

This is Google's cache of <http://www.sanmateocourt.org/director.php?filename=/tentrul/wed.htm>. It is a snapshot of the page as it appeared on Jul 30, 2009 00:43:17 GMT. The [current page](#) could have changed in the meantime. [Learn more](#)

These search terms are highlighted: **eberhard vs musk**

[Text-only version](#)



SELF-HELP CENTER • DEPARTMENTS • FOR ATTORNEYS/LITIGANTS • PRESIDING JUDGE'S CORNER • JURY INFORMATION • NEWS



If an appearance is required or if a party has provided timely notice of intent to appear, any party may appear telephonically through Court Call. To do so, you must contact Court Call at (888) 882-6878 no later than 4:30 p.m. on the court day prior to the hearing.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Presiding Judge - Law and Motion Calendar
Judge: HONORABLE BETH LABSON FREEMAN, ACTING PRESIDING JUDGE
Department 3

400 County Center, Redwood City
Courtroom 2L

JULY 29, 2009

If you plan to appear on any case on this calendar,
you must call (650) 363-4805 before 4:00 p.m.

Case Title / Nature of Case

9:00

1

CIV 343501 RUTH HENDRIX **VS** LARRY J. JORDAN

RUTH HENDRIX
LARRY J. JORDAN

HEARING: APPEARANCE OF JUDGMENT DEBTOR LARRY J. JORDAN.

- **APPEAR.**

9:00

2

CLJ 472278 ADVENTERA, INC. **VS** SULAIMAN ROCHEMONT

ADVENTERA, INC. BRENDA MAR
SULAIMAN ROCHEMONT

HEARING: APPEARANCE OF JUDGMENT DEBTOR SULAIMAN ROCHEMONT.

- **APPEAR .**

9:00

3

CLJ 473178 PEPSI BOTTLING GROUP **VS** BRINDERJIT KAUR

PEPSI BOTTLING GROUP ROBERT L. POLLAK
BRINDERJIT KAUR

HEARING: APPEARANCE OF JUDGMENT DEBTOR BRINDERJIT KAUR.

- **APPEAR .**

[]

If an appearance is required or if a party has provided timely notice of intent to appear, any party may appear telephonically through Court Call. To do so, you must contact Court Call at (888) 882-6878 no later than 4:30 p.m. on the court day prior to the hearing.

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO**

Law and Motion Calendar

**Judge: HONORABLE JOHN L. GRANDSAERT
Department 11**

**400 County Center, Redwood City
Courtroom 2D**

JULY 29, 2009

**If you plan to appear on any case on this calendar,
you must call (650) 363 - 1882 before 4:00 p.m.**

Case	Title / Nature of Case
9:00	
1	
CIV 453968	ALTAMAR AT THE RIDGE OWNERS ASSOCIATION VS BROOKFIELD NORTHEAST RIDGE I, INC.
ALTAMAR AT THE RIDGE OWNERS ASSOCIATION	ALLISON L. ANDERSON
BROOKFIELD NORTHEAST RIDGE I, INC.	SHAWN D. MORRIS

MOTION TO EXCLUDE EXPERT TESTIMONY AND TO PRECLUDE AUGMENTATION OF EXPERT WITNESS DISCLOSURE
FILED BY EAST BAY CONSTRUCTION COMPANY, INC.

- On July 17, 2009 Cross-defendant Atlas Heating & Ventilation filed a "Notice of Order Granting Rehabilitation And 120 Day Stay" and "Notice of Temporary Stay". The Orders were issued by the Supreme Court of the State of New York, County of New York, regarding The Insurance Corporation of New York ("INSCORP"). INSCORP is defending Atlas Heating in this lawsuit and has been determined insolvent by the New York Court. Paragraph 12 of the New York Court's Order enjoins further prosecution of this lawsuit, among other things.
- The issue created by the New York Order is to what extent this Court must stay this lawsuit vis-à-vis the New York Order, particularly with respect to Insurance Code section 1063.6, or any other applicable theory of law. In the absence of a stipulation between and among the parties with regard to the effect of this New York Order, this Court directs that the parties consult with Special Master Jonathan Margolis on this issue as soon as possible. The Court will also give notice of this issue to the Special Master by way of a copy of a Minute Order reflecting this Court's ruling after hearing in this matter. The Special Master shall consider this issue if and when the parties have consulted him on the issue. Once consulted, the Special Master shall make a recommendation to this Court, with reference to the stay, as soon as possible.
- Plaintiff is hereby authorized to substitute Mr. O'Connor for Mr. Holsinger as an expert. Plaintiff shall not be able to call Mr. Holsinger as an expert. Plaintiff shall pay for the entirety of Mr. O'Connor's deposition fees. Plaintiff shall complete its requested additional testing on or before August 10, 2009, and the Defense shall have the opportunity to observe any such testing. Plaintiff shall produce Mr. O'Connor for deposition on or before August 24, 2009, or within 14 days of completion of the testing, whichever date is earlier. Mr.

