**These are the tentative rulings for civil law and motion matters set for Thursday, August 1, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, July 31, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.**

---

**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

---

1. **M-CV-0029200 Turner Motorsport, Inc vs. Autowerks, Inc**

Assignee's Motion to Name Additional Judgment Debtors is denied without prejudice. There is no proof of service in the file that comports to the service requirements of CCP§1013.

2. **M-CV-0056734 Capital One Bank USA, N.A. vs. Rowland, Nancy, et al**

Plaintiff's Motion for Summary Judgment is dropped from the calendar. A dismissal of the entire action was entered on May 9, 2013.

3. **M-CV-0056744 Capital One Bank USA, N.A. vs. Traina, Linda M., et al**

Plaintiff's Motion for Summary Judgment

This is a collections case based upon a revolving credit card account. The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party has the burden of showing, by affidavit, facts establishing every element necessary to sustain a judgment in favor of the party. (*Consumer Cause, Inc. v. Smilecare* (2001) 91 Cal.App.4th 454, 468.) Once a plaintiff proves its prima facie case, the burden of proof shifts to the defendant to prove material facts. (CCP§437c(p)(1).)

To prevail in an action for breach of contract, plaintiff must show: (1) the existence of a contract between the parties; (2) the plaintiff's performance or excuse for nonperformance; (3) the defendant's failure to perform (breach); and (4) resulting damages. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d

1371, 1388.) Plaintiff has sufficient established that the parties entered into a revolving credit card agreement. (Plaintiff's SSUMF Nos. 1-5.) Plaintiff provided defendants with a credit card that was used by the defendants. (Id. at Nos. 3, 6-8.) Defendants defaulted on the account and has failed to make any further payments on the account. (Id. at Nos. 9, 10.) As a result, plaintiff has suffered $6,193.53 in damages. (Id. at No. 11.) Plaintiffs has met its burden and defendants have failed to prove a triable issue of material fact. Based upon the foregoing, the motion is granted.

**4. M-CV-0056992 Unifund CCR, LLC vs. Abramowitz, Joseph**

Defendant's motion to amend answer is continued, on the court's own motion, to August 15, 2013 at 8:30 a.m. in Department 40. Defendant is requested to provide the court with an endorsed filed copy of his moving papers.

**5. M-CV-0058871 Springview Village Apartments vs. Jones, Jennifer**

Appearance required on August 1, 2013 at 8:30 a.m. in Department 40 on defendant Jennifer Jones' Application for Stay of Execution.

**6. M-CV-0057288 Cavalry SPV I, LLC vs. Bojorquez, Bertha**

Defendant's Motion to File Amended Answer is dropped from calendar as defendant did not re-notice the motion or file a proof of service.

**7. S-CV-0017201 Pacific Bell Directory vs. Zadah, Mohammad**

The motion for summary judgment is dropped from the calendar as no moving papers were filed with the court.

**8. S-CV-0028646 Energy 2001 vs. Pacific Gas and Electric Co., et al**

Cross-Defendant Pacific Gas and Electric Company's (PG&E) Motion for Judgment on the Pleadings as to Shaw Environmental's (Shaw) Second Amended Cross-Complaint (SACC)

Preliminary Matters

As an initial matter, the court notes Shaw's objection to the current motion as time barred. While this is true, the court deems that the matter encompassed in the motion should be substantively addressed in light of the court's prior ruling on Shaw's demurrer that entered on May 2, 2013. Thus, the court shall permit PG&E to proceed with the motion. (CCP§438(e).)

///

Ruling on Requests for Judicial Notice

PG&E's request for judicial notice is granted.

Shaw's request for judicial notice is granted.

Ruling on Motion

PG&E requests for the court to enter judgment on the pleadings as to the sixth cause of action for indemnity/contribution and the seventh cause of action for declaratory relief. Shaw has acknowledged deficiencies in the SACC. In response, Shaw agrees to withdraw the sixth cause of action for indemnity/contribution. In light of this representation, the court denies the motion as to the sixth cause of action as moot. The court further strikes the sixth cause of action from the SACC based upon Shaw's representation in its opposing papers.

