

**Tentative Rulings and Resolution Review Hearings
October 16, 2017
Department 8**

NOTE: 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.

Law and Motion – 8:30 a.m.

**GATSCHET, ET AL VS. DEVANEY
Case Number: 186010**

Tentative Ruling on Order to Show Cause re Sanctions: In consideration of the information contained in the responsive declaration filed September 18, 2017, the Court declines to impose monetary sanctions against Plaintiff and counsel. The Court resets the matter for trial on **Tuesday, March 20, 2018 at 8:45 a.m. in Department 8.** The Mandatory Settlement Conference is set for **Monday, January 8, 2018 at 1:30 p.m. in Department 8.** Plaintiffs shall give notice of the trial and settlement conference dates to Defendant.

**MAXIM'S NUTRICARE VS. CANTECA FOODS, ET AL
Case Number: 188288**

Tentative Ruling on Application for Right to Attach Order and Writ of Attachment: The present motion is unopposed. Plaintiff, Maxim’s Nutricare, Inc. dba Papa Pita Bakery moves for a Right to Attach Order and Writ of Attachment as against Defendants, Canteca, Inc. (hereinafter “Canteca”) and Stephen Will (hereinafter “Will”). The applications comply with the procedural requirements of Code of Civil Procedure section 484.010, et seq. for issuance of a right to attach order as to both Defendants.

In accordance with CCP § 484.090, the Court finds:

- (1) The claim upon which the attachment is based is one upon which an attachment may be issued.
- (2) The plaintiff has established the probable validity of the claim upon which the attachment is based.
- (3) The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.
- (4) The amount to be secured by the attachment is greater than zero.

Code of Civil Procedure section 483.010 provides “...an attachment may be issued only in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim is a fixed or readily ascertainable amount not less than five hundred dollars (\$500) exclusive of costs, interest, and attorney’s fees.” There is an additional requirement when a right of attachment is sought against a natural person; specifically, whether the claim arises out of the conduct by the defendant of a trade, business, or profession. CCP § 483.010(c). Plaintiff has demonstrated that the claim is one upon which an attachment may be issued and that the claim against Will, a natural person, arises out of the conduct of a trade, business, or profession. Additionally, the Court finds the applications provide sufficiently specific descriptions of the property sought to be attached. CCP § 484.020(e); see *Bank of America v. Salinas Nissan, Inc.* (1989)

207 Cal.App.3d 260, 267-68.

The applications for a Right to Attach Order as against both Defendants are GRANTED. Proposed orders have not been lodged with the Court as required by Local Rule 5.17(D). Plaintiff shall prepare the orders. The Court notes that undertakings have not been filed and Writs of Attachment shall not issue until separate undertakings for the benefit of each Defendant are filed in the amount of \$10,000 apiece.

MCHUGH, ET AL VS. WILSON, ET AL
Case Number: 184768

Tentative Ruling on Motion to Be Relieved as Counsel: Attorney Thomas Palecek seeks to be relieved as counsel for Defendant Small Equity Initiative, LLC (Small Equity Initiative) on the basis that counsel mistakenly undertook legal representation of Small Equity Initiative without actual authority. Counsel indicates the sole member of Small Equity Initiative is deceased and the entity is no longer an active LLC. Attorney Palecek's Declaration in Support of Attorney's Motion to be Relieved as Counsel states that according to the Texas Secretary of State, Small Equity Initiative's status is "Franchise Tax Involuntarily Ended" but provides no further information or other evidence in support of that statement.

The Court notes that Attorney Palecek's Declaration in Support of Ex Parte Application for an Order Shortening Time to Hear Motion to be Relieved as Counsel contains as Exhibit 1 a printout from the Texas Secretary of State's website showing Small Equity Initiative, LLC's entity status as "forfeited existence" and its legal name status as "inactive." While the Court has already ruled upon that Ex Parte Application, because the information contained in Exhibit 1 as attached to Attorney Palecek's supporting declaration is directly relevant to the pending motion, the Court takes judicial notice of Exhibit 1 as attached to Attorney Palecek's Declaration in Support of Ex Parte Application for an Order Shortening Time to Hear Motion to be Relieved as Counsel.

In considering the information contained in Attorney Palecek's Declaration in Support of Attorney's Motion to be Relieved as Counsel and Exhibit 1 as attached to Attorney Palecek's Declaration in Support of Ex Parte Application for an Order Shortening Time to Hear Motion to be Relieved as Counsel, the Court finds that the information provided by counsel as to the legal status of Small Equity Initiative is insufficient to establish that the entity ceases to exist or that there is presently no ownership interest in the limited liability company.

The Court also notes that instant motion has not been served on Small Equity Initiative, counsel has indicated at 3.b.(2) of the Declaration that counsel has been unable to confirm that the address is current or to locate a more current address.

