These are the tentative rulings for civil law and motion matters set for Tuesday, June 20, 2017, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, June 19, 2017. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances are governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

---

1. M-CV-0061327 Citibank, N.A. vs. Olsen, Roy C.

Appearance required on June 20, 2017, at 8:30 a.m. in Department 40 on plaintiff's Motion to Set Civil Limited Case for Trial.

2. M-CV-0066475 American Express Centurion Bank vs. McClelland, Cezanne

Plaintiff's Motion to Deem Matters Admitted is granted. The matters set forth in plaintiff's Request for Admissions, Set One, are deemed admitted. Plaintiff is awarded sanctions from defendant Cezanne McClelland in the amount of $360. Code Civ. Proc. § 2033.280(c).

3. M-CV-0067215 Siena Roseville, LP vs. Dickinson, Clarence, et al

Defendants' Demurrer to Complaint is overruled.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The court assumes the truth of all facts properly pleaded, and accepts as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts. *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6. However, the court does not assume the truth of contentions, deductions, or conclusions of facts or law. *Id.*

Defendants argue that the amount of past-due rent stated in the 3-day notice and complaint is incorrect, because it includes late fees which are not properly included in the definition of "rent". Defendant Shavon Brooks aka Shavon Dickinson also asserts that she is not properly named in the complaint. Neither of these arguments provides a basis for sustaining the demurrer. The court must accept the allegations of the complaint as true for the purpose of ruling on a demurrer. Factual disputes regarding the nature of the amounts sought as past-due rent cannot be resolved at this stage. Further, the erroneous identification of a defendant is not a proper ground to sustain the demurrer. See Code Civ. Proc. § 430.10.

Plaintiff's request to set the case for trial is denied at this time, as defendants have not yet filed an answer to the complaint. Defendants are instructed to file and serve their answer to the complaint within five calendar days of service of notice of entry of the court's order on this demurrer. Code Civ. Proc. § 472b; Cal. R. Ct., rule 3.1320(g).

4. S-CV-0035325 Finkelstein, David, et al vs. Petersen, Dean, et al

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested it shall be heard on June 20, 2017, at 8:30 a.m. in Department 42.

Fig Landscaping, Inc.'s Motion for Leave to File Cross-Complaint

Fig Landscaping, Inc.'s Motion for Leave to File Cross-Complaint is granted. The cross-complaint shall be filed on or before June 30, 2017.

Wood Monsters of Oregon, LLC's Motion for Leave to File Cross-Complaint

Wood Monsters of Oregon, LLC's Motion for Leave to File Cross-Complaint is granted. The cross-complaint shall be filed on or before June 30, 2017.

Dean Petersen's Motion for Leave to File Sixth Roe Amendment to its Cross-Complaint

Dean Petersen's Motion for Leave to File Sixth Roe Amendment to its Cross-Complaint is granted. The Roe Amendment shall be filed on or before June 30, 2017.

5. S-CV-0035651 Pacific Gas and Electric Co. vs. Baseline P & R, LLC, et al

This tentative ruling is issued by the Honorable Charles D. Wachob:

Appearance required on June 20, 2017, at 8:30 a.m. in Department 42.

The parties' Motion on Stipulation for Single Assignment is granted. The following cases are assigned to the Honorable Charles D. Wachob for all purposes, including trial: consolidated cases *Pacific Gas and Electric Company v. Baseline P&R, LLC, et al. (SCV-35651)* and *Pacific Gas and Electric Company v. Baseline 80 Investors, LLC, et al. (SCV-35652)*; *Pacific Gas and Electric Company v. KV Sierra Vista LLC (severed from SCV-35651)*; *Pacific*

Gas and Electric Company v. DF Properties, et al. (SCV-35649); and *Pacific Gas and Electric Company v. Previte, et al. (SCV-35650)*.

The appearance of the parties is required for a status conference to discuss setting of the hearing on PG&E's pending CCP § 1260.040 motions, as well as to set trial and trial-related dates in these actions.

6. S-CV-0036687 Ferlito, Gaspare vs. General Motors, LLC

The Motion for Summary Judgment is continued to June 27, 2017, at 8:30 a.m. in Department 40. The court finds good cause to permit the motion to be heard within 30 days of the trial date.

