

Tentative Rulings for June 15, 2016
Departments 402, 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

16CECG00424 *Gahvejian Enterprises, Inc. v. Los Kitos Produce, LLC* (Dept. 501)

16CECG00866 *California Dept. of Motor Vehicles v. Anter Grewal* (Dept. 402)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

16CECG00949 *Bradshaw v. Acqua Concepts, Inc. et al.* the Motion for Bond is continued to Tuesday, July 19, 2016, at 3:30 p.m. in Dept. 503; the Demurrer and Motion to Strike are continued to Tuesday, August 2, 2016, at 3:30 p.m. in Dept. 503.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

(23)

Tentative Ruling

Re: **Victor Hernandez v. Raymond Chavez Nevares, Jr.**
Superior Court Case No. 16CECG01086

Hearing Date: Wednesday, June 15, 2016 (**Dept. 402**)

Motion: Defendant Raymond Chavez Nevares, Jr.'s Motion to Strike Plaintiff's Complaint for Punitive Damages

Tentative Ruling:

To deny Defendant Raymond Chavez Nevares, Jr.'s motion to strike the punitive damages allegations of Plaintiff Victor Hernandez's complaint. (Code Civ. Proc., § 436, subd. (a).)

Explanation:

Defendant Raymond Chavez Nevares, Jr. ("Defendant") moves to strike the words "punitive damages" at page 3, paragraph 14.a(2) and all of the "Exemplary Damages Attachment" at page 6 from Plaintiff Victor Hernandez's complaint. Defendant contends that the punitive damages allegations must be struck because Plaintiff has failed to allege facts sufficient to support an award of punitive damages.

Civil Code section 3294, subdivision (a) states that: "In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." Malice is defined as "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) Oppression is defined as "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) Fraud is defined as "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person or property or legal rights or otherwise causing injury."

Here, Plaintiff alleges that Defendant acted with a willful and conscious disregard for the rights and safety of others when he took drugs and/or alcohol to the point of intoxication even though he knew that he was going to operate a motor vehicle, that Defendant operated a motor vehicle while intoxicated, that Defendant was "aware from the onset of the probable consequences of such conduct[.]" and that Defendant willfully and deliberately failed to avoid those consequences. (Plaintiff's

Tentative Rulings for Department 403

Tentative Rulings for Department 501

03

Tentative Ruling

Re: **Switzer v. Flourney Management, LLC**
Case No. 11 CE CG 04395

Hearing Date: June 15th, 2016 (Dept. 501)

Motion: Plaintiff/Cross-Defendant/Cross-Complainant Switzer's
Motions to Compel Further Responses to Request for
Production, Set One, from Defendants/Cross-Defendants
Robert Wood and Access Medical, LLC, and for Monetary
Sanctions

Cross-Defendants Schnitzer, et al.'s Motion to Strike Portions
of Cross-Complaint

Tentative Ruling:

To grant the plaintiff's motions to compel further responses to request for production, set one, as to defendants/cross-defendants Wood and Access Medical, LLC, in their entirety. (Code Civ. Proc. § 2031.310.) To grant monetary sanctions against defendant/cross-defendant Wood in the amount of \$3,750, and against defendant/cross-defendant Access Medical in the amount of \$750. (*Ibid.*) Defendants shall serve their verified supplemental responses without objections within 10 days of the date of service of this order. They shall pay monetary sanctions within 30 days of the date of service of this order.

To deny cross-defendants Schnitzer and Kravitz, Schnitzer & Johnson's motion to strike portions of cross-complaint. (Code Civ. Proc. § 435.)

Explanation:

Motions to Compel Further Responses: Defendants have argued that there plaintiff has not shown good cause for production of the documents, most of which they claim are irrelevant to the claims of the case. However, plaintiff has alleged cross-claims for theft and misappropriation of money and business opportunities from Flourney by Wood and Access, and the requested documents seek relevant information regarding these claims. Plaintiff seeks evidence of payments and transactions between Access, Wood and various other entities, which would be relevant to show that Wood and Access have been diverting money and opportunities from Flourney to their own business entities and accounts. Therefore, plaintiff has shown good cause for production of the requested documents.

