

**PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR OCTOBER 1, 2020 AT 8:30 A.M.**

These are the tentative rulings for the **THURSDAY, OCTOBER 1, 2020 at 8:30 A.M.**, civil law and motion calendar. 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., WEDNESDAY, SEPTEMBER 30, 2020**. Notice of request for 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 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.

NOTE: TELEPHONIC APPEARANCES ARE STRONGLY ENCOURAGED FOR CIVIL LAW AND MOTION MATTERS. (PLACER COURT EMERGENCY LOCAL RULE 10.28.) More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard at **8:30 a.m.** in **DEPARTMENT 42** located at 10820 Justice Center Drive, Roseville, California.

1. M-CV-0067944 STORY RENTALS, INC. v. KNOWLTON, GEORGE

The motion to amend the cross-complaint and continue trial is continued to Friday, October 9, 2020 at 8:30 a.m. in Department 40 to be heard by Commissioner Glenn M. Holley.

2. M-CV-0068564 WELLS FARGO BANK v. BOYD, SHAWN

Plaintiff's Motion for Judgment on the Pleadings

Ruling on Request for Judicial Notice

Plaintiff's request for judicial notice is granted under Evidence Code section 452.

///

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR OCTOBER 1, 2020 AT 8:30 A.M.

Ruling on Motion

The motion is granted. A motion for judgment on the pleading, when brought by a plaintiff, may be granted where the complaint states facts sufficient to constitute a cause of action and the answer does not state facts sufficient to constitute a defense to the complaint. (Code of Civil Procedure section 438(c)(1)(A).) The motion has the same function as a demurrer but is brought where the time for a demurrer has expired. (Code of Civil Procedure section 438(g); *Southern California Edison Co. v. City of Victorville* (2013) 217 Cal.App.4th 218, 227.)

Plaintiff has made a sufficient showing that its complaint alleges enough facts to support the account stated and money lent causes of action. Plaintiff has also made a sufficient showing defendants are unable to plead a defense in light of the judicial admissions by both defendants as to the requests for admissions. (see Plaintiff's Request for Judicial Notice.) Thus, plaintiff is entitled to entry of judgment on the \$5,046.80 alleged in the complaint along with costs subject to the cost memorandum.

Judgment is entered forthwith against defendants Shawn Boyd and Michelle Boyd in the amount of \$5,046.80 and costs subject to a cost memorandum. (Code of Civil Procedure section 438(h)(3).)

3. M-CV-0073860 DEPT STORES NATL BANK v. JOHNSON, ASHLEY

Plaintiff's Motion to Enter Judgment Pursuant to Stipulation

The motion is granted. (Code of Civil Procedure section 664.6.) Judgment in the amount of \$2,301.47 is entered in favor of plaintiff Department Stores National Bank pursuant to the terms of the stipulation agreement entered on December 30, 2019. The judgment amount includes the original damages of \$2,961.47 less \$950.00 in credits plus \$290.00 in costs.

4. M-CV-0075278 CAPITAL ONE BANK v. DOLLAR, DIANA

Plaintiff Capital One Bank's Motion for Order Deeming Admissions Admitted

The motion is granted. The matters encompassed in plaintiff's requests for admissions, set one, are deemed admitted.

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR OCTOBER 1, 2020 AT 8:30 A.M.

5. S-CV-0036980 SPENCER, SAMUEL v. SINCLAIR, ROBERT

Defendants' Motion to Deem Plaintiff Samuel R. Spencer a Vexatious Litigant

Preliminary Matters

Plaintiff's request for continuance is denied as there has not been a good cause showing to support a continuance.

Plaintiff's request for a statement of decision is denied as plaintiff has not made a sufficient showing that a statement of decision is required under Code of Civil Procedure section 632.

Plaintiff's request to present oral testimony is denied.

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

The motion is denied without prejudice. In the current request, defendants seek to have plaintiff declared a vexatious litigant under Code of Civil Procedure section 391(b)(2) and (3). These subsections allow for a vexatious litigant determination where the person, acting in pro per, repeatedly attempts to relitigate litigation that has reached a final determination against the same defendants or involving the same claims or a person, acting in pro per, repeatedly filed unmeritorious pleadings or engages in other frivolous or unnecessary delay tactics. (Code of Civil Procedure section 391(b)(2), (3).) The primary reasoning behind the vexatious litigant statutes is to curb misuse of the court system by in pro pers that repeatedly relitigate the same issues or file numerous unmeritorious actions. (*Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 224.) The court has carefully reviewed the materials presented by defendants and finds that, at this time, it has not been sufficiently established that plaintiff either (1) attempts to repeatedly relitigate an action or (2) has repeatedly filed unmeritorious pleadings or engaged in frivolous/unnecessary delay tactics. Thus, the court declines to make such a determination at this time.

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR OCTOBER 1, 2020 AT 8:30 A.M.

6. S-CV-0039936 TAHOE VISTA NOTE ACQU v. VERDOM REALTY

Plaintiff's Motion to Compel Deposition of Defendant's PMK and to Reopen Discovery

Ruling on Objections

Defendant's objections are overruled.

