

**Tentative Rulings for June 30, 2016**  
**Departments 402, 403, 501, 502, 503**

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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).)

14CECG02396      *Anthony Encias v. Raul Reyes* (Dept. 402)

12CECG01894      *Doe v. Fresno Unified School Dist., et al.* (Dept. 501)

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

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(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 402**

# **Tentative Rulings for Department 403**

# **Tentative Rulings for Department 501**

(17)

## **Tentative Ruling**

Re: ***Hull v. City of Fresno et al.***  
Court Case No. 14 CECG 00707

Hearing Date: June 30, 2016 (Dept. 501)

Motion: Defendant City of Fresno's Motion to Tax Plaintiff Betty Hill's Costs  
Plaintiff Lowell Hull's Motion to Tax Defendant City of Fresno's  
Costs

### **Tentative Ruling:**

To tax Mrs. Hull's Memorandum of Costs in the following amounts: jury fees: \$59.90; court ordered transcripts: \$28,698.17; models blowups and photocopies of exhibits: \$21,557.50. To tax the City of Fresno's Memorandum of Costs as follows: deposition costs: \$2,362.50; other: \$325,156.00.

### **Explanation:**

Items of allowable costs are set forth in Code of Civil Procedure section 1033.5, subdivision (a), and disallowed costs are set forth in subdivision (b). Items not expressly mentioned in the statute "upon application may be allowed or denied in the court's discretion." (Code Civ. Proc. § 1033.5, subd. (c)(4).) All allowable costs must be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation, and they must be reasonable in amount and actually incurred. (Code Civ. Proc. § 1033.5, subd. (c)(1), (2) and (3).)

On motion to tax costs, the initial burden depends on the nature of the costs that are being challenged.

[T]he mere filing of a motion to tax costs *may* be a "proper objection" to an item, the necessity of which appears doubtful, or which does not appear to be proper on its face. However, if the items appear to be proper charges, the verified memorandum is *prima facie* evidence that the costs, expenses and services therein listed were necessarily incurred by the defendant, and the burden of showing that an item is not properly chargeable is upon the objecting party.

(*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131 (*Nelson*).)

In order to meet this burden, where the objections are based on factual matters, the motion should be supported by a declaration. (*County of Kern v. Ginn* (1983) 146 Cal.App.3d 1107, 1113-4.)

## **The City's Motion to Tax Mrs. Hull's Costs:**

### *Item 2 – Jury Fees*

Plaintiff was charged \$3,908.98 in jury fees. However, Mrs. Hull claimed an additional \$59.90 that she was charged for an area surcharge and service fees associated with the legal service she chose to use to send the jury fees to the Fresno Court. The area surcharge and service fee are not "jury fees" and should not have been claimed in Item 2. They should have been claimed in Item 13, "Other," if at all.

And while messenger fees may be found to be recoverable when necessary for trial preparation (*Ladas v. California State Auto. Ass'n* (1993) 19 Cal.App.4th 761, 776), Mrs. Hull has not shown why the initial deposit of \$150 in jury fees due on a date certain needed to be messengered to court as opposed to being mailed or overnighted. The sum of \$59.90 will be taxed.

### *Item 9 – The Cost of Court Transcripts*

Mrs. Hull seeks \$35,648.17 in "court ordered transcripts" in her verified Memorandum of Costs. However, of this amount \$28,698.17 was charged for the daily transcripts and \$6,950.00 was the per diem fee for the presence of the court reporter. (William Bruce Decl. ¶ 5.) The City contends the trial transcripts were not court ordered. (See William Bruce Decl. ¶ 6.) Mrs. Hull offers no evidence to contradict this. Moreover, it is the Court's recollection that it did not order transcripts. Accordingly, the \$28,698.17 in transcript costs will be disallowed.

Code of Civil Procedure section 1033.5, subdivision (a)(9) provides for the recovery of costs for "transcripts of court proceedings ordered by the court." Code of Civil Procedure section 1033.5, subdivision (b)(5) specifically prohibits the recovery of "transcripts of court proceedings not ordered by the court" as costs. Therefore, a court cannot simply deem the costs reasonably necessary to the litigation and award them under Code of Civil Procedure section 1033.5, subdivision (c).

