

**Tentative Rulings and Resolution Review Hearings
October 2, 2023
Department 8**

This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b) (1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court’s website (www.shasta.courts.ca.gov) and are available by clicking on the “Tentative Rulings” link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

In furtherance of compliance with the California Department of Public Health and CDC guidelines and recommendations, the Superior Court of California, County of Shasta is continuing to undertake precautionary measures to ensure the health and safety of the courthouse users. Persons are encouraged to make appearances telephonically, through CourtCall (888-882-6878; courtcall.com).

8:30 a.m. – Law & Motion

IN RE: ADKINS

Case Number: 22CV-0200719

Tentative Ruling on Order to Show Cause Re: Dismissal: An Order to Show Cause Re: Dismissal (hereinafter “OSC”) issued August 18, 2023 to Petitioner Shania Adkins, in pro per, for failure to comply with the Court’s Order dated June 28, 2023. The June 28, 2023 Order required that Petitioner appear in court on August 14, 2023 and provide a status of prosecution. Petitioner did not appear as ordered. Petitioner did not provide a written response to the OSC.

There is no sufficient excuse for the noncompliance with the Court’s Order and it does not appear to the Court that lesser sanctions would be effective. The Court orders this case **DISMISSED** without prejudice pursuant to Gov. Code § 68608(b). Any future dates are vacated. The clerk is directed to close the file.

ADKISON, ET AL. VS. MAUGHS, ET AL.

Case Number: 22CV-0201172

Tentative Ruling on Order to Show Cause Re: Sanctions: An Order to Show Cause Re: Sanctions issued on August 18, 2023 to Plaintiffs Angela Adkison and Elizabeth Boren and counsel J&M Legal Group for failure to timely serve the Complaint. The Complaint in this matter was filed on December 22, 2022. No Proof of Service of Summons has been filed as to Defendant Michael White and an invalid Proof of Service of Summons was filed as to Defendant Robert Maughs on August 31, 2023. “The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint.” CRC 3.110(b). It has been over nine months since the Complaint was filed. Plaintiff has not requested an extension and has not provided good cause by way of written response to the Order to Show Cause.

With no sufficient excuse for the delay, sanctions are imposed in the amount of \$250.00 against Plaintiffs and counsel. The clerk is instructed to prepare a separate Order of sanctions. The Court will issue an Order to Show Cause Re: Dismissal pursuant to Gov’t Code Section 68608(b) for failure to timely serve the summons and complaint and failure to prosecute. The hearing on the Order to Show Cause Re: Dismissal is set for **Monday, November 20, 2023, at 8:30 a.m. in Department 8.** The clerk is instructed to prepare a separate Order to Show Cause Re: Dismissal. This matter is also calendared on **Monday, November 20, 2023, at 9:00 a.m. in Department 8** for review regarding status of service.

CABRERA VS. RYNEARSON, ET AL.

Case Number: 22CV-0201146

Tentative Ruling on Order to Show Cause Re: Sanctions: An Order to Show Cause Re: Sanctions issued on July 26, 2023 to Plaintiff and counsel for failure to timely serve the Complaint. Counsel filed a written response that provides sufficient excuse for the delay. The Order to Show Cause is **DISCHARGED**. The matter will be on calendar on **Monday, December 18, 2023 at 9:00 a.m. in Department 8** for status of minor's compromise.

CHAPONICK, ET AL. VS. SANDBERG, ET AL.

Case Number: 22CV-0201258

Tentative Ruling on Order to Show Cause Re: Sanctions: An Order to Show Cause Re: Sanctions issued on August 30, 2023 to Plaintiffs, Defendants, and their counsel for failing to appear on August 28, 2023 and failing to provide the Court with a status of the Federal action. Both parties filed written responses that provide sufficient excuse for the delay. The Order to Show Cause is **DISCHARGED**. The matter will be on calendar on **Tuesday, January 2, 2024 at 9:00 a.m. in Department 8** for status of removal. The parties are ordered to provide status conference statements informing the Court of the status of removal at least five court days prior to the review hearing. **No appearance is necessary on today's calendar.**

CROWDEN, ET AL. VS. GRIFFEY, MD, ET AL.