The Motion to Be Relieved as Counsel for Defendant Small Equity Initiative is **continued to Monday, December 4, 2017 at 8:30 a.m. in Department 8.** The Court orders counsel for Small Equity Initiative to provide additional evidence pertaining to the legal status of Small Equity Initiative, namely whether, following the death of its sole member, the limited liability company has been dissolved and the status of any surviving ownership interest. Such information must be filed at least 5 court days before the hearing. If an individual or entity is found to have a surviving ownership interest, service of the motion should be effectuated upon that individual or entity.

Tentative Ruling on Motion to Compel Discovery Responses as to Defendant Small Equity Initiative: In light of the information contained in counsel's supporting declaration and the need for further evidence from defense counsel as to the dissolution status of Small Equity Initiative, the Motion to Compel Discovery Responses as to defendant Small Equity Initiative is **continued to Monday, December 4, 2017 at 8:30 a.m. in Department 8** to coincide with the hearing on the Motion to Be Relieved as Counsel.

PORTFOLIO RECOVERY ASSOCIATES VS. GEIS

Case Number: 16CV288

Tentative Ruling on Order to Show Cause re Sanctions: An Order to Show Cause Re: Sanctions and Further Orders issued on September 27, 2017 to plaintiff and plaintiff's counsel for failure to comply with the Court's order of August 21, 2017 to lodge a proposed order pursuant to Local Rules, Rule 5.17D and further ordering plaintiff and plaintiff's counsel to immediately comply with the Unified Local Rules of Court and serve the Court's order of September 27, 2017 upon plaintiff, with proof of service to be filed with the court. Plaintiff's counsel having lodged a proposed order, and in consideration of the information contained in the responsive declaration filed September 27, 2017, the Court declines to impose monetary sanctions against Plaintiff and counsel. However, the Court would note that the proposed Order is deficient in that it does not contain an actual signature line for the Court's execution and it is signed by plaintiff's counsel. In order to avoid further delay, the Court will modify and execute the proposed Order.

STATE FARM MUTUAL VS. WINCO FOODS, LLC

Case Number: 17CV002

Tentative Ruling on Order to Show Cause re Sanctions and Further Orders: An Order to Show Cause Re: Sanctions and Further Orders issued on September 6, 2017 to plaintiff and plaintiff's counsel for failure to timely serve pleadings (CRC Rule 3.110(b)) and failure to prosecute; failure to timely file a settlement conference/pre-trial statement (CRC Rule 3.725); and failure to appear at mandatory settlement conference on September 5, 2017.

No response to the Order to Show Cause having been filed, sanctions are hereby imposed in the sum of \$250 against plaintiff and counsel. Said sum to be paid to the Court no later than 30 days from the date of issuance of the order. The clerk is directed to prepare a separate Order of Sanctions. An Order to Show Cause re dismissal of the action shall issue, with a hearing date of Monday, November 27, 2017, at 8:30 a.m., in Department 8. If proof of service or dismissal is filed before the hearing date, the matter will be dropped from the Law & Motion calendar.

TUSCANY REDDING VS. J.G.CONSTRUCITON ET AL

Case Number: 187718

Tentative Ruling on Motion for Reconsideration of Order Denying Petition to Release Property from Mechanic's Lien: Petitioner seeks to have the Court reconsider its Order Denying Petition to Release Property from Mechanics Lien on the basis that the 90-day time period to file an action under Civil Code § 8460 has now lapsed. Petitioner has attempted to cure the deficiencies on which the Court based its denial of the Petition. The Court finds that certain procedural defects, namely Petitioner's failure to serve Respondents with notice of the petition hearing and Petitioner's premature filing of the petition, cannot be cured. The Court is required by Civil Code § 8486(a) to "rule and make any necessary orders" on a petition for a release order within 60 days of filing of the petition. Because more than 60 days have passed from the Petition filing date of June 27, 2017 and the Court has already ruled on the Petition to Release Property from Mechanics Lien, the Court no longer has jurisdiction. Based on the Petition's continuing and incurable defects and the Court's lack of jurisdiction over the Petition, the Motion for Reconsideration of Order Denying Petition to Release Property from Mechanic's Lien is **DENIED** and the case remains closed. Any subsequent petition cannot be filed in this closed case.

Resolution Review – 9:00 a.m.

DANIELS VS O'QUINN, ET AL
Case Number: 17CV628

This matter is on calendar for review regarding status of entry of default. The Court is in receipt of Petitioner’s proposed Default Judgment by Court submitted on October 5, 2017. This matter is set for a default prove-up hearing on **Monday, November 13, 2017 at 10:00 a.m. in Department 8**, or alternatively, Petitioner may submit a default judgment for abandonment only. No appearances are necessary on today’s calendar.

IMEL VS. IN & OUT SMART REPAIR, ET AL
Case Number: 186486

This matter is on calendar for review regarding status of judgment/dismissal. On September 5, 2017, the Court conducted a settlement conference and the parties entered into an interim agreement. No status report, notice of settlement, or request for dismissal has been filed. The Resolution Review re Status of Dismissal is continued to **Monday, November 13, 2017 at 9:00 a.m. in Department 8**. The parties are **ORDERED** to each file a Status Report at least five court days prior to that hearing apprising the Court of what must be done before the matter can be dismissed and the Court file closed.