

# **Tentative Rulings**

## **Law & Motion and Family Law Calendar for August 13, 2018**

August 9, 2018, 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, August 10, 2018. 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. PR18-00036 – Conservatorship of Caton**

Tentative Ruling: **Appearance required.** Hearing on request for appointment of Conservator.

#### **Case No. PR18-00034 – Conservatorship of Kleinkauf**

Tentative Ruling: **Appearance required.** Hearing on request for appointment of Conservator.

#### **Case No. PR18-00029 – Estate of Weston**

Tentative Ruling: **Appearance required.**

#### **Case No. PR12-00007 – Guardianship of Greenwood**

Tentative Ruling: **No appearance required.** The Court has not received the Confidential Guardianship Status Report and orders the review hearing be continued to September 10, 2018, at 9:00 a.m. A copy of this Order is to be sent to the guardians and they are to be personally present on that date.

#### **Case No. PR13-00024 – Guardianship of Juden**

Tentative Ruling: **No appearance required.** The Court has not received the Confidential Guardianship Status Report and orders the review hearing be continued to September 10, 2018, at 9:00 a.m. A copy of this Order is to be sent to the guardians and they are to be personally present on that date.

#### **Case No PR08-6412– Guardianship of Kelley**

Tentative Ruling: **No appearance required.** The Court has not received the Confidential Guardianship Status Report and orders the review hearing be continued to September 10, 2018,

at 9:00 a.m. A copy of this Order is to be sent to the guardians and they are to be personally present on that date.

**Case No. PR07-6381– Guardianship of Scarbrough**

Tentative Ruling: **No appearance required.** The Court has received and reviewed the Confidential Guardianship Status Report and the Court finds it is in the minor's best interests to continue the guardianship. The Court will set the next annual review hearing for August 12, 2019, at 9:00 a.m. The Clerk of the Court is reminded to send notice to the guardian one month prior to that date, informing the guardian of the duty to file a confidential status report prior to the review hearing.

## Civil – 9:30 a.m.

### Case No. CV18-00037 – Graciano vs. Estate of Gratreaks

Tentative Ruling: The Court will continue Defendant’s Motion to Quash Deposition Subpoena for Production of Business Records to the next Law and Motion date of August 27, 2018, at 9:30 a.m., in order for the Court to prepare a tentative ruling.

### Case No. CV16-00014 – J&S Custom Homes vs. Nakoma Associates

Tentative Ruling: **Granted.** The motion by defendant, Nakoma Associates, LP (“Nakoma”), for leave to file the proposed cross-complaint is granted. The parties shall appear for a case management conference on September 24, 2018, at 1:30 p.m., at which time counsel shall be prepared to stipulate to a schedule for further pleadings, motions, discovery, discovery cut-off and trial.

The proposed cross-complaint includes claims arising from the alleged breach, by plaintiff, J&S Custom Homes Inc. (“J&S”), of the same contract under which J&S seeks recovery. (See, First Amended Complaint, filed March 18, 2016, para. 8; proposed Cross-complaint, Exhibit D to Declaration of Katherine P. Sandberg, filed June 6, 2018, para. 10.) As such, it is a compulsory cross-complaint under *Code of Civil Procedure section 426.30(a)*.<sup>1</sup> (See, *Flickinger v. Swedlow Engineering Company, Inc.* (1955) 45 Cal.2d 388, 392-393 (under prior statute, claim arising from same contract upon which plaintiff filed suit was a compulsory counterclaim).) Nakoma’s discovery of its claims after serving its answer herein does not remove them from the provisions of section 426.30(a). “Under the general rule, a cause of action accrues when the wrongful act is done and not when a plaintiff discovers he or she has a cause of action to pursue.” (*Moreno v. Sanchez* (2003) 106 Cal.App.4th 1415, 1423.)

Accordingly, Nakoma’s motion “shall” be granted (*section 426.50*), in the absence of “. . . a strong showing of bad faith.” (*Foot’s Transfer & Storage Co., Ltd. v. Superior Court* (1980) 114 Cal.App.3d 897, 902.) In *Gherman v. Colburn* (1977) 72 Cal.App.3d 544, bad faith was found to exist where, on the first day of trial, the defendant sought leave to file a cross-complaint in which the defendant’s position on a key issue of the case (whether there was a joint venture among the parties) changed, apparently for the ulterior purpose of denying the plaintiffs a jury trial.