7. S-CV-0037165 Swope, Melodie, et al vs. John Mourier Construction, Inc., et al

The Motion for Determination of Good Faith Settlement is continued to June 27, 2017, at 8:30 a.m. in Department 40.

8. S-CV-0037210 Mazzaferro, Ronald vs. Choudhary, Nilesh

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard on June 20, 2017, at 8:30 a.m. in Department 42.

Orders to Show Cause

On May 9, 2017, the court issued orders to show cause re:

(1) Why the court should not dismiss the complaint and amended complaint (filed December 3, 2016, and March 7, 2017, respectively) as to all defendants due to plaintiff's failure to obtain a presiding judge order to file either the complaint or the amended complaint as required by Code of Civil Procedure section 391.7;
(2) If the court does not dismiss the complaint and amended complaint referred to in (1) as to all defendants, why the court should not enter an order of dismissal of the complaint and amended complaint as to defendants Lynn Searle and William Parisi or either of them;
(3) Why the court should not dismiss the cross-complaint filed by defendant Nilesh Choudhary on April 3, 2017;
(4) If the complaint, amended complaint, and/or cross-complaint referred to in items (1)-(3) above, are not dismissed, why they should not be severed from this trial after arbitration action, commenced by plaintiff December 21, 2015, and ordered refiled by the clerk as a separate action with a new case number;
(5) Why plaintiff should not be sanctioned for failing to bring the December 2015 action to issue by obtaining the responsive pleading or default of defendant Nilesh Choudhary in contravention of case management orders of this court filed August 23, 2016, October 18, 2016, January 24, 2017, and April 11, 2017.

Plaintiff Ronald Mazzaferro is a vexatious litigant subject to a prefiling order entered in the Court of Appeal in January 2012. Plaintiff initiated this action on December 21, 2015, by filing a pleading entitled "Request for Trial de Novo/Appeal of Attorney Client Fee Arbitration Award" naming Nilesh Choudhary (Choudhary) as defendant. The pleading was filed pursuant to Business and Professions Code section 6204(c), which allows any party to a non-binding attorney fee arbitration proceeding to reject the award and pursue "a trial after arbitration" by "commenc[ing] an action in the court having jurisdiction over the amount of money in controversy." Plaintiff obtained leave of the presiding judge of the court prior to filing the Request for Trial de Novo. Plaintiff has not filed proof of service of the Request for Trial de Novo/Appeal of Attorney Client Fee Arbitration showing service on Choudhary. Choudhary did appear in the action in August 2016 by filing a case management statement, but did not otherwise file a response to the Request for Trial de Novo/Appeal of Attorney Client Fee Arbitration Award.

On December 5, 2016, plaintiff filed an additional complaint in this case with the same court case number. The complaint appears to name four defendants including Choudhary, Joel Rapaport (Rapaport), Lynn Searle (Searle), and William Parisi (Parisi). There is no indication that Rapaport, Searle or Parisi are parties to the trial after arbitration action. The complaint includes causes of action for breach of contract, attorney malpractice, breach of fiduciary duty, and fraud, and seeks monetary damages. Plaintiff did not request or obtain leave of the presiding judge permitting the filing of this complaint.

On March 7, 2017, plaintiff filed an amended complaint naming the same defendants and including the same causes of action. Plaintiff did not request or obtain leave of the presiding judge permitting the filing of this amended complaint. On April 3, 2017, Rapaport and Choudhary filed answers to the amended complaint, and Choudhary filed a cross-complaint against plaintiff, seeking to confirm the arbitration award and asserting claims of breach of contract and unjust enrichment. Plaintiff answered the cross-complaint on May 2, 2017.

