

These are the tentative rulings for civil law and motion matters set for Thursday, October 27, 2016, 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, October 26, 2016. 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.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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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.

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**1. M-CV-0065359 Grover, Linda vs. Stephens, Jeromy, et al.**

Defendant and judgment creditor AnnaLisa Linderhower's motion to set aside judgment is denied. No proof of service of the motion or order shortening time has been filed.

**2. M-CV-0065926 Galt's Gulch Property Holdings, LLC vs. Rabideau, John**

The motion to set aside the default/default judgment is continued to November 3, 2016 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

**3. M-CV-0066176 Goszulak, Stephanie Saba vs. Barnes, Jude Simms, et. al.**

Defendant's motion to set aside the default judgment is denied as there is no proof of service in the file that comports with the requirements of CCP section 473(b).

**4. M-CV-0066272 Johal, Gary vs. Baskin, Martha Ann, et al**

Defendant's demurrer is overruled. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.*

(2011) 192 Cal.App.4th 1149, 1153.) The complaint, when read as a whole, alleges sufficient facts to support an unlawful detainer claim.

Defendant shall file and serve her answer or general denial on or before October 31, 2016.

**5. S-CV-0030314 Belisle, David, et al vs. Centex Homes, et al**

The two motions for good faith settlement are continued to November 3, 2016 at 8:30 a.m. in Department 43. The court apologizes to the parties for any inconvenience.

**6. S-CV-0032904 Schmidley, Valisa vs. Dance Hall Investors, Inc., et al**

The unopposed motion to confirm arbitration award is granted. The court confirms Arbitrator Cynthia Remmer's Final Award entered on April 14, 2016.

**7. S-CV-0035732 Fredette, Mark vs. Ford Motor Company**

Plaintiff's motion for attorney's fees and costs is granted. Determining the reasonable amount of attorney's fees begins with the lodestar method, i.e the number of hours reasonably expended multiplied by the reasonable hourly rate. (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48-49.) The lodestar figure may then be adjusted, based upon factors specific to the case, to fix the fees at a fair market value. (*Ibid.*) This adjustment may be an increase or a decrease, often referred to as a multiplier or negative multiplier, after the court considers several factors. (*Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322.) The factors may include (1) the nature of the litigation; (2) the difficulty of the case; (3) the amount involved; (4) the skill required to handle the case; (5) the skill employed by counsel; (6) the attention given the case; (7) the success or failure of the case; and (7) any other circumstances in the case. (*PLCM Group, supra at p. 1096*; see *Serrano III, supra at p. 48-49*; *Press, supra at p. 322, fn. 12.*) A review of the briefing in this case sufficiently establishes 143.4 hours as a reasonable number of hours for the work completed in this litigation. The hourly rate, however, is reduced to \$285 to reflect the reasonable hourly rate for similar work done within Placer County. (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 614-619.)

The court turns to the issue of the requested multiplier. In this case the court balances the salutary statutory purposes of the multiplier on the one hand, and the lack of complexity and limited issues raised in this action on the other. The court awards a multiplier of 1.15. In sum, the court finds the reasonable number of hours related to this litigation is 143.4 hours at an hourly rate of \$285= \$40,869, multiplied by 1.15 = \$46,999.35. The court also grants plaintiff's request for costs in the amount of \$3,984.40.

**8. S-CV-0035774 Kor-It Inc., et al vs. Buckmaster, Dennis, et al**

Plaintiffs' motion for leave to file a first amended complaint is granted. Plaintiffs shall file and served their first amended complaint on or before November 3, 2016.

**9. S-CV-0037100 Johnson, Michael vs. Williams, Jonathan**

Defendant's Motion to Compel Discovery as to Plaintiff Michael Johnson

The motion is granted. Plaintiff shall provide verified responses and responsive documents, without objections, to form interrogatories; special interrogatories; and requests for production of documents on or before November 3, 2016.

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.)

Defendant's Motion to Compel Discovery as to Plaintiff Amae El' Shloyh

The motion is granted. Plaintiff shall provide verified responses and responsive documents, without objections, to form interrogatories; special interrogatories; and requests for production of documents on or before November 3, 2016.

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.)

**10. S-CV-0037670 Gilchrist, Debra vs. Greene, Casey et al**

The demurrer and motion to disqualify are continued to November 10, 2016 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

**11. S-CV-0037732 Love, Diane, et al vs. Moss, Keith, et al**

Defendants' demurrer to the first amended complaint is overruled. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The

complaint, when read as a whole, alleges sufficient facts to support plaintiffs' fraud claims.