Defendants also argue that the scope of the requests is overbroad as to time because plaintiff is requesting documents from long after the partnership between the

parties ended. However, Justice Vartabedian already rejected the overbreadth objection, finding that the plaintiff's claims including allegations of continuing theft of business assets and opportunities that continues to the present. (Vartabedian letter ruling of January 7th, 2016, p. 2, third paragraph.) Defendants never expressly rejected this ruling, and thus it appears that they have accepted it as binding. Defendants claim that they "did not accept" Vartabedian's ruling on the requests, but they point to no evidence that they ever specifically objected to them either. Therefore, it appears that they accepted the ruling by their acquiescence to it. In any event, even assuming that the referee's ruling is not binding in itself, the court intends to adopt the same reason in its own ruling, since plaintiff's allegations encompass ongoing theft and misappropriation of business opportunities.

Defendants have argued that plaintiff already has documents regarding transactions from 2013, and therefore defendants should not have to produce further "duplicative" documents regarding these transactions. However, plaintiff has alleged that defendants have continued to steal money and business from Fournoy after 2013 and up to the present, so he is entitled to any documents that support these claims. The documents that plaintiff has obtained so far only cover the period up to early 2013, not any later transactions that would also be relevant to the cross-complaint's allegations. As a result, the court intends to overrule the objection based on the alleged overbreadth of the requests.

In addition, while defendants attempt to raise objections to the requests based on business confidentiality and trade secret protections, they never raised these objections in their initial or supplemental responses to the requests. Defendant Wood did object that some of the requests violate his right of financial privacy, but this objection does not mention trade secrets or business confidentiality. (See e.g. Wood's Response to Request No. 27.) Thus, defendants have waived the objections, and they cannot rely on them now to support their refusal to answer the requests. (*Scottsdale Ins. Co. v. Superior Court* (1997) 59 Cal.App.4th 263, 273-274.)

Defendants have claimed that they provided proper responses to many of the requests by stating that they were not in possession of the requested documents. However, defendants' responses are not in compliance with section 2031.230, because they do not contain a statement that they have made a diligent search and reasonable inquiry in an effort to comply with the demands, or whether their inability to comply is the result of the particular item never having existed, or being destroyed, lost, misplaced, stolen, or that it has never been in their custody possession or control. (Code Civ. Proc. § 2031.230.) The response must also state the name and address of any person or organization known or believed to be in possession, custody, or control of the item. (*Ibid.*) Here, defendants' responses simply indicate that they are not in possession, custody and/or control of any responsive documents, but that discovery and investigation continues and they reserve the right to supplement their responses. (See e.g. Wood's response to Request No. 26.) Defendants' responses imply that the documents may exist in someone else's custody or control, but they do not state who might have them, or that they even made a diligent attempt to locate them. Thus, defendants have not complied with section 2031.230, and their responses are insufficient.

Tentative Rulings for Department 502

Tentative Rulings for Department 503

(29)

Tentative Ruling

Re: ***Vincent Montoya, et al. v. EMC Mortgage, LLC, et al.***
Superior Court Case No. 13CECG03739

Hearing Date: June 15, 2016 (Dept. 503)

Motions: Defendant EMC Mortgage, LLC's motions to compel supplemental responses; sanctions

Tentative Ruling:

To grant the motion to compel supplemental responses to interrogatories. (Code Civ. Proc. §2030.070.) Plaintiffs shall serve supplemental verified responses, without objection, within 10 days of the date of service of this order.

To grant the motion to compel supplemental responses to requests for production. (Code Civ. Proc. §2031.050.) Plaintiffs shall serve supplemental verified responses, without objection, within 10 days of the date of service of this order.

To grant the motions for sanctions. (Code Civ. Proc. §§ 2023.010, 2023.030.) Plaintiffs Vincent Montoya and Rosemary Montoya, and Plaintiffs' attorney, Danny Barak, jointly and severally, are ordered to pay monetary sanctions in the amount of \$480.40 to the law office of Parker Ibrahim & Berg, within 30 days of service of this order.

