

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 20, Honorable Socrates Peter Manoukian, Presiding

Courtroom Clerk: Hien-Trang Tran-Thien

191 North First Street, San Jose, CA 95113

Telephone: 408.882.2320

Department20@scscourt.org

"Every case is important" "No case is more important than any other." —
United States District Judge Edward Weinfeld (<https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html>)

"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the
Biggest Case of Your Life." — Common Wisdom.

As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and
drink as friends." (Shakespeare, *The Taming of the Shrew*, act I, scene ii.)" (*Gregori v. Bank of
America* (1989) 207 Cal.App.3d 291, 309.)

Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.*
(1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented
by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)

By Standing Order of this Court, all parties appearing in this Court are expected to comply with the
Code of Professionalism adopted by the Santa Clara County Bar Association:

<https://www.sccba.com/code-of-professional-conduct/>

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DATE: Thursday, 02 November 2023

TIME: 9:00 A.M.

**The Old Courthouse is open for in-person appearances. The Court also uses Zoom for Law and
Motion and for Case Management Calendars. If counsel wished to avoid coming to Court.
The Zoom link below is for all appearances.**

"A person's name is to him or her the sweetest and most important sound in any language."—Dale Carnegie. All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try to be careful how I pronounce the names of others." Please inform the Court how you, or if your client is with you, you and your client prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers. You might also try www.pronouncenames.com but that site mispronounces my name.

You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.

Join Zoom Meeting
<https://scu.zoom.us/j/96144427712?pwd=cW1JYmg5dTdsc3NKNFBpSjJEam5xUT09>
Meeting ID: 961 4442 7712
Password: 017350

Join by phone:
+1 (669) 900-6833
Meeting ID: 961 4442 7712

One tap mobile
+16699006833,,961 4442 7712#

APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in court appearances as well. If you do intend to appear in person, please advise us when you call to contest the tentative ruling so we can give you current instructions as to how to enter the building.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See *Jensen v. Superior Court (San Diego)* (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwidth. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California *Rules of Court*, rule 3.672.

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 8(E) and *California Rules of Court*, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

Please notify this Court immediately if the matter will not be heard on the scheduled date. *California Rules of Court*, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. *California Rules of Court*, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. *California Rules of Court*, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will be helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: **Line #/name/party**. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

CIVILITY.

In the 48 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

This Court is aware of a study being undertaken led by Justice Brian Currey and involving various lawyer groups to redefine rules of civility. This Judge has told Justice Currey that the lack of civility is due more to the inability or unwillingness of judicial officers to enforce the existing rules.

The parties are forewarned that this Court may consider the imposition of sanctions against the party or attorney who engages in disruptive and discourteous behavior during the pendency of this litigation.

COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); *California Rules of Court*, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if

any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

PROTOCOLS DURING THE HEARINGS.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with **California Rules of Court**, rule 3.1312.

TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the “Control” key and click. If you see last week’s tentative rulings, you have checked prior to the posting of the current week’s tentative rulings. You will need to either “REFRESH” or “QUIT” your browser and reopen it. Another suggestion is to “clean the cache” of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

