

## **TENTATIVE RULINGS for LAW and MOTION**

### **September 17, 2020**

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 on Yolo Court's Website, at [www.yolo.courts.ca.gov](http://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 Ten (530) 406-6816  
Telephone number for the clerk in Department Nine (530) 406-6819

**NOTICE:** Effective May 4, 2020, all court appearances are by Zoom or Conference call. Yolo Superior Court Virtual Courtroom and conference call information is posted on the Yolo Court's Website at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov).

#### **TENTATIVE RULING**

**CASE:** **Doe v. The Regents of the University of California**  
**Case No. CV PT 16-765**

**Hearing Date:** **August 20, 2020 Department Nine 9:00 a.m.**

The Regents of the University of California's motion to dismiss John Doe's petition for writ of administrative mandamus for delay in prosecution is **DENIED**. The policy of favoring trial or other disposition of an action on the merits are generally to be preferred over the policy that requires dismissal for failure to proceed with reasonable diligence in prosecution. (Code Civ. Proc., § 583.130.) The competing considerations to be evaluated in a motion to dismiss for delay in prosecution are the policies of discouraging stale claims and compelling reasonable diligence balanced against the strong public policy which seeks to dispose of litigation on the merits rather than on procedural grounds. (*Van Keulen v. Cathay Pacific Airways, Ltd* (2008) 162 Cal.App.4<sup>th</sup> 122, 131.) In considering a motion for discretionary dismissal for delay in prosecution, the policy of preferring to dispose litigation on the merits only comes into play when a plaintiff makes a showing of some excusable delay. (*Ibid.*) Doe's excuse that he was attempting to obtain the administrative record in a reasonably diligent manner constitutes *some* excusable delay in getting this case to a hearing, triggering the policy of favoring disposal on the merits. Where the court has no administrative record, it cannot weigh the evidence. Nor may it decide the sufficiency of the evidence supporting the administrative decision. (*Ocheltree v. Gourley* (2002) 102 Cal.App.4<sup>th</sup> 1013, 1017.) Doe could not move forward with a hearing without obtaining the administrative record and he has offered evidence that he requested the administrative record April 14, 2016. (Decl. of Honchariw, paragraph 21.) Although Doe has not offered an excuse for some of the delays in serving Regents and communicating with Regents to finalize promptly the administrative record, some of the delay was attributable to Regents providing the wrong index for the administrative record. Parties must work together to move a case forward. Both parties bear some of the responsibility for the delay in this case. At this stage, where dismissal for delay is discretionary, this Court does not exercise that discretion to dismiss based on delay rather than permitting Doe to attempt to proceed to the merits of his claim.

The Regents of the University of California’s alternate motion for summary judgment is **DENED WITHOUT PREJUDICE**. (Code Civ. Proc., § 437c.) The Regents of the University of California failed to comply with the 75 day notice requirement for the alternate motion for summary judgment. (Code Civ. Proc., § 437c, subd. (a)(2).) A trial court does not have authority to shorten the minimum notice period for hearings on summary judgment motions, absent the consent of the parties. (*McMahon v. Superior Court* (2003) 106 Cal.App.4th 112, 112.) A continuance of the hearing date does not automatically cure a failure to provide 75 days notice. (*Robinson v. Woods* (2008) 168 Cal.App.4<sup>th</sup> 1258, 1267-1268.)

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:** **Gonzales et al. v. Sandeno et al.**  
**Case No. CV PO 17-1517**  
**Hearing Date:** **September 17, 2020** **Department Ten** **9:00 a.m.**

Parties are **DIRECTED TO APPEAR**.

**TENTATIVE RULING**

**CASE:** **JAG1 Connections v. Brighthouse Life Insurance**  
**Case No. CV PO 20-1069**  
**Hearing Date:** **September 17, 2020** **Department Nine** **9:00 a.m.**

Petitioner JAG1 Connections, LLC’s petition for approval of transfer of structured settlement payment rights is **DENIED**. (Ins. Code, § 10134 et seq.) Petitioner has failed to file proof that petitioner served the Attorney General and all interested parties with a proof of service showing compliance with notification requirements. (Ins. Code, § 10139, 10139.5.)

The notice of motion does not provide notice of this Court’s tentative ruling system as required by Local Rule 11.4(b). Counsel for moving party, or the moving party if unrepresented by counsel, is ordered to notify the opposing party or parties immediately of the tentative ruling system.

If no hearing is requested, and no party appears at the hearing, 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:** **Weishaar v. Leet**  
**Case No. CV PO 17-1998**  
**Hearing Date:** **September 17, 2020** **Department Ten** **9:00 a.m.**

Defendant William Leet’s request for judicial notice is **GRANTED**. (Evid. Code, §§ 452, 453.)

The Court declines to rule on defendants William Leet and Mary Helen Leet's evidentiary objections as the evidence objected to is not germane to the disposition of the instant motion. (Code Civ. Proc., § 437c, subd. (q).)

The Court declines to rule on plaintiff Dayna Weishaar's evidentiary objections made within her separate statement in support of her opposition to defendants' motion for summary judgment because "[a]ll written objections to evidence must be served and filed separately from the other papers...in opposition to the motion." (California Rules of Court, rule 3.1354(b).)

Defendant Mary Helen Leet's motion for summary judgment and/or adjudication is **DENIED**, without prejudice. (Code Civ. Proc., § 437c, subd. (p)(2).) The notice of motion for summary judgment did not include defendant Mary Helen Leet as a moving party. (Code Civ. Proc., § 437c, subd. (a).)

Defendant William Leet's motion for summary judgment and/or adjudication is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(2).) Defendant has failed to show that prior water intrusion at the subject property was not a material fact requiring disclosure to plaintiff. (*Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 248; UMF 3-7, 10-12.) As defendant has not shown that plaintiff's fraud and deceit cause of action lacks merit, plaintiff's punitive damage claim stands. (Civ. Code, § 3294, subd. (a).) Further, defendant has failed to show that the water dripping in the master bath was not "a material defective condition affecting the premises' habitability..." (*Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal.App.4th 1281, 1297; *Knight v. Hallsthammar* (1981) 29 Cal.3d 46, 55; *Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186; UMF 20, 21.) Additionally, defendant did not establish that the water dripping in the master bath did not interfere with plaintiff's use and enjoyment of the property. (*Adams v. MHC Colony Park, L.P.* (2014) 224 Cal.App.4th 601, 610; *Pierce v. Nash* (1954) 126 Cal.App.2d 606, 613 & 617; UMF 20, 21.) Finally, as to the fifth cause of action for intentional infliction of emotional distress, defendant's motion for summary adjudication is denied as moot because plaintiff struck this cause of action on May 5, 2020.

Plaintiff Dayna Weishaar's motion for sanctions against defendants is **DENIED**. (Code Civ. Proc., §§ 128.5, 128.7.) Plaintiff failed to file her motion 21 days after service on defendants. (*Malovec v. Hamrell* (1999) 70 Cal.App.4th 434, 441.)

Defendants' request for monetary sanctions against plaintiff and her counsel is **GRANTED**, in the amount of \$2,115.00. (Code Civ. Proc., §§ 128.5, 128.7.) The Court declines to award sanctions for time not yet incurred. Plaintiff shall pay the sanction by October 16, 2020.

The notice of motion does not provide notice of this Court's tentative ruling system as required by Local Rule 11.4(b). Counsel for moving party, or the moving party if unrepresented by counsel, is ordered to notify the opposing party or parties immediately of the tentative ruling system.

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