O'Connor may opine with respect to the additional testing. The defense shall be entitled to conduct reasonable additional testing at the plaintiff's complex, if requested by the earlier of Sept. 9, 2009, or 30 days after completion of Plaintiff's testing.

- Moving party shall prepare and submit a formal order complying with California Rule of Court 3.1312 for the Court's signature.
- The Clerk shall send of a copy of the final Order in this matter, following hearing, to the Special Master.
- If the tentative ruling is uncontested, it shall become the order of the court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10.

9:00

2

CIV 474977 LOIS BOYD **VS** MILLS PENINSULA HOSPITAL

LOIS BOYD

MARYLON M. BOYD

MILLS PENINSULA HOSPITAL

DAVID SHEUERMAN

MOTION TO STRIKE PORTIONS OF COMPLAINT FILED BY LAWRENCE COSKEY.

- Defendant's Request For Judicial Notice is **GRANTED** with respect to the Complaint and the lack of an Order in the Court's file permitting Plaintiffs to assert a punitive damage claim.
- Defendant Lawrence Coskey's unopposed Motion to Strike Portions of the Complaint is **GRANTED**, without leave to amend. Paragraph 14(a)(2) and the exemplary damages attachment are hereby stricken.
- Moving party shall prepare and submit a formal order complying with California Rule of Court 3.1312 for the Court's signature.

DEMURRER TO COMPLAINT OF BOYD FILED BY LAWRENCE COSKEY.

- Defendant Lawrence Coskey's unopposed Demurrer to the Complaint in its entirety is **SUSTAINED**, with leave to amend, as the Complaint fails to state facts sufficient to state any cause of action and also is uncertain. (Code of Civ. Proc. §430.10(e) & (f).) Plaintiffs shall file and serve an amended Complaint by August 12, 2009.
- Moving party shall prepare and submit a formal order complying with California Rule of Court 3.1312 for the Court's signature.

9:00

3

CIV 475242 HWONG KWO LIN **VS** MAO PEI XU

HWONG KWO LIN

PRO PER

MAO PEI XU

SVETLANA M. SHIRNOVA

MOTION TO STRIKE 2ND AMENDED COMPLAINT, REQUEST FOR ATTORNEY FEES AND FOR SANCTIONS FILED BY XIN LIU AND MAO PEI XU.

- Defendants' Motion to Strike the Second Amended Complaint is **GRANTED**, without prejudice to Plaintiffs' bringing a motion for leave to file an amended pleading. Leave to file an amended complaint making substantive changes should be obtained via a noticed motion. (Code of Civ. Proc. §473(a)(1), Weil & Brown California Practice Guide: Civil Procedure Before Trial §§6:619, 6:666.) In this case, leave to amend had been granted by Judge Scott on an *ex parte* basis, but only because it was represented that proper notice had been given, and that the defense had no objection. Now that a controversy has arisen regarding the truth and/or accuracy of those representations, the prior *ex parte* authorization to file the SAC is withdrawn and the instant Motion is **GRANTED**. In light of the controversy surrounding the claimed prior agreement between the parties, with reference to the Court's prior *ex parte* ruling, Defendants' request for sanctions is **DENIED**.
- Moving party shall prepare and submit a formal order complying with California Rule of Court 3.1312 for the

Court's signature.

- If the tentative ruling is uncontested, it shall become the order of the court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10.

9:00

4

CIV 482477 455 HICKEY HOLDINGS, LLC VS NORMITA PASCUAL

455 HICKEY HOLDINGS, LLC
NORMITA PASCUAL

JOHN MARSHALL COLLINS
JONATHAN HERSCHEL BORNSTEIN

MOTION COMPELLING RESPONSES TO FORM INTERROGATORIES FILED BY 455 HICKEY HOLDINGS, LLC.

- Plaintiff's Motion to Compel Responses to Form Interrogatories is **GRANTED IN PART**. Defendant shall serve full and complete responses to interrogatories 15.1, 17.1 and 50.1 no later than August 10, 2009. The Motion is **DENIED** as to all other interrogatories.
- Moving party shall prepare and submit a formal order complying with California Rule of Court 3.1312 for the Court's signature.
- If the tentative ruling is uncontested, it shall become the order of the court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10.

