TENTATIVE RULINGS

FOR: January 31, 2018

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to http://napacountybar.org/court-reporting-services/ for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

Benjamin Griffin, et al. v. Bell Products, Inc. **16CV001001**

DEFENDANT BELL PRODUCTS, INC.ôS MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING: The Notice of Motion does not provide notice of the Courtôs tentative ruling system as required by Local Rule 2.9. Defendantôs counsel is directed to contact Plaintiffsô counsel forthwith and advise Plaintiffsô counsel of Local Rule 2.9 and the Courtôs tentative ruling procedure. If Defendantôs counsel is unable to contact Plaintiffsô counsel prior to the hearing, Defendantôs counsel shall be available at the hearing, in person or by telephone, in the event Plaintiffsô counsel appears without following the procedures set forth in Local Rule 2.9.

Plaintiffsô Request For Judicial Notice is DENIED as to items 1, 2, and 3. Plaintiffs state the Declaration of Mark McDonald supports the request, but Mr. McDonald only states in a conclusory fashion that these three documents are applicable. He does not cite to any provision in these particular documents that state how and when they are applicable. Furthermore, these documents do not contain ñfacts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of disputeò or ñfacts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.ò (Evid. Code §§ 451(f), 452(h).) Plaintiffsô Request for Judicial Notice is GRANTED as to items 4 and 5.

Defendantôs Motion for Summary Judgment is GRANTED. ñA defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action.ò (Code Civ. Proc., § 437c(p)(2).) In Defendantôs Motion, Defendant has shown that Plaintiffs cannot prove

their claim for Negligence against Defendant. ñIn order to maintain an action for negligence, plaintiff must be able to show that: (1) defendant owed a legal duty of care; (2) he breached that duty; and (3) defendant's breach was the proximate or legal cause of plaintiff's injury.ò (*Brunelle v. Signore* (1989) 215 Cal.App.3d 122, 127, citing *Peter W. v. San Francisco Unified Sch. Dist.* (1976) 60 Cal.App.3d 814, 820; 6 Witkin, Summary of Cal. Law (9th ed. 1988) § 732, p. 60.) In considering whether one owes a duty of care, several factors must be weighed including: ñ[t]he foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendantôs conduct and the injury suffered, the moral blame attached to the defendantôs conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.ò (*Rowland v. Christian* (1968) 69 Cal.2d 108, 113.)

Here, Defendant contracted to furnish and install the gas main at Vallejo High School. (Defendantôs Undisputed Material Fact (UMF) Nos. 6, 9, and 14.) The scope of work did not include the bleeding of gas lines. (UMF No. 10.) Vallejo City Unified School District personnel and agents testified that they did not expect Defendant to bleed the gas lines if it was not in their contract, and Mr. Edwin Crane, Senior Lead Maintenance employee at Vallejo High School, testified that he had intended for Vallejo High School personnel (including Plaintiffs) to bleed the gas lines and re-light the appliances. (UMF Nos. 10, 11, and 17.) Successful pressure tests were conducted on the gas main Defendant replaced before PG&E turned the gas back on. (UMF Nos. 8, 12, and 15.) Subsequently, an explosion occurred when Vallejo High School personnel, including Plaintiffs Mr. Griffin and Mr. Teitgen, attempted to re-light the appliances. (UMF No. 13.) There were no complaints from the school district regarding Defendantôs work in replacing the gas main. (UMF No. 16.)

The Court does not believe it was foreseeable to Defendant that Vallejo High School maintenance personnel would not know how to bleed the gas lines and re-light the appliances when their own supervisor, Mr. Crane, believed they were capable of doing so. (UMF No. 35, 36.) Plaintiffsô claim essentially requires skilled tradespersons to warn other skilled tradespersons regarding risks that they should already be aware of. In addition, there is no evidence that Defendant failed to perform as required under the contract, or that the gas main was replaced incorrectly or in any way caused the explosion. Defendantôs employee, Rick Laughridge, inquired as to whether the school district wanted them to re-light the appliances, and was told the schoolôs maintenance department would be handling it. (Laughridge Deposition, 98:21 - 99:11.) There is little connection between the Defendantôs conduct and the injury suffered or any moral blame attached to Defendantôs conduct.

Since there is a lack of foreseeability, Defendant did not owe Plaintiffs a legal duty of care in this case.

As to Plaintiffsô strict liability claims, Plaintiffs have not shown there was any defective condition in the gas main that Defendant replaced. (UMF Nos. 8, 12, 15, and 16.) ñThe burden is upon the plaintiff to establish the defective condition of the product and to prove that the defect proximately caused plaintiff's injury.ò (*Miller v. Los Angeles County Flood Control Dist.* (1973) 8 Cal.3d 689, 704.)

Plaintiffsô claim for breach of warranties is also unsupported. ñThe warranty is breached if the sellerôs product is not in fact suitable for the use intended by the purchaser.ò (*Odell v. Frueh* (1956) 146 Cal.App.2d 504, 509, citing *Tremeroli v. Austin Trailer Equipment Co*. (1951) 102 Cal.App.2d 464, 475.) There is no evidence that the replaced gas main was not suitable for its intended use. (UMF Nos. 8, 12, 15, and 16.)

Because Defendant has shown that Plaintiffsô claims for negligence, strict liability, and breach of warranties are unsupported, Plaintiff Kathleen Teitgenôs Loss of Consortium claim also fails.