Mrs. Hull admits on reply that she combined the categories of court-ordered transcripts and statutory court reporter fees (items 9 and 12 on the Memorandum of Costs). This improper, as only the court reporter fees are recoverable. (Code Civ. Proc., § 1033.5, subd. (a)(11).)

Government Code section 68086, subdivision (d)(2) directs the Judicial Council to adopt rules to ensure "[t]hat if an official court reporter is not available, a party may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter, the costs therefor recoverable as provided in subdivision (c)." Subdivision (c) of the statute states that "[t]he costs for the services of the official court reporter shall be recoverable as taxable costs by the prevailing party as otherwise provided by law." California Rules of Court, rule 2.956(c) provides: "If the services of an official court reporter are not available for a hearing or trial in a civil case, a party may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter. It is that party's responsibility to pay the

reporter's fee for attendance at the proceedings, but the expense may be recoverable as part of the costs, as provided by law." Accordingly, recovery of the cost of the privately-retained reporter is "provided by law" in Code of Civil Procedure section 1033.5, subdivision (a)(11). Thus, the \$6,950 paid to the court reporter per diem is recoverable.

*Item 11 – Models, Blowups, and Photocopies of Exhibits*

Initially, the Court notes that Mrs. Hull chose not to file the Memorandum of Costs Worksheet (Judicial Council Form MC-011.) This made deciphering her claimed exhibit costs difficult. However, in her opposition, Mrs. Hull has produced invoices and billing statements which permit the court to ascertain what expenses comprise the sum of \$44,406.38 sought in this category.

The sum of \$15,000.00 is sought for a "Day in the Life" video. The City asserts the \$15,000 was, in fact, for a 30 minute video produced and played at the mediation only. (Reply 2:14-15.) This is in accordance with the recollection of the court which remembers that a very short video of the Hull's two story home, which did not appear to be professionally produced, was played to the jury to explain that Mrs. Hull could not navigate to the second story bedroom. If the \$15,000 video was played only at the mediation, and not at trial, its cost is not recoverable. Costs for exhibits not used at trial are not recoverable. (*Seever v. Copley Press, Inc.* (2006) 141 Cal.App.4th 1550, 1559-1560 ["Code of Civil Procedure section 1033.5, subdivision (a)(12), ... allows the recovery of the cost of photocopies of exhibits, but only if they were reasonably helpful to the trier of fact. Because the Legislature has expressly stated in subdivision (a)(12) what is allowable (exhibits used at trial that are reasonably helpful) and implicitly what is not, the discretion granted in section 1033.5, subdivision (c)(4), to award costs for items not mentioned in section 1033.5 is simply inapplicable."].)

The sum of \$19,593 was charged to plaintiffs by Cogent Legal, LLC for computerized graphics played at trial. According to the billings attached to the Declaration of David L. Winnett as Exhibit C, three categories of professional worked on these exhibits, designers, senior designers and "Attorney Consultants." The City argues that the costs are not recoverable, but if they are, the City wishes to amend its Memorandum of Costs to include its analogous litigation support services at a cost of \$120,458.20.<sup>1</sup>

Allowable costs include "[m]odels and blowups of exhibits and photocopies of exhibits" if they were "reasonably helpful to aid the trier of fact." (Code of Civ. Proc. § 1033.5(a)(12).) Additionally, expenses for computerized forms of exhibits, such as imaged documents and video and graphic exhibits, are recoverable. In *American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, the court rejected the defendants' argument that the trial court abused its discretion by

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<sup>1</sup> Because the omission of this category of costs was not a mere mathematical error, and because costs must be claimed 15 days after the notice of entry of judgment, this request is untimely and should be disallowed. (See Cal. Rule of Court, rule 3.1700(a).)

allowing \$19,307.33 for imaging documents and deposition transcripts and for display equipment rental. (*Id.* at p. 1057.) The court explained that “[w]hile admittedly ‘high-tech,’ the methods defendants used to display documents to the jury were specifically approved by the trial court, which found them to be highly effective, efficient, and commensurate with the nature of the case.” (*Ibid.*)

