to file a Case Management Statement as set forth in the Notice of First Case Management Conference filed at the time Plaintiff filed this action. At that time, this Court issued the Order to Show Cause which was then served by mail to the Plaintiff's mailing address on the pleadings.

Plaintiff has not filed any response to the OSC to date. The Court will be considering the imposition of reasonable monetary sanctions on October 28, 2019, at 9:30 a.m.

Family Law – 10:30 a.m.

Case No. FL15-00229 Ackley, Monteil vs. Cantu, Chase

Tentative Ruling: **Appearance required.** The Court will discuss Respondent's completion of parenting class.

Case No. FL17-00083 Cokor, Monica Janae vs. Cokor, Joseph Matthew

Tentative Ruling: **Appearance required.** The Respondent's Request for Modification of custody and visitation was continued to this date. The Court will discuss the results of mediation.

Case No. FL19-00161 Cooley, Joshua vs. Willis, Sara

Tentative Ruling: **Appearance required.** There is no proof of service of any documents or the mediation order.

Case No. FL19-00094 English, Joseph E. vs. English, Amanda J.

Tentative Ruling: **Appearance required.** This case is also on calendar for a Case Management Conference at 2 p.m. There has also been a DVPA TRO entered in FL19-00190. The Court will be consolidating the two cases and will discuss the results of mediation.

Case No. FL14-00225 Hibbard, Alyson vs. L'Italien, Richard

Tentative Ruling: **No appearance required.** The Court has reviewed the Petitioner's Motion for Change of Venue of this action to Sacramento County. Respondent does not oppose the Motion. In light of the fact that the parents and minor child all live in Sacramento at this time, the Court finds the appropriate forum for this Family Law action is Sacramento County and the Court orders this case is to be transferred to that county. Petitioner's attorney is prepare the proposed Order granting the Request.

Case No. FL19-00050 Olsen, Kimberly M., vs. Olsen, Caleb J.

Tentative Ruling: **Appearance required.** The Case Management Conference was continued to this date.

Case No. FL17-00174 White, Tommy Alan Jr vs. Nelson, Melissa Karen

Tentative Ruling: **Appearance required.** This matter is set for a status review hearing.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. LC19-00072 Bank of America N.A. vs. Basinger, Dennis C

Tentative Ruling: **No appearance required.** This case was dismissed without prejudice. The CMC goes off-calendar.

Case No. LC19-00093 Bank of America vs. Keena, Kimberly C

Tentative Ruling: **Appearance required.** The Plaintiff has not filed a case management statement in violation of Rules of Court and has not served the Defendant in violation of Rule 3.740(d). The Court will issue an order to show cause why monetary sanctions should not be ordered.

Case No. LC19-00092 Bank of America, N.A. vs. Kenna, Kimberly C

Tentative Ruling: **Appearance required.** The Plaintiff has not filed a case management statement in violation of Rules of Court and has not served the Defendant in violation of Rule 3.740(d). The Court will issue an order to show cause why monetary sanctions should not be ordered.

Case No. CV19-00108 Britt, Kyle Dale vs. Batchelor, Shayanna

Tentative Ruling: **Appearance required.** Based upon the Declaration of Plaintiff's Counsel filed for this date, the OSC is taken off calendar. The Court will discuss the status of service of the Summons and Complaint.

Case No. CV18-00230 Cantrell, Riley C. vs. Windel, David O., et al

Tentative Ruling: **Appearance required.** The Court will discuss the status of discovery and possible mediation.

Case No. CV18-00155 Dickens Drilling, Inc. vs. Carnes, Alesha

Tentative Ruling: **Appearance required.** This matter is on calendar for the Order to Show Cause why monetary sanctions should not be imposed for the failure to appear for the Case

Management Conference on September 9, 2019. The Court will also discuss the failure to obtain a default judgment in violation of Rule of Court 3.740(f).

Case No. CV19-00013 Greg Lopez Construction, Inc. vs. Baeta, Mark A., et al.,

Tentative Ruling: **No appearance required.** Based upon Mr. Ralph's request for accommodation for medical reasons, the Case Management Conference and Demurrer have been continued to November 25, 2019, at 9:30 a.m. Mr. Ralph can appear telephonically at that time.