ñOnce the defendant or cross-defendant has met [its] burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto.ò (Code Civ. Proc., § 437c(p)(2).) Plaintiffs have failed to show that a triable issue of material fact exists. Plaintiffsô Objections to Evidence are OVERRULED. Defendantôs Objections to Evidence are OVERRULED as to objections numbered 1, 2(a), 2(b), 9, 24, 41, 48, 49, and 58 and SUSTAINED as to the remaining objections. Plaintiffs attempt to argue that Defendant should have completed additional procedures when they replaced the gas main based on various fuel and gas codes, but the codes are not admissible, as addressed above. Plaintiffs also argue that Defendant should have warned Plaintiffs regarding the risks associated with bleeding the gas lines and re-lighting the appliances, but as stated above, it was not foreseeable to Defendant that the school districtôs maintenance employees would take over that portion of the project without actually knowing how to do it.

Hearing on this Motion was continued from January 3, 2018 to January 31, 2018 to allow Plaintiffs to review emails that were not produced to Plaintiffs until December 26, 2017, and to allow Plaintiffs to file a supplemental briefing regarding any of those late-produced emails. In their supplemental filings, Plaintiffs not only attach and make arguments regarding the late-produced emails, but also make new arguments based on evidence that was available at the time their initial opposition was due. Defendant has properly objected to this untimely use of existing evidence without leave of court, along with other meritorious evidentiary objections. Defendantôs Supplemental Objections to Evidence Submitted by Plaintiffs Nos. 2, 3, 5 - 13 are SUSTAINED; the remaining objections are OVERRULED. As to the new emails that are admissible, none create any triable issues of fact. Evidence regarding the Dan Mini School projects is completely irrelevant to this case. Evidence regarding whether the Vallejo High School project was put out to bid and the amount of time it took Defendant to draft the proposal is similarly irrelevant.

Dennis H. Bethke and Fonda V. Bethke as Trustees of the Bethke Family Trust v. Specialized Loan Servicing, LLC, et al. **16CV001190**

MOTION TO CONSOLIDATE

TENTATIVE RULING:

Defendants Specialized Loan Servicing, LLC, the Law Offices of Les Zieve, and the Bank of New York Mellon FKA the Bank of New Yorkôs (as trustee for certificate holders of the CWALT, Inc., Alternative Loan Trust 2006-OA10 Mortgage Pass-Through Certificates, Series 2006-OA10) request for judicial notice of the recorded documents and court filings from the various bankruptcy cases is GRANTED.

Plaintiffsô motion to consolidate this case with the unlawful detainer action, Case No. 17CV001178, pursuant to Code of Civil Procedure section 1048 is DENIED. Plaintiffs state they are seeking to stay any unlawful detainer action pending adjudication of their ñrightful claim to title in this Civil action.ò (Mem. at p. 5:7-9.) The property was sold on June 13, 2017, and the trusteeôs deed upon sale subsequently was recorded. (RJN, Exs. 31-32.) The sale divested plaintiffs of any title interest. The remaining causes of action alleged in the third amended complaint against the moving defendants are for violation of the Homeowner Bill of Rights (violation of Civil Code section 2923.55, violation of Civil Code section 2923.6, violation of Civil Code section 2923.7) and for unfair business practices. HBOR claims do not affect title. The claim for quiet title is alleged against defendant Medline Management Corp., not the moving defendants. Moreover, unlawful detainer proceedings deal only with the right to possession and damages from the unlawful detention. Title is not at issue. Plaintiffs also argue the two cases present common issues of law or fact and there is a risk of inconsistent judgments. For the same reasons noted, the argument lacks merit. The two cases do not present common issues of law or fact and there is no risk of inconsistent judgment. Finally, plaintiffs contend they would be prejudiced by forcing them to leave the home. But the Bank of New York Mellon also is prejudiced by plaintiffsô failure to leave or pay the fair market rental value of the property.

PROBATE CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)

In the Matter of the Robert A. Sexton Revocable Trust **17PR000267**

PETITION FOR ORDER CONFIRMING TRUST ASSETS TO REVOCABLE TRUST

TENTATIVE RULING: GRANT petition.

Estate of Robert Fisher **17PR000272**

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: Hearing on the Petition is continued to February 21, 2018 at 8:30 a.m. in Dept. F to allow for re-publishing of the hearing notice. Petitioner is also to submit the proposed letters (DE-150).

CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)

Julia Eufusia v. Bright Power, Inc. dba BPI **17CV001267**

DEMURRER TO THE COMPLAINT

TENTATIVE RULING:

The notice of motion does not provide notice of the Courtôs tentative ruling system as required by Local Rule 2.9. Defendantôs counsel is directed to contact the opposing party forthwith and advise the opposing party of Local Rule 2.9 and the Courtôs tentative ruling procedure. If defendantôs counsel is unable to contact the opposing party prior to the hearing, defendantôs counsel shall be available at the hearing, in person or by telephone, in the event opposing party appears without following the procedures set forth in Local Rule 2.9.

Defendant Bright Power, Inc.ôs (dba BPI) demurrer to each cause of action in the complaint on the grounds of failure to state sufficient facts and uncertainty is SUSTAINED WITH LEAVE TO AMEND. Plaintiff Julia Eufusia did not adequately respond to the arguments raised in the demurrer, thereby conceding they are meritorious. Moreover, this matter should have been discussed and resolved during the meet-and-confer process because the complaint clearly is deficient. Plaintiffôs counsel is ordered to meaningfully meet-and-confer with defendantôs counsel in the future.

If plaintiff elects to do so, she shall file her first amended complaint within 10 calendar days of service of notice of entry of order. If another demurrer is filed, plaintiff is reminded of her obligation to indicate how she can amend her claims. Failure to do so will be an indication that the causes of action cannot be further amended.