As to the seventh cause of action for declaratory relief, Shaw contends that it can amend the SACC so as to correct the deficiencies. It further seeks leave to add two additional causes of action against PG&E: one for negligence and another for breach of contract as to a third party beneficiary. As to the seventh cause of action for declaratory relief and the new cause of action for negligence, the court is not persuaded by Shaw's contentions. As Shaw has previously asserted, this action stems from a contractual agreement. " 'Contract actions are created to protect the interest in having promises performed,' 'Tort actions are created to protect the interest in freedom from various kinds of harm. The duties of conduct which give rise to them are imposed by law, and are based primarily on social policy, and not necessarily based upon the will or intention of the parties ….' [Citation.]" (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 515.) Conduct that is based upon a breach of contract will only become tortious when there is an independent duty arising from principles of tort law. (*Ibid.*) Shaw has not demonstrated that either its seventh cause of action or its proposed negligence claim create any such independent duty. Further, a review of the declaratory relief action demonstrates that it cannot stand on its own since it is tied to the sixth cause of action, which Shaw is withdrawing. The motion is granted as to the seventh cause of action without leave to amend the seventh cause of action or add an additional cause of action for negligence.

This leaves the proposed amendment for the new breach of contract as to third party beneficiary cause of action. The court is persuaded, based upon what is pled in the proposed pleading and the arguments made in the opposition and reply papers, that the amendment cannot state such a cause of action. A breach of contract based upon third party beneficiary status requires contact interpretation; thus, the terms of the contract must be set forth in the pleading. (*California Emergency Physicians Medical Group v. PacifiCare of California* (2003) 111 Cal.App.4th 1127, 1137-1138.) Shaw's proposed pleading does not allege the contractual terms and the conclusory pleading does not tend to show an ability to allege such a cause of action. Thus, the court shall not grant leave to amend to add the breach of contract as to third party beneficiary cause of action.

The court reiterates that the motion is denied as moot as to the sixth cause of action for indemnity/contribution. The court strikes the sixth cause of action from the SACC. Furthermore, Shaw is denied leave to amend this sixth cause of action. The motion is granted as to the seventh cause of action for declaratory relief without leave to amend. Shaw's request for leave to amend to add a new cause of action for negligence is denied. Shaw's request for leave to amend to add a new cause of action for breach of contract as to third party beneficiary is denied.

**9. S-CV-0029350 Bennison, James M., et al vs. Moore, Alba M.D., et al**

The motion to compel discovery responses is dropped from the calendar as no moving papers were filed with the court.

**10. S-CV-0029972 Sanchez, Felix vs. Robles, Deborah, et al**

Plaintiff's unopposed Motion for Distribution of Sale Proceeds is granted. Plaintiff shall be reimbursed $42,482.54 in costs associated with the partition action. Plaintiff and defendant shall share the remaining $9,469.44 equally.

**11. S-CV-0031148 Mazzoni, Nello, et al vs. Centex Real Estate Corp., et al**

Cross-Defendant Ironshore Specialty Insurance Company's Demurrer to the St. Paul Fire and Marine Insurance Company's Cross-Complaint and Motion to Set Aside Order of Reference are continued to August 22, 2013 at 8:30 a.m. in Department 40 at the request of the moving party.

**12. S-CV-0032128 Wire, Michael, et al vs. Levin, Ross A., et al**

Defendant's Motion to Compel Discovery Responses from Plaintiffs is granted. The plaintiffs shall provide verified responses and responsive documents, without objections, to form interrogatories, set one; special interrogatories, set one; and request for production of documents, set one on or before August 16, 2013.

Sanctions are denied because the motion was not opposed. (CCP§2030.290(c); 2031.300(c).) However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.)

///

**13. S-CV-0032262 Stiles, Harry vs. Taco Bell Corp.**

Defendant's Motion to Stay is granted. An OSC re Status of Stay is set for November 19, 2013 at 11:30 a.m. in Department 40.

If oral argument is requested, defendant's request for telephonic appearance is granted. The party is informed that it must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

**14. S-CV-0032370 Top Shelf Entertainment, LLC vs. Elite Entertainment Group**

The personal appearance of the defendants is required at the OSC re contempt for arraignment.

**15. S-CV-0032406 Beadle, Marva E. vs. Allied Trustee Services, et al**

Appearance of the parties is required on plaintiff's OSC re Preliminary Injunction.