Here, the Court believes that the timeline prepared by the plaintiffs was reasonably helpful to the jury, and the animations during closing were likewise helpful as well. However, in reviewing the billings there are 17 entries for “Attorney Consultant” representing 40.1 hours billed at a rate of \$250 per hour and 5.5 hours billed at a rate of \$175.00 per hour, representing a total amount billed of \$10,987.50. Some of the tasks performed by the Attorney Consultant appear to involve legal judgment (see 1/4/16 “review of all medical, breaking report into segments for determination of timeline for case” and 1/13/16 “revise of all medical records and expert reports to identify key items to include in overall timeline”) whereas some seem purely design oriented (see 1/14/16 “revisions to designers 8 foot board timeline” and 1/23/16 creating interactive keynote presentation for opening statement”). However, attorney’s fees and experts fees are not recoverable by Mrs. Hull in this case. (Code Civ. Proc., § 1033.5, subd. (a)(10).) Accordingly, the time during which the Attorney Consultants were exercising legal judgment in creating the exhibits, i.e., acting as attorneys as opposed to designers, is not recoverable. Thus, the 4 hours billed on 1/13/16, the 2.5 hours billed on 1/4/16 and the 5.5 hours billed on 1/16/16 are not recoverable in any instance, resulting in a reduction of \$2,587.50.

Moreover, because all allowed costs “shall be reasonable in amount,” (Code Civ. Proc., § 1033.5 (c)(3)) it is unreasonable to allow the Attorney Consultants to bill more than the design consultants. Either the Attorney Consultants were doing attorney type work, in which case the time should be disallowed altogether, or they were doing design type work, in which case they should be compensated as designers, because attorney’s fees are not permitted. Reducing the rate of the Attorney Consultants to the rate of a senior designer of \$175.00 per hour results in a reduction of \$3,970.00. Therefore the Design Consultants, LLC cost is allowed in the amount of \$12,749.83.

The City has no objection to the additional photocopying charges and some charges for poster board blow-ups. Accordingly, only the sum of \$27,749.83 will be taxed from this category.

**Mr. Hull’s Motion to Tax the City’s Costs:**

First, the Hulls claim they must be treated conjointly as prevailing parties, citing no authority. This is simply contrary to established law. Mrs. Hull received a judgment of \$239,913.00 in her favor. Whereas the Judgment provided, “Plaintiff Lowell Hull shall take nothing from defendant City of Fresno.” Code of Civil Procedure defines “prevailing party” as “*the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant.*” (Emphasis added.) Thus, Mrs. Hull is a prevailing

party as against the City, and the City is a prevailing party as against Mr. Hull. The Hulls recovery is not considered together for an award of costs. So long as "[t]he interest of each [plaintiff] is in his own 'case' or cause of action"; and the complaint as a whole is merely a series of 'cases' embodied in one document," prevailing party determinations are made as to each plaintiff separately. (*Fields v. Napa Mill. Co.* (1958) 164 Cal.App.2d 442, 448-449.)

"[L]oss of consortium is not a derivative cause of action. While the cause of action is triggered by the spouse's injury, 'a loss of consortium claim is separate and distinct.... [Citations.]' [Citation.]" (*Rosencrans v. Dover Images, Ltd.* (2011) 192 Cal.App.4th 1072, 1089.) "[T]he injury incurred can neither be said to have been 'parasitic' upon the husband's cause of action nor can it be properly characterized as an injury to the marital unit as a whole. Rather, it is comprised of [the spouse's] own physical, psychological and emotional pain and anguish which results when [the injured spouse] is negligently injured to the extent that he [or she] is no longer capable of providing the love, affection, companionship, comfort or sexual relations concomitant with a normal married life. [Citation.]" (*Lantis v. Condon* (1979) 95 Cal.App.3d 152, 157.) While joinder of a loss of consortium claim with the injured spouse's personal injury claim is encouraged, it is not mandatory and a loss of consortium claim may be maintained independently. (*Rodriguez v. Bethlehem Steel Corp.* (1974) 12 Cal.3d 382, 406-407); *Leonard v. John Crane, Inc.* (2012) 206 Cal.App.4th 1274, 1279-80.)

Costs must be assessed independently against Mr. and Mrs. Hull.

