

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/08/10 TIME: 8:30 A.M. DEPT: H CASE NO: CV080588

PRESIDING: HON. JOHN A. SUTRO, JR.

REPORTER: CHRISTINA GILSON

CLERK: KATHY BECK

PLAINTIFF: GREGORY R. RAIFMAN,
ET AL

vs.

DEFENDANT: PRIVATE CONSULTING
GROUP, INC., ET AL

NATURE OF PROCEEDINGS: MOTION – TO BE RELIEVED AS COUNSEL AS TO DEFT PRIVATE CONSULTING GROUP, INC., AN OREGON CORPORATION BY [ATTY] PAUL B. GEORGE

RULING

NO OPPOSITION HAVING BEEN RECEIVED AND GOOD CAUSE APPEARING, THE MOTION OF PAUL B. GEORGE, ESQ.; AND ROBERTS KAPLAN LLP TO BE RELIEVED AS COUNSEL FOR DEFENDANT THE PRIVATE CONSULTING GROUP, INC. IS GRANTED. PURSUANT TO THE PROVISIONS OF CALIFORNIA RULES OF COURT RULE 3.1362(E), THE EFFECTIVE DATE OF THE ORDER ENTERED HEREON SHALL BE DELAYED UNTIL PROOF OF SERVICE OF A COPY OF THE SIGNED ORDER ON THE CLIENT HAS BEEN FILED WITH THE COURT.

THE MATTER IS SET ON THE CASE MANAGEMENT CALENDAR ON MARCH 24, 2010, AT 8:30 A.M. IN DEPARTMENT H FOR STATUS OF ARBITRATION. COUNSEL SHALL INCLUDE NOTIFICATION OF THIS FUTURE DATE IN THE ORDER GRANTING THEIR MOTION TO BE RELIEVED AS COUNSEL.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/08/10 TIME: 8:30 A.M. DEPT: H CASE NO: CV084856

PRESIDING: HON. JOHN A. SUTRO, JR.

REPORTER: CHRISTINA GILSON

CLERK: KATHY BECK

PLAINTIFF: LAURIE BRUSCHERA, ET
AL

vs.

DEFENDANT: GREGORY G. MONARDO,
ET AL

NATURE OF PROCEEDINGS: 1) HEARING ON DEMURRER – TO PLAINTIFFS’ THIRD CAUSE OF ACTION TO PLAINTIFFS’ AMENDED COMPLAINT [DEFT] GREGORY G. MONARDO

2) MOTION – TO STRIKE PLAINTIFFS’ SECOND THROUGH NINTH PARAGRAPHS OF PAYER OF SECOND AMENDED COMPLAINT [DEFT] GREGORY G. MONDARDO

3) HEARING ON DEMURRER – TO PLAINTIFFS’ SECOND AMENDED COMPLAINT [DEFT] JOANNE P. MONARDO [CRCO] JOANNE P. (1) MONDARDO

RULING

DEFENDANTS’ DEMURRERS TO THE THIRD CAUSE OF ACTION ARE SUSTAINED WITH LEAVE TO AMEND.

AS TO THE TRANSFER FROM GREGORY TO JOANNE, PLAINTIFFS ARE CORRECT THAT TRANSFERS MADE AS PART OF A MARITAL SETTLEMENT AGREEMENT CAN BE A FRAUDULENT CONVEYANCE. (SEE *MEJIA V. REED* (2003) 31 CAL.4TH 657, 668, AND *FILIP V. BUCURENCIU* (2005) 129 CAL.APP.4TH 825, 834.) HERE, HOWEVER, PLAINTIFFS HAVE OFFERED NO ALLEGATIONS OR EXPLANATION AS TO HOW THIS TRANSFER PUT THE PROPERTY BEYOND THEIR REACH. (SEE *MEHRTASH V. MEHRTASH* (2001) 93 CAL.APP.4TH 75, 80.)

AS TO JOANNE’S HOMESTEAD DECLARATION, PLAINTIFFS HAVE NOT ESTABLISHED THAT THEY HAVE AN EQUITABLE LIEN WHICH HAS PRIORITY OVER THE HOMESTEAD DECLARATION. (SEE *JONATHAN MANOR, INC. V. ARTISAN, INC.* (1967) 247 CAL.APP.2D 651, 653-654.)

PLAINTIFFS HAVE NOT NAMED BENNINGTON, IN WHOSE NAME THE PROPERTY IS HELD.