Pursuant to California Rules of Court, rule 3.1312, and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: A.M. Simpson on 6/10/16.
(Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***Ballesteros v. Hyundai Motor America***
Superior Court Case No. 16 CECG 00089

Hearing Date: June 15, 2016 (**Dept. 503**)

Motion: Enforce Settlement Agreement pursuant to
CCP § 664.6

Tentative Ruling:

To deny the motion.

Explanation:

Background

On or about May 24, 2013, Plaintiff purchased a used 2011 Hyundai Sonata from Lithia Hyundai of Fresno. Plaintiff alleges that the vehicle has serious defects. On January 12, 2016, he filed a complaint alleging violations of the Song-Beverly Consumer Warranty Act and the Magnuson- Moss Warranty Act. Only Hyundai Motor America is named as a Defendant. It filed an Answer on February 22, 2016.

Motion at Bench

On March 2, 2016, Defendant, through its counsel of record sent the Plaintiff, through his counsel of record, an offer pursuant to CCP § 998. On April 4, 2016, Plaintiff sent an "executed" version of the offer along with a letter indicating that Plaintiff's understanding of the offer was that he would be receiving **\$77,238.81**. See Exhibits A-C attached to the Declaration of Morse.

On April 11, 2016, Defendant's counsel sent a letter indicating that Plaintiff's understanding of the offer was mistaken. Instead, the offer consisted of two options. Plaintiff could accept paragraphs 1, 2, 3 and 4 which would have allowed him to send over his itemized his damages and Defendant would then calculate this amount, and, if there was a disagreement, it could be decided via reference, bench trial, and motion or jury trial. Or, Plaintiff could accept paragraph 5 and simply accept **\$25,746.27**. See Exhibit D.

The parties "met and conferred" to resolve the matter to no avail. See Exhibits E through G. On May 20, 2016, the Plaintiff filed a motion to enforce settlement pursuant to CCP § 664.6. Opposition and a reply have been filed.

Plaintiff contends that an accepted CCP § 998 offer is equivalent to a settlement and as such, is subject to enforcement pursuant to CCP § 664.6. In support, Plaintiff cites *Glende Motor Co. v. Superior Court* (1984) 159 Cal.App.3d 389 (disapproved on

(28)

Tentative Ruling

Re: ***Empire Indemnity Insurance Co. v. Shaver Lake Sports, Inc.***

Case No. 14CECG02750

Hearing Date: June 15, 2016 (Dept. 503)

Motion: By Defendant Shaver Lake Sports, Inc. for a stay of the action.

Tentative Ruling:

To grant the motion for a stay.

The Court sets a status conference for October 12, 2016 at 3:30 p.m. in Department 503.

Explanation:

Defendant seeks to stay this insurance coverage action pending the resolution of the lawsuit giving rise to the coverage issue currently active in Los Angeles.

“To eliminate the risk of inconsistent factual determinations that could prejudice the insured, a stay of the declaratory relief action pending resolution of the third party suit is appropriate when the coverage question turns on facts to be litigated in the underlying action.” (*Montrose Chem. Corp v. Superior Court* (1993) 6 Cal.4th 287, 301.)

Likewise, where there is a parallel action regarding the underlying alleged loss, “[a] coverage action may proceed only if ‘the coverage question is logically unrelated to the issues of consequence in the underlying case.’” (*GGIS Ins. Services, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1493, 1504.) However, a coverage action may also proceed if the coverage issue is one of law or turns upon factual questions that are logically unrelated to the matters at issue in the underlying action. (*GGIS Ins. Servs., supra*, 168 Cal.App.4th at 1505.)

In short, “[i]f the factual issues to be resolved in the declaratory relief action overlap with issues to be resolved in the underlying litigation, the trial court *must* stay the declaratory relief action. If there is no such factual overlap and the declaratory relief action can be resolved on legal issues or factual issues unrelated to the issues in the underlying action, the question as to whether to stay the declaratory relief action is a matter entrusted to the trial court’s discretion.” (*Great American Ins. Co. v. Superior Court* (2009) 178 Cal.App.4th 221, 235-36.)

Here, Defendant argues that the coverage issues could be dependent on causation issues in the underlying case. Defendant relies specifically on *Ohio Cas. Ins. Co. v. Hartford Accident & Indem. Co.* (1983) 148 Cal.App.3d 641, 745.) That coverage

