

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 16, Honorable Roberta S. Hayashi, Presiding

Courtroom Clerk:

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LAW AND MOTION TENTATIVE RULINGS

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

DATE: WENESDAY, FEBRUARY 5, 2025

TIME: 9:00 A.M.

Please Read Carefully As Some of Our Protocols Have Changed.

All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed or referred to. All persons should spell their names for the benefit of Court Staff.

Appearances.

Personal appearances in the courtroom are strongly encouraged. If you must appear remotely, you must use the MS Teams link from a device with a camera. Please "name" yourself when you log in, as: **Line #/name/party**. Remote appearances should be made from a quiet location with no background noise (and not from a moving vehicle). IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY, AND NOT TO INTERRUPT WHEN SOMEONE ELSE IS SPEAKING.

Please notify this Court immediately if the matter will not be heard on the scheduled date. **California Rules of Court**, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. **California Rules of Court**, rule 3.1304(d).

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 7(E) and **California Rules of Court**, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the court by 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. **California Rules of Court**, rule 3.1304(c).

Court Reporters.

This Court does not appoint Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a private court reporter, please use Local Form #CV-5100.

No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. Use of the Court's Electronic Recording (ER) system is limited to proceedings permitted by statute or General Order of the Court. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); **California Rules of Court**, rule 1.150.

Orders After Hearing

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel shall comply with **California Rules of Court**, rule 3.1312.

TROUBLESHOOTING TENTATIVE RULINGS

If you see last week's tentative rulings, you have checked prior to the posting of the current week's tentative rulings. You will need to either "REFRESH" or "QUIT" your browser and reopen it. If you fail to do either of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

Tentative Rulings Are Continued Below. Full Orders Are on The Following Pages.

LINE #	CASE #	CASE TITLE	RULING
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LINE #	CASE #	CASE TITLE	RULING
LINE 1	24CV446115	PBJCT IRREVOCABLE TRUST vs WELLS FARGO BANK, N.A.	<p>Motion to Strike Complaint. The tentative ruling of the Court is to find the Motion to Strike moot as Defendant's Demurrer to the Complaint was sustained without leave to amend, and to order it off calendar.</p> <p>To the extent the motion is not made moot by the Court's order of January 24, 2025, the Court grants Defendants' motion to strike on the grounds that a trust is an entity that cannot appear as a self-represented litigant, and that to the extent that Plaintiff PBJCT IRREVOCABLE TRUST, is appearing through its Trustee, B.C. Williams, it does not appear that said Trustee has complied with the pre-filing approval orders previously made by the Court prior to the filing of the Complaint.</p> <p>Order to be prepared by the moving party.</p>
LINE 2	23CV418573	Lori Holcomb vs Magic Touch Relaxation et al	<p>Defendant and Cross-Complaint's Motion to compel production of documents and verified response to demand for production (filed 11/6/2024) is GRANTED. It appears that Cross-Defendants Magic Touch Relaxation, MT Relaxation and Lihui Han and each of them were served with First Street Gilroy's Requests for Production of Documents and failed to respond in any manner or produce documents before the filing of First Street Gilroy's Motion to Compel on November 6, 2024, or at any time thereafter. Said Cross-Defendants have filed no opposition to this Motion. Accordingly the Court orders that Cross-Defendants' objections (if any) are deemed waived, and Cross-Defendants' and each of them are ordered to provide code-complaint verified responses to each Demand for Production of Documents, and to produce all response documents in their possession, custody or control within 20 days. Failure to comply with this order may result in further monetary and evidentiary sanctions. In addition, said Cross-Defendants are ordered to jointly pay the sum of \$2,260. as monetary sanctions for failure to respond to discovery necessitating the filing of a motion. Said sum to be paid in 30 days to First Street Gilroy.</p>

LINE #	CASE #	CASE TITLE	RULING
LINE 3	24CV432711	Jane Doe vs Ramesh Patel et al	<p>Defendant's Motion (filed 12/9/2024) to compel production of an unredacted version of all journals, diaries, day books or calendars maintained by the Plaintiff during her employment by Asstik Corporation, is GRANTED IN PART.</p> <p>Plaintiff is ordered within 20 days of the date of hearing, or notice of order (whichever comes first) to provide a verified response to identify all journals, diaries, day books, calendars (whether stored written or electronically, such as "blogs", "time lines" created by her between January 2022 through December 5, 2023 (the time period when she was employed by Defendant and Mr. Patel was her supervisor); The response should clearly designate the dates covered by any journals, diaries, calendars, etc. and state clearly and unequivocally if there are any responsive documents that no longer exist, or cannot for any reason be produced, in the manner required by the code.</p> <p>Plaintiff is further ordered within 20 days to produce for inspection and copying all the above documents identified by her in her verified response in their original or "native" format (for electronically stored information) that are in her possession, custody or control. The responsive documents are to be designated as "Confidential" subject to the protective order. Plaintiff may redact therefrom information that she contends discloses the content of confidential privileged information, such as attorney-client communications, psychotherapist/patient, HIPPA information, taxpayer privilege (e.g. relating to a diagnosis, prognosis or treatment).</p> <p>Plaintiff may also redact therefrom information that she contends that she is not obligated to produce as a victim of sexual assault, such as information about other dating, romantic or sexual relationships and partners.</p> <p>For each redaction made by Plaintiff, she must at the same time the verified response is served, also serve a verified summary which shows the date (time if applicable) of the calendar or diary entry that is redacted, and the basis for the specific redaction (e.g. nature of privilege, other dating/sexual relationship) that is made, with sufficient information so that Defendant can determine whether the redacted information should be unredacted as it may be admissible evidence or lead to the discovery of admissible evidence.</p> <p>The Court denies moving party's request for sanctions without prejudice to considering a future award of sanctions which includes the cost of this motion if Plaintiff fails to comply with the orders made herein.</p> <p>Moving Party to prepare the order.</p>