THE REMAINING ARGUMENTS HAVE NO MERIT. THE THIRD CAUSE OF ACTION IS NOT A FRAUD CAUSE OF ACTION. THE THIRD CAUSE OF ACTION DOES NOT SEEK TO SET ASIDE THE CONVEYANCE FROM DEFENDANTS TO THE MILLERS.

THE COURT HAS NOT ADDRESSED JOANNE'S ARGUMENT THAT THE CAUSE OF ACTION IS BARRED BY CIVIL CODE SECTION 47(b) AND CODE OF CIVIL PROCEDURE SECTION 425.16. SHE DID NOT RAISE THIS GROUND IN HER DEMURRER. THE COURT ALSO NOTES THAT THE ENTIRETY OF HER ARGUMENT IN HER MOVING BRIEF IS ONE SENTENCE IN THE FACTS SECTION. (COMPARE TO REPLY AT 4:11-5:13.)

BECAUSE OF THE COURT'S RULING ON THE DEMURRER, THE MOTION TO STRIKE IS MOOT.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/08/10 TIME: 8:30 A.M. DEPT: H CASE NO: CV086236

PRESIDING: HON. JOHN A. SUTRO, JR.

REPORTER: CHRISTINA GILSON

CLERK: KATHY BECK

PLAINTIFF: YODER CONSTRUCTION
COMPANY

vs.

DEFENDANT: BRUCE REEVES, ET AL

NATURE OF PROCEEDINGS: 1) MOTION – FOR ORDER TO COMPEL PLAINTIFF’S
SUPPLEMENTAL RESPONSES TO DEFENDANTS’ DISCOVERY, AND FOR
MONETARY SANCTIONS [DEFT] BRUCE REEVES
2) NOTICE OF MOTION – FOR PROTECTIVE ORDER RE FURTHER RESPONSES TO
SPECIAL INTERROGATORIES [PLTF] YODER CONSTRUCTION COMPANY

RULING

APPEARANCES REQUIRED.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/08/10 TIME: 8:30 A.M. DEPT: H CASE NO: CV086418

PRESIDING: HON. JOHN A. SUTRO, JR.

REPORTER: CHRISTINA GILSON

CLERK: KATHY BECK

PLAINTIFF: LAVONNE T. SANTA, ET AL	
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vs.

DEFENDANT: KIT COLE, ET AL	
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NATURE OF PROCEEDINGS: NOTICE OF MOTION – FOR LEAVE TO FILE FIRST AMENDED COMPLAINT [PLTF] JULIA BRIGDEN [PLTF] MICHAEL BRIGDEN [PLTF] BARBARA SONNENBORN GREENBERG [PLTF] RONALD GREENBERG [PLTF] WILMA KAY [PLTF] LAVONNE T. SANTA

RULING

PLAINTIFFS’ MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT (“FAC”) IS GRANTED. THE PROPOSED FAC ATTACHED AS EXHIBIT A TO THE DECLARATION OF RICHARD J. IDELL SHALL BE DEEMED FILED FORTHWITH. COUNSEL SHALL APPEAR AT THE FEBRUARY 8, 2010 HEARING TO DISCUSS TRIAL SCHEDULING.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/08/10 TIME: 8:30 A.M. DEPT: H CASE NO: CV092360

PRESIDING: HON. JOHN A. SUTRO, JR.

REPORTER: CHRISTINA GILSON

CLERK: KATHY BECK

PLAINTIFF: JOSEPH ROTENBERG

vs.

DEFENDANT: BRAIN RESEARCH LABS,
LLC, ET AL
(COMPLEX CASE)

NATURE OF PROCEEDINGS: MOTION FOR CHANGE OF VENUE – PURSUANT TO CCP SEC 397© [DEFT] BRAIN RESEARCH LABS, LLC, A DELAWARE LLC [DEFT] 20/20 BRAIN POWER FOUNDERS, CALIFORNIA LLC [DEFT] 20/20 BRAINPOWER PARTNERS, LLC, A CALIFORNIA LLC [DEFT] RICHARD COTE [DEFT] SHRIK METHA [DEFT] JOSHUA REYNOLDS (ETC)

RULING

MATTER CONTINUED TO MARCH 15, 2010.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/08/10 TIME: 8:30 A.M. DEPT: H CASE NO: CV092774

PRESIDING: HON. JOHN A. SUTRO, JR.

REPORTER: CHRISTINA GILSON

CLERK: KATHY BECK

PLAINTIFF: CAT TRAIL CAPITAL, LLC

vs.