#### *Item 4 – Deposition Costs*

The City seeks reimbursement for deposition costs of \$59,931. However, Mr. Hull claims that the City cannot recover certain charges: \$731.69, \$603.77, \$2,732.61, \$1,110.60, \$250.00 and \$485.48 because no back-up documentation was provided to show the charges were actually incurred. This was unnecessary. When the items claimed as costs on a verified cost memorandum appear to be proper, that is prima facie evidence that the expenses and services claimed were necessarily incurred and reasonable in amount, and there is no requirement that the person claiming the costs include documentation (bills, statements, etc.) to support them. Rather, at that point it is the burden of the party objecting to an item of costs to demonstrate that it is not properly claimed. Thus merely objecting to an item that appears to be proper by filing a motion to strike or tax costs will not shift the burden to the person filing the cost memo to prove that the item was necessary and reasonable. (*Nelson, supra*, 72 Cal.App.4th at p. 131; *Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1267.)

Nevertheless, the City withdraws the \$250.00 deposition charge. It will be stricken.

Mr. Hull also objects to the payment of \$2,112.50 to the City's retained expert Dr. Benowitz, as a deposition expense. The City admits it should have been claimed as an expert witness fee. It will be stricken as a deposition expense.

Mr. Hull also contest the \$6,571.50 in charges for videotaping various depositions, claiming videotaping depositions is never necessary expect where the deposing party will not have the power to subpoena the witness because he or she will be out of state, or it is clear the witness will be unable to appear at trial. Mr. Hull claims neither of these circumstances existed when any of the videotaped depositions were taken, thus, the cost of videotaping the depositions should be stricken. The City counters that at the time of deposition it is not known whether the witness will be available for trial, especially expert witnesses, whose professional obligations are particularly pressing, thus, in an abundance of causation, it was reasonably necessary to take the videotaped depositions in this case, particularly that of Mrs. Hull whose ailments left substantial concerns whether she would be able to attend trial. The court agrees with the City that the videotaping of the depositions was reasonably necessary for the conduct of the litigation.

Finally, Mr. Hull objects to the costs of the depositions of certain witnesses who did not testify at trial. The standard for recovering costs of depositions is whether they "were reasonably necessary to the conduct of the litigation" rather than "merely convenient or beneficial to its preparation." (Code Civ. Proc., § 1033.5, subd. (c)(1), (2).) It was reasonably necessary to depose witnesses to the accident and witnesses of the aftermath of the accident because they might have heard Mrs. Hull make statements about her symptoms or injuries or made observations about Mrs. Hull symptoms or injuries. Deposing Mrs. Hull's daughter would give insight into Mrs. Hull's complex symptomatology and injuries. Finally, deposing doctors, including experts not called at trial, provided a more complete picture of Mrs. Hull's complex medical presentation. As such, the Court finds it was reasonable to take all the depositions.

#### *Item 13 – "Other" – Expert Witness Fees Pursuant to Section 998*

Under Code of Civil Procedure section 998, until ten days before trial "any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time." (Code Civ. Proc., § 998, subd. (b).) The failure to accept an offer has consequences for a plaintiff who does not obtain a more favorable result at trial. In that event, the plaintiff cannot recover its postoffer costs, must pay the defendant's costs from the time of the offer, and may be held liable for a reasonable sum to cover the defendant's expert witness fees. (Code Civ. Proc., § 998, subd. (c)(1).)

Mr. Hull argues that the award of expert fees is unwarranted because his recovery, when added to his wife's recovery exceeds "the City's 998 offer of \$225,000." Mr. Hull does not indicate whether this is the sum of the two 998 offers to the Hulls separately or the 998 offer to Mrs. Hull individually. However, the law is clear each plaintiff with separate causes of action must receive a separate or apportioned section 998 offer so as to be able to determine whether the recovery at trial was "more favorable" than the offer. Apportionment of a section 998 offer to multiple plaintiffs is required where, "the offerees have either had different causes of action against the offeror or the potential for separate verdicts and varying recoveries on a single cause of action." (*McDaniel v. Ascuncion* (2013) 214



**Tentative Ruling**

Re: **Montgomery v. Cameron Park Apartments**  
Case No. 14 CE CG 02143

Hearing Date: June 30<sup>th</sup>, 2016 (Dept. 501)

Motion: Defendant's Motion for Summary Judgment as to Plaintiff's  
Complaint

**Tentative Ruling:**

To deny defendant's motion for summary judgment as to plaintiff's complaint.  
(Code Civ. Proc. § 437c.)

**Explanation:**

Defendants move for summary judgment on the theory that the uneven concrete driveway on which plaintiff tripped was a trivial defect as a matter of law, and therefore defendant had no duty to warn of or repair the defect. (*Caloroso v. Hathaway* (2004) 122 Cal.App.4th 922, 927.)