Case Number: 22CV-0201144

Tentative Ruling on Order to Show Cause Re: Sanctions: An Order to Show Cause Re: Sanctions issued on August 18, 2023 to Plaintiffs Candace Crowden and Jennifer Crowden-Smoot and Counsel Wilcox Callahan LLP for failure to timely serve the Complaint. The Complaint in this matter was filed on December 2, 2022. No Proof of Service of Summons has been filed. "The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint." CRC 3.110(b). It has been ten months since the Complaint was filed. Plaintiff's counsel filed a written response addressing the reason for the delay and informing the Court that the issue would be resolved within 60 days. Hearing on the Order to Show Cause Re: Sanctions is continued to **Monday, December 4, 2023 at 8:30 a.m. in Department 8**. Any further written response is to be filed no later than five court days prior to the hearing. The matter will also be on calendar for review regarding status of service on to **Monday, December 4, 2023 at 9:00 a.m. in Department 8**. **No appearance is necessary on today's calendar.**

IN RE: FORRESTER

Case Number: 23CV-0202889

Tentative Ruling on Petition for Change of Name: Petitioner Sterling Vaughn Forrester seeks to change his name to Sterling Vaughn Brown. No proof of publication has been submitted. The Court requires a Certificate of Publication from the publishing newspaper before the Petition may be granted. If the Certificate of Publication is provided, the Court intends on granting the Petition, vacating all future dates and closing the file.

IN RE: MORGAN

Case Number: 23CV-0203051

Tentative Ruling on Petition for Change of Name: Petitioner Sharon LaVonne Morgan seeks to change her name to LaVonne Sharon Morgan. No proof of publication has been submitted. The Court requires a Certificate of Publication from the publishing newspaper before the Petition may be granted. If the Certificate of Publication is provided, the Court intends on granting the Petition, vacating all future dates and closing the file.

RIVERA, ET AL. VS. HOUSEBOATING.ORG, ET AL.

Case Number: CVPO21-0197164

Tentative Ruling on Motion for Leave to File Amended Complaint: Plaintiffs Hector Rivera and Erika Cornejo move for leave to file a First Amended Complaint. Defendants Houseboating.org and Silverthorn Resort Associates oppose the Motion. Although properly noticed, Defendants Brunswick Corporation and Mercury Marine, Inc. did not file Oppositions. Default was entered against Defendant Twin Anchors Marine, LTD on December 29, 2022.

CCP § 473(a)(1) permits any pleading to be amended in further of justice and on any terms as may be proper, after notice to the adverse party. The Court's discretion in this regard will usually be exercised liberally to permit amendment. *Nestle v. Santa Monica* (1972) 6 Cal. 3d 920, 939. "If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion." *Morgan v. Sup.Ct.* (1959) 172 Cal.App.2d 527, 530.

Here, Plaintiffs move for leave to allege a Third Cause of Action for Fraud in the Inducement as well as additional factual allegations. Defendants Houseboating.org and Silverthorn Resort Associates oppose the motion on various grounds. The first ground is that the motion is untimely and causes prejudice to Defendants. While the Complaint was filed over two years ago, trial in this matter is calendared to commence on June 4, 2024, which is nine months away. This provides ample time to conduct additional discovery if deemed necessary. In explaining the delay, Plaintiffs have provided evidence by way of a declaration of counsel indicating that the new factual allegations were recently discovered.

Another ground for opposing the motion is that the amendments would be futile. The Court notes that a prayer for punitive damages was included in the Complaint as was the Second Cause of Action for Strict Products Liability against Defendant Houseboating.org. Raising issues in the Opposition regarding allegations that were included in the Complaint is not the proper method to challenge these allegations. Both Defendants challenge the amendment based on Plaintiffs not properly alleging a fraud in the inducement cause of action.

"It is of course proper to deny leave when the proposed amendment or amended pleading is insufficient to state a cause of action or defense." 5 Witkin, Cal. Proc. (6th ed. 2023) Pleading§ 1241. "That rule would find its most appropriate application, however, in cases in which the insufficiency of the proposed amendment is established by controlling precedent and where the insufficiency could not be cured by further appropriate amendment." *California Casualty Gen. Ins. Co. v. Superior Court* (1985) 173 Cal. App. 3d 274, 281, disapproved of on other grounds by *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal. 4th 390. "The preferable practice would be to permit the amendment and allow the parties to test its legal sufficiency by demurrer, motion for judgment on the pleadings or other appropriate proceedings." *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048; *Atkinson v. Elk Corp.* (2003) 109 Cal. App. 4th 739, 760 ("the better course of action would have been to allow [plaintiff] to amend the complaint and then let the parties test its legal sufficiency in other appropriate proceedings.").