DEFENDANT: PETER J. DALTON, ET AL

NATURE OF PROCEEDINGS: HEARING ON DEMURRER – TO FIRST AMENDED COMPLAINT [DEFT] ET WATER SYSTEMS, INC., A DELAWARE CORPORATION

RULING

OFF CALENDAR.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/08/10 TIME: 8:30 A.M. DEPT: H CASE NO: CV093306

PRESIDING: HON. JOHN A. SUTRO, JR.

REPORTER: CHRISTINA GILSON

CLERK: KATHY BECK

PLAINTIFF: LYNN MASON, ET AL

vs.

DEFENDANT: FRED RUNYON

NATURE OF PROCEEDINGS: 1) HEARING ON DEMURRER – TO COMPLAINT [DEFT]
FRED RUNYON
2) MOTION – TO STRIKE [DEFT] FRED RUNYON

RULING

DEFENDANT’S DEMURRER TO THE FIRST CAUSE OF ACTION IS SUSTAINED WITH LEAVE TO AMEND WITHIN TEN (10) DAYS OF THE DATE OF SERVICE OF NOTICE OF ENTRY OF THE ORDER HEREON. PLAINTIFFS FAIL TO ALLEGE ANY FACTS SHOWING THAT DEFENDANT ACTED WITH A WILLFUL DISREGARD OF PLAINTIFF’S RIGHTS. NO OPPOSITION AND GOOD CAUSE APPEARING, DEFENDANT’S MOTION TO STRIKE IS GRANTED.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/08/10 TIME: 8:30 A.M. DEPT: H CASE NO: CV094860

PRESIDING: HON. JOHN A. SUTRO, JR.

REPORTER: CHRISTINA GILSON

CLERK: KATHY BECK

PLAINTIFF: RIVERWALK HOLDINGS
LTD.

vs.

DEFENDANT: JOSEPH SALAMA

NATURE OF PROCEEDINGS: HEARING ON DEMURRER – TO COMPLAINT [DEFT]
JOSEPH SALAMA

RULING

DEFENDANT JOSEPH SALAMA HAS FILED A DEMURRER TO PLAINTIFF RIVERWALK HOLDINGS, LTD.’S COMPLAINT ON THE GROUNDS THAT “THE COMPLAINT IS NOT BEING BROUGHT BY THE REAL PARTY IN INTEREST, AND ACCORDINGLY FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED” (NOTICE OF HEARING ON DEMURRER TO COMPLAINT, LINES 19-20; SEE CODE OF CIVIL PROC. §§430.10(D)(E)). DEFENDANT ALLEGES IN AN UNSWORN STATEMENT IN SUPPORT OF THIS CONTENTION THAT THE ACCOUNT ENDING IN “8670” UPON WHICH THE ACTION IS BASED (SEE COMPLAINT, PARAGRAPH CC-1.B.(6)) WAS NOT ISSUED BY PLAINTIFF.

IN RULING ON A DEMURRER TO A COMPLAINT, THE COURT MUST ACCEPT AS TRUE ALL ALLEGATIONS OF FACT CONTAINED THEREIN (*BLANK V. KIRWAN* (1985) 39 CAL.3D 311, 318; *CUNDIFF V. GTE CAL, INC.* (2002) 101 CAL.APP.4TH 1395, 1404-1405). BECAUSE A DEMURRER TESTS ONLY THE SUFFICIENCY OF THE COMPLAINT, THE COURT WILL NOT CONSIDER FACTS THAT HAVE NOT BEEN ALLEGED IN THE COMPLAINT UNLESS THEY MAY REASONABLY BE INFERRED FROM THE MATTERS ALLEGED OR ARE PROPER SUBJECTS OF JUDICIAL NOTICE (*HALL V. GREAT W. BANK* (1991) 231 CAL.APP.3D 713, 719N7). THE FACTS THAT DEFENDANT PROFFERS IN SUPPORT OF HIS DEMURRER, BESIDES BEING UNSWORN, ARE NOT ASCERTAINABLE FROM THE FACE OF THE COMPLAINT, NOR ARE THEY PROPER SUBJECTS OF JUDICIAL NOTICE (WHICH, IN ANY EVENT, WAS NOT REQUESTED).

ACCORDINGLY, DEFENDANT'S DEMURRER TO THE COMPLAINT IS OVERRULED. DEFENDANT SHALL HAVE TEN (10) DAYS FROM THE DATE OF SERVICE OF NOTICE OF ENTRY OF THE ORDER HEREON WITHIN WHICH TO FILE AN ANSWER THE COMPLAINT.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/08/10 TIME: 8:30 A.M. DEPT: H CASE NO: CV096124

PRESIDING: HON. JOHN A. SUTRO, JR.

