

DEPT. 3 CIVIL LAW & MOTION (8:30 A.M.) AND REVIEW (9:00 A.M.) CALENDARS FOR TUESDAY, NOVEMBER 13, 2018 WILL BE HEARD IN DEPT. 7

**Tentative Rulings and Resolution Review Hearings
November 13, 2018
Department 3**

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.

8:30 a.m. – Law & Motion

**COLEMAN VS. SCHOOLEY ET. AL.
Case Number: 190177**

Tentative Ruling on Demurrer to First Amended Complaint: Defendants Bob and Pamela Schooley demur both generally and specially to various causes of action in Plaintiff James Coleman’s First Amended Complaint. The party filing a demurrer must file and serve a notice of hearing with the demurrer. CRC Rule 3.1320(a). Notice must comply with the notice time requirements for motions generally. CCP § 1005(b); CRC Rule 3.1320(c). Notice and all supporting papers must be filed and served at least 16 court days prior to the hearing date, plus the required additional time for service. CCP § 1005(b). If notice is served by mail, the 16-day period is extended by five calendar days where both the place of mailing and address are within California. *Ibid.*

The demurrer was originally incorrectly noticed for Monday, November 12, 2018, a Court holiday. That notice and the supporting papers were filed and served on Plaintiff by mail on October 17, 2018. An amended notice was then filed and served on October 18, 2018. The demurrer was not filed and served in accordance with CCP § 1005(b) and is untimely. No opposition has been filed that would arguably waive this procedural defect. The demurrer is **OVERRULED**, without prejudice, on procedural grounds. A proposed order was not lodged with the Court as required by Local Rule 5.17(D). Defendants shall prepare the order. **No appearance is necessary on today’s calendar.**

**GILROY VS. DOLL, ET AL
Case Number: 187965**

Tentative Ruling on Motion to Continue Trial: Defendants, Gina Doll, Stephen Doll and Emma Doll move to continue the trial date of December 11, 2018 pursuant to CRC 3.1332. The basis for the motion is that Emma Doll will be unavailable for trial due to her college final exam schedule.

The Court has discretion to continue a trial date upon a showing of “good cause.” CRC 3.1332(c) and (d). CRC 3.1332(b). Good cause includes both the unavailability of an essential witness because of death, illness or other excusable circumstances and the unavailability of a party for the same reasons. CRC 3.1332(c)(1) & (2). The Court finds that Emma Doll’s unavailability constitutes good cause under both CRC 3.1332(c)(1) & (2). A review of the additional factors in CRC 3.1332(d) also support the trial continuance. The trial date will be

continued to a new date based on all parties' availability.

The caption of the notice of motion and proposed order both indicate that Defendants are seeking a continuance of both the trial and related discovery deadlines. Other than the caption, no specific request to continue the discovery deadlines was made in the body of the notice, nor was a request contained in the supporting memorandum. Without any authority or argument on this point, that relief is denied.

Finally, Plaintiff requests sanctions for having to oppose a frivolous motion. The Court finds that the motion is meritorious. Further, Plaintiff has provided no authority for his request for sanctions. The request for sanctions is denied.

The motion to continue the trial date is **GRANTED**. Discovery deadlines will not be extended. Plaintiff's request for sanctions is **DENIED**. A proposed order was lodged with the Court and will be modified to reflect the Court's final ruling. This matter is set for review on **Monday, December 3, 2018, at 9:00 a.m. in Department 3** for trial re-setting. The parties are ordered to meet and confer prior to that hearing date on the issue of availability.

9:00 a.m. – Review Hearings

K&S STAFFING SOLUTIONS, INC VS. FIDELITY & DEPOSIT COMPANY OF MARYLAND

Case Number: 189440

K&S STAFFING VS. TITAN D.V.B.E., INC.

Case Number: 189037

These matters are on calendar for review regarding status of service and trial re-setting. The matters, while not coordinated or consolidated, are related. At the mandatory settlement conference for both actions on September 10, 2018, the Court found good cause to allow additional time for service. The Court also stated it expected service to be effected by today's review hearing. No proof of service has been filed on either litigation. **An appearance is required by Plaintiff to provide the Court with a status of service on both actions.**

METALS DIRECT, INC. VS MILLER, ET AL

Case Number: 180247

This matter is on calendar for review regarding status of entry of default judgment. A new default package was received by the Court on October 19, 2018 and is still under review. This matter is continued to **Monday, December 10, 2018 at 9:00 a.m. in Department 3.** **No appearance is necessary on today's calendar.**