Case No. LC18-001084 Grizzly Ranch Association vs. Kraus, Joseph R., et al.,

Tentative Ruling: **Appearance required.** The Court will discuss the status of resolution of the case.

Case No. CV18-00117 Hobbs, Scott, et al vs. Clifford, Edward A.

Tentative Ruling: **Appearance required.** The Court notes defaults have been entered as to remaining Defendants. The Court will discuss a continuance of the Case Management Conference for entry of judgment.

Case No. CV18-00179 Hudson Insurance Co vs. Sierra Valley Axel & Gear., et al.

Tentative Ruling: **Appearance required.** Defendant has not filed a case management statement. The Court will discuss the status as to settlement discussions and either mediation or setting the matter for MSC.

Case No. FL18-00174 Ray, Christopher vs. Ray, Brandi

Tentative Ruling: **Appearance required.** The parties had indicated they had reached a settlement and needed time to prepare the paperwork. No marital settlement agreement/Judgment has been filed to date.

Case No. CV18-00152 Swartz, Gail vs. County of Plumas, et al

Tentative Ruling: **Appearance required.** The Court will discuss the status of settlement discussions and possible mediation.

Case No. LC19-00068 TD Bank USA, N.A. vs. Rees-Bush, Ashley

Tentative Ruling: **Appearance required.** An Order to Show Cause for monetary sanctions for non-appearance at 9/23/2019 has been issued.

Case No. LC19-00129 TD Bank USA, N.A. vs. Shafer, Haley N

Tentative Ruling: **Appearance required.** Plaintiff has not filed a Case Management Statement.

Case No. CV19-00091 Teague, Shelly vs. Ketchersid, Kirk, et al

Tentative Ruling: **Appearance required.** Plaintiff has not filed a Case Management Statement.

Case No. LC19-00087 Unifund CCR, LLC vs. Davis, Richard S.

Tentative Ruling: **No appearance required.** The Case Management Conference will be continued to January 27, 2020, at 2:00 p.m. for the parties to discuss possible settlement.

Case No. LC18-00264 Wells Fargo bank, N.A. vs. Fortner, Cameron

Tentative Ruling: **Appearance required.** Plaintiff has not timely proceeded to obtain an order for service by publication as required by Rule of Court 3.740(d). Pursuant to Rule 3.740(e), this Court will issue an order to show cause why reasonable monetary sanctions should not be imposed.

Case No. FL19-00086 Davis, Renee vs. Lee, Aaron

Tentative Ruling: **Appearance required.** The Court will discuss the results of mediation.

Case No. LC19-00066 Midland Funding LLC vs. Velez, Chantel

Tentative Ruling: **No appearance required.** Plaintiff has filed a Case Management Statement. Pursuant to Rule of Court 3.740(f), the Court will continue the Case Management Conference to March 23, 2020, at 2:00 p.m. for entry of a default judgment or if a default judgment has not been entered by that date, for Plaintiff to show cause why monetary sanctions shall not be imposed for failure to enter the Judgment. Plaintiff is to file an updated Case Management Statement and may appear telephonically, if no judgment has been entered.

Case No. LC19-00036 Portfolio Recovery Associates, LLC vs. McMichael, Catherine

Tentative Ruling: **Appearance required.** Neither Plaintiff or Defendant have filed a case management statement in violation of the Rules of Court. The Court will discuss the status of discovery, settlement discussions and possible mediation.

Case No. CV19-00001 Wheeler, Frankie, et al vs. Dewitt, George, et al

Tentative Ruling: **Appearance required.** The Court will discuss the status of discovery and possible mediation.

Case No. CV19-00004 Discover Bank vs. Carolyn K. Fagg

Tentative Ruling: **No appearance required.** The Case Management Conference is continued to December 23, 2019, at 2:00 p.m. for entry of default judgment. If the judgment has been entered before that date, no appearance of counsel is necessary. Telephonic appearance is authorized.