On April 19, 2017, Searle filed a document entitled "Notice of Mistaken Filing of First Amended Complaint From Vexatious Litigant," notifying the court that plaintiff, who was subject to a prefiling order, had initiated new litigation without obtaining approval of the presiding judge as required. Pursuant to Code of Civil Procedure section 391.7(c), the filing of this document automatically stayed the litigation. Further, the statute requires that the litigation be automatically dismissed "unless the plaintiff within 10 days of the filing of that notice obtains an order from the presiding justice or presiding judge permitting the filing of the litigation". (*Code of Civil Procedure section 391.7(c).*) On May 2, 2017, plaintiff requested entry of default as to Searle. On May 8, 2017, plaintiff requested entry of default as to Parisi. Both defaults were mistakenly entered by the clerk despite the fact that the action was automatically stayed as of April 19, 2017, when Searle filed the Notice of Mistaken Filing. On May 9, 2017, Searle applied ex parte to set aside her default and dismiss the action. The court granted Searle's request to set aside the default, and set the matter for hearing on the orders to show cause identified above. At no time prior to the filing of the ex parte application or since did plaintiff seek permission of the presiding judge of this court to file the complaint or amended complaint.

In response to the orders to show cause, plaintiff asserts that Code of Civil Procedure section 391.7 does not apply to him following the opinion issued in *John v. Superior Court* (2016) 63 Cal.4th 91. In *John v. Superior Court*, the California Supreme Court held that the vexatious litigant prefiling requirement does not apply to a self-represented vexatious litigant's appeal as a defendant. Plaintiff appears to argue that under the holding of *John v. Superior Court*, the Court of Appeal determination that he is a vexatious litigant was erroneous. Plaintiff states that he has requested by letter to the California Judicial Council that his name be removed from their list of vexatious litigants, and further asserts that he has been prevented from invoking the statutory process for removing his name from list of vexatious litigants pursuant to Code of Civil Procedure section 391.8 due to circumstances beyond his control.

Plaintiff fails to establish that the requirements of Code of Civil Procedure section 391.7 no longer apply to him. Although plaintiff filed an amicus curiae brief on behalf of the petitioner in *John v. Superior Court*, he was not a party to that action. This court, which is unaware of the circumstances under which the Court of Appeal determined plaintiff to be a vexatious litigant, does not have jurisdiction to vacate the prefiling order. Such an application "shall be filed in the court that entered the prefiling order" and "shall be made before the justice or judge who entered the order, if that justice or judge is available." (*Code of Civil Procedure section 391.8.*) Plaintiff provides no evidence that he has attempted to comply with Code of Civil Procedure section 391.8. Instead, plaintiff attaches a letter sent to the California Judicial Council on January 5, 2017, requesting that his name be removed from the list of vexatious litigants. On its face, this letter does not comport with the requirements of Code of Civil Procedure section 391.8.

Plaintiff argues that he has been prevented from complying with section 391.8 because utilization of the Judicial Council form created for this purpose would require him to commit perjury. Plaintiff's main concern appears to be that the Judicial Council Form MC-703 refers to the applicant as "plaintiff/petitioner" which plaintiff believes to be incorrect in his circumstance. However, given that plaintiff could simply make necessary changes to the form application or draft his own application (Form MC-703 specifies on its face that it is for optional use), the court finds this argument unpersuasive.

Code of Civil Procedure section 391.7 requires the court to dismiss the litigation after any defendant files notice that plaintiff is a vexatious litigant subject to a prefiling order unless the plaintiff obtains an order from the presiding judge within 10 days of the filing permitting the filing of the litigation. With respect to the complaint filed December 5, 2016, and the amended complaint filed March 7, 2017, plaintiff failed to obtain such an order, and fails to establish that the prefiling order against him has been vacated.

Based on the foregoing, the complaint filed December 5, 2016, and the first amended complaint filed March 7, 2017, are hereby dismissed. Plaintiff's Request for Trial de Novo/Appeal of Attorney Client Fee Arbitration Award remains pending. The cross-complaint filed by Choudhary exists as an independent action, and shall not be dismissed by the court at this time. In light of the complicated procedural posture of this action, the court will not impose sanctions against plaintiff at this time based on prior case management orders. However, the court reserves the right to impose sanctions at the case management conference currently scheduled on July 18, 2017, if plaintiff continues to fail to file proof of service of the Request for

Trial de Novo/Appeal of Attorney Client Fee Arbitration Award, and take all necessary steps to bring this case to issue.

