

A long time ago (well, actually, today) in a galaxy far, far away (or in Martinez, California)....

THE LAW & MOTION SAGA

EPISODE V: THE EVIDENCE STRIKES BACK

DISCLAIMER

- I am happy to take questions during and after the program, time permitting.
- I am a quasi-judicial court employee bound not only by the Rules of Professional Conduct, but by the Canons of Judicial Ethics.
- I cannot answer questions about cases that are pending in the Contra Costa County Superior Court.
- I cannot answer questions about how particular judges would rule on any issue. Nothing in this seminar should be construed as any indication of how a judge would rule.
- All fact patters, examples and sample forms are fiction.

ABBREVIATIONS

APJ – All-Purpose Judge	MSJ/MSA – Motion for Summary Judgment/Summary Adjudication
COA – Cause of Action	MTC – Motion to Compel
CoCoCo – Contra Costa County	NOE – Notice of Entry
F&S – File & Serve	POD – Request for Production of Documents
j/x – Jurisdiction	RFA – Request for Admission
M&C – Meet & Confer	RFJN – Request for Judicial Notice
MIL – Motion <i>In Limine</i>	Rog – Interrogatory (either Special or Form)
MJOP – Motion for Judgment on the Pleadings	SOL – Statute of Limitations
MPA – Memorandum of Points and Authorities	

THE LAW & MOTION UNIVERSE

All of the Episodes of the Law & Motion Saga will give examples based on the following set of hypothetical facts:

Darth Vader (fka Annikan Skywalker) died during the Battle of Endor. At the time of his death, Vader was unmarried. His wife, Padme Skywalker (nee Amidala), predeceased him in childbirth. Vader was survived by twin children, Luke Skywalker and Princess Leia Solo (nee Organa).

Approximately two months after Vader's death, Luke and Leia received a Trustee's Notification pursuant to Probate Code § 16061.7. The Trustee's Notification included a copy of The Darth Vader Revocable Living Trust. The Trust provides that the successor trustee following Vader's death is to be Emperor Palpatine or, if he does not survive (he didn't), then "Supreme Leader Snoke" is to serve as successor trustee. Upon Vader's death, all of the assets of the Trust (assumed to be worth approximately 10 million Galactic Credits) are to be distributed to Vader's Grandson, Ben Solo, except that Luke and Leia are to each receive a bantha, if any are assets of the Trust.

Shocked, Luke (but not Leia) hired an attorney to file a Petition in the Probate Division of the Contra Costa County Superior Court alleging, among other claims, that the Trust is invalid because (1) Vader lacked the requisite mental capacity to execute the Trust; (2) Vader was unduly influenced by Emperor Palpatine, Ben Solo and/or "Supreme Leader Snoke" into executing the Trust; and (3) Vader was under duress when he executed the Trust.

Assume that CoCoCo has personal and subject matter jurisdiction over this case and that service of the petition was proper and timely.

EPISODE V: THE EVIDENCE STRIKES BACK

MOTIONS IN LIMINE



EPISODE V: THE EVIDENCE STRIKES BACK

- **“*In Limine*” means “at the very start”.**
- **There is no express statutory authority authorizing MILs.**
 - **See Witkin California Evidence (6th Ed. West 2023) Presentation at Trial §§ 379-381.**

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- **Purposes:**
 - **To prevent a jury from hearing inadmissible evidence.**
 - **To avoid wasting trial time on inadmissible evidence.**
 - **To set some trial procedures.**

EPISODE V: THE EVIDENCE STRIKES BACK

- **Use in Court Trials:**
 - **Some trial judges have standing orders that evidentiary issues raised by MILs are all denied without prejudice and will be addressed at the time the evidence is presented.**
 - **Others will entertain MILs on the merits before trial begins.**

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- **Use in Court Trials:**
 - **Any evidentiary objection that could be raised at trial can be raised by MIL. Condon-Johnson & Assocs. V. Sacramento Mun. Utility Dist. (2007) 149 Cal. App. 4th 1384.**
 - **Common MIL is to exclude non-party fact witnesses from the courtroom until after testimony is offered.**

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• Examples:

- Irrelevant evidence. Evid. Code § 350.**
- Unduly prejudicial evidence. Evid. Code § 352.**
- Privileges. Evid. Code §§ 900 et seq.**
- Offers to compromise. Evid. Code § 1152.**