While the Court notes that Nakoma fails to provide an explanation for the delay in filing its motion and also fails to explain why the filing of the proposed cross-complaint was not discussed during the Case Management Conference held on May 30th, nothing in the evidence of its words or conduct suggests “. . . dishonest purpose, moral obliquity, sinister motive, furtive design or ill will.” (*Silver Organizations Ltd. v. Frank* (1990) 217 Cal.App.3d 94, 100.) In this instance, there is no strong showing of bad faith or the requisite dishonest purpose. Therefore, the Court is compelled to grant this Motion.

**Case No. CV17-00215 – Lyons vs. Soper Company, et al.**

Tentative Ruling: Plaintiff's motion: **Denied**; Defendant's motion: **Granted**. The Plaintiff's Motion for Judgment on the Pleadings is denied; the Defendant's Motion for Judgment on the Pleadings is granted, with leave to amend. All requests for judicial notice are granted.

Plaintiff, Joan Lyons ("Lyons"), seeks to quiet title to property that was the subject of a prior action, *Aguilera, et al. v. Lyons, et al.*, Case No. CV01-22149 ("prior action"), on the grounds that the judgment entered therein is void. (Complaint, filed December 21, 2018; *see, OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1327-1328 (procedures available to challenge void judgment).) That judgment, entered on August 21, 2003 and thereafter amended, reflects that the matter was tried on June 25, 2003, counsel for the parties were present and evidence was admitted. (Interlocutory Judgment for Partition, Exhibit B to Lyons' Request for Judicial Notice, filed May 2, 2018, p. 2:4-12.)

Relying on *Harbour Vista, LLC v. HSBC Mortgage Services, Inc.* (2011) 201 Cal.App.4th 1496 ("*Harbour Vista*"), Lyons contends that the judgment is void, because it was entered against her after default and without giving her notice of the date set for trial. (*See, id.*, at 1507-1508 (quiet title judgment after default requires evidentiary hearing in open court).)

Lyons, as a defaulting defendant in the prior action, was not entitled to such notice. (*See, Uplinger v. Yonkin* (1920) 47 Cal.App. 435, 437 (notice of time of trial need not be given to defaulting defendant); *In re Angela R.* (1989) 212 Cal.App.3d 257, 274 (same); *Code of Civil Procedure* section 1010 (no notice or other paper, other than amended pleadings, need be served on defaulting party); *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1301 (same).) Accordingly, the language in *Harbour Vista*, regarding a "properly noticed evidentiary hearing" (*id.*, at 1508), as dictum, does not create a new right, in a defaulting defendant, to notice of the time of trial. (*See, Bryant v. Superior Court* (1986) 186 Cal.App.3d 483,495 (*dicta* not binding); *see, also, Muelder v. Western Greyhound Lines* (1970) 8 Cal.App.3d 319, 329 (*dictum* inconsistent with repeated judicial pronouncements).) Indeed, the *Harbour Vista* court acknowledges that no such new right is created by its ruling. (*Id.*, at 1505 (defaulting parties will be "severely disadvantaged," even with evidentiary hearing, because plaintiff need not give them "notice of any future court dates").)

Lyons' reliance on *Mortgage Electronic Registration Systems, Inc. v. Johnston* (U.S.D.C. C.D.Cal.2016) 2016 U.S. Dist. LEXIS 174395 is misplaced, as the holding therein turned on the fact that the plaintiff failed to name, as a defendant in a quiet title action, an entity known to have an adverse claim to the property, and thus the default judgment was void. *Id.*, at p. \*10. Moreover, there was an evidentiary hearing in open court where counsel for the parties were present and evidence was admitted for the entry of judgment after default, as mandated by *Harbour Vista*.

Accordingly, Lyon's motion for judgment on the pleadings is denied. For the same reason, the Defendant's Motion is granted; however, the doctrine of *res judicata* is inapplicable to void judgments. (*Rochin v. Pat Johnson Manufacturing Company*(1998)67 Cal.App.4<sup>th</sup> 1228, 1239-1240.) Accordingly, Lyons shall have 30 days in which to file an amended pleading.

**Case No. CV18-00123 – Matter of McMahon**

Tentative Ruling: **No appearance required.** The Petition has been granted and the Court has signed the Order.

**Case No. CV18-00137 – Matter of Metzger**

Tentative Ruling: **No appearance required.** The Petition has been granted and the Court has signed the Order.

