

Tentative Rulings

Law & Motion and Family Law Calendar for August 24, 2015

August 20, 2015, 4:00p.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 21, 2015. 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.

Probate – 9:00 a.m.

Case No. PR15-00036 – Austin vs. Austin

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. The Petition for Order to Increase Community Spouse's Resource Allowance, to Transmute and Transfer Community Property, and to Execute an Amended and Restated Trust is granted. Petitioner is to prepare the Order.

Case No. PR07-6363– Conservatorship of Curran

Tentative Ruling: **No appearance required.** The court has not received the investigator's report. The court will continue this hearing to September 14, 2015, at 9:00a.m.

Case No. PR09-00044 – Conservatorship of Sherod

Tentative Ruling: **No appearance required.** The court has not received the investigator's report. The court will continue this hearing to September 14, 2015, at 9:00a.m.

Case No. PR15-00035 – Estate of Gutierrez

Tentative Ruling: **Granted, upon proof of publication being filed.** If proof of publication is filed prior to the hearing, the court will find that notice has been given as required by law. The Petition for Probate is granted. Petitioner is to prepare the Order.

Case No. PR12-00014 – Guardianship of Hopper

Tentative Ruling: **No appearance required.** The court has received and reviewed the guardianship status report, and finds that continued guardianship is in the best interests of the minors. The matter is set for an annual review on August 8, 2016, at 9:00a.m., if necessary. The court vacates the order to show cause issued on August 10, 2015.

Case No. PR15-00017 – Guardianship of Britton

Tentative Ruling: **Appearance required.**

Case No. PR11-00031 – Matter of Griffith

Tentative Ruling: **No appearance required.** The court has not received the investigator's report. The court will continue this hearing to September 14, 2015, at 9:00a.m.

Civil – 9:30 a.m.

Case No. CV09-00065 – Adams vs. Fish & Game

Tentative Ruling: **Demurrer overruled; motion to strike denied.** The general demurrer of defendant, the Department of Fish and Wildlife (“DFW”), to the first through third, fifth and sixth causes of action of the Fifth Amended Complaint (“FAC”) asserted by plaintiff, City of Portola (“Portola”), is overruled; the motion to strike is denied, and the request for judicial notice (“RJN”) is granted.

A government claim “. . . need not contain the detail and specificity required of a pleading, but need only ‘fairly describe what the entity is alleged to have done.’ [Citation.]” (*Stockett v. Association of California Water Agencies Joint Powers Insurance Authority* (2004) 34 Cal.4th 441, 446.) It also “. . . need not specify each particular act or omission later proven to have caused the injury. [Citation.]” (*Id.*, at 447; *see, also, Blair v. Superior Court* (1990) 218 Cal.App. 3d 221, 226 (“*Blair*”) (claim asserting negligence in construction and maintenance of highway not limited to failure to remove ice).)¹

Portola’s government claim, Exhibit B to the RJN (“Claim”), refers to the negligent conduct of the eradication project. (*Id.*, at paras. 18-19.) By letter dated October 16, 2008, the Claim was amended to reflect that the incident commenced on September 4, 2007 and continued through May 7, 2008. (*Ibid.*) The Claim thus encompasses the conduct by DFW relating to the eradication project during that time period.

However, even if Portola’s nuisance causes were limited to the actual application of Rotenone to Lake Davis, *Civil Code section 3482* does not bar them. (*Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 291 (liability barred only if statute expressly authorizes conduct).) The language of the authorizing statute (not of opinions construing the statute in other contexts) must reflect an “. . . ‘unequivocal legislative intent to sanction a nuisance . . .’” *Jacobs Farm/DelCabo, Inc. v. Western Farm Service, Inc.* (2010) 190 Cal.App.4th 1502, 1530 (“*Jacobs Farm*”).) Hence, one sees in *Farmers Insurance Exchange v. State* (1985) 175 Cal.App.3d 494 (“*Farmers*”), cited by DFW, a statute and regulations which “. . . designated specific medfly eradication areas and set forth the means and methods that could be employed . . .” (*Jacobs, supra*, at 1531; *see, Farmers, supra*, at 499.) Nothing in *Fish and Game section 5501*, or the regulations cited by DFW, rises to such specificity. Accordingly, the demurrers to the first and second causes of action are overruled.