EPISODE V: THE EVIDENCE STRIKES BACK

• Examples:

- Character evidence. Evid. Code §§ 785-791, 1100-1109.**
- Evidence not disclosed in discovery when required.**
- Expert testimony of an unqualified witness. Evid. Code §§ 720, 801.**

EPISODE V: THE EVIDENCE STRIKES BACK

- **Inappropriate uses of MILs:**
 - **As a substitute for a MJOP**
 - **However, you can move to exclude all evidence (either in one MIL or in multiple MILs), then let the court decide whether the result is dismissal or default.**
 - **To control ordinary procedure and matters of professional courtesy. Kelly v. New West Federal Savings (1996) 49 Cal. App. 4th 659, 671.**

EPISODE V: THE EVIDENCE STRIKES BACK

- **Procedure:**
 - **Depends on the court. Sometimes F&S on the first day of trial, sometimes up to a week before, sometimes at a pre-trial conference.**
- **Form:**
 - **Depends on the court. Usually MILs are brief, but are still supported by evidence. Should usually comply as closely as possible with normal law & motion format (i.e., Notice, MPA, Evidence).**

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...is that really all?

THE LAW & MOTION SAGA


**ROGUE DECISION:
*A LAW & MOTION STORY***

ROGUE DECISION: A LAW & MOTION STORY

STATEMENTS OF DECISION



STATEMENTS OF DECISION

- **CCP § 632; CRC 3.1590**
- **Replaces the old “findings of fact and conclusions of law”**
- **Court trials only where the case involved the trial of a question of fact**
- **Explains the factual and legal basis for the court’s decision as to each of the principal controverted issues at trial. CCP § 632.**

PROCEDURE & TIMING

- **Getting a SOD requires a timely request**
- **Timing depends on length of trial**
 - **< 1 calendar day or < 8 hours over more than 1 day: Before case is submitted. CRC 3.1590(n).**
 - **> 1 calendar day: w/in 10 days after tentative decision is announced. CRC 3.1590(d).**

PROCEDURE & TIMING

- **The Tentative Decision**
 - **The court's conclusion after trial.**
 - **May be made orally or in writing. CRC 3.1590(a).**
 - **If made orally, clerk must serve minute order on all parties reflecting tentative decision**
 - **Tentative decision is not binding. CRC 3.1590(b).**

PROCEDURE & TIMING

- **The Tentative Decision**
 - **Court has four options regarding content (CRC 3.1590(c)):**
 - **State that it is the SOD, subject to objection;**
 - **Indicate that the court will prepare the SOD;**
 - **Order a party to prepare the SOD; or**
 - **Direct that the tentative decision will become the SOD unless, within 10 days of announcement, a party specifies those principal controverted issues as to which the party is requesting a SOD or makes proposals not included in the tentative decision.**

PROCEDURE & TIMING

- **If no timely request or request is waived**
 - **All objections to the court's failure to make all findings necessary to support its decision are *waived*.**
 - **Court of Appeal applies the doctrine of implied findings and presumes that the trial court made all necessary findings supported by substantial evidence. Nellie Gail Ranch Owners Assn. v. McMullin (2016) 4 Cal. App. 5th 982, 996.**

PROCEDURE & TIMING

- **Form of request for SOD**
 - **Principal controverted issues must be specified in the request for SOD. CRC 3.1590(d).**
- **After a request is made under (d), any other party may make proposals as to the content of the SOD within 10 days of the first request. CRC 3.1590(e).**

PROCEDURE & TIMING

- **Preparation of Proposed SOD (CRC 3.1590(f))**
 - **If court decides to do it, court must prepare Proposed SOD & Proposed Judgment w/in 30 days of Tentative Decision; OR**
 - **If party is ordered to prepare it, must be filed and served w/in 30 days of Tentative Decision**
 - **If SOD and Proposed Judgment are not timely, any other party may either prepare it themselves OR move for an order deeming SOD waived.**

PROCEDURE & TIMING

- **Objections to Proposed SOD (CRC 3.1590(g))**
 - Any party may object to Proposed SOD w/in 15 days after date Proposed SOD & Judgment are served.
 - Form of Objection: need to show that the Proposed SOD (1) does not resolve a controverted issue; (2) is ambiguous; or (3) relies on facts that were not proven or are outside the record. Colony Ins. Co. v. Crusader Ins. Co. (2010) 188 Cal. App. 4th 743-750-751.

