

NOTICE:

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-7848 (Department 54) by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 3.04.

**Department 54
Superior Court of California
800 Ninth Street, 3rd Floor
Shelleyanne W.L. Chang, Judge
E. Higginbotham, Clerk
V. Carroll, C.A., Bailiff**

Wednesday, January 31, 2007, 9:00 AM

Item 1 **03AS01696 PATRICK GAINER, ET AL VS. GREYSTONE HOMES, INC.**

Nature of Proceeding: Motion for Determination of Good Faith Settlement

Filed By: Yee, Darryl M.

Cross-defendant CPC Enterprises, Inc.'s motion for determination of good faith settlement is unopposed and is granted.

The Court will sign the formal order submitted with the moving papers.

Item 2 **04AS03682 JESSICA HARRIS, ET AL VS. TRAVELERS PROPERTY INSURANCE CO.**

Nature of Proceeding: Motion To File Amended Complaint

Filed By: Laskin, Alan M.

This matter is dropped from calendar.

Item 3 **05AS03398 KEVIN WOODY VS. LEONARD J. FLORY, ET AL**

Nature of Proceeding: Motion for Sanctions

Filed By: Jaffe, Roger V.

The matter is continued to February 14, 2007. The court has considered the supplemental declarations filed in response to the court's January 3, 2007 order. Previously, defendant refused to produce documents because he did "not have the money to do so." Defendant now declares that the account statements are free and that "[s]tatements were ordered." Defendant's new found knowledge demonstrates that his earlier responses to this court's orders of June 15 and September 14, 2006, were unfounded and not made in good faith. Further, defendant's declaration that "statements were ordered" is deliberately vague as to when the statements were ordered, by whom, and from whom. Finally, defendant's declaration provides no information as to when the statements will be produced. At the continued hearing, the court will consider the imposition of additional sanctions, including terminating sanctions.

Plaintiff's request for a monetary sanction is granted. Defendant Leonard Flory shall pay to plaintiff \$1,040.00.

This minute order is effective immediately. No formal order pursuant to CRC rule 3.1312 or other notice is required.

Item 4 **06AS02542 PAMELA ANN TRILIA, ET AL VS. SANDRA SUE JACKSON, ET AL**

Nature of Proceeding: Default Hearing

Filed By: Beaudoin, Gerald J.

Plaintiff's request for default judgment against defendant Sandra Sue Jackson is denied. Defendant Wells Fargo Bank filed an answer on July 25, 2006. The Court exercises its discretion under CCP section 579 not to issue a several judgment.

Item 5 **06AS02974 MICHELL K. REED VS. JONATHAN COPPEDGE**

Nature of Proceeding: Motion To Compel

Filed By: Reed, Michell K.

Plaintiff's motion to compel further responses to discovery is denied for failure to comply with CRC Rule 3.1020. Plaintiff's declaration does not meet the requirement of CRC Rule 3.1020 that "the separate statement must be full and complete so that no person is required to review any other document in order to determine the full request and the full response."

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 6 **06AS03442 DINA KRAVCHUK VS. CARLA VERONICA CHRISTIANSON**

Nature of Proceeding: Motion To Compel

Filed By: Sherinian, Suzanne A.

Defendant's motion to compel responses to form interrogatories (set one), request for production of documents (set one), special interrogatories (set one) and request for production of documents (set two) is unopposed and is granted.

Plaintiff shall serve verified responses, without objection, no later than February 9, 2007.

Sanctions are denied as the motion is unopposed.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 7 **06AS03800 TOM BROWN, ETAL VS. SUNBRIDGE CARD AND REHABILITATION, ETAL**

Nature of Proceeding: Petition To Compel Arbitration

Filed By: Asterlin, Paul

The petition to compel arbitration is denied. The arbitration provisions were initiated by Kathryn Brown. The power of attorney appoints Tommy John Brown as decedent's attorney in fact, and if he is unwilling or unable to serve, then Kathryn Ann Brown is appointed as alternate. The Court does not read the power of attorney as appointing Kathryn Ann Brown to serve jointly with Tom Brown, nor as an equally situated alternate. Kathryn Ann Brown's appointment is conditioned, and her authority does not arise, unless Tom Brown is unable or unwilling to serve. Plaintiffs have produced evidence that Tom Brown was available and willing to sign the admission papers for his mother, but was not asked to do so.

Petitioners' contention that Kathryn Brown should be estopped from denying the validity of her authority is not persuasive. The power of attorney is dated prior to the date of admission, and was in petitioner's file relating to decedent. It appears from the record that petitioner had possession of the power of attorney at the time of admission. There is no evidence that the Browns misrepresented Kathryn's authority or concealed the terms of the power of attorney.

The Court notes that the power of attorney was not a durable power of attorney, and that decedent's capacity at the time of admission is disputed. As moving party, petitioner has the burden of showing, through admissible evidence, that decedent had capacity at the time of admission, such that the power of attorney was effective at that time. Petitioner has not carried its burden as it has not produced any evidence on the issue of decedent's capacity at the time of admission.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 8 **06AS04228** **FILOMENA TOGONON VS. IMELDA PASION**

Nature of Proceeding: Default Hearing

Filed By: Rimmer, Kirk S.