The demurrer to the third cause of action also fails. In *Aubry v. Tri-City Hospital District* (1992) 2 Cal.4th 962 (“*Aubry*”), an action was brought by the Labor Commissioner against a public entity for failing to assure that, in the award of a public works contract, the contractor paid the prevailing wage, as required by *Labor Code sections 1720, et seq.* (*Aubry*, at 967-968.) Affirming the judgment of dismissal on demurrer, the Supreme Court explained that there was no “injury,” as defined by *Government Code section 810.8*, because the duty under the *Labor Code* was imposed on public entities only; a private person, in awarding a construction contract, had no duty to assure payment of the prevailing wage, and thus the injury was not “. . . ‘to the

¹ As discussed at length in *Blair*, DFW’s authorities are inapposite, as they involved a “complete shift in allegations.” (*Id.*, at 225-226.)

kind of interests that have been protected by the courts *in actions between private persons.*' [Citation.]" (*Ibid.* (Italics in original.))

Hence, under *Aubry*, this Court “. . . must determine whether the ‘injuries’ on which . . . [Portola’s third] cause[] of action . . . [is] based. . . would be actionable against a defendant which was not a public entity.” (*Forbes v. County of San Bernardino* (2002) 101 Cal.App.4th 48, 55; *see, City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 867 (“injury” in *Government Code section 810.8* refers to the wrong complained of); *City of Clovis v. County of Fresno* (2014) 222 Cal.App.4th 1469, 1478-1479 (same); *N.V. Heathorn, Inc. v. County of San Mateo* (2005) 126 Cal.App.4th 1526, 1534-1535 (breach of statutory duty to obtain payment bond constitutes injury, because mechanic’s lien laws afford similar remedy between private parties).)

The third cause of action, for negligence under *Government Code sections 815.2, 830, 835(b)* and *862(b)*, is premised on the alleged existence of a dangerous condition of real property maintained by DFW and its use of a pesticide, wrongs which have long been actionable between private persons. (*See, e.g., Rowland v. Christian* (1968) 69 Cal.2d 108, 119 (action for injuries caused by defective condition of real property); *Jacobs Farms, supra*, 190 Cal.App.4th at 1510 (action for damages from over-spray of pesticide onto organic crops).)

For the reasons stated above, the demurrer to the fifth and sixth causes of action, on the grounds that there is no injury, is unavailing. The “wrong” upon which these causes are based is DFW’s alleged interference with Portola’s prospective economic advantage; that economic advantage includes the anticipated collection of real property taxes. (*See, e.g., Gladstone Realtors v. Village of Bellwood* (1979) 441 U.S. 91, 110-111 (reduction in property values from “racial steering” injures city by diminishing tax base and threatening its ability to bear costs of local government).)

Additionally, *Blank v. Kirwan* (1985) 39 Cal.3d 311 (“*Blank*”) does not hold that, to state a cause of action for tortious interference with prospective economic advantage, the relationship with which the defendant interfered must be commercial. The *dicta* in *Blank*, upon which DFW relies, relates to the speculative, not the “noncommercial,” nature of the plaintiff’s expectancies in the licensing relationship. (*Id.*, at 330.) As explained in *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, *Blank* did not rule out an action for interference with nonbusiness expectancies. (*Id.*, at 1055-1056.) The demurrer to these causes is thus overruled.

As discussed above, the Claim fairly reflects that it is based on conduct relating to the eradication project commencing in early September 2007 through early May 2008. Nothing in the FAC, or in any other matter of which this Court has been requested to take judicial notice, establishes when the negligent restocking occurred. Accordingly, the motion to strike allegations relating to the restocking is denied.

Defendant is to file responsive pleadings within 10 days.

Case No. LC03-24049 – National Credit Association vs. Bailey

Tentative Ruling: **Appearance required.** The court will conduct the debtor’s examination.

Case No. CV13-00149 – Seneca Gold vs. Preim

Tentative Ruling: **Demurrer overruled, in part, and sustained, in part.** The general demurrer of Seneca Gold, LLC (“Seneca”) to the second and third causes of action in the First Amended Cross-Complaint (“FAXC”) filed by Jon Shields is overruled, and sustained without leave to amend with regard to the fourth cause of action. The demurrer to the second and third causes of action in the First Amended Cross-Complaint (“FAXC”) filed by Dane Shields is sustained, with leave to amend. The demurrer to the fourth cause of action for assault is overruled. Seneca’s request for judicial notice is granted, as previously ruled, as to the existence of the records in the court’s files, but denied as to any facts or hearsay contained therein. The court recognizes that the Shields have not filed an opposition to the demurrer.

