

**PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
FRIDAY, OCTOBER 2, 2020, AT 8:30 A.M.**

These are the tentative rulings for civil law and motion matters set at **8:30 a.m., Friday, October 2, 2020**. 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., Thursday, October 1, 2020**. 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 the **HONORABLE MICHAEL W. JONES** and if oral argument is requested, it will be heard Friday, October 2, 2020, at 8:30 a.m. in Department 3, located at 101 Maple Street, Auburn California.

PLEASE NOTE: TELEPHONIC APPEARANCE IS STRONGLY ENCOURAGED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: www.placer.courts.ca.gov.

1. M-CV-0075327 Citibank, N.A. vs. McConnel, Marne

Plaintiff's motion to enter judgment pursuant to stipulation is granted. Judgment shall be entered in favor of plaintiff Citibank, N.A. and against defendant Marne McConnel in the total amount of \$2,817.35.

2. S-CV-0016410 Wallace, Richard, et al vs. Monier Lifetile LLC, et al

Plaintiff classes' motion for inclusion of prejudgment interest in the judgment is continued at the parties' request to November 13, 2020, at 8:30 in Department 3. No further briefing other than a joint statement on the outcome of mediation is permitted.

3. S-CV-0041049 Moore, E. Charles Jr., et al vs. Caliber Home Loans, Inc., et al

Defendants' motion for summary judgment, or in the alternative summary adjudication, and plaintiffs' motion for summary adjudication, are continued to October 30, 2020, at 8:30 a.m. in Department 3. The court has no record of plaintiffs' motion having been filed, although an opposition and reply brief to plaintiffs' motion have both been filed. Plaintiffs shall file their previously served motion for summary adjudication by no later than October 12, 2020. No further briefing is permitted.

4. **S-CV-0041493** **W1 Holdings, et al vs. Bank of New York Mellon, et al**
S-CV-0042872 **George, Sheena vs. Meritage Homes of California, Inc.**
S-CV-0043149 **W1 Holdings, LLC et al vs. Deutsche Bank AG, et al**

Defendant Bank of New York Mellon's request for judicial notice is granted.

Defendant Bank of New York Mellon ("BONY") moves to consolidate (1) Placer County Superior Court Case No. SCV-41493, *W1 Holdings, et al vs. Bank of New York Mellon, et al* ("the Taylor action"), (2) Placer County Superior Court Case No. SCV-42872, *Sheena George vs. Meritage Homes of California, Inc., et al* ("the George action"), and (3) Placer County Superior Court Case No. SCV-43149, *W1 Holdings, et al vs. Deutsche Bank AG, et al* ("the W1 action"), for all purposes including trial.

The motion is denied.

A complete consolidation may be ordered where the parties are identical and the causes of action could have been joined. *Hamilton v. Asbestos Corp., Ltd.* (2000) 22 Cal.4th 1127, 1147-1148. Parties who have appeared in either action are then subject to the court's jurisdiction in the merged action. *Id.* Here, each case to be consolidated has a different plaintiff. Plaintiff in the Taylor action is Anne Taylor, current occupant of the subject property, who alleges claims of trespass, invasion of privacy, violation of Government Code section 12955.7, slander and intentional infliction of emotional distress. Taylor's claims stem from alleged actions of defendants after she moved into the property. Plaintiff in the George action is Sheena George, a former owner of the property, who alleges claims including negligence, fraud, breach of contract, rescission and quiet title. George's claims stem from representations made or omitted in connection with her purchase of the property in 2003. Plaintiffs in the W1 action are W1 Holdings and Donald Hubbard, who allege claims of non-disclosure, fraud, UCL violations and quiet title, based on alleged ownership interests which arose after Sheena George conveyed her interest in the property. These claims stem from representations made or omitted in connection with defendants' attempts to sell the property after it was foreclosed on.

The cases also involve different defendants. The court notes that BONY's notice of motion fails to comply with California Rules of Court, rule 3.350(a), as it does not list all parties in each case. In the Taylor action, the named defendants are BONY, Stone Canyon Estates Homeowners Association and John Tidgewell, all of whom have appeared. In the George action, only BONY, Mortgage Electronic Registration Systems, Inc. and Merscorp Inc., all of whom are represented by the same counsel, have appeared. However, the complaint names 10 other defendants, including Stone Canyon Estates Homeowners Association, with no indication that these defendants have been served with the complaint. In the W1 action, only BONY, Bayview Loan Servicing, LLC and Bayview Mortgage Services, all of whom are represented by the same counsel, have appeared. However, the complaint names 18 other defendants with no indication that these defendants have been served with the complaint.