This Court’s tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court’s final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	22CV397625	Chand Sultana vs Gasser Aboubakr et al	Order of Examination. There does not appear to be a proof of service upon the judgment debtor providing notice of this hearing. Unless the parties agree otherwise, both parties are to appear in Department 20 at 9:00 AM via the Zoom virtual platform. The appropriate oath will be administered by the Court and the parties may conduct the examination off-line and report back to the Court. The parties may meet and confer on how to conduct the examination remotely. NO FORMAL TENTATIVE RULING.
LINE 2	23CV418884	Dung Bui vs Citibank, N.A. et al	Motion of Defendant Revestors LLC For Order To Expunge Any and All Notices Of Pendecy Of Action Or Lis Pendens. The motion of defendant Revestors LLC to expunge all the lis pendens on the subject property is GRANTED. SEE ATTACHED TENTATIVE RULING.
LINE 3	23CV418884	Dung Bui vs Citibank, N.A. et al	Demurrer of Defendant Revestors LLC To Plaintiff’s Complaint. The demurrer is MOOT WITHOUT PREJUDICE to a subsequent demurrer as the plaintiff filed a first amended complaint on 20 October 2023. SEE TENTATIVE RULING ATTACHED TO LINE #2.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 4	23CV418884	Dung Bui vs Citibank, N.A. et al	<p>Motion of Plaintiff to Consolidate Filed in the Unlawful Detainer or, in the Alternative, Stay Unlawful Detainer Action.</p> <p>The motion is DENIED WITHOUT PREJUDICE to the filing of a proper motion supported by a Memorandum of Points and Authorities.</p> <p>SEE TENTATIVE RULING ATTACHED TO LINE #2.</p>
LINE 5	23CV412507	Wells Fargo Bank, N.A. vs José Dangtayan, III	<p>Motion of Plaintiff for Summary Judgment.</p> <p>Defendant did not file opposition to this motion. The motion of plaintiff for summary judgment is GRANTED. Plaintiff is to prepare a judgment and submitted through the clerk's e-filing queue for execution by this Court. Plaintiff is entitled to costs.</p> <p>The trial date of 04 December 2023 is VACATED. The Court will set a dismissal review for 28 March 2024 at 10:00 AM and this Department.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 6	19CV348513	David Bigelow vs Luis Maciel et al.	<p>Motion Of Defendant Antonio Maciel To Compel Plaintiff To Provide Initial Responses To Discovery Requests.</p> <p>Plaintiff has not filed opposition to this motion. The motion is GRANTED in its entirety. Plaintiff made a code-compliant request for monetary sanctions and the request is GRANTED in the amount of \$1,400.00. Code compliant responses without objection and the payment of sanctions Further responses and payment of sanctions are due within 20 days of the filing and service of this order.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 7	19CV348513	David Bigelow vs Luis Maciel et al.	<p>Motion Of Defendant Antonio Maciel To Compel Plaintiff To Respond To Requests For Admissions And Requests For Production Of Documents.</p> <p>Plaintiff has not filed opposition to this motion. The motion is GRANTED in its entirety. Plaintiff made a code-compliant request for monetary sanctions and the request is GRANTED in the amount of \$2,275.00. Code compliant responses without objection responses and payment of sanctions are due within 20 days of the filing and service of this order.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 8	17CV308093	X. Young Lai vs Frank Scott Moore; Michelle Ane Melen; Wen Fang Wang	<p>Motion of Defendants for Attorneys Fees on Their Special Motion to Strike Plaintiffs First Amended Complaint.</p> <p>The ex parte application of plaintiff to continue the motion was opposed in the Statement of Non-Opposition filed on 27 October 2023. The application is GRANTED. The motion will be heard on 21 November 2023 at 9:00 AM in Department 20. Moving papers and any reply shall be filed by Code. Plaintiff understands that defendants may seek additional fees as a result of this continuance and may do so in the reply papers.</p> <p>NO FORMAL TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 9	22 CV 395332	James R. Helmer versus Thomas M. Helmer; Susan M. Helmer	<p>Application of Plaintiff for Default Judgment.</p> <p>In this partition action, plaintiff James R. Helmer and defendant Thomas M. Helmer have agreed to resolve the matter. Defendant Susan M. Helmer did not file an answer and refuses to communicate with counsel for plaintiff. Plaintiff therefore seeks defendant Susan M. Helmer as well as costs and attorneys fees.</p> <p>Plaintiff served defendant Susan M. Helmer via personal service on 19 March 2022. She has not filed a request to enter default against Susan M. Elmer.</p> <p>Plaintiff should request the clerk to enter a default and default judgment against defendant Susan M. Helmer via Form CIV-100.</p> <p>The Court will CONTINUE the hearing on the matter to Thursday 18 January 2024 at 9:00 am in Department 20.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 10	23CV416895	Lynly Hogan v. Michael Shtein	<p>Motion of Plaintiff for Leave to File a First Amended Complaint.</p> <p>Defendant has filed an anti-SLAPP motion currently calendared for 28 November 2023. By ex parte application, plaintiff seeks to continue the hearing on this motion until after the hearing on the anti-SLAPP motion.</p> <p>Defendant has filed opposition to the merits of the motion for leave to file a first amended complaint, asking this Court to continue the motion for leave to file the first amended complaint on a date subsequent to defendant's hearing on his anti-SLAPP motion.</p> <p>Good cause appearing, IT IS ORDERED that the hearing on this motion will be CONTINUED to 18 January 2024 at 9:00 AM in this Department.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 11			SEE ATTACHED TENTATIVE RULING.
LINE 12			SEE ATTACHED TENTATIVE RULING.
LINE 13			SEE ATTACHED TENTATIVE RULING.
LINE 14			SEE ATTACHED TENTATIVE RULING.
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LINE 18			SEE ATTACHED TENTATIVE RULING.
LINE 19			SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 20			SEE ATTACHED TENTATIVE RULING.
LINE 21			SEE ATTACHED TENTATIVE RULING.
LINE 22			SEE ATTACHED TENTATIVE RULING.
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LINE 28			SEE ATTACHED TENTATIVE RULING.
LINE 29			SEE ATTACHED TENTATIVE RULING.
LINE 30			SEE ATTACHED TENTATIVE RULING.

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Calendar Line 1

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**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
DEPARTMENT 20**

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(For Clerk's Use Only)

CASE NO.: 23CV418884

Dung Bui vs Citibank, N.A. et al

DATE: 02 November 2023

TIME: 9:00 am

LINE NUMBER: 02, 03, 04

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 01 November 2023. Please specify the issue to be contested when calling the Court and Counsel.

