

These are the tentative rulings for civil law and motion matters set for Tuesday, November 8, 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, Monday, November 7, 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-0065283 U.S. Bank Trust, N.A. vs. Raquiza, Remedios M.**

Plaintiff's motion for summary judgment is granted. A motion for summary judgment in an unlawful detainer action may be brought at any time after the answer is filed upon five days notice. (CCP§1170.7.) A party is entitled to bring a motion for summary judgment where there are no triable issues of fact. (CCP§437c.)

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 unlawful detainer following a foreclosure, plaintiff must show that (1) plaintiff purchased the property upon foreclosure and title following the foreclosure sale has been duly perfected, (2) defendant was served with a three-day written notice to quit the property, and (3) defendant continued in possession after expiration of the notice. (CCP§1161a(b)(3).)

Plaintiff provides evidence that it purchased the property at a trustee's sale and said title was duly perfected. (Plaintiff's Separate Statement of Undisputed Material Facts (SSUMF) Nos. 9, 10.) Plaintiff also shows that defendants were served with

notices to quit and to vacate. (Plaintiff's SSUMF Nos. 11-13.) Finally, Plaintiff submits evidence that defendants remain on the property after the expiration of the notice. (Plaintiff's SSUMF No.13.)

As Plaintiff has made a prima facie showing in support of summary judgment, the burden now shifts to defendant. While defendant has filed a written opposition, he fails to present any evidence to establish a triable issue of material fact. With the burden shifted and defendant unable to make a sufficient showing, the motion is granted.

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

The appearances of the parties are required for the hearing on defendant's motion to set aside the default judgment.

**3. S-CV-0034325 Adams, Ryan, et al vs. Pulte Home Corporation, et al**

Intervenors St. Paul Mercury Insurance Company and St. Paul Fire and Marine Insurance Company's unopposed motion for leave to file a complaint-in-intervention is granted.

The clerk shall file the lodged complaint-in-intervention forthwith.

**4. S-CV-0034521 347 Group Inc. vs. Philip Hawkins Architect Inc.**

Plaintiff's motion for leave to file a second amended complaint is granted. The court may permit a party to amend its operative pleading in the furtherance of justice and on such terms as may be just. (*Code of Civil Procedure section 473(a)(1); Code of Civil Procedure section 576.*) The moving party must also show that the amendment will not prejudice any opposing party. (*Douglas v. Superior Court (1989) 215 Cal.App.3d 155, 158.*) Courts have broad discretion in granting leave to amend a pleading and such discretion is usually exercised liberally to permit amendment to the pleading. (*Howard v. County of San Diego (2010) 184 Cal.App.4th 1422, 1428.*) Plaintiff's motion has been brought in a timely fashion, comports with the requirement of CRC Rule 3.1324, and there is no showing of prejudice to the defendants.

**5. S-CV-0034756 Mahlberg, Stephanie A. vs. City of Rocklin**

The motion for summary judgment is dropped from the calendar. A notice of settlement of the entire case was filed on October 14, 2016.

**6. S-CV-0035073 Ruiz, Victor Tony Jr. vs. Union Pacific Railroad Company**

Defendant Chase Chevrolet's unopposed motion for determination of 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 defendant's proportionate shares of liability for plaintiff's injuries and therefore is in good faith within the meaning of CCP§877.6.

**7. S-CV-0035511 Stout, Vicki vs. RCO Services, LLC, et al**

Plaintiff's motion for attorney's fees is continued to November 22, 2016 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

**8. S-CV-0035964 Dimaggio, Daphne Rupley vs. Mourier Land Investment, et al**

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

**9. S-CV-0036839 Grinager, Shelley vs. Tayu Investment, Inc, et al**

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

**10. S-CV-0037037 Vogt, Ashley vs. Flint, Jeffrey John**

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

**11. S-CV-0037359 Bartholomew, Karen vs. AIG Insurance Company, et al**

The demurrer is sustained without leave to amend. 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.) While the SAC has now separated the causes of action with the second cause of action being the standalone claim against the moving defendant. The substance of the allegations, however, remains substantially similar to those made in the FAC. These allegations are still insufficient to support a claim against defendant. Moreover, the second cause of action still appears to be barred by the workers' compensation exclusivity doctrine. (*Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 810-812.) In light of these deficiencies and the failure of plaintiff to demonstrate any ability to amend the pleading, the demurrer is sustained without leave to amend.

**12. S-CV-0038145 Green Planet 21 Utility Services, LLC vs. Addiego, Michael**

The demurrer, motion to strike, and motion for dismissal are continued to November 10, 2016 at 8:30 a.m. to be heard by the Honorable Michael W. Jones.

**13. S-CV-0038165 Dominguez, Cathy, et al vs JIPC Management Holdings, et al**

The petition for minor's compromise is dropped from the calendar as no moving papers were filed with the court.

**14. S-CV-0038423 Gutzman, David vs. ACW Construction, Inc.**

The petition for release of mechanic's lien is dropped from the calendar at the request of the moving party.

**15. S-CV-0038465 Mares, C. - In Re the Petition of**

The petition for approval of transfer of payment rights is granted as prayed.

**16. S-CV-0038469 G., April - In Re the Petition of**

The petition for approval of transfer of payment rights is granted as prayed.

**17. S-PR-0008299 Slater, Keith Noel - In Re the Estate of**

Petitioner's unopposed motion to quash the subpoena duces tecum served on third party Sutter Auburn Faith Hospital is granted. The subpoena issued by respondent Bruce Slater on Sutter Auburn Faith Hospital is quashed.

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