**16. S-CV-0032922 Glacken, Gregory, et al vs. Bank of America, N.A., et al**

Defendants' Demurrer and Motion to Strike are continued, on the court's own motion, to August 22, 2013 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

**17. S-CV-0033052 Medina, Viridiana Torres - In Re the Petition of**

Appearance of the party is required on the Petition for Approval of Transfer of Structured Settlement Payment Rights.

**18. S-CV-0033356 City of Roseville vs. County of Placer, et al**

The City of Roseville's OSC re Preliminary Injunction is continued, at the request of the moving party, to August 6, 2013 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

///

**19. S-PR-0000138 Koshman, Alex, Family Revocable Trust, In the Matter of**

Motion for Summary Judgment

The parties are generally referred to by their first names for clarification, and no disrespect is intended.

All requests for judicial notice are granted.

Larry Koshman's objections to Robert Koshman's evidence are overruled.

Robert's motion for summary judgment is granted. The material facts put forward by Robert Koshman are not disputed. Larry opposes Robert's fact no. 13, which states: "Robert Koshman sent the beneficiaries a Trustee Report dated April 6, 2004[,] which referred to the 'status of environmental issues' and 'potential sale of trust property.'" Larry's opposition is: "Disputed. Larry Koshman does not recall receiving this report and there is no evidence that it was mailed to or received by him." Larry cites to no evidence in support of this statement in derogation of C.R.C. 3.1350(f). This statement therefore insufficient to demonstrate a disputed issue of material fact.

The additional material facts put forward by Larry are likewise not disputed. Robert opposes Larry's face no. 6, which reads as follows: "The June 8, 2005[,] letter was the first time the Trust and beneficiaries had been informed that *the individual beneficiaries*, in addition to the Trust, would be ineligible to receive federal farm subsidies." Robert's opposition is: "Unknown. Respondent does not have sufficient information to know what Petitioner [Larry] knew at what point in time." This statement likewise is insufficient to demonstrate a disputed issue of material fact.

The facts and evidence offered by Robert amply demonstrate that Robert is entitled to judgment as a matter of law because Larry's claims are all barred by the three-year statute of limitations of Probate Code section 16460. The statute begins to run when a trust beneficiary has "sufficient information so that the beneficiary . . . reasonably should have inquired into the existence of the claim. Quick v. Pearson (2010) 186 Cal.App.4th 371, 378. Even if the beneficiary's relationship with the trustee is a confidential one, beneficiaries are still under a duty of inquiry. Noggle v. Bank of America (1999) 70 Cal.App.4th 853, 859-861. The undisputed facts show that the alleged trustee misfeasance related to leveling the fields and sale of the property were known to Larry more than 3 years before the 2008 petition was filed. Indeed, his communications to Robert show that he was aware of the facts and had undertaken at least some inquiry into possible legal action against Robert. (See, for example, Robert's facts 9, 11, 13-16 and evidence in support thereof.)

Although Larry's facts may show that he learned additional details regarding the alleged misfeasance and its consequences within three years of filing the petition, the relevant inquiry is not when he obtained *actual knowledge* of all the facts underlying his claims, but when he was put on sufficient notice to invoke the duty of inquiry. See Quick & Noggle, supra. Thus, even if Larry's actual knowledge coalesced in June 2005 or

thereafter, the statute had already been running for a substantial period of time no later than late 2004.

Accordingly, summary judgment is granted to Robert Koshman on all claims brought in Larry Koshman's 2008 petition.

Motion for leave to amend

Because summary judgment is granted in favor of Robert Koshman, and for the reasons set forth in the court's tentative ruling issued for the May 16, 2013, hearing on the motion for leave to amend, the motion for leave to amend is denied.

Motion for sanctions pursuant to C.C.P. § 128.7

Upon review of the entirety of the documents filed in this matter related to the 2008 petition and the motions thereunder (including the summary judgment motion granted today), the court denies the motion for sanctions under § 128.7. The filing and prosecution of the petition was not so frivolous or egregious as to warrant the exercise of the court's discretionary power to award such sanctions.

**20. T-CV-0001684 Schlinger, Norman vs. Lamberth Construction, Inc**

Cross-Defendant Vista Pointe Architectural Systems, LLC's Motion for Good Faith Settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasor's proportionate shares of liability for Plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

---

**These are the tentative rulings for civil law and motion matters set for Thursday, August 1, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, July 31, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.**