

## **TENTATIVE RULINGS—FEBRUARY 6, 2009**

**To request a hearing on any matter on this calendar, you must call the Court at (209) 257-2692 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.**

**BONNEAU V. BONNEAU: 05CV3701**

### ***Defendant's Motion to Enforce Settlement Agreement***

Defendant's motion to enforce settlement is hereby granted.

The transcript from the proceedings indicates, "judgment will be entered against Kevin Bonneau on the Complaint in this case, and the court will execute that judgment in the amount of \$0 payable to the plaintiffs, each side to bear its own costs and fees." The parties did not expressly agree, in Court, that the settlement was to state that judgment would be entered on the "merits." Moreover, the settlement agreement included both a settlement of the instant action and a release of other specific claims. The transcript is clear in this regard. (see RT 4:4-5:15.) Plaintiffs' argument that the release was not a part of the settlement of this action is disingenuous.

In this instance, it appears the terms of the proposed settlement prepared by the defendant matches the terms of the agreement stated on the record on September 5, 2008. Therefore, the motion is granted.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

**BONNEAU V. ALBERTA HALE LAND TRUST: 08CV5182**

### ***Defendants' Special Motion to Strike***

Due to the disqualification of Judge Susan C. Harlan, this matter is continued to February 13, 2009.

**FALLON V. YANES, ET AL.: 07CV4829**

### ***Defendant Walt Robb's Motion to Dismiss Plaintiff's First Amended Complaint***

Defendant's unopposed motion to dismiss Plaintiff's First Amended Complaint, pursuant to C.C.P. §591 (f)(1) is hereby granted.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

**FIA CARD SERVICES V. THOMPSON: 08CV5343**

### ***Plaintiff's Motion to Establish Admissions and for Monetary Sanctions and Plaintiff's Motion to Compel Responses to Interrogatories and Request for Sanctions:***

Plaintiff's motions are hereby denied. Defendant was out of the area from November 15, 2008 to December 27, 2008. Defendant served responses to the discovery on January 13, 2009. If the defendant's responses are deficient, the plaintiff may file a motion to compel further responses.

In addition, the Court finds any waiver of objections was the result of inadvertence on the defendant's part and therefore, the waiver is hereby set aside.

Finally, the court finds the imposition of sanctions in this matter would be unjust. Therefore, the plaintiff's requests for sanctions are denied.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

**HSBC BANK V. OEHLER: 08CV5620**

***Plaintiff's Motion for Judgment on the Pleadings***

The plaintiff's unopposed motion for judgment on the pleadings is hereby granted.

Plaintiff is to prepare an order in compliance with Rule 3.1312.

**JACKSON RANCHERIA BAND OF MIWUK INDIANS V. WORTH: 07CV5069**

***Cross-defendant Con-Fab California's Demurrer to Cross-complaint of F&H Construction***

Cross-defendant's demurrer to the Cross-complaint is hereby overruled. A party has the right to plead inconsistent legal theories.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

**PEACH V. CDCR: 07CV4833**

***Defendant's Motion to Continue Trial***

Defendant's Motion to Continue trial and mandatory settlement conference dates is hereby granted. However, due to the age of the instant case, the Court will not be inclined to grant any further continuances.

This matter is set for a trial setting conference on March 23, 2009 at 1:30 p.m. in Department 3.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

***Defendant's Motion for Judgment on the Pleadings***

Defendant's motion for judgment on the pleadings is hereby denied.

Government Code §844.6 provides, in pertinent part:

- (a) Notwithstanding any other provision of this part, except as provided in this section and in Sections 814, 814.2, 845.4, and 845.6, or in Title 2.1 (commencing with Section 3500) of Part 3 of the Penal Code, a public entity is not liable for: (1) An injury proximately caused by any prisoner.

Under FEHA, to demonstrate a claim of discrimination, the plaintiff must demonstrate that he was an employee of the defendant; that the defendant took adverse employment action against him; that his protected status was a motivating reason for the adverse employment action; that he was harmed; and that the adverse employment action was a substantial factor in causing his harm. (CACI 2500; Gov. Code §12940, sub. (a).)

In this instance, the harm the plaintiff complains of is the disparate treatment of his complaints regarding sexual harassment. Plaintiff contends that if female employees made the same complaints of sexual harassment, the female employees would have been treated differently. Thus, inmates did not directly cause the harm.

Defendant's request for sanctions is hereby denied. Preliminarily, there is no evidence the defendant complied with the safe harbor provision of C.C.P. §128.7. Second, even if there was compliance, as the motion is denied, there is no basis for sanctions.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.