MOTION FOR ORDER OF ADMISSION AND FOR SANCTIONS FILED BY 455 HICKEY HOLDINGS, LLC.

- Plaintiff's Motion to Deem Matters Admitted is **DENIED**. Defendant served proposed responses on 7/14/09 which are in substantial compliance with Code of Civil Procedure §2033.220. However, to the extent the proposed responses to Requests 10-13 and 30 are not fully compliant with §2033.220(c), Defendant is Ordered to provide further responses no later than August 10, 2009.
- Moving party shall prepare and submit a formal order complying with California Rule of Court 3.1312 for the Court's signature.
- If the tentative ruling is uncontested, it shall become the order of the court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10.

MOTION COMPELLING RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE, FILED BY 455 HICKEY HOLDINGS, LLC.

- Plaintiff's Motion to Compel Responses to Requests for Production of Documents is **DENIED**.
- Plaintiff's request for sanctions is granted. Defendant shall pay Plaintiff's reasonable expenses in the amount of \$2,400, pursuant to Code of Civil Procedure §§2030.290(c), 2031.300(c) and 2033.280(c), on or before August 10, 2009.
- Moving party shall prepare and submit a formal order complying with California Rule of Court 3.1312 for the Court's signature.
- If the tentative ruling is uncontested, it shall become the order of the court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10.

9:00

5

CIV 483987 MARY M. GALLAGHER VS THRIFTY PAYLESS, INC.

MARY M. GALLAGHER
THRIFTY PAYLESS, INC.

RONALD C. CHAUVEL
J. JULIA HANSEN

DEMURRER TO COMPLAINT OF GALLAGHER FILED BY THRIFTY PAYLESS, INC.

- The Demurrer for uncertainty is **OVERRULED** in its entirety.

- Demurrer to the 1st and 2nd causes of action is **OVERRULED**: (1) The analogy to the *Murphy* case is not persuasive, and, (2) Citation to cases concerning promises or guaranties of success concern only physicians (*Cobbs, Custodio, et al*) and have not extended the rule to all health care providers in general.
- Demurrer to the 3rd cause of action is **OVERRULED**. The claim is not based on an omission; it alleges a representation. (See Complaint ¶ 30.)
- Demurrer to the 4th cause of action is **OVERRULED**. Regardless of its title, the claim alleges a cause of action for medical negligence that is not necessarily duplicative of the 6th cause of action.
- Demurrer to the 5th cause of action is **SUSTAINED** without leave to amend. (*Flowers v. Torrance Mem. Hospital Med. Center* (1994) 8 Cal.4th 992, 1000.)
- Demurrer to the 7th cause of action is **SUSTAINED** with leave to amend. The Complaint fails to allege: (1) "contact", or, (2) that Defendant intended to cause the contact to result in harm.
- Plaintiff shall have until August 12, 2009, to file a First Amended Complaint.
- Moving party shall prepare and submit a formal order complying with California Rule of Court 3.1312 for the Court's signature.
- If the tentative ruling is uncontested, it shall become the order of the court, pursuant to Rule 3.1308(a) (1), adopted by Local Rule 3.10.

9:00

6

CIV 484400 MARTIN **EBERHARD VS ELON MUSK**

MARTIN **EBERHARD**
ELON **MUSK**

YOSEF PERETZ
GARY M. GANSLE

MOTION FOR SPECIAL MOTION TO STRIKE PORTIONS OF COMPLAINT AS SLAPP (CCP §425.16) FILED BY ELON **MUSK** AND TESLA MOTORS, INC.