Defendant's answer and or general denial shall be filed and served on or before November 3, 2016.

**12. S-CV-0037836 Takacs, Stephen M. vs. Hunting, William Joseph., et al**

The motion to compel discovery is dropped from the calendar at the request of the moving party.

**13. S-PR-0006637 Davidson Neece, Barbara Ann - In re the Estate of**

The motion of Angela Berardo and Gina Berardo for judgment on the pleadings as to the petition to determine ownership to property and for other relief is denied.

In reviewing a motion for judgment on the pleadings, as in reviewing a demurrer, courts consider whether properly pleaded factual allegations, assumed to be true and liberally construed, are sufficient to constitute a cause of action. Stone Street Capital, LLC v. Cal. State Lottery Com'n (2008) 165 Cal.App.4th 109, 116; Fire Ins. Exchange v. Sup. Ct. (2004) 116 Cal. App. 4th 446, 452-53. "The grounds for [the] motion . . . must appear on the face of the complaint or from a matter of which the court may take judicial notice." Richardson-Tunnell v. School Ins. Program for Employees (2007) 157 Cal.App. 4th 1056, 1061.

The petition alleges decedent Barbara Neece, wife of decedent Matthew "Bill" Berardo, acquired and owned 822 Leith Court, Lincoln, as her separate property during her marriage to Bill (¶¶ 13-14). After Barbara died, surviving spouse Bill stated she left a will leaving him her estate; Robbyn Neece, Barbara's daughter, had seen a will leaving the estate to Robbyn and her siblings (¶ 15). In 2005, Bill, Robbyn and Robbyn's siblings agreed together that the Leith Court property would pass to Bill, Robbyn, and Robbyn's siblings in equal shares, and that the property would then transfer to Robbyn by sale (¶ 20). Robbyn and her siblings further agreed that they would share in the proceeds when Robbyn eventually sold the property (¶ 35).

Upon execution of this agreement, Bill moved out of the property (¶ 21). Robbyn moved into the home, which then had little or no equity, undertaking all payments on the indebtedness (including redeeming the home from foreclosure proceedings), insurance, taxes, maintenance and improvements, at a cost in excess of \$200,000 or \$300,000 (¶¶ 21-24, 26, 28, 30, 34, 38-39, 43, 51, 52-53) over more than 11 years. Bill confirmed that he had surrendered and transferred the property to Robbyn, a distribution different from Bill's right to inherit (whether testate or intestate) (¶¶ 23, 34, 44), and he never contacted Robbyn again concerning the property (¶¶ 24, 26). The transfer agreement contemplated Bill would eventually probate Barbara's estate to resolve the record title to the property, but he did not do so (¶¶ 22, 25, 28, 36). Robbyn undertook to probate Barbara's estate and resolve any record title issues (¶ 36). The expenses of ownership and maintenance paid solely by Robbyn exceeded any reasonable rental value of the property (¶ 39). Bill, Bill's estate, and Bill's relatives have never paid any amount toward the property in more

than 11 years since it was transferred to Robbyn (id., 42), and, until these proceedings commenced, never made any claim to ownership.

The allegations are sufficient to allege an agreement by Barbara's successors (whether Bill alone or Bill together with Robbyn and her siblings) to assign or transfer the subject property to petitioner, and the inter vivos transfer by Bill of the property under said agreement. The court notes that, as a matter of law, Bill succeeded to his share of Barbara's estate immediately upon her death (Prob.C. § 7000), even though the property would still be subject to administration in Barbara's estate.

The allegations are also sufficient to allege an agreement between Bill, Robbyn and Robbyn's siblings for distribution contrary to the will or intestacy. Probate Code section 11604—which permits the court to undertake a limited to a review of the "circumstances surrounding the execution of, and the consideration for, the transfer, agreement, request, or instructions" to distribute contrary to a will or intestate succession—does not prescribe any mandatory form for such an agreement or assignment. Even if it did, section 11604 permits the court only to determine whether the agreement included "grossly unreasonable" consideration or arose as the result of "duress, fraud, or undue influence." Id., subdiv. (c)(1)-(2). The petition does not seek any determinations under that section, and there allegations do not reveal any legal basis for the court to refuse to enforce the agreement under § 11604.

The petition is sufficient to allege a § 850 claim: it clearly alleges that Robbyn's claim to ownership and the potential adverse claim of Barbara's estate. Prob.C. § 850's broad provisions reach such a claim. Prob.C. § 855 further permits the joining of related civil claims described in the petition.

