TENTATIVE RULINGS for CIVIL LAW and MOTION
September 5, 2014

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Two: (530) 406-6843

TENTATIVE RULING

Case: **Ellenberger v. Sutter Davis Hospital Foundation**
Case No. CV PO 14-465

Hearing Date: **September 5, 2014** **Department Two** **9:00 a.m.**

Defendant David DaSilva, M.D.'s demurrer to the second cause of action for elder abuse is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff has pled that defendant engaged in conduct that is defined as "neglect" in Welfare and Institutions Code section 15610.57(b)(1) and (2). (Welf. & Inst. Code, § 15657; First Amended Complaint ("FAC"),¶ 15.) Additionally, plaintiff has pled that defendant engaged in "reckless" conduct. (Welf. & Inst. Code, § 15657; FAC, ¶ 16.) "Recklessness," as would support liability under Elder Abuse Act, refers to a subjective state of culpability greater than simple negligence, which involves more than "inadvertence, incompetence, unskillfulness, or a failure to take precautions" but rather rises to the level of a conscious choice of a course of action with knowledge of the serious danger to others involved in it. (*Worsham v. O'Connor Hospital* (2014) 226 Cal.App.4th 331.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.

TENTATIVE RULING

Case: **Grill v. Meritage Homes of California, Inc.**
Case No. CV CV 11-13

Hearing Date: **September 5, 2014** **Department Two** **9:00 a.m.**

Cross-defendant Merit Concrete, Inc.'s unopposed motion for determination of good faith settlement is **GRANTED**. (Code Civ. Proc., § 877.6.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.

TENTATIVE RULING

Case: **Sacramento Floormasters, Inc. v. Sac Profloors, Inc.**
Case No. CV CV 13-2165

Hearing Date: **September 5, 2014** **Department Two** **9:00 a.m.**

Defendant Enrique Curbelo's petition for writ of mandate:

Plaintiff Sacramento Floormasters, Inc.'s evidentiary objection nos. 1, 7-9, 11, & 12 to the defendant's verified petition are **SUSTAINED**. Objection nos. 2-6, 10, & 13-18 are **OVERRULED**.

Plaintiff's evidentiary objections to the Harvilla, Thompson, and Drake declarations are **OVERRULED**.

Plaintiff's evidentiary objection nos. 1 and 8 to the Curbelo declaration are **SUSTAINED**. Objection nos. 2-7 are **OVERRULED**.

Plaintiff's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Defendant's petition for writ of mandate is **GRANTED**. (Corps. Code, § 1603; Code Civ. Proc., §§ 1085-86.) Plaintiff shall make available for inspection the accounting books and records and minutes of proceedings of the shareholders and the board and committees of the board. (Corps. Code, § 1601.)

Defendant's request for attorneys' fees is **GRANTED,** in the amount of $5,151.00. The Court does not award fees for the motion for preliminary injunction since defendant opted to pursue an unsuccessful procedural means for the relief requested. (Corps. Code, § 1604.)

Plaintiff Sacramento Floormasters, Inc.'s motion to strike defendant Enrique Curbelo's petition for writ of mandate is **DROPPED FROM CALENDAR**. The motion was not filed and served at least 16 court days before the hearing date. (Code Civ. Proc., §§ 436, 1005.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.

Plaintiff Sacramento Floormasters, Inc.'s motion for a preliminary injunction:

The Court will consider defendant Enrique Curbelo's opposition to the motion for preliminary injunction. Defendant is reminded to comply with Code of Civil Procedure section 1005 in ensuring papers are received timely by plaintiff, or the Court may decline to consider them in the future.

The Court does not consider any new evidence submitted with plaintiff's reply in support of the motion. (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38.)

Plaintiff's application to seal the declarations of Dan Forman, Jose Rodriguez, and Shanelle Lorenzo is **DENIED**. The application is not accompanied by a declaration containing facts sufficient to justify the sealing. (Cal. Rules of Court, rule 2.551(b)(1).)

Defendant has also proffered declarations in opposition under seal. Because these declarations are not accompanied by a declaration containing facts sufficient to justify the sealing, the Court has not sealed them. (Cal. Rules of Court, rule 2.551(b)(1).)

Plaintiff's evidentiary objections to the Bravo, Lisa Curbelo, Errecart, Regan, and MacLaughlin declarations are **OVERRULED**.

Plaintiff's evidentiary objection nos. 1-12, 16-19, 22-25, 28-31, 34-35, 40, 42, 44-45, and 47 to the declaration of Enrique Curbelo are **OVERRULED**. Plaintiff's evidentiary objection nos**.** 13-15, 20-21, 26-27, 32-33, 36-39, 41, 43, and 46 are **SUSTAINED**.

Plaintiff evidentiary objection nos. 1 and 3-4 to the Savarino declaration are **OVERRULED**. Plaintiff's evidentiary objection nos**.** 2 and 5 are **SUSTAINED**.

Plaintiff evidentiary objection nos. 1-2, 4-11, and 14-20 to the Sorenson declaration are **OVERRULED**. Plaintiff's evidentiary objection nos**.** 3 and 12-13 are **SUSTAINED**.

Plaintiff's motion for a preliminary injunction is **DENIED**. Plaintiff has not shown that it is likely to suffer continuing harm in the absence of an injunction and is likely to prevail on the merits. (*American Credit Indem. Co. v. Sacks* (1989) 213 Cal.App.3d 622.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.