"It is well established that a property owner is not liable for damages caused by a minor, trivial or insignificant defect in property. Courts have referred to this simple principle as the 'trivial defect defense,' although it is not an affirmative defense but rather an aspect of duty that plaintiff must plead and prove. The 'trivial defect defense' is available to private, nongovernmental landowners. As the *Ursino* court stated, 'persons who maintain walkways, whether public or private, are not required to maintain them in an absolutely perfect condition.'" (*Id.* at p. 927, internal citations omitted.)

However, "The decision whether the defect is dangerous as a matter of law does not rest solely on the size of the crack in the walkway, since a tape measure alone cannot be used to determine whether the defect was trivial. A court should decide whether a defect may be dangerous only after considering all of the circumstances surrounding the accident that might make the defect more dangerous than its size alone would suggest. Aside from the size of the defect, the court should consider whether the walkway had any broken pieces or jagged edges and other conditions of the walkway surrounding the defect, such as whether there was debris, grease or water concealing the defect, as well as whether the accident occurred at night in an unlighted area or some other condition obstructed a pedestrian's view of the defect." (*Ibid*, internal citation omitted.)

The court in *Caloroso* determined that the raised portion of walkway, which was about half an inch tall, was trivial as a matter of law and there were no other circumstances that made the defect more dangerous than its size might indicate. (*Id.* at pp. 927-929.) Other courts have likewise determined that raised edges of

between half and three-quarters of an inch were trivial defects where there were no other aggravating circumstances. (*Ursino v. Big Boy Restaurants* (1987) 192 Cal.App.3d 394, 397; *Fielder v. City of Glendale* (1977) 71 Cal.App.3d 719, 726.) On the other hand, courts have found that the presence of circumstances such as night time, shadows, and unfamiliarity with the area may support a finding that the defect was not trivial as a matter of law, even where the raised portion of sidewalk was only about half an inch tall. (*Johnson v. City of Palo Alto* (1962) 199 Cal.App.2d 148, 152.)

In the present case, defendant has presented evidence showing that the raised portion of the cement driveway on which plaintiff tripped was about three-quarters of an inch above the adjacent concrete. (Defendant's UMF No. 23.) The accident occurred on the morning of June 21<sup>st</sup>, 2013. (UMF No.'s 1, 5, 8.) Plaintiff was taking a walk with her two friends, Lucille Smith and Arthur Layfield. (UMF No. 7.) She was in the habit of walking with her friends almost every day. (UMF No. 8.) She estimated that she had walked past the Cameron Park Apartments about 15 times. (UMF No. 15.) She tripped and fell as she was walking across the driveway approach to the defendant's apartments. (UMF No. 16.)

Plaintiff also authenticated several photos of the site of the accident. (UMF No. 18.) The photos were taken by either herself or her daughter on June 21<sup>st</sup> or 22<sup>nd</sup>, 2013, shortly after the accident occurred. (*Ibid.*) The photos depict the area where she fell. (UMF No. 19.) The photos show that the driveway is made of concrete, there were no obstructions nearby, and that there was a small raised portion between the sections of concrete in the middle of the driveway that is about three-quarters of an inch high. (Exhibits to Plaintiff's Deposition and UMF No.'s 23, 24.) The photos also show that, at the time the photos were taken, there was no debris, grease, water, or gravel, or jagged edges near the raised section of concrete that could have obscured the defect or made it more dangerous than its height would tend to indicate. (Exhibits to Plaintiff's Deposition.)

However, defendant has not provided any evidence stating whether the conditions at the site at the time the photos were taken were the same as when the accident occurred. According to plaintiff's testimony, the photos were taken either the day of the accident, or possibly the next day. (UMF No. 18.) However, it is not clear that conditions were identical to the time of the accident. The accident occurred in the morning, when shadows would have been longer and trees might have cast the area into shade. Also, in the intervening time, leaves or debris might have been removed, water might have dried up, or other conditions might have changed and made the defect more obvious than it was when the accident occurred.