- The "Statement of Intent to Introduce Oral Testimony" submitted by Plaintiff is not referenced in CRC 3.1306(b). To the extent that the Court considers said Statement of Intent to Introduce Oral Testimony to constitute the required Request to Introduce Oral Testimony, the request to introduce oral testimony is **DENIED**. The Plaintiff has not shown the "nature and extent" of the proposed testimony, a "reasonable time estimate for the hearing" thereof, and has not in any other way made the required good cause showing that is a prerequisite for such oral testimony. The determination of the Motions submitted will be based upon the evidence presented by declarations submitted with the Motions.
- Plaintiff's evidentiary objections are **OVERRULED** as to Objections Nos. 1-30, 32-33 and **SUSTAINED** as to Objection Nos. 31 and 34.
- Defendants' evidentiary objections are **OVERRULED** as to Objections Nos. 1-18, 20-26, 28-35, 37-45, 48-115, 118-143 and **SUSTAINED** as to Objection Nos. 19, 27, 36, 46-47 and 116-117.
- Plaintiff's request for judicial notice is **GRANTED**.
- The Court must undertake a two-step process in determining the merits of a SLAPP motion. First, the Court must decide if the Defendants have made a threshold showing that the challenged causes of action arose from protected activity. If the Defendants fail to satisfy this burden, the challenged causes of action are not subject to a motion to strike. If the Court finds such a showing has been made, it must then determine whether the Plaintiff has demonstrated a probability of prevailing on the claims. (*Clark v. Mazgani* (2009) 170 Cal.App. 4th 1281, 1286.) Only causes of action that satisfy both prongs of the anti-SLAPP statute—i.e., that arise from protected speech or petitioning and lacks even minimal merit—is a SLAPP, subject to being stricken under the statute. (*Navellier v. Sletten* (2002) 29 Cal. 4th 82, 89.) Only a minimal showing of merit is required to establish a probability of prevailing on plaintiff's claims. (*Sycamore Ridge Apartments, LLC v. Naumann* (2008) 157 Cal.App.4th 1385, 1392.) The Court does not weigh or compare the weight of the evidence; the Court accepts as true the evidence favorable to the plaintiff. (*Id.*, at 1397.)

- In this case, the Defendants have made a *prima facie* showing the challenged cause of action arises from an act in the furtherance of free speech. (Code of Civ. Proc. §425.16(e)(3) and (e)(4).) Plaintiff has not defeated the Defendants' threshold showing that the causes of action were protected activity by the Defendant. As to the second prong of the SLAPP analysis, however, the Court finds that the Plaintiff has demonstrated a probability that he will prevail on the challenged causes of action. Defendants' Special Motion to Strike the 1st, 2nd, 3rd, 6th and 11th causes of action of Plaintiff's Complaint is, therefore, DENIED:
 - As to the First and Second Causes of Action (Defamation) Plaintiff has established a probability he could prevail on at least some of his defamation/libel claims relating to statements made by MUSK, including but not limited to, that Plaintiff caused the financial issues at TESLA, that he left a "mess" when he left the company, that he caused the delays in the production of the Roadster, and that MUSK had to spend a lot of time correcting all the errors made by Plaintiff. (Complaint, ¶¶89-102; Exhibits. 24-30.)
 - As to the Third Cause of Action (Injunctive Relief), because Plaintiff has shown the probability he may prevail on the merits of a portion of his defamation claims, he may also prevail on his claim for injunctive relief. An injunction which does no more than prohibit Defendants from repeating the defamation is not a prior restraint and does not offend the First Amendment. (*Balboa Island Village Inn v. Lemen* (2007) 40 Cal.4th 1141, 1148.)
 - As to the Sixth Cause of Action (Declaratory Relief), an anti-SLAPP motion is not the proper mechanism to use to contest the validity of this cause of action. Rather, the separate motion to strike under Code of Civil Procedure §436 *et seq* contemporaneously filed herewith fully and adequately addresses this dispute.
 - As to the Eleventh Cause of Action (Negligence), the Complaint does not predicate this cause of action solely upon Defendants' alleged defamatory statements.
- Neither these determinations, however, that there is a probability that the Plaintiff will prevail on these causes of action, nor the fact that said determinations were made, shall be admissible for any purpose, nor shall it affect any burden of proof, in any later stage of these or related proceedings. (Code Civ. Proc., §425.16(b)(3).)
- Responding party shall prepare and submit a formal order complying with California Rule of Court 3.1312 for the Court's signature.
- If the tentative ruling is uncontested, it shall become the order of the court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10.

MOTION TO STRIKE PORTIONS OF COMPLAINT FILED BY ELON MUSK AND TESLA MOTORS, INC.

- Defendants' Motion to Strike Portions of Plaintiff's Complaint is DENIED IN PART and GRANTED IN PART as follows:
 - DENIED as to "Count One" of the Fourth Cause of Action. A determination as to whether Plaintiff breached the Nondisparagement clause of the BOD Resignation Agreement would require interpretation of the contract and its terms, which is improper on a motion to strike.
 - DENIED as to "Count Three" of the Fourth Cause of Action. In ruling on a motion to strike, the Court is limited to the face of the pleadings and any information it may judicially notice. (Code of Civ. Proc. §437.) The evidence of the upgrade may not be considered by the Court. Thus, there are no grounds upon which to grant the motion to strike.
 - GRANTED as to "Count One" of the Sixth Cause of Action. Plaintiff is improperly requesting the Court make factual determinations, as opposed to a declaration regarding the parties' legal rights and obligations.
 - GRANTED as to "Count Two" of the Sixth Cause of Action. This count is duplicative of the fourth and fifth causes of action asserted in the Complaint.
- Moving party shall prepare and submit a formal order complying with California Rule of Court 3.1312 for the Court's signature.