The arguments related to the sufficiency of the pleading are therefore better raised in a demurrer, motion for judgment on the pleadings, or other appropriate proceedings. Due to the preference for resolving cases on their merits and because Defendants will be able to challenge the fraud cause of action as well as the other allegations Defendants take issue with, the Court will find good cause to grant the motion.

The Motion to Amend is **GRANTED**. The proposed First Amended Complaint was attached as an exhibit to the moving papers. As the clerk may not alter a filed document, Plaintiffs are required to submit the proposed First Amended Complaint as a separate document suitable for filing within ten days of the hearing on this matter.

Additionally, the proposed First Amended Complaint does not include the correct name for Defendant Silverthorn Resort Associates and does not name Does 3-5 that have been identified in previous amendments filed April 25, 2022. These corrections to the Frist Amended Complaint should be made prior to filing. Plaintiffs provided a proposed Order that will be modified to reflect the Court's ruling.

SILLER, ET AL VS. SILLER, ET AL.

Case Number: CVCV18-0189788

Tentative Ruling on Order to Show Cause Re: Sanctions: An Order to Show Cause Re: Sanctions issued on August 29, 2023 to Plaintiffs Charles W. Siller and CWS Enterprises, Inc. and Plaintiffs' counsel Yonano Law Offices, P.C. for failure to appear on August 28, 2023 and failure to provide the Court with a status of Federal action. Plaintiff was made aware of the August 28, 2023 date by this Court's Order dated June 26, 2023. Despite being served with the Order to Show Cause by mail on August 31, 2023, no written response has been filed.

With no sufficient excuse or good cause for the lack of appearance or update to the Court on August 28, 2023, sanctions are imposed in the amount of \$250.00 against Plaintiffs and Counsel. The clerk is instructed to prepare a separate Order of sanctions. The Court will issue an Order to Show Cause Re: Dismissal pursuant to Gov't Code Section 68608(b) to Plaintiffs and Counsel for failure to provide the Court with a status of removal and failing to appear on August 28, 2023. The hearing on the Order to Show Cause Re: Dismissal is set for **Monday, December 4, 2023, at 8:30 a.m. in Department 8.** The clerk is instructed to prepare a separate Order to Show Cause Re: Dismissal. This matter is also calendared on **Monday, December 4, 2023, at 9:00 a.m. in Department 8** for review regarding status of removal.

SWAIN VS. MARUTI WVRVL OIL INC, ET AL.

Case Number: 23CV-0202166

Tentative Ruling on Application for Order Extending Time: Defendants seek an extension of time to December 31, 2023 to file a responsive pleading to the First Amended Complaint filed on July 18, 2023. "The parties may stipulate without leave of court to one 15-day extension beyond the 30-day time period prescribed for the response after service of the initial complaint." CRC 3.110(d). The parties have already entered into a stipulation making the last day to file and serve a responsive pleading September 2, 2023.

The court, on its own motion or on the application of a party, may extend or otherwise modify the times provided in (b)-(d). An application for a court order extending the time to serve a pleading must be filed before the time for service has elapsed. The application must be accompanied by a declaration showing why service has not been completed, documenting the efforts that have been made to complete service, and specifying the date by which service is proposed to be completed.

CRC 3.110(e).

Defendants have presented evidence that the responsive pleadings were due on September 2, 2023, which was a Saturday. This Application was filed on September 5, 2023, the next court day after the responsive pleading was due. Defendants have presented good cause for the request in that the parties are attempting early resolution and due to the issue of which Defendants will remain in the matter. Plaintiff was properly noticed and did not file an objection.

The Application is **GRANTED**. Defendants are to file a responsive pleading to the First Amended Complaint no later than December 31, 2023. The proposed Order will be modified to reflect the Court's ruling.

9:00 a.m. – Review Hearings

IN RE: ADKINS

Case Number: 22CV-0200719

This matter was dismissed on this morning's Law & Motion calendar and all future hearings were vacated.