Searle's request for monetary sanctions or a finding of criminal contempt against plaintiff is denied at this time.

9. S-CV-0037513 Hirsa, Matt Ahmad vs. Voight, Kyle

Appearance required on June 20, 2017, at 8:30 a.m. in Department 40 on the Motion to be Relieved as Counsel.

10. S-CV-0037723 Langs, Olivia vs. Fidelity Brokerage Services, LLC, et al

The Motion for Summary Judgment, or in the Alternative, Summary Adjudication, is continued to July 11, 2017, at 8:30 a.m. in Department 40.

11. S-CV-0037935 JLM Energy, Inc. vs. ACE, LLC Solar, et al

The Motion to be Relieved as Counsel by John A. Mason and Gurnee Mason & Forestiere LLP is granted, effective upon the filing of proof of service of the court's order granting the motion on defendant and cross-complainant ACE, LLC Solar and all parties who have appeared in the action.

12. S-CV-0038045 Placer Co. Taxpayers For Safety vs. County of Placer, et al

The Demurrer to Writ of Mandate is continued to July 18, 2017, at 8:30 a.m. in Department 42 to be heard with the other pending demurrer in this consolidated action.

13. S-CV-0038205 Desmangles, Roy, et al vs. Western Mutual Ins. Co., et al

Demurrer to Complaint

Defendants' Demurrer to Complaint is sustained with leave to amend.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The court assumes the truth of all facts properly pleaded, and accepts as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts. *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6. However, the court does not assume the truth of contentions, deductions, or conclusions of facts or law. *Id.*

The demurrer is sustained with respect to plaintiffs' first cause of action for breach of contract. A written contract may be pleaded by attaching a copy to the complaint, by setting out the terms verbatim, or by pleading the contract's legal effect. To plead a written contract

according to its legal effect, as plaintiffs purport to do in this case, plaintiffs must allege the making of the contract, and the substance of its relevant terms. The complaint alleges the written contract as follows: "Defendants provided homeowners insurance to plaintiffs". (Complaint at p.3, BC-1.) This allegation is insufficient to plead the written contract, as plaintiffs allege no facts regarding the substance of the relevant terms of the agreement, including defendants' obligations thereunder.

In light of the ruling on the first cause of action, the demurrer must also be sustained as to the second cause of action for bad faith, as plaintiffs have failed to adequately allege a contract between the parties. A bad faith claim cannot be maintained unless policy benefits are due under the contract. *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 36. Further, the demurrer must be sustained as to the fourth cause of action for negligent infliction of emotional distress. This claim arises against insurer-defendants from a duty of good faith and fair dealing, which arises only in the context of an enforceable contract between the parties, which has not been alleged here. *See Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 576 .

Finally, the demurrer is sustained as to plaintiffs' third cause of action for intentional infliction of emotional distress. Plaintiffs fail to plead "extreme and outrageous conduct" by defendants, meaning conduct "so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Schlauch v. Hartford Accident & Indemnity Co.* (1983) 146 Cal.App.3d 926, 936. Further, plaintiffs fail to allege facts indicating the nature or extent of their mental suffering, as opposed to conclusory allegations. *Bogard v. Employers Casualty Co.* (1985) 164 Cal.App.3d 602, 617.

Plaintiffs are granted leave to amend. Any amended complaint shall be filed and served on or before July 14, 2017.

Motion to Strike

In light of the ruling on the demurrer, defendants' Motion to Strike is dropped as moot.

14. S-CV-0038387 Newsura Insurance Services, Inc. vs. Beta Healthcare Group

The Motion for Terminating Sanctions is continued to July 18, 2017, at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

15. S-CV-0038467 Element Financial Corp. vs. Martinson, Shoichi R., et al

Defendants' Motion for Reconsideration is denied.

Motions for reconsideration are restricted to circumstances where a party offers some fact or circumstance not previously considered, and some valid reason for not offering it earlier. *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500. A motion for reconsideration must be accompanied by an affidavit or declaration from the moving party which states what application was made previously, when and to what judge the application was made, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.