**Case No. CV17-00191 – Pacific Service Credit Union vs. Busselen**

Tentative Ruling: Defendant’s Motion for Relief from Default: **Granted.**

Defendant has filed a motion for relief from default pursuant to Code of Civil Procedure section 473(b) which is based upon Defendant’s attorney sworn “affidavit of fault” attesting to the mistake of himself and his employee. The default in this matter was entered on July 2, 2018, and the Defendant filed this Motion seven days later on July 9, 2018.

Pursuant to the statutory mandate of CCP sec. 473(b), it is **mandatory** that the default be set aside when based on an “attorney affidavit of fault” “to alleviate the hardship on parties who lose their day in court due solely to an inexcusable failure to act on the part of their attorneys.(Zamora v. Clayborn Contracting Group, Inc.(2002)28 C4th 249, 257.) That statutory mandate to grant such relief also applies when it is the “fault” of the attorney’s employee, as in this case.(Hu v. Fang(2002)104 CA4th 61, 64.

Based upon the Defendant’s timely filing of the 473(b)Motion and the Declaration filed by Defendant’s counsel setting forth the attorney and employee’s fault, this Court **must** grant this Motion and set aside the entry of the Default entered on July 2, 2018. The proposed Judgment shall not be entered in this case.

Furthermore, CCP sec. 473(b), also provides that when relief has been granted pursuant to an “attorney affidavit of fault,” the Court **must** “direct the attorney to pay reasonable compensatory legal fees and costs” to the opposing counsel. Accordingly, Plaintiff’s counsel can submit to the Court a memorandum setting forth reasonable compensatory legal fees and costs incurred for the entry of default and submission of the proposed Judgment to the Court and in relation to this Motion, which shall be submitted on or before September 13, 2018.

## **Family Law – 10:00 a.m.**

### **Case No. FL18-00049 – England vs. Biggers**

Tentative Ruling: **Appearance required.** The Court will discuss the status of case and disclosures as well as setting for Mandatory Settlement Conference.

### **Case No. FL18-00006 – Griffen vs. Alvey**

Tentative Ruling: **Appearance required.** The Court will discuss the Order to Show Cause for failure to appear and status of case.

### **Case No. FL18-00048 – Jordan vs. Haworth**

Tentative Ruling: **Appearance required.** The Court will discuss the parties' compliance with Case Management Conference Order of July 11, 2018.

### **Case No. FL18-00042 – Marro vs. Williams**

Tentative Ruling: **Appearance required.** The Court will discuss status of case and the issue of child support.

### **Case No. FL18-00044 – Smith vs. Bagby**

Tentative Ruling: **Appearance required.** The Court will discuss status of case and the entry of Judgment.

### **Case No. FL17-00204 – Mar. of Sylvia**

Tentative Ruling: **Appearance required.** The Court will discuss status of case and the entry of Judgment.

### **Case No. FL18-00052 – Mar. of Taddei**

Tentative Ruling: **Appearance required.** The Court will discuss status of case and the entry of Judgment.

## **Family Law – 10:30 a.m.**

### **Case No. FL12-00248 – Ahearn vs. Sanchez**

Tentative Ruling: **Appearance required.** To date, there have been no proofs of service of the Request for Order and Temporary Emergency Orders filed and no response has been filed.

### **Case No. FL15-00192 – Arthur-Sutter vs. Arthur**

Tentative Ruling: **Appearance required.** The Court has reviewed this Request for Order and declarations and will discuss if this matter can be heard on this Law and Motion calendar or should be heard as a long cause hearing.

### **Case No. FL16-00135 – Burgueno vs. Sweeny**

Tentative Ruling: **Appearance required.** The Court will discuss the summer parenting time and compliance with this Court's Orders.

### **Case No. FL15-00183 – Carnes vs. Benner**

Tentative Ruling: **Appearance required.** The Court will review the parenting time since the last hearing.

### **Case No. FL17-00064 – Colewell-Meisenheimer vs. Meisenheimer**

Tentative Ruling: **Appearance required.** This case is on calendar for a review hearing on August 13<sup>th</sup>, however the file also shows a contested hearing set for August 16<sup>th</sup> at 9 a.m. Nothing has been filed regarding the status of parenting since the last Court Order. The Court will be discussing status and whether parties are prepared to proceed with contested hearing.

