

Dept. 1 Civil Law and Motion Tentative Ruling for 01-13-23 at 8:30 a.m.

If you wish to appear for oral argument, you must so notify the Court and all other parties by 4:00 p.m. one court day prior to the scheduled hearing, pursuant to California Rules of Court, rule 3.1308. The phone number for Department 1 is (209) 588-2383. The tentative ruling will become the ruling of the Court if the Court has not directed oral argument by its tentative ruling and notice of intent to appear has not been given.

1. **CVL63728** **Bank of America v. Proulx**
Hearing on: Motion for Entry of Judgment
Moving Party: Plaintiff
Tentative Ruling: N/A; withdrawal and full dismissal filed

2. **CV64645** **PG&E v. LaForge**
Hearing on: Status Conference
Moving Party: N/A
Tentative Ruling: N/A; plaintiff's CMC statement does not address status of work performed (see CM-110 Para 18-19); defendant failed to submit any CMC statement (see CRC 3.725). Parties to appear and discuss status of hardening work and whether matter can be dismissed.

3. **CV64943** **Wainwright v. Pascal**
Hearing on: Motion to Expunge Lis Pendens
Moving Party: Defendant
Tentative Ruling: N/A; due to plaintiff's filing on 12/19/22 of a Notice of Conditional Settlement of Entire Case, the hearing on the motion to expunge must be vacated (CRC 3.1385(c)(3)(A)); however, this Court will reserve jurisdiction should a dismissal be filed and plaintiff fails to properly withdraw the *lis pendens*.

4. **CV64417** **Weed v. Clark**
Hearing on: Motion to Expunge Lis Pendens; Motion for Judgment on the Pleadings (Statutory)
Moving Party: Defendant
Tentative Ruling: Granted

This is a boundary line dispute between neighbors impacting both ingress/egress and use of a pre-existing well. Before the Court this day are two defense motions: first, a motion to expunge a recently-recorded lis pendens on the putative *dominant* parcel; and second, a statutory motion for judgment on the pleadings, directed at the original complaint filed 03/16/22.

Defendant's motion to expunge must be GRANTED for a variety of reasons. First, as defendant notes, a Notice of Lis Pendens cannot be recorded by a self-represented non-lawyer without first securing court approval (CCP §405.21) – which plaintiff failed to secure. Second, a Notice of Lis Pendens cannot be recorded before it has been properly served on all interested persons (CCP §§ 405.22, 405.23) – and there is no proof of that having occurred. Third, to be valid, a copy of

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the Notice of Lis Pendens, along with the proof of service, must be filed with the Court (CCP §405.22) – and that did not happen. Fourth, as will be addressed more thoroughly in the motion for judgment on the pleadings, the operative pleading does not adequately allege a real property claim involving title to, or an easement upon, *defendant's* property (CCP §§ 405.4, 405.31). Given the variety of issues with the Notice of Lis Pendens, and other issues mentioned in the motion but not directly reviewed (e.g., inaccuracies in the Notice itself), this Court is unable to find that plaintiff acted with substantial justification sufficient to avoid a statutory award of fees and costs to defendant (CCP §405.38). Plaintiff does not offer any resistance to the request for fees/costs, or any basis to conclude that an award would be unjust under the circumstances (CCP §405.38). For those reasons, an award is mandatory. As for the amount, this Court finds that an attorney commanding \$375/hour would have invested no more than 3 hours on the motion. Plaintiff shall reimburse defendant \$1,185.00 (3 hrs. + \$60 filing fee) within 10 days.

Defendant's statutory motion for judgment on the pleadings must be GRANTED, with 30 days leave to amend. A statutory motion for judgment on the pleadings is similar to a demurrer, except that the motion (1) can be made at any time 30 days prior to the initial trial date, but (2) only after defendant has answered and (3) only on the grounds of subject-matter jurisdiction or failure to state a cause of action. CCP §438(c)-(f). The rules governing pleading scrutiny are the same as those applicable to demurrers, to wit: it must appear from the pleading itself, from facts judicially noticeable, or in rare instances from sworn statements outside the pleadings so long as the hearing does not cross the line into an incomplete evidentiary hearing, that despite inartful pleading plaintiff has not stated any cognizable right to judicial relief. See, e.g., *Tung v. Chicago Title Co.* (2021) 63 Cal.App.5th 734, 758-759; *New Livable California v. Association of Bay Area Governments* (2020) 59 Cal.App.5th 709, 716; *Weimer v. Nationstar Mortgage, LLC* (2020) 47 Cal.App.5th 341, 352; *Templo v. State of California* (2018) 24 Cal.App.5th 730, 735; *Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 186-187; *Bezirdjian v. O'Reilly* (2010) 183 Cal.App.4th 316, 321. As defendant correctly points out here, plaintiff's use of "the wrong" Judicial Council forms, coupled with a near-absence of facts (see CCP §425.10(a)), makes this pleading inadequate. See *Southern California Edison Company v. City of Victorville* (2013) 217 Cal.App.4th 218, 227; *Shields v. Hennessy Industries, Inc.* (2012) 205 Cal.App.4th 782, 785. Although defendant's various filings (cross-complaint, memoranda, etc.) provide this Court the needed explanation to understand what the dispute is about, it seems to this Court that plaintiff is merely complaining about a trespass (and perhaps declaratory relief), and that it shall be defendant's burden to establish the easement sought (not the other way around). Thus, plaintiff shall be ordered to file a First Amended Complaint within 30 days properly narrowed to the claims actually being made, and inserting facts sufficient to acquaint a reader of the pleading as to the nature of the dispute.