IN RE FRANKLIN, II

Case Number: 23PB-0032115

This matter is on calendar for confirmation of deposit of settlement into blocked account. An Acknowledgement of Receipt of Order and Funds for Deposit in Blocked Account was filed on September 25, 2023. **No appearance is necessary on today's calendar.**

IN RE FRANKLIN

Case Number: 23PB-0032114

This matter is on calendar for confirmation of deposit of settlement into blocked account. An Acknowledgement of Receipt of Order and Funds for Deposit in Blocked Account was filed on September 25, 2023. **No appearance is necessary on today's calendar.**

CHAPONICK, ET AL. VS. SANDBERG, ET AL.

Case Number: 22CV-0201258

This matter is on calendar for review regarding status of removal. A written response to this morning's Order to Show Cause Re: Sanctions included a status update that the matter is proceeding in Federal Court and there are no current efforts to remand the matter. The review hearing is continued to **Tuesday, January 2, 2024 at 9:00 a.m. in Department 8** for status of removal. The parties are ordered to provide status conference statements informing the Court of the status of removal at least five court days prior to the review hearing. **No appearance is necessary on today's calendar.**

ELDRIDGE VS. SAFEWAY INC, ET AL.

Case Number: 22CV-0200937

This matter is on calendar for trial setting. The matter is not yet at issue. Plaintiff has named "John Doe, an individual" as a Defendant. Defendant John Doe has not been served. The Court does not intend to set a trial date until the matter is at issue. The matter is continued to **Monday, December 11, 2023 at 9:00 a.m. in Department 8** for review regarding status of service, and if appropriate, trial setting. The Court expects Plaintiff to get the matter at issue prior to the next hearing. **No appearance is necessary on today's calendar.**

FALL RIVER DEVELOPMENT VS. LASSEN PINES

Case Number: CVCV18-0190059

This matter is on calendar for review regarding status of dismissal. The Court has reviewed Plaintiff's Resolution Review Statement filed on September 26, 2023 in which Plaintiff requests that the review hearing be continued 90 days. The Court notes that the Complaint in this matter was filed on June 6, 2018. Accordingly, it must be brought to trial by December 6, 2023 unless the parties stipulate to extend the five year (plus six months in this case due to COVID-19) deadline. CCP § 583.310; Emergency Rule 10(a). **An appearance by both parties is necessary on today's calendar to discuss either setting the matter for trial or stipulating to extending the deadline.**

RATH VS. SELL, JR.

Case Number: 22CV-0199630

This matter is on calendar for review regarding status of the case. At the last hearing, there was a disagreement as to whether the matter was settled and the Court continued the hearing to see if the parties could resolve the issues. If the matter is not resolved, the Court intends to set the matter for trial. The Court designates this matter as a Plan III case and intends on setting the matter for trial no later than April 16, 2024. Neither party has posted jury fees. The parties are granted 10 days leave to post jury fees. A failure to post jury fees in that time will be deemed a waiver of the right to a jury. **An appearance is necessary on today's calendar to discuss the status of the case and, if appropriate, set a trial date.**

SILLER, ET AL VS. SILLER, ET AL.

Case Number: CVCV18-0189788

This matter is on calendar for review regarding status of removal. No status update has been provided to the Court. **An appearance is necessary on today's calendar to provide the Court with an update regarding the status of removal.** If no appearance is made, the Court intends to issue an Order to Show Cause Re: Dismissal and continue the review hearing to **Monday, December 4, 2023, at 9:00 a.m. in Department 8** for review regarding status of removal.

SWIFT VS. HOUGHTON

Case Number: CVPO22-0199288

This matter is on calendar for review regarding status of responsive pleading. A Second Amended Complaint was filed on August 17, 2023. There is no proof of service indicating that Defendant has been served with a filed copy of the Second Amended Complaint and there is no responsive pleading. **An appearance is necessary on today's calendar.**

THE PEOPLE VS. \$35, 557.16 U.S. CURRENCY

Case Number: CVCV20-0195245(Consolidated with: CVCV20-0195246)

This asset forfeiture matter is on calendar for review regarding status of dismissal. No Request for Dismissal has been filed and the Court has not been provided updated information on the status of the return of the seized money to Claimant. **An appearance is necessary on today's calendar.**