REPORTER: CHRISTINA GILSON

CLERK: KATHY BECK

PLAINTIFF: BRIDGEWAY BUILDING
BUSINESS, L.P.

vs.

DEFENDANT: ANTHONY PONTER, ET
AL

NATURE OF PROCEEDINGS: 1) HEARING – FOR RIGHT TO ATTACH ORDER; ORDER OF ISSUANCE OF WRIT OF ATTACHMENT [PLTF] BRIDGEWAY BUILDING BUSINESS, L.P., A CA LTD. PARTNERSHIP
2) HEARING – FOR RIGHT TO ATTACH ORDER; ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT [PLTF] BRIDGEWAY BUILDING BUSINESS, L.P., A CA LTD. PARTNERSHIP

RULING

PLAINTIFF’S APPLICATION FOR RIGHT TO ATTACH ORDER AND ORDER FOR WRIT OF ATTACHMENT IS GRANTED IN THE AMOUNT OF \$112,377.92. (CODE CIV. PROC. §§483.010, 483.015.) DEFENDANT’S CLAIM OF HOMESTEAD EXEMPTION AS TO 12575 DUNBAR ROAD, GLEN ELLEN, APN 053-110-057 IS GRANTED IN THE AMOUNT OF \$100,000.00. (CODE CIV. PROC. §§487.025, 704.710, 704.720, 704.730.) AS A CONDITION FOR GRANTING THE WRIT OF ATTACHMENT, PLAINTIFF SHALL POST AN UNDERTAKING IN THE AMOUNT OF \$10,000.00. (CODE CIV. PROC. §489.220.)

PLAINTIFF HAS DEMONSTRATED THE PROBABLE VALIDITY OF ITS CLAIM FOR RENT AND CHARGES DUE THROUGH THE PERIOD THAT DEFENDANTS REMAINED IN POSSESSION, BUT PLAINTIFF’S CLAIM AS TO FUTURE RENT IS NOT FIXED OR READILY ASCERTAINABLE AT THIS TIME DUE TO THE UNRESOLVED ISSUE OF MITIGATION. (*LEE V. PLACER TITLE COMPANY* (1994) 28 CAL.APP.4TH 503, 511-514; *PETROLEUM COLLECTIONS INC. V. SWORDS* (1975) 48 CAL.APP.3D 841, 847; *WESTERN STEEL & SHIP REPAIR, INC. V. RMI, INC.* (1986) 176 CAL.APP.3D 1108, 1112, FN. 3; COMPARE *CIT GROUP/EQUIPMENT FINANCING*,

INC. V. SUPER DVD, INC. (2004) 115 CAL.APP.4TH 537, 540, AND CALIFORNIA SAFETY CENTER, INC. V. JAX CAR SALES (1985) 164 CAL.APP.3D 992, 998.)

PLAINTIFF'S EVIDENTIARY OBJECTIONS:

SUSTAINED: 1, 2, 3, 7, 8, 10, 14, 17, 18, 21, 22, 23;

OVERRULED: 4, 5, 6, 9, 11, 12, 13, 15, 16, 19, 20.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 02/08/10 TIME: 8:30 A.M. DEPT: H CASE NO: CV096420

PRESIDING: HON. JOHN A. SUTRO, JR.

REPORTER: CHRISTINA GILSON

CLERK: KATHY BECK

PLAINTIFF: WACHOVIA MORTGAGE,
FSB

vs.

DEFENDANT: JILL LUCCHESI

NATURE OF PROCEEDINGS: MOTION FOR SUMMARY JUDGMENT [PLTF]
WACHOVIA MORTGAGE, FSB

RULING

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IS GRANTED, ON THE CONDITION THAT PLAINTIFF FILE AN APPROPRIATE PROOF OF SERVICE FOR THE MOTION AT OR BEFORE THE HEARING ON THE MOTION. PLAINTIFF HAS SHOWN THAT IT HOLDS RECORD TITLE TO THE PROPERTY, THAT PLAINTIFF HAS SERVED DEFENDANT WITH A THREE-DAY NOTICE TO VACATE, AND THAT PLAINTIFF HAS A RIGHT TO EVICT DEFENDANT. CCP §§ 2924; 1161a; SEE ALSO MOSKOVITZ, et al., CALIFORNIA LANDLORD-TENANT PRACTICE (CEB, 2d ed. 2009) §9.37. (SEE, e.g., COPY OF RECORDED TRUSTEE'S DEED UPON SALE, AND NOTICE TO VACATE SERVED ON 12/04/09.)