

Tentative Rulings – December 4, 2003

To request a hearing on any matter on this calendar, you must call the Court at (209) 223-6360 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

Citibank v. Raper – 03CV2719 – Plaintiff's Motion to Compel Discovery Responses

Plaintiff's motion for an order compelling responses to special interrogatories and request for production of documents is granted. The defendant is ordered to provide verified answers to this discovery, without objection, within 20 days of service of notice of this ruling.

The court awards plaintiffs sanctions in the amount of \$271.00. The court reserves the right to increase this sanction award if a hearing is requested and the tentative ruling confirmed after hearing.

Unless a hearing is requested, this tentative ruling shall be considered the order of the court. Plaintiff is ordered to give notice of this ruling.

Citibank v. Raper – 03CV2719 – Plaintiff's Motion for Order that Matters Set Forth in Requests for Admissions be Admitted

Plaintiff's motion for an order that matters set forth in Requests for Admissions be deemed admitted granted. The court awards plaintiffs sanctions in the amount of \$121.30. The court reserves the right to increase this sanction award if a hearing is requested and the tentative ruling confirmed after hearing.

Unless a hearing is requested, this tentative ruling shall be considered the order of the court. Petitioner is ordered to give notice of this ruling.

Dunn v. Blackman – 03CV2807 – Briski's Demurrer to Second Amended Complaint

The Briski defendants' demurrer to the plaintiffs' second amended complaint is based on the grounds the third and fourth causes of action are barred by the 10-year statute of limitations found in Code of Civil Procedure Section 337.15.

Briski's demurrer to the third cause of action is sustained with 10 days leave to amend. A cause of action based on fraudulent concealment is an exception to the 10-year statute of limitations. However, assuming Briski owed a duty of disclosure to the Dunns, no cause of action for fraudulent concealment is stated. The cause of action is based on affirmative representations made by Briski in the well report to the effect that the well was properly sealed and cased. The exception in Code of Civil Procedure Section 337.15(f) is limited to fraudulent concealment and does not extend to allegedly fraudulent misrepresentations.

Briski's demurrer to the fourth cause of action is overruled. Accepting the allegations of the complaint as true, the Dunns have adequately alleged a cause of action for willful misconduct.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.

Citibank v. Klammt – 02CV2313 – Plaintiff's Motion for Summary Judgment

The plaintiff's motion for summary judgment is denied. The plaintiff failed to file proof of service of the motion on the defendant with the court. (Code of Civil Procedure Section 437c(a) and California Rules of Court, Rule 317(c).)

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.