### **Case No. FL16-00174 – Cuccia vs. Gomez**

Tentative Ruling: **Appearance required.** The Judgment, which contained the 2016 Mediation Agreement was finally filed last month. Each party is ordered to file a declaration regarding what problems have arisen regarding parenting and each party's proposals for future parenting time. This case will be continued to September 24, 2018 at 10:30 p.m. The declarations are to be filed by September 17<sup>th</sup>.

### **Case No. FL113-00079 – Mar. of Fitch**

Tentative Ruling: **No appearance required.** This matter is continued to August 28, 2018, at 9:00 a.m. for a hearing on the issue of child support. At the hearing the parties are to produce their latest paystubs and proposals regarding guideline child support based upon actual parenting time.

### **Case No. FL10-00082 – Glover vs. Parsons**

Tentative Ruling: **Appearance required.** The Court will discuss the results of mediation and parenting time as a result of the proposed move to Arkansas.

**Case No. FL16-00149 – Gross vs. Luippold**

Tentative Ruling: **Appearance required.** The Court will discuss status of service of OSC re: Contempt.

**Case No. FL16-00140 – Gross vs. Luippold**

Tentative Ruling: **Appearance required.** The Court will discuss the status of service of OSC re: Contempt.

**Case No. FL17-00145 – Mar. of Hultberg**

Tentative Ruling: **Appearance required.** The Court will discuss the results of mediation. No response has been filed by the Respondent.

**Case No. FL10-00074 – Knudson vs. Valadez**

Tentative Ruling: **Appearance required.** There has been no appearance by the Respondent nor any response filed to the Request. If there is no appearance at the hearing, the Court will be entering the requested orders terminating visitation with the minor.

**Case No. FL15-00064 – Mar. of Lawson**

Tentative Ruling: **No appearance required.** The Court notes that the Request for Order and attachments were timely and properly served on the Petitioner and no response has been filed or served by the Petitioner to date. The Court will grant the Orders as requested by the Respondent.

**Case No. FL16-00230 – Marcigliano vs. Mierlot**

Tentative Ruling: **No appearance required.** The Mediation Custody and Visitation Agreement filed on July 24, 2018, will become the Order of this Court. The Respondent is responsible for the preparation of the Order and can contact Family Court Services to assist her. A copy of the proposed Order shall be mailed to the Petitioner before being submitted to the Court for signature and Respondent shall mail a copy of the filed Order to the Petitioner.

**Case No. FL13-00058 – Norton vs. Harrison**

Tentative Ruling: **Appearance required.** The Court will hear the review hearing on the status of custody and parenting time.

**Case No. F14-00136 – Mar. of Wolf**

Tentative Ruling: **Appearance required.** The Court will hear the review hearing on the status of custody and parenting time.

**Case No. FL11-00020 – Wratten vs. Shirer**

Tentative Ruling: **Appearance required.**



# **CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS**

## **Case No. LC17-00138 – Bank of America vs. Rivera**

Tentative Ruling: **Appearance required.** Plaintiff has not obtained a default judgment to date. This matter will be set for an order to show cause and sanctions may be imposed if the default judgment is not obtained by August 25, 2018, pursuant to Rule of Court 3.740(f).

## **Case No. CV18-00016 – Creedon vs. Plumas District Hospital**

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

## **Case No. LC18-00020 – Discover Bank vs. Dold**

Tentative Ruling: **Appearance required.** The Court is in receipt of a Request for Entry of Default which cannot be entered without proof of service having been filed. The matter is continued to September 10, 2018, for entry of default judgment. If the default judgment has not been entered by the next hearing date, the matter will be set for an order to show cause and sanctions may be imposed pursuant to Rule of Court 3.740(f).

## **Case No. PR17-00028 – Guardianship of Barton**

Tentative Ruling: **Appearance required.** The Court has not received a Confidential Guardianship Status Report to date.

## **Case No. LC17-00142 – LVNV Funding LLC vs. Olivo**

Tentative Ruling: **Appearance required.** Plaintiff has not obtained a default judgment to date. This matter will be set for an order to show cause and sanctions may be imposed if the default judgment is not obtained by September 2, 2018, pursuant to Rule of Court 3.740(f).

## **Case No. CV16-00095 – Hudson vs. Hudson**

Tentative Ruling: **Appearance required.** The Court will discuss the status of settlement or setting the matter for trial.

## **Case No. CV17-00215 – Lyons vs. Soper Company, et al.**

Tentative Ruling: **Appearance required.** Please see the tentative ruling for this case on the 9:30 a.m. calendar. The Court will discuss the status of the case at that time.