In short, the three actions involve four different plaintiffs, over 30 different defendants, and 35 different causes of action stemming from different events occurring over the course of many years. While there is some factual overlap in the three cases, BONY fails to demonstrate that consolidation would lessen the burden on the court or the parties to the three actions. To the contrary, it appears to the court that consolidation would unnecessarily complicate the issues before the court, and prejudice defendants in the Taylor action and other defendants who have not yet appeared.

5. S-CV-0041917 Conners, Blake A. vs. Safeway, Inc.

Defendant Safeway, Inc.'s motion for leave to file cross-complaint is granted. Safeway, Inc. shall file and serve its cross-complaint on or before October 16, 2020.

6. S-CV-0042129 Michael, Jerry A. vs. FCA US LLC, et al

Motion to Compel Deposition of Defendant Chrysler Auburn Dodge Jeep Ram's Person Most Qualified re: Video Surveillance

Plaintiff moves to compel deposition of defendant Chrysler Auburn Dodge Jeep Ram's personal most qualified re: video surveillance.

Plaintiff's counsel agreed to conduct the deposition of defendant's person most qualified telephonically. The deposition was taken on July 15, 2020. Now that the deposition has concluded, plaintiff takes the position that counsel was placed "at an obvious disadvantage that would raise reasonable suspicion in *any* case". (Declaration of Maria L. Weitz, ¶ 6, *emph. in orig.*) Plaintiff's counsel also notes background noise during the deposition, hesitation with respect to certain answers, and one instance of the deponent reviewing a document that he expressly requested from defense counsel. Plaintiff moves to compel the deposition of defendant's personal most knowledgeable with respect to video surveillance at the location where the deposition occurred.

Plaintiff fails to demonstrate that the requested testimony has even minimal bearing on the issues to be determined in this lawsuit. The motion is based on nothing more than unsupported speculation due to circumstances which plaintiff's counsel expressly agreed to prior to the deposition. The motion to compel is denied.

Motion to Compel Deposition of Jay Sussala

Plaintiff's motion to compel the deposition of Jay Sussala is denied.

Plaintiff served notice of the deposition of Jay Sussala on Friday, September 4, 2020, setting the deposition for Thursday, September 17, 2020. Pursuant to Code of Civil Procedure section 2025.270(a), a notice of deposition must be served at least 10 days before the date set for the deposition. If the deposition notice is served by electronic transmission, as was done here, the required notice is extended by two court days. Code Civ. Proc. § 1010.6(a)(4)(B).

Code of Civil Procedure section 12c states:

- (a) Where any law requires an act to be performed no later than a specified number of days before a hearing date, the last day to perform that act shall be determined by counting backward from the hearing date, excluding the day of the hearing as provided by Section 12.
- (b) Any additional days added to the specified number of days because of a particular method of service shall be computed by counting backward from the day determined in accordance with subdivision (a).

In this case, counting backwards from the date of the deposition, 10 days notice would fall on Monday, September 7, 2020, which was a court holiday. Counting backwards by an additional two court days, the deposition notice needed to be served by no later than September 3, 2020, in order to provide the requisite notice. As the deposition notice in this instance was served with insufficient notice, it is invalid.

The parties' requests for sanctions are denied.

7. S-CV-0042357 King, Ted Arthur vs. Tarver, Russell Lee

Motion for Trial Preference

Defendant's request for judicial notice is granted.

Defendant and cross-complainant Russell Tarver's ("Tarver's") motion for trial preference is denied. Although Tarver states that he suffers from various health conditions, he provides no prognosis or other information relating to how the stated health conditions impact him such that his interest in the current litigation will be prejudiced if trial preference is not granted.