Code Civ. Proc. § 1008(a); *Branner v. Regents of Univ. of Cal.* (2009) 175 Cal.App.4th 1043, 1048. A motion that is filed and served without a supporting affidavit is invalid. *Branner v. Regents of Univ. of Cal., supra*, 175 Cal.App.4th at 1048.

Defendants' motion is not supported by affidavit, and is therefore invalid. Further, defendants fail to set forth any new or different facts, circumstances, or law that were not previously considered. Finally, the court notes that Code of Civil Procedure section 473(b), the statute under which defendants moved to set aside their default, requires that the moving party's motion "be accompanied by a copy of the answer or other pleading proposed to be filed…" Similarly, the court's prior ruling denying defendants' motions to set aside default noted that the motions "are not accompanied by a copy of the answer or other responsive pleading proposed to be filed in this action." (March 28, 2017, Ruling on Motions to Set Aside Default.) Defendants chose to attach proposed answers as the "pleading proposed to be filed" and the court's ruling that defendants must file and serve those answers reflects that choice.

16. S-CV-0039165 Ibanez, Michael, et al vs. Rushmore Loan Mgmt. Svcs., et al

Defendant Rushmore Loan Management Services' ("Rushmore's") request for judicial notice is granted as to Exhibits A, B, C and D. The court takes judicial notice of the existence of the documents, but not the truth of matters stated therein. The request is denied as to Exhibit E.

Rushmore's Demurrer to Complaint is sustained in part, and overruled in part, as set forth below.

As a preliminary matter, the court notes that Rushmore does not demonstrate compliance with the meet and confer requirements set forth in Code of Civil Procedure section 430.41.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The court assumes the truth of all facts properly pleaded, and accepts as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts. *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6. However, the court does not assume the truth of contentions, deductions, or conclusions of facts or law. *Id.*

Rushmore's demurrer is overruled with respect to the first and second causes of action for violation of Civil Code section 2923.55, and violation of Civil Code section 2923.7. Defendant argues that these claims should be dismissed because plaintiff has obtained a preliminary injunction in this action. This argument is nonsensical given that plaintiff has only obtained a *preliminary* injunction pending resolution of the merits of the action. Further, defendant cannot establish for the purpose of this demurrer that any alleged violations have been remedied or corrected. Alternatively, Rushmore asserts that the other allegations in the complaint contradict plaintiff's claims. Rushmore points to allegations in the complaint that plaintiff "sought options to avoid foreclosure by contacting Rushmore and request[ing] a single Point of Contact ("SPOC") be assigned", and "contacted Defendant Rushmore to inquire about options to avoid

foreclosure". (Complaint, ¶¶ 32, 34.) These allegations fall short of admitting compliance with the statutory requirements of sections 2923.55 and 2923.7 Finally, Rushmore argues that the court should accept as true the statements made in the declaration of due diligence attached to the notice of default. However, the court may not take judicial notice of the truth of factual matters stated in documents of which it takes judicial notice. Evid. Code § 451; *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882; *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063-1064. In light of the finding that these claims are adequately pleaded, the court also overrules the demurrer with respect to plaintiff's fifth cause of action for unfair business practices.

Rushmore's demurrer is sustained with respect to the third cause of action for negligence. A financial institution is generally only liable for negligence where it "actively participates" by exceeding its scope "beyond the domain of the usual money lender." *Nymark v. Heart Fed. Sav. & Loan Ass'n* (1991) 231 Cal.App.3d 1089, 1096. Here, plaintiff's negligence claim is based solely on statutory violations relating to Civil Code sections 2923.55 and 2923.7. Plaintiff fails to allege any facts to show that defendant's actions in considering plaintiff's request for options to avoid foreclosure exceeded its scope "beyond the domain of a usual money lender" such that a duty of care was created.

The demurrer is also sustained with respect to plaintiff's fourth cause of action for "declaratory relief" which in actuality is a claim for injunctive relief. Injunctive relief is a remedy, not a cause of action. Further, this claim is completely duplicative of the relief sought by the first and second causes of action.

Plaintiff bears the burden of demonstrating how the pleading may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. A demurrer will be sustained without leave to amend absent a showing by plaintiff that a reasonable possibility exists that the defects can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. As the demurrer was unopposed, plaintiff fails to satisfy his burden in this regard. Accordingly, as to the third and fourth causes of action, the demurrer is sustained without leave to amend.