CONTENT OF SOD

- Requires the “factual and legal basis” for the decision. CCP § 632.
- Court need not address all of the legal and factual issues raised by the parties, but only the grounds upon which the judgment rests without necessarily specifying the particular evidence considered by the court. Peak-Las Positas v. Bollag (2009) 172 Cal. App. 4th 101, 112.

CONTENT OF SOD

- **Need only set out ultimate findings rather than evidentiary findings. Almanor Lakeside Villas Owners Assn. v. Carson (2016) 246 Cal. App. 4th 761, 770.**
- **Court need not make specific findings on every evidentiary point, only the grounds on which the judgment rests. Richardson v. Franc (2015) 233 Cal. App. 4th 744, 753, n.2.**
- **SOD on attorney fee award is not required. Ventura v. ABM Industries Inc. (2012) 212 Cal. App. 4th 258, 275.**

HEARING

- **Court has discretion to order a hearing regarding proposals and objections. R. of Ct. 3.1590(k).**



QUESTIONS???



Presented by:
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Contra Costa County Superior Court



NOTE: THIS IS ONE OF MANY FORMS THAT MOTIONS IN LIMINE CAN BE PRESENTED. CHECK YOUR LOCAL RULES AND LOCAL PRACTICE TO DETERMINE THE PRECISE FORMAT FOR YOUR CASE

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF CONTRA COSTA

In re the

DARTH VADER REVOCABLE LIVING
TRUST.

Case No.: P74-00001

MOTIONS IN LIMINE

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on September 3, 2075, at 9:00 a.m., in Department 30 of the above captioned court, located at 725 Court Street, Martinez, California, LUKE SKYWALKER (“Petitioner”) will and hereby does move for the following orders *in limine*:

MOTION IN LIMINE NO. 1

For an order excluding all non-party percipient witnesses from the courtroom during trial until after their testimony has been concluded.

MOTION IN LIMINE NO. 2

For an order excluding the testimony of Darth Plaeus entirely from the trial on the ground that his testimony will be unduly prejudicial to Petitioner. Evid. Code § 352.

MOTION IN LIMINE NO. 3

5Δ7 KΛ Δ77V17 Δ1ΛKJ-V 7V1V17C1Λ1Λ17 ΔEKΔ ΔEV1
VΛU17V1 VΔ710V1N EK11C OKN ΔEV1 EV1NΔ ΔΔ KJN ΔΔ ΔEV1
VΔK7 OK7N CΔY1V1N11

1 This Motion is based on this Notice, the Memorandum of Points and Authorities and
2 Declaration of Cassian Andor, attached hereto, the file herein, and such argument as may be
3 made at the hearing on these motions.

4 Date: _____

5 _____
6 CASSIAN ANDOR, ESQ.
7 Attorneys for LUKE SKYWALKER

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 Like all other motions, here is where your points and authorities go, assuming your court
10 wants them. Make it brief and to the point!

11 Date: _____

12 _____
13 CASSIAN ANDOR, ESQ.
14 Attorneys for LUKE SKYWALKER

15 **DECLARATION OF CASSIAN ANDOR**

16 I, CASSIAN ANDOR, declare as follows:

17 1. I am an attorney at law duly licensed to practice law in the State of California and
18 an attorney of record herein for LUKE SKYWALKER. I have personal knowledge of the facts
19 set forth herein and if called on to testify, I could and would do so competently.

20 2. Include facts here where necessary, including depo transcripts or pleadings to
21 support your motion.

22 3. I, CASSIAN ANDOR, declare as follows:
23 I am an attorney at law duly licensed to practice law in the State of California and
24 an attorney of record herein for LUKE SKYWALKER. I have personal knowledge of the facts
25 set forth herein and if called on to testify, I could and would do so competently.
26 I include facts here where necessary, including depo transcripts or pleadings to
27 support my motion.

28 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed this 15th day of October, 2075, at Skywalker Ranch,
California.

Cassian Andor