

**Tentative Rulings for November 8, 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).)

16CECL06446      *JD Home Rentals v. Pena, 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.

15CECG03720      *Porter v. CRMC* is continued to December 6, 2016 at 3:30 p.m. in Department 503

11CECG04395      *Switzer v. Flournoy Management, LLC, et al.*, is continued to December 8, 2016, at 3:30 p.m. in Department 501

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(Tentative Rulings begin at the next page)

# Tentative Rulings for Department 402

(30)

## Tentative Ruling

Re: **The Best Service Co. Inc. v. Todd Spencer**  
Superior Court No. 16CECG01335

Hearing Date: Tuesday, November 8, 2016 (**Dept. 402**)

Motion: Defendant Oberti's Request for leave to amend

### **Tentative Ruling:**

To Deny.

### **Explanation:**

#### Code of Civil Procedure section 473

Code of Civil Procedure section 473 authorizes the trial court, in its discretion, to allow amendments in furtherance of justice. Courts employ a liberal policy in permitting amendments at any stage (*Congleton v. Natl. Union Fire Ins. Co.* (1987) 189 Cal.App.3d 51, 62.), “[w]here no prejudice is shown to the adverse party ....” (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564.) **But it is proper to deny leave when the proposed amended pleading is insufficient to state a defense.** (*Rose v. Ames* (1942) 53 Cal.App.2d 583, 589; *Hayutin v. Weintraub* (1962) 207 Cal.App.2d 497, 506-507; *Congleton, supra*, 189 Cal.App.3d 51 at p. 62.) Denial is justified where the defect is established by controlling precedent and the insufficiency cannot be cured. (*California Cas. General Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 280, overruled on other grounds.)

#### *The Fair Debt Collections Act: 15 U.S.C. § 1692k, subd. (d)*

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction. (15 U.S.C. § 1692k, subd. (d).)

Here, 15 U.S.C. § 1692k, subdivision (d) makes *clear* that violations of the Act are to be asserted by filing a complaint, *not* via affirmative defense. Therefore, it is proper to deny leave, regardless of other considerations such as liberality or prejudice. Nonetheless, Defendant cites to *Hernandez v. Williams Zinman & Parham* (9th Cir. 2016), case no. 14-15672 and *Atkinson v. Elk Corporation* (2003) 109 Ca1.App.4th 739, *neither of which are applicable*.

In *Hernandez*, Plaintiff asserted notice violations of 15 U.S.C. § 1692g against a subsequent debt collector. The district court granted summary judgment in favor of defendant, reasoning that he was not explicitly subject to the Act (based on a plain language interpretation). The Appeals Court reversed, expanding the application of 15 U.S.C. § 1692g to include all subsequent debt collectors, in addition to the initial debt collector. Here, the *Hernandez* decision is inapplicable



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**Tentative Ruling**

Re: **Orion Distributing, Inc. v. Daniel Pizarro, et al.**  
Court Case No. 16CECG00225

Hearing Date: November 8, 2016 (Dept. 402)

Motion: Cross-Defendants Sanger Pacific Associates, AMG & Associates, Housing Alternatives, TPC Idaho Holdings V, and Pacific West Builder's general and special demurrers, and motion to strike

**Tentative Ruling:**

To sustain the demurrers to the Second Amended Cross-Complaint, with leave to amend. To deny the motion to strike the Second Amended Cross-Complaint. To grant the motion to strike Cross-Complainant's claim for punitive damages, with leave to amend.

**Explanation:**

Demurrer

"Although California courts take a liberal view of unartfully drawn complaints, '[i]t remains essential...that a complaint set forth the actionable facts relied upon with sufficient precision to inform the defendant of what plaintiff is complaining, and what remedies are being sought.' [Citation.] Fairness dictates that a complaint give the defendant sufficient notice of the cause of action stated to be able to prepare the case. [Citation.]" (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 413.) Prior to filing a demurrer, the parties are required to meet and confer to determine whether the demurring party's objections can be resolved informally. (CCP § 430.41.)

In the case at bench, counsel for Cross-Defendants Sanger Pacific Associates, AMG & Associates, Housing Alternatives, TPV Idaho Holdings V, and Pacific West Builders ("Cross-Defendants"), filed a declaration explaining that she attempted multiple times over an approximately one month period to meet and confer with attorney Jeffrey Reich. Ms. Lewis states that Mr. Reich failed to respond to phone calls and emails requesting they meet and confer. This is a sufficient "failure to respond" meet and confer effort as required by the statute. (See CCP § 430.41 (a)(3)(B).) Mr. Reich is reminded that the meet and confer requirement is just that - a *requirement*. By such conduct, limited and valuable time is wasted by the court and opposing counsel.

*First and Second Causes of Action*

Cross-Defendants demur to the first cause of action on the grounds that (1) the subcontract is between Cross-Complainant and Cross-Defendant Pacific West Builders, Inc. ("PWB") only, but is alleged against all cross-defendants; and (2) the allegations in the complaint contradict the provisions of the subcontract. Cross-Defendants demur to the second cause of action on the grounds that it is conclusory, and it, too, should be maintained against Cross-Defendant PWB only.

Cross-Complainant, in its opposition, agrees with Cross-Defendants, insofar as the first and second causes of action should be directed against Cross-Defendant PWB alone, stating that directing these causes of action at the other cross-defendants was in error. As to the contradictions alleged by Cross-