LINE #	CASE #	CASE TITLE	RULING
LINE 4	21CV383462	Vita Equipoise Equity Partners, LLC vs Thomas Braegelmann et al	<p>Plaintiff's Motion for Leave to file a second Amended Complaint (filed 9/20/2024) and that Defendant be deemed to have denied all material allegations is GRANTED. The proposed Second Amended Complaint appears to "provide more detailed allegations regarding Defendants' conduct, including alter ego allegations."</p> <p>The law favors just one trial on the merits. It is reasonable that it was only after the opportunity to conduct discovery, that Plaintiff could have uncovered the information which gives rise to alter ego allegations or the identity of Doe Defendants. It does appear that Plaintiff moved to amend with due diligence. It further appears that the Parties could have simply stipulated to the filing of the amendment in September 2024 when this motion was filed.</p> <p>Further, the Court does not find sufficient evidence of prejudice to disallow this amendment. Accordingly, motion to file the Amended Complaint is granted. Plaintiff shall file the Second Amended Complaint within 10 days of today's hearing, and shall diligently seek to serve the added Defendant. Continuance of the trial date is denied, as no good cause therefore appears at this time.</p> <p>Moving Party to prepare the order.</p>
LINE 5	21CV392486	Jennifer Bick vs John Barnard	<p>Motion for Entry of Judgment following Default is DENIED as the Defendants' defaults are not entered although service was complete as of May 2024. At the last appearance on January 9, 2025, Plaintiff's counsel stated they were resubmitting the request for entry of default so that today's hearing could go forward. Does not appear that the request for entry of default has been resubmitted.</p> <p>The Court will continue the matter for OSC re: dismissal on Friday, 5/2/2025 at 10 a.m. in Dept. 64. In the absence of a written declaration of good cause, the matter will be dismissed, w/o prejudice if the request for entry of default is not on file prior to the next court date.</p> <p>Order to be prepared by the Court.</p>

LINE #	CASE #	CASE TITLE	RULING
LINE 6	22CV398755	Mindy Ni vs Urban Compass, Inc. et al	Defendants' Motion for leave to file a Cross Complaint against Plaintiff Mindy Ni for Breach of Contract and Unjust Enrichment (Exhibit 2 to the Declaration of Elliot C. Harvey Schatmeier filed 8/8/2024) is GRANTED. No opposition was filed; trial date has not yet been set. Defendants and Cross-Complainants shall file the Cross-Complaint within 10 days and serve it promptly. Moving Party to prepare the Order.
LINE 7	24CV443930	In Re: 10505 Madrone Court, Cupertino, CA 95014	Motion: Order. Motion GRANTED. See below for details.
LINE 8			
LINE 9			
LINE 10			

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**In Re: 10505 Madrone Court, Cupertino , CA 95014
Motion for Orders re: Deposit of Surplus Proceeds**

Having reviewed the pleadings and papers on file with the Court, and good cause appearing therefore, the Court finds and orders that:

Findings:

1. Moving Party Mortgage Lender Services, Inc. ("MLS") is the Trustee under a Deed of Trust executed by Randall G. Garfield and Kathleen Garfield on July 5, 2017 (recorded July 6, 2017) with regard to the Real Property located at 10505 Madrone Court, Cupertino, CA 95014.
2. Following a foreclosure sale on February 3, 2023, and payment of all required debts and liens, there were surplus proceeds in the amount of \$438,275.49 in the possession of MLS (the "Surplus Proceeds")

3. MLS received notice of two claimants to the Surplus Proceeds: 1) the City of Cupertino -- pursuant to a Property Value Restrictions Resale Agreement and Option to Purchase; and 2) the surviving Former Trustor, Kathleen Garfield. The Court finds that as of the date of this order, despite due diligence by the Trustee, there is a conflict between potential claimants to the Surplus Proceeds, requiring that MLS file the instant motion pursuant to California Civil Code section 2924j.
4. Upon review of the documents and declaration filed by MLS, the Court finds that MLS has incurred attorneys' fees and costs in the amount of \$4,488.75.
5. No opposition to MLS's motion has been filed.

Accordingly, the Court orders that:

1. Within 30 days of this Order, MLS shall deposit the Surplus Proceeds (net of the attorneys' fees and costs) in the amount of \$433,786.74 (pursuant to Civil Code section 2924j(c));
2. A Hearing regarding distribution of the Surplus Funds is set for Friday, June 27, 2025 at 9 a.m. in Dept. 64 of the Court. The Clerk shall give notice to the claimants. Please be advised that if any person requests to present witness testimony at the hearing, then the Court will reset this hearing to another date and time.
3. The Court grants MLS' request for attorneys' fees and costs in the amount of \$4,488.75., which amount shall be deducted and remitted to MLS prior to the deposit ordered herein; and
4. Upon the deposit of the Surplus Proceeds as ordered herein, MLS is discharged from any further responsibility for disbursing the Surplus Proceeds.

Order to be prepared by the Court.

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