



Superior Court of California,
County of Mendocino

Tentative Rulings

for

Ukiah Department E
Friday, 9:00 & 9:30am Law & Motion Calendar

Calendar Date: January 19, 2018

Prior to a Civil Law & Motion or Probate hearing, the Court may issue a tentative ruling pursuant to California Rule of Court 3.1308. Unless a party requests to appear and notifies both the opposing party and the court, no hearing will be held, and the tentative ruling will become the order of the Court.

A party wishing to appear to provide oral argument must advise the opposing party and the Court by phone or by e-mail no later than 4:00pm on the court day before the hearing.

Phone: (707) 468-2007, Option 2
E-mail: tr@mendocino.courts.ca.gov

If you do not notify the opposing party and the Court by 4:00pm on the court day before the hearing, no hearing will be held.

If you do not find information regarding your particular case, and you have not previously been informed that you are excused from the calendar, an appearance is required.

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Probate:

SCUKCVPB-17-26940, Estate of Margaret Scott Stephenson:

Approve Petition for Probate and sign Order as presented.

SCUKCVPB-17-26943, Estate of DeAnne Cannon:

Approve Amended Petition for Probate and sign Order as presented.

SCUKCVPG-17-26935, Conservatorship of Dorothy Woods:

Parties to appear to schedule new hearing date to accommodate Probate Investigator and counsel for Conservatee. Parties may appear by phone.

Civil:

SCUKCVPO-15-66785, Philip Lappe v. State of California:

Motion for Summary Judgment filed by Defendant Caltrop Corporation is granted in its entirety. No opposition filed by Plaintiff. Defendant to prepare Order.

SCUKCVG-14-69536, Michael Pecherer v. Russian River Cemetery District:

Defendant's Motion to Strike and Demurrer is granted. No opposition filed by Plaintiff.

SCUKCVPM-17-69700, Lauren Bishop v. Brian Schat:

Defendant's Motion to Strike portions of the complaint relating to punitive damages is denied. Plaintiff has alleged sufficient facts to support a request for punitive damages.

SCUKCVG-17-69872, James Asher v. Patricia Jasper:

Request to Continue Motion To Compel Arbitration is granted. The Motion shall be continued to February 23, 2018 at 9:30 am. in Department E.

SCUKCVPO-17-68988, John Becker, et al. v. State of California, et al.:

Motion to Dismiss is granted. Court will sign Order as presented.

SCUKCVG-17-69021, Amanda Carley v. County of Mendocino et al.,:

Defendant Eyster's Motion to Strike is granted and the demurrer is sustained without leave to amend. In her opposition Plaintiff has consented to dismiss five of the seven causes of action pled against Eyster. The only two causes of action remaining are the FEHA Harassment claim and the claim for civil conspiracy. Both of these claims fail to state a cause of action as a matter of law. The action taken by Defendant Eyster to place Carley on the Brady list falls under prosecution of judicial proceedings or other proceedings authorized by law. Prosecutors have absolute immunity for actions that fall under a prosecutor's judicial function. Plaintiff has also failed to allege the requisite factual basis for her harassment and conspiracy claims. Plaintiff does not allege any facts which would demonstrate that Eyster's actions were based on Plaintiff's protected status. The claim for conspiracy is likewise inadequate as it is now based only on the alleged harassment claim which is insufficient as a matter of law.

*As to the Motion to Strike Code of Civil Procedure §425.16 (b) (1) states that, "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." In making its determination, the court is required to consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based. (§425.16((b) (2)). The motion procedure requires the trial court to engage in a two-part analysis. *Navellier v. Sletten* (2002) 29 Cal. 4th 82.*

*The first level of inquiry in evaluating the motion is whether the Defendant can demonstrate that the challenged cause of action arises from protected activity. *Rusheen v. Cohen* (2006) 37 Cal. 4th 1048 (and cases cited therein). The court looks to the gravamen of the complaint in conducting this analysis. *Chaker v. Mateo* (2012) 37 Cal. 4th 1048. In this instance, the gravamen of Plaintiff's complaint is the placement of Carly on the Brady list which is clearly protected activity under section 425.16. Plaintiff's reliance on *Nam v. Regents of California* is misplaced. *Nam* supports the proposition that the basis for the SLAPP action must be that the defendant's act, underlying the cause of action itself, is a protected activity and not conduct which that demonstrates discrimination or retaliation. The court finds that the Defendant has satisfied his predicate burden to show that Plaintiff's claims arise out of protected activity as set forth in the statute.*

Having met the first prong of the inquiry, the burden shifts to the Plaintiff to demonstrate, with admissible evidence, a probability of prevailing on the claim. "[T]he Plaintiff must demonstrate that the complaint is

both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the Plaintiff is credited.” (Rusheen, supra). The court is not permitted to weigh credibility or compare the weight of the evidence but rather is required to apply the same standard as applied in considering a motion for summary judgment. Gerbosi v. Gaims, Weil, West & Epstein, LLP (2011) 193 Cal. App.4th 435. In this instance, Plaintiff failed to even address the second prong of the analysis. The Motion to Strike is granted in its entirety.