Motion to Compel Responses to Special Interrogatories, Set 2

Plaintiff and cross-defendant Ted King's motion to compel responses to special interrogatories, set 2, is denied. Pursuant to Code of Civil Procedure section 2024.020(a), motions concerning discovery must be heard on or before the 15th day, before the date initially set for trial of the action. Further, a continuance of the trial date does not automatically operate to reopen discovery proceedings. Code Civ. Proc. § 2024.020(b). In this case, the initial trial date was set for August 24, 2020. Although the trial date was continued by stipulation of the parties, the parties did not stipulate to continue any cutoff dates relating to discovery responses or motions. A party who notices a discovery motion to be heard after the discovery motion cutoff date has no right to have the motion heard. *Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568, 1586. The parties' requests for sanctions are denied.

8. S-CV-0042635Z Skyline Oak LLC vs. Worthington, John
S-CV-0043512 Tech Services 2 U, et al vs. TRI Property Mgmt. Services, Inc.

Defendant Skyline Oak LLC's request for judicial notice is granted. Objection Nos. 1 and 2 are sustained. Objection No. 3 is overruled.

Tech Services 2U and John Worthington, individually and dba Tech Services 2U, move to consolidate Placer County Superior Court Case No. SCV-42635Z, *Skyline Oak LLC v. Worthington, John* and Placer County Superior Court Case No. SCV-43512, *Tech Services 2U v. TRI Property Management Services, Inc.*

The motion is denied. Case No. SCV-42635Z was initially filed as an unlawful detainer action, but was converted to a contract action after moving parties vacated the premises. The issue before the court in that action is the amount of past due rent and holdover damages owed pursuant to the lease agreement between the parties. In Case No. SCV-43512, moving parties allege fraud, breach of fiduciary duty, and intentional interference with contractual relations, against the property manager for the premises. In the fraud case, plaintiffs allege that they were led to believe that they had validly exercised an option to extend the lease terms for five years. Plaintiffs seek damages suffered as a result of having to relocate due to the lease terms not being extended.

Although there is some factual overlap in the two cases, moving parties do not establish that the two cases involve common legal questions, such that there is the danger of inconsistent rulings if the cases are not consolidated. Further, Skyline Oak LLC demonstrates that it would be prejudiced by consolidation as its straightforward contract claim would be intertwined with moving parties' claims of intentional torts and breach of fiduciary duty against the property manager. In light of substantial differences between the claims made in the two actions, moving parties do not show that economy and convenience would be served by consolidation.

9. S-CV-0042913 Whitworth, Chadwick M. vs. Salazar, Johnny, et al

Plaintiff's motion to compel the deposition of defendant Johnny Salazar is denied.

The current motion was initially set for hearing on September 4, 2020. The court issued a tentative ruling on September 3, 2020, which directed the parties to engage in additional meet and confer regarding the setting of the deposition. According to the supplemental declaration of Mary Talmachoff filed September 25, 2020, since that time plaintiff's counsel has made no effort to engage in additional meet and confer discussions. Based on plaintiff's failure to meet and confer in good faith regarding the scheduling of defendant's deposition as directed by the court, the motion is denied.

Defendant is awarded sanctions in the amount of \$780 from plaintiff and plaintiff's counsel, jointly and severally.

10. S-CV-0043241 Garcia, Martin, et al vs. Ben Evans, Inc.

Plaintiff's unopposed motion for preliminary approval of class action settlement is granted.

The court has broad discretion in determining whether (1) a settlement is fair and reasonable, (2) the class notice is adequate, and (3) certification of the class is proper. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235. When reviewing the fairness of a class action settlement, the court is to give due regard to the parties' agreement, ensuring the agreement is not a product of fraud, overreaching parties, or collusion and that the settlement, as a whole, is fair, reasonable, and adequate. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145. Reasonableness of the settlement may be determined by looking to several factors such as the strength of the plaintiff's case; the risk, expense, complexity, and duration of further litigation; discovery; the experience of counsel; the presence of government participation; and the reaction of class members to the proposed settlement. *In re Cellphone Fee Termination Cases, supra; Dunk, supra; Kullar v. Foot Locker Retail, Inc., supra.*

The court has reviewed the Joint Stipulation of Class Action Settlement attached as Exhibit 1 to the declaration of Vincent C. Granberry, the moving papers, and accompanying declaration filed in connection with the motion. Based upon that review, the court determines that a sufficient showing has been made that the settlement is fair, reasonable and adequate.