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Orders on:

- 1. Defendant Revestors LLC For Order To Expunge
Any and All Notices Of Pendecy Of Action Or Lis Pendens;**
- 2. Demurrer of Defendant Revestors LLC To Plaintiff's Complaint; and**
- 3. Motion of Plaintiff to Consolidate Filed in the Unlawful Detainer
or, in the Alternative, Stay Unlawful Detainer Action.**

I. Statement of Facts.

In this case, plaintiff seeks damages pursuant to a foreclosure proceeding which evicted him, his wife and four children from his home.

Defendant Citibank is the beneficiary of the deed of trust which financed the home.

Defendant Cenlar FSB is the servicer of the loan secured by the deed of trust

Defendant Quality Loan Service Corporation is the trustee of the deed of trust.

Defendant Revestors LLC are the purported purchasers of the property pursuant to the trustee's deed upon sale recorded in Alameda County on 05 April 2023.

Plaintiff has owned and lived in the Property since 2014. Plaintiff took out a Home Equity Line of Credit (HELOC) around March 2019 with a maximum limit of \$100,000.00 in favor of CitiBank, N.A.

On 31 March 31, 2020, Plaintiff suffered a major accident causing him to lose a finger. As a result, Plaintiff was unable to work for about two years. While going through all this, including undergoing surgery, going to physical and mental therapy, Plaintiff experienced serious financial hardship causing him to have challenges in making payments.

The home eventually went into foreclosure and plaintiff and his family were evicted from the home.

The amount of the default on the mortgage payments was \$14,988.41. The property was worth \$1,400,000 but was sold for \$531,000.

Plaintiff claims that he never received notices concerning default on the loan and foreclosure proceedings that defendants were required to send by certified mail according to the Loan Note. He did not know that the home was sold at a trustee's sale

Plaintiff filed this complaint on 07 July 2023. He alleges causes of action for:

1. Breach of Contract;
2. Negligence;
3. Breach of Covenant of Good Faith and Fair Dealing;
4. Wrongful Foreclosure;
5. Cancellation of Instruments; and
6. Declaratory Relief.

There is a case that plaintiff claimed to be related to this one entitled *Revestors LLC v. Dung Bui*, bearing Case No. 23CV414415. That action, a residential unlawful detainer action, was filed on 13 April 2023. Plaintiff was issued a writ of possession on 18 August 2023 after Commissioner Johnson denied the ex parte application of defendant to stay the eviction of judgment and notice to vacate.

II. Motions.

The following motions are currently on calendar for discussion:

1. Defendant Revestors LLC For Order To Expunge Any and All Notices Of Pendecy Of Action Or Lis Pendens;
2. Demurrer of Defendant Revestors LLC To Plaintiff's Complaint; and
3. Motion of Plaintiff to Consolidate Filed in the Unlawful Detainer or, in the Alternative, Stay Unlawful Detainer Action.

Subsequent to the filing of these motions by the various parties, counsel for plaintiff has filed a motion to withdraw as counsel for plaintiff.. That motion is currently calendar for 21 December 2023 at 9:00 AM in this Department.

III. Analysis.

A. Expunging the Lis Pendens (Line #2):

California law mandates that a lis pendens be expunged unless the claimant proves the "probable validity" of such real property claim (***Code of Civil Procedure***, § 405.32; see ***Melendrez v. D&I Investment, Inc.*** (2005) 127 Cal.App.3d 1238, 1250 (investor's bona fide purchaser status rendered sale "invulnerable", regardless of allegations against the lender or foreclosing trustee).)

Here, Plaintiff has presented no allegations or evidence of any involvement or wrongdoing on the part of the third-party buyer, REVESTORS, which holds title the subject property as a bona fide purchaser by virtue of its Trustee's Deed upon Sale.

The motion of defendant Revestors LLC to expunge all the lis pendens on the subject property is GRANTED.

B. Demurrer of Defendant Revestors LLC To Plaintiff's Complaint (Line #3):

The demurrer is MOOT WITHOUT PREJUDICE to a subsequent demurrer as the plaintiff filed a first amended complaint on 20 October 2023.

C. Consolidation.

On 26 July 2023, plaintiff filed a notice of motion to consolidate the unlawful detainer action with the current matter. It seems that the Points and Authorities were never filed. There is no opposition on file.

The motion is DENIED WITHOUT PREJUDICE to the filing of a proper motion supported by a Memorandum of Points and Authorities. ("A point which is merely suggested by appellant's counsel, with no supporting argument or authority, is deemed to be without foundation and requires no discussion." (See ***In re***

Steiner (1955) 134 Cal.App.2d 391, 399); **Jones v. Superior Court** (1994) 26 Cal.App.4th 92, 99 [“Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived.”)]

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

There are additional law and motion matters currently calendared for 21 December 2023. This court will set a Trial Setting Conference for 04 June 2024 at 11:00 AM in Department 20.

VI. Order.

The final orders have been indicated as above.

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

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