Defendant shall file and serve its answer to the complaint on or before July 14, 2017.

17. S-CV-0039311 Love, Devon T., et al vs. State of Cal. Dept. of Education, et al

The Demurrer to Complaint is continued to July 18, 2017, at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

18. S-CV-0039393 Ryan, Richard J. vs. County of Placer

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard on June 20, 2017, at 8:30 a.m. in Department 42.

Motion for Reconsideration

Petitioner Richard J. Ryan moves for reconsideration of the court's order denying petitioner's ex parte application, filed May 4, 2017. Petitioner's ex parte application sought an alternative writ of administrative mandamus directing respondent County of Placer to: (1) set aside its decision not to grant a one-year extension of petitioner's building permit; (2) stay expiration of the building permit, which expired on May 5, 2017, until final resolution of petitioner's separate quiet title action against adjoining property owners; and (3) extend petitioner's building permit for one year after final resolution of the quiet title action.

The court denied the ex parte application on three separate grounds. First, petitioner did not provide timely notice of the application as required by California Rules of Court, rule 3.1203. Second, petitioner did not make a sufficient affirmative showing of irreparable harm, immediate danger or other statutory basis for granting the requested relief. In particular, the court noted that circumstances surrounding expiration of the building permit had been known to petitioner for a significant period of time, and at least since December 2016. Finally, the court noted that the majority of the relief sought was improper to grant on an ex parte basis, as petitioner was asking the court to summarily rule on a pending writ petition without affording respondent the ability to properly review and respond to the petition.

Motions for reconsideration pursuant to Code of Civil Procedure section 1008 are restricted to circumstances where a party offers some fact or circumstance not previously considered, and some valid reason for not offering it earlier. (*Gilberd v. AC Transit (1995) 32 Cal.App.4th 1494, 1500.*) In this case, petitioner points to a supplemental declaration filed by County Counsel just after the court issued its ruling, wherein attorney Julia Reeves states that although she initially believed that her office was not timely served notice of the ex parte hearing, she later determined that the time calibration on the office fax machine was off by one hour, and that the ex parte notice had in fact been timely served.

Where the statutory requirements under Code of Civil Procedure section 1008 are met, reconsideration should be granted. However, the court is not required to reach a different result. (*Corns v. Miller (1986) 181 Cal.App.3d 195, 202.*) In this case, the court is not persuaded that the earlier ruling was erroneous. As noted in the prior ruling, petitioner failed to make an affirmative showing to support ex parte relief. An ex parte application must make an affirmative showing of irreparable harm, immediate danger, or other statutory basis for granting the requested relief. (California Rules of Court, rule 3.1202(c).) The circumstances surrounding expiration of the building permit were known to petitioner for a significant period of time. Petitioner and respondent first began communication about a possible extension of the building permit in December 2016. In February 2017 petitioner received notice that his adjoining neighbor disputed the property line and intended to appropriate petitioner's well. On March 14, 2017, the Chief Building Official for Placer County indicated that the County would not consider extension of the building permit until the issue regarding the property line and well was resolved. However, petitioner did not seek ex parte relief from the court until May 4, 2017, the day before the permit was to expire. Any exigency that may exist was created by petitioner's actions rather than those of the respondent, and does not warrant ex parte relief.

Further, the majority of the relief sought by the ex parte application appears to be improper to grant on an ex parte basis. Ex parte relief is available under limited circumstances. Such relief is inappropriate where it would affect the rights of the opposing party. (*McDonald v. Severy (1936) 6 Cal.2d 629, 631.*) Petitioner would have the court summarily rule upon the pending writ petition without affording respondent an ability to properly review and respond to the petition. Due process requires that proper notice and opportunity to be heard be given to such opposing parties. (*Carabini v. Superior Court (King) (1994) 26 Cal.App.4th 239, 244.*)

For the foregoing reasons, the application is denied. Petitioner's request for sanctions is also denied.

These are the tentative rulings for civil law and motion matters set for Tuesday, June 20, 2017, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, June 19, 2017. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.