Appearance required. Plaintiff should be prepared to present oral/documentary evidence to prove the damages requested.

Item 9 **06UD06968** **CITY OF SACRAMENTO VS. SAHIB RAO**

Nature of Proceeding: Order to Show Cause

Filed By:

Having received no evidence that the claim of right of possession filed by Bindra Singh Sandhu has been withdrawn, the court orders the claim dismissed and further orders that claimant Bindra Singh Sandhu pay into the court a penalty of \$250.00. CCP section 128.7(d).

The OSC is ordered DISCHARGED.

Sandhu's claim is the second filed in this matter after the court granted plaintiff City of Sacramento's motion for summary judgment in the underlying unlawful detainer

action. As was the case with the earlier claimant, whose claim the court denied, this case has proceeded through discovery and summary judgment without mention of the claimant. Further, in opposition to the earlier claim, the City's employee responsible for monitoring the property at issue declared that he had "never observed any person, other than Kumar and the Rao's exercise any rights which would normally be associated with the right to occupancy." Sheridan dec., para. 6. Finally, under the terms of the lease agreement, Kumar and the Rao's were not permitted to assign their interest without the City's permission. The City previously stated at hearing on December 8, 2006, that it never consented to an assignment by Kumar and/or the Rao's.

This minute order is effective immediately. No formal order pursuant to CRC rule 3.1312 or other notice is required.

Item 10 **05AM01120 VORGIE DEESE, JR. VS. GOLDEN STATE VINYL SIDING, ET AL**

Nature of Proceeding: Motion for an Order Setting Aside & Vacating Default

Filed By: Silk, Melvyn A.

This matter is dropped from calendar.

Item 11 **06AM08124 DOLAN'S BUILDING MATERIALS CO INC VS. BROOKHURST HOMES ET AL**

Nature of Proceeding: Motion to Disqualify Counsel

Filed By: Griffin, Thomas M.

Defendants' motion to disqualify plaintiff's counsel is denied. In ruling on this motion, the Court has reviewed two factors: first, whether the relationship between defendant Moser and attorney Brooks was "direct and personal" and second, the relationship between the legal problem involved in the former representation and the legal problem involved in the current matter. *Jessen v. Hartford Casualty Ins. Co.* (2003) 111 Cal.App.4th 698, 709.

Defendant Moser has produced evidence that he met with attorney Brooks on one occasion, during which he disclosed "private" information about his personal life, finances and philosophies, including his strategy for settling lawsuits. He turned over information pertaining to the former action and paid the requested retainer payment.

Attorney Brooks has produced evidence that he did not recall the meeting with defendant Moser, did not review any documents provided by defendant Moser, and returned the \$9,000 retainer check about a month after the meeting. Attorney Brooks never became defendant Moser's attorney of record in the former action; Mr. Moser either represented himself in pro per or was represented by his present counsel.

This evidence does not show that attorney Brooks was "personally involved in providing legal advice and services" to defendant Moser in the former action. Rather, the contact was peripheral and limited in nature.

As to the second factor, no nexus has been shown between the former and present actions. No evidence was produced as to the issues in the former lawsuit. The conclusory unsworn statement that both actions "are related to Defendant Moser's personal financial information" is insufficient.

In the absence of a written waiver, the Court disregards the declaration of Robert M. Wheatley that defendant Moser orally waived the potential conflict in a telephone conversation.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 12 **06AS01284** **MIGUEL GONZALEZ-SALGADO VS. FOLSOM CAR STOP, INC. ET AL.**

Nature of Proceeding: Motion To File Cross Complaint

Filed By: Baumgartner, Theresa A.

Defendant Folsom Car Stop, Inc. dba Folsom Lake Dodge's motion for leave to file cross-complaint is unopposed and is granted.

Defendant may file and serve the cross-complaint no later than February 9, 2007.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 13 **06CS01792** **IN RE: GRETCHEN BENDER**

Nature of Proceeding: Petition For Change Of Name

Filed By: Bender, Gretchen

The petition for name change is unopposed and is granted on condition that proof of publication is filed in Department 54 prior to hearing.

Item 14 **06ED20082** **STATE OF CALIFORNIA, ET AL VS. CARMEN F. CATALAN**

Nature of Proceeding: Claim of Exemption

Filed By: Vives-Almodovar, R.

The claim of exemption is denied. The Court is without jurisdiction to grant an exemption where, as here, the debt is incurred for the "common necessities of life." CCP section 706.051(c)(1); J.J. MacIntryre Co. v. Duren (1981) 118 Cal.App.3d Supp. 16.

However, the judgment creditor is willing to accept a lesser amount than it is entitled to garnish. The Sheriff is therefore directed to garnish \$50 per pay period, not to exceed \$100 per month, from the judgment debtor's earnings and return to the judgment debtor forthwith all funds withheld in excess of that amount.