The court has reviewed the original Cross-Complaint filed by Jon and Dane Shields (collectively “Shields”) and the First Amended Cross-Complaints filed by both Jon and Dane separately. Unfortunately, Dane did not amend his second and third causes of action, but Jon did, following the court’s ruling on the first demurrer filed by Seneca.

Yet, Seneca’s demurrers are an exact copy of the first demurrer filed on January 14, 2015, except for the exclusion of the paragraph relating to the first cause of action under the Legal Analysis, although the Introduction includes Seneca’s demurrer to the first cause of action. In addition, the demurrers only refer to the original cross-complaint. There is no analysis as to the amendments made to the second and third causes of action, alleged by Jon Shields. And, there is no attempt to distinguish the difference in the fourth causes of action in the cross-complaints. The fourth cause of action in Dane’s cross-complaint is for assault, and this is not addressed by Seneca. Therefore, the court must presume there is no demurrer to this count. However, the demurrers do address the fact that the court has already sustained Seneca’s demurrer to the fourth cause of action for injunctive relief. Needless to say, the amended cross-complaints and the demurrers are both confusing and inadequately pled, leaving the court with the difficult task in attempting to make sense of these pleadings.

The second and third causes of action in the FAXC filed by Jon Shields contain sufficient facts to state a cause of action for trespass and quiet title. While these allegations are somewhat conclusory, they are sufficient to overcome demurrer and the court does not find that the cross-complaint is uncertain. The demurrer to the second and third causes of action in the FAXC filed by Dane Shields is sustained, with leave to amend, for the same reasons as stated by the court in its previous demurrer ruling. The fourth cause of action in Jon Shields’ FAXC is sustained without leave, because there is no separate cause of action for injunctive relief, as the court previously ruled. The demurrer to the fourth cause of action in Dane Shields’ FAXC is overruled as there is no argument, or points and authorities, with regard to the assault and battery, and the court finds sufficient facts alleged for this cause of action.

Seneca is ordered to file responsive pleadings to the first amended cross-complaint of Jon Shields, except for the fourth cause of action, within 10 days. Dane Shields has ten days to amend his first amended cross-complaint.

Case No. CV15-00077 – Thornburg vs. Parsons

Tentative Ruling: **Granted.** Intervenor’s Motion for Leave to Intervene is granted. The court notes there is no opposition in the file.

Family Law – 10:30 a.m.

Case No. FL02-11955 – Burns vs. Dean

Tentative Ruling: **Appearance required.** The court notes there is no proof of service in the file on the respondent.

Case No. FL15-00013 – Mar. of Carpenter

Tentative Ruling: **No appearance required.** The court has received the signed the mediation agreement.

Case No. FS14-00255 – County of El Dorado vs. Hoffman

Tentative Ruling: **Appearance required.** The court will review the custody and visitation orders. The court notes that petitioner has not submitted a visitation proposal, as ordered by the court on June 12, 2015.

Case No. FL08-28339 – Fellos v. Timmins

Tentative Ruling: **Appearance required.** The court notes there is no proof of service in the file on the petitioner.

Case No. FL12-00249 – Mar. of Shutt

Tentative Ruling: **Appearance required.**

Case No. FL15-00134 – Williams vs. Towers

Tentative Ruling: **Appearance required.** The court will order the parties to mediation.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. LC14-00127 – Cavalry SPV vs. King

Tentative Ruling: **Appearance required.**

Case No. CV15-00029 – Mason vs. Feather River Rail Society

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with the parties.

Case No. CV13-00202 – Nichols vs. Stark

Tentative Ruling: **Appearance required.**

Case No. CV15-00016 – TIC Federal Credit Union vs. Wallace

Tentative Ruling: **No appearance required.** The court has received a Request for Dismissal.

Case No. CV15-00033 – Carlson vs. Mason

Tentative Ruling: **Appearance required.** The court will confirm the date for mediation and the name of the mediator.

Case No. CV14-00009 – High Sierra Rural Alliance vs. County of Plumas

Tentative Ruling: **Appearance required.** The court will set the trial date.

Case No. CV14-00097 – Marler vs. Eastern Plumas Health Care

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

Case No. CV14-00151 – Miles vs. Pizza Factory

Tentative Ruling: **Appearance required.** The court will confirm the date for mediation and the name of the mediator.

Case No. CV14-00089 – Smith vs. Emmot

Tentative Ruling: **Appearance required.**