Ruling on Motion

In the current request, plaintiff seeks to compel the deposition of defendant's PMK in addition to reopening discovery. Initially, the court determines a sufficient showing has been made by the parties to reopen discovery. (Code of Civil Procedure section 2024.050.) The discovery cut off dates are reopened to track the January 19, 2021 trial date.

With discovery reopened, the court addresses plaintiff's motion to compel the deposition of defendant's PMK. The request is granted. The parties are ordered to meet and confer to coordinate taking the deposition of defendant's PMK.

7. S-CV-0041916 BERMAN, HARRIET v. SAFEWAY

Defendant Safeway Inc.'s Motion for Leave to File Cross-Complaint

The motion is granted. Safeway shall file and serve its cross-complaint by October 16, 2020.

8. S-CV-0042554 CHANCO, PHILIP v. MAXEY, RYAN

The motion for summary judgment is dropped from the calendar. A full dismissal of the action was entered on July 15, 2020.

9. S-CV-0042984 SELTER, BRUCE v. JAMES, KELLY

The motion for summary judgment is continued to Thursday, November 19, 2020 at 8:30 a.m. in Department 42 at the request of the moving party.

///

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR OCTOBER 1, 2020 AT 8:30 A.M.

10. S-CV-0043030 KAMALI, NEUSHA v. SUN CITY LINCOLN HILLS

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

11. S-CV-0043290 DUKE, SUSAN v. HALL, GARY

The motion to be relieved as counsel is continued to Friday, October 9, 2020 at 8:30 a.m. in Department 3, located at the Historic Auburn Courthouse, to be heard by the Honorable Michael W. Jones.

12. S-CV-0043391 WENDORF, SUZANNE v. AYALA, LEOPOLDO

Defendant Leopoldo Ayala's Motion to File an Amended Answer

The motion is denied. In the current request, defendant seeks leave to amend his answer in order to change a prior admission that the 2013 Ayala Trust owned the subject property to a denial of this fact along with asserting a related affirmative defense. Such an amendment is generally improper to grant since it contradicts an admission made in the original pleading. (*Astenius v. State of California* (2005) 126 Cal.App.4th 472, 477.) Further, defendant has not made a sufficient enough showing that the amendment is meant to correct an inadvertent misstatement or erroneous allegation. (*Berman v. Bromberg* (1997) 56 Cal.App.4th 936, 945.) The court declines to entertain a request to contract a pleaded admission based upon the limited showing presented by defendant. For these reasons, the motion is denied.

13. S-CV-0044538 McANALLY, SARA v. WILLIS, JOEL

Plaintiff's Motion to Quash Defendant's Subpoena Duces Tecum

The motion is denied subject to the parties entering into a protective order limiting the disclosure of plaintiff's medical records to those matters related to spine; hip; knees; upper left thigh; and sacrum treatment from December 26, 2018 through the present. The parties shall diligently meet and confer in good faith in drafting the protective order language. Plaintiff's request for sanctions is denied.

///

**PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR OCTOBER 1, 2020 AT 8:30 A.M.**

14. S-CV-0044728 SHEA LIVING TRUST v. AMERIGAS PROPANE

Defendant's Demurrer to the Complaint

Preliminary Matters

Initially, the court shall consider plaintiffs' untimely opposition.

Ruling on Judicial Notice

Defendant's request for judicial notice is granted in part. The request is granted as to Exhibits A, B, C, E, and F. The request is denied as to Exhibit D.

Ruling on Demurrer

In the current request, defendant challenges the sufficiency of all three causes of action. Upon review of plaintiffs' opposition, they generally concede the deficiencies within the complaint and request leave of court to file a first amended complaint. The court sustains the demurrer in its entirety in light of plaintiffs' concession regarding the deficiencies in the complaint.

The remaining issue to address is whether plaintiffs should be afforded leave to amend. Leave to amend is generally granted liberally as a matter of fairness unless the complaint shows on its face that it cannot be amended. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747.) A review of the complaint shows that it may be amenable to amendment. Since the deficiencies may be remedied with an amendment, and in light of the liberal policy in support of granting leave, the demurrer is sustained with leave to amend.

Plaintiffs shall file and serve their first amended complaint by October 23, 2020.

15. S-CV-0044822 WALLACE, JONATHAN v. TOP SHELF MOTORS

Plaintiff's Motion to Compel Arbitration

The motion is continued to Thursday, October 29, 2020 at 8:30 a.m. in Department 42. At this time, the court is experiencing significant delays in the processing time for civil documents. The motion is continued to assure the briefing in this matter is complete as no oppositions currently appear in the court file.

**PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR OCTOBER 1, 2020 AT 8:30 A.M.**

16. S-CV-0045182 DRM INSURANCE SERV v. NEW LEGEND

The demurrer and motion to strike are continued to Thursday, October 29, 2020 at 8:30 a.m. in Department 42.

17. S-CV-0045284 PLASTIKON, INC v. JBR, INC

The two demurrers and the motion to strike are continued to Thursday, October 29, 2020 at 8:30 a.m. in Department 42.