Moving parties' addition arguments including those relating to C.C.P. § 366.2, Cory v. Hyde (1875) 49 Cal. 469, and the remedies sought by Robbyn are unpersuasive.

#### **14. S-PR-0008238                      Berardo, Jr. Mathew William - In Re The Estate Of:**

The motion of Angela Berardo and Gina Berardo for judgment on the pleadings as to the petition to determine ownership to property and for other relief is denied.

In reviewing a motion for judgment on the pleadings, as in reviewing a demurrer, courts consider whether properly pleaded factual allegations, assumed to be true and liberally construed, are sufficient to constitute a cause of action. Stone Street Capital, LLC v. Cal. State Lottery Com'n (2008) 165 Cal.App.4th 109, 116; Fire Ins. Exchange v. Sup. Ct. (2004) 116 Cal. App. 4th 446, 452-53. "The grounds for [the] motion . . . must appear on the face of the complaint or from a matter of which the court may take judicial notice." Richardson-Tunnell v. School Ins. Program for Employees (2007) 157 Cal.App. 4th 1056, 1061.

The petition alleges decedent Barbara Neece, wife of decedent Matthew "Bill" Berardo, acquired and owned 822 Leith Court, Lincoln, as her separate property during her marriage to Bill (¶¶ 13-14). After Barbara died, Bill stated she left a will leaving him her estate; Robbyn Neece, Barbara's daughter, had seen a will leaving the estate to Robbyn and her siblings (¶ 15). In 2005, Bill, Robbyn and Robbyn's siblings agreed together that the Leith Court property would pass to Bill, Robbyn, and Robbyn's siblings in equal shares, and that the property would then transfer to Robbyn by sale (¶ 20).

Robbyn and her siblings further agreed that they would share in the proceeds when Robbyn eventually sold the property (§ 35).

Upon execution of this agreement, Bill moved out of the property (§ 21). Robbyn moved into the home, which then had little or no equity, undertaking all payments on the indebtedness (including redeeming the home from foreclosure proceedings), insurance, taxes, maintenance and improvements, at a cost in excess of \$200,000 or \$300,000 (§§ 21-24, 26, 28, 30, 34, 38-39, 43, 51, 52-53) over more than 11 years. Bill confirmed that he had surrendered and transferred the property to Robbyn, a distribution different from Bill's right to inherit (whether testate or intestate) (§§ 23, 34, 44), and he never contacted Robbyn again concerning the property (§§ 24, 26). The transfer agreement contemplated Bill would eventually probate Barbara's estate to resolve the record title to the property, but he did not do so (§§ 22, 25, 28, 36). Robbyn undertook to probate Barbara's estate and resolve any record title issues (§ 36). The expenses of ownership and maintenance paid solely by Robbyn exceeded any reasonable rental value of the property (§ 39). Bill, Bill's estate, and Bill's relatives have never paid any amount toward the property in more than 11 years since it was transferred to Robbyn (*id.*, 42), and, until these proceedings commenced, never made any claim to ownership.

The allegations are sufficient to allege an agreement by Bill to assign or transfer his interest in the subject property to petitioner, and the inter vivos transfer of the property under said agreement. The court notes that, as a matter of law, Bill succeeded to his share of Barbara's estate immediately upon her death (Prob.C. § 7000), even though the property would still be subject to administration in Barbara's estate.

The allegations are also sufficient to allege an agreement between Bill, Robbyn and Robbyn's siblings for distribution contrary to the will or intestacy. Probate Code section 11604—which permits the court to undertake a limited to a review of the "circumstances surrounding the execution of, and the consideration for, the transfer, agreement, request, or instructions" to distribute contrary to a will or intestate succession—does not prescribe any mandatory form for such an agreement or assignment. Even if it did, section 11604 permits the court only to determine whether the agreement included "grossly unreasonable" consideration or arose as the result of "duress, fraud, or undue influence." *Id.*, subdiv. (c)(1)-(2). The petition does not seek any determinations under that section, and there allegations do not reveal any legal basis for the court to refuse to enforce the agreement under § 11604.

The petition is sufficient to allege a § 850 claim: it clearly alleges that Robbyn's claim to ownership and the potential adverse claim of Bill's estate. Prob.C. § 850's broad provisions reach such a claim. Prob.C. § 855 further permits the joining of related civil claims described in the petition.

Moving parties' addition arguments including those relating to C.C.P. § 366.2, Cory v. Hyde (1875) 49 Cal. 469, and the remedies sought by Robbyn are unpersuasive.

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