- If the tentative ruling is uncontested, it shall become the order of the court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10.

DEMURRER TO COMPLAINT OF **EBERHARD** FILED BY ELON **MUSK** AND TESLA MOTORS, INC.

- Plaintiff's request for judicial notice is **GRANTED** as to the existence of the complaints and demurrers in the other actions. However, the Court may not take judicial notice of the truth of the statements contained therein.
- Defendants' Demurrer to the 3rd and 7th through 9th causes of action of Plaintiff's Complaint is **OVERRULED** in its entirety.
- Responding party shall prepare and submit a formal order complying with California Rule of Court 3.1312 for the Court's signature.
- If the tentative ruling is uncontested, it shall become the order of the court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10.

9:00

7

CIV 485161 FUSIONSTORM CORPORATION **VS** LIVEUNIVERSE, INC.

FUSIONSTORM, A CALIFORNIA CORPORATION ARTHUR D. LEVY
LIVEUNIVERSE, INC.

APPLICATION FOR RIGHT TO ATTACH ORDER/WRIT OF ATTACHMENT AS TO LIVEUNIVERSE, INC. AND MEE VEE, INC. FILED BY FUSIONSTORM, A CALIFORNIA CORPORATION.

- Plaintiff's unopposed Application for a Pre-Judgment Writ of Attachment is **DENIED** for failure to show the required proof of service pursuant to Code of Civ. Proc. §1005(b).

9:01

8

CLJ 199682 HSBC BANK, USA **VS** AMJAB ABYCAHRIDEH

HSBC BANK, USA RANDALL NAIMAN
AMJAB ABYCAHRIDEH PRO PER

MOTION TO QUASH SERVICE OF SUMMONS AND SET ASIDE ENTRY OF DEFAULT FILED BY AMJAB ABYCAHRIDEH.

- Defendant's Motion to Set Aside Default and Default Judgment is **GRANTED** pursuant to Code of Civil Procedure section 473. Defendant's mistaken failure to file a timely response was excusable under the circumstances, given the Court's ruling on the Demurrer in the first action for Unlawful Detainer, and the timing of that ruling.
- Defendant's Motion to Quash is **DENIED**. Substituted Service was properly made pursuant to Code of Civil Procedure section 415.20. The Summons and Complaint was left with a competent member of the household and mailed to Defendant.
- Defendant's Answer or other responsive pleading must be filed no later than August 5, 2009.
- The Plaintiff's request for payment of costs is denied.
- This Court declines to rule on Plaintiff's request for a "use and occupancy" fee.
- Moving party shall prepare and submit a formal order complying with California Rule of Court 3.1312 for the Court's signature.
- If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10.

9:01

9

CLJ 199877 DEUTSCHE BANK NATIONAL TRUST CO. **VS** SHARLEEN OWENS

DEUTSCHE BANK NATIONAL TRUST CO.
SHARLEEN OWENS

EDWARD TREDER
SHIRLEY GIBSON

DEMURRER TO COMPLAINT (UNLAWFUL DETAINER) OF DEUTSCHE BANK NATIONAL TRUST CO. FILED BY
SHARLEEN OWENS.

- **Defendant's Request for Judicial Notice is GRANTED pursuant to Evidence Code §452(b).**
- **Defendant's unopposed Demurrer to the Complaint is SUSTAINED with leave to amend. Plaintiff has failed to allege sufficient facts to support a cause of action for unlawful detainer based on failure to execute a new lease/failure to provide access to the unit. Plaintiff has not alleged compliance with all necessary provisions of the East Palo Alto Rent Stabilization Ordinance.**
- **Moving party shall prepare and submit a formal order complying with California Rule of Court 3.1312 for the Court's signature.**



[SITE MAP](#) | [HOME](#) | [GENERAL INFO](#) | [SAN MATEO COUNTY VISITOR INFORMATION](#) | [GO TO COURT](#) | [JURY DUTY](#) | [PAY FINES](#) | [GET FORMS](#)
[CONTACT US](#) | [EMPLOYMENT](#) | [SELF-HELP CENTER](#) | [DEPARTMENTS](#) | [FOR ATTORNEYS/LITIGANTS](#) | [PRESIDING JUDGE'S CORNER](#) | [JURY DUTY](#)
[NEWS](#) | [ADA POLICY](#) | [Copyright](#) © 2009 Superior Court of California, County of San Mateo | [EMAIL THE WEBMASTER](#)