Also, defendant has not offered any evidence that would tend to show that there were no aggravating circumstances that might have made the defect more dangerous than its size alone would indicate. Defendant's expert states that there were no visual obstructions at the accident site when he inspected it. (UMF No. 24, and Flynn decl., p. 2.) However, he does not state when he inspected the site. (Flynn decl.) It appears that it was some time after the accident, since he states that he reviewed the deposition of plaintiff and the photographs she took before



(23)

**Tentative Ruling**

Re: ***Daniela M. Carrillo Trust v. J & J Ranch Produce, Inc.***  
Superior Court Case No. 14CECG00774

Hearing Date: Thursday, June 30, 2016 (**Dept. 501**)

Motion: Defendant J & J Ranch Produce, Inc.'s Motion for Summary Judgment

**Tentative Ruling:**

To deny Defendant J & J Ranch Produce, Inc.'s motion for summary judgment of Plaintiff Daniela M. Carrillo Trust's first amended complaint. (Code Civ. Proc., § 437c.)

**Explanation:**

Defendant J & J Ranch Produce, Inc. ("Defendant") moves for summary judgment of Plaintiff Daniela M. Carrillo Trust's ("Plaintiff") verified first amended complaint. Defendant is named in Plaintiff's first and second causes of action for fraud, fifth cause of action for breach of oral contract, and seventh cause of action for common counts.

Plaintiff contends that Defendant's motion for summary judgment should be denied because the moving papers were served less than 75 days before the hearing date and the motion is scheduled to be heard less than 30 days before trial. (Code Civ. Proc., § 473c, subds. (a)(2) & (a)(3).) However, on February 26, 2016, the Court signed a stipulation and order permitting Defendant to file and serve a summary judgment motion pursuant to the minimum notice period specified in Code of Civil Procedure section 1005, subdivision (b), rather than the notice period specified in Code of Civil Procedure section 437c, subdivision (a)(2), and permitting Defendant's summary judgment motion to be heard up to 15 days before trial. Since the stipulation was signed by both Plaintiff's trustee and Plaintiff's counsel, Plaintiff consented to the Court's order shortening the minimum notice period for Defendant's summary judgment motion and allowing the motion to be heard less than 30 days before trial. (*McMahon v. Superior Court* (2003) 106 Cal.App.4th 112, 114.) Therefore, the Court rejects Plaintiff's request to deny Defendant's motion for summary judgment for failing to comply with the notice and hearing requirements prescribed in Code of Civil Procedure section 473c, subdivisions (a)(2) and (a)(3).

Nevertheless, the Court determines that Defendant's summary judgment motion fails to comply with the service requirements established in Code of Civil Procedure section 1005, subdivision (b). Since Defendant personally served its summary judgment motion, Defendant was required to file and serve all moving and supporting papers "at least 16 court days before the hearing." (Code Civ. Proc., § 1005, subd. (b).) However, since Defendant's summary judgment motion was filed



# **Tentative Rulings for Department 502**

# **Tentative Rulings for Department 503**

(20)

## **Tentative Ruling**

Re: ***Empire Indemnity Insurance Co. v. Shaver Lake Sports, Inc.***, Superior Court Case No. 14CECG02750

Hearing Date: **June 30, 2016 (Dept. 503)**

Motion: Plaintiff's Motion for Summary Judgment

### **Tentative Ruling:**

To take off calendar in light of the June 21, 2016 order staying the action.

In the event that oral argument is requested, it will be heard at 3:30pm, on July 19, 2016, in Department 503.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(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 6/23/16.  
(Judge's initials) (Date)

(28)

**Tentative Ruling**

Re: **Clark v. JoAnn Stores, Inc.**

Case No. 14CECG02939

Hearing Date: June 30, 2016 (Dept. 503)

Motion: By Plaintiff to vacate and set aside default and default judgment.

**Tentative Ruling:**

To take the motion off calendar unless Plaintiff can produce conformed copies of the supporting documentation and proofs of service at the hearing.

**NOTE: If oral argument is requested, it will be heard July 14, 2016, at 3:30 p.m. in Department 503.**

**Explanation:**

This matter is on for a hearing regarding a motion to vacate and set aside default and default judgment. In the Court's files is on document entitled "Notice of Motion and Motion for Order Vacating and Setting Aside Default and Default Judgment." This document is unsigned. No other supporting documents appear to be in the Court's files. There also does not appear to be a proof of service.

The Court is therefore inclined to take the motion off calendar unless Plaintiff can attend the hearing and produce conformed copies with the supporting documentation and valid and timely proofs of service.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), 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** 6/29/16.  
(Judge's initials) (Date)