The court preliminarily certifies the settlement class, defined as any current or former hourly non-exempt employees employed by Ben Evans, Inc. dba Environment Control in California between September 14, 2014, and August 14, 2019. The court preliminarily approves the proposed settlement agreement and approves the Class Notice and Allocation Form attached as Exhibits A and B to the Joint Stipulation of Class Action Settlement. The parties are authorized to provide notice to the class members in the manner set forth in the settlement agreement.

The court preliminarily appoints Joseph Lavi, Esq., Vincent C. Granberry, Esq. and Anwar D. Burton of Lavi & Ebrahimian, LLP and Sahag Majarian II of the Law Office of Sahag Majarian, as Class Counsel. Simpluris, Inc. is approved to act as the Settlement Administrator. The court also incorporates by reference all findings and orders set forth in the Proposed Order lodged with the court.

The court sets a Final Approval Hearing on January 15, 2021, at 8:30 a.m. in Department 3, located at the Historic Courthouse in Auburn.

11. S-CV-0043612 JMK Golf, LLC vs. Alessi, Betsey

Appearance required on October 2, 2020, at 8:30 a.m. in Department 3.

12. S-CV-0044393 McCreary, Cameron vs. R & D Holdings Placer, LP, et al

The scheduled hearing is dropped as no moving papers were filed with the court.

13. S-CV-0044639 Baker, Trent Claude vs. McDaniel, Bojordan Edwards, et al

The scheduled hearing on defendant's motion to appoint counsel is continued to November 13, 2020, at 8:30 in Department 3. No moving papers have been filed. The court notes that defendant's motion was rejected by the clerk's office on July 31, 2020.

14. S-CV-0044845 Galilei, Rouslana vs. Comcast Cable Communications, LLC

The motion to be relieved as counsel for plaintiff by Todd M. Friedman and the Law Offices of Todd M. Friedman, P.C., is continued to October 23, 2020, at 8:30 a.m. in Department 3.

The court notes that the declaration of counsel in support of the motion states that the motion has been served on the client by personal service. However, the only proof of service in the court's file states that the motion was served by mail. When service of the motion is made by mail, counsel must indicate whether and in what manner it has been confirmed that the mailing address is current. Cal. R. Ct., Rule 3.1362(d). Counsel's declaration omits this information.

At least five court days prior to the continued hearing date, counsel may file and serve an amended declaration which provides the information required by Rule 3.1362(d), or alternatively a proof of service showing personal service of the motion on plaintiff. In addition, counsel shall lodge an amended proposed order which reflects the next scheduled case management conference in this action, set January 26, 2021, at 10:00 a.m. in Department 40.

15. S-CV-0044861 Galilei, Rouslana vs. Sprint Solutions, Inc.

The motion to be relieved as counsel for plaintiff by Todd M. Friedman and the Law Offices of Todd M. Friedman, P.C., is continued to October 23, 2020, at 8:30 a.m. in Department 3.

The court notes that the declaration of counsel in support of the motion states that the motion has been served on the client by personal service. However, the only proof of service in the court's file states that the motion was served by mail. When service of the motion is made by mail, counsel must indicate whether and in what manner it has been confirmed that the mailing address is current. Cal. R. Ct., Rule 3.1362(d). Counsel's declaration omits this information.

At least five court days prior to the continued hearing date, counsel may file and serve an amended declaration which provides the information required by Rule 3.1362(d), or alternatively a proof of service showing personal service of the motion on plaintiff. In addition, counsel shall lodge an amended proposed order which reflects the next scheduled case management conference in this action, set January 26, 2021, at 10:00 a.m. in Department 40.

16. S-CV-0045147 Smit, Andrea Inez - In the Matter of

The expedited petition to approve compromise of minor's claim is granted. If oral argument is requested, appearance of the minor is excused.

17. S-CV-0045253 Portugal, Anny - In Re the Petition of

The petition to approve compromise of pending action of minor Anny Portugal is granted as prayed. The court incorporates by reference all findings and orders set forth in the Proposed Order Approving Compromise of Pending Action lodged with the court on September 21, 2020. If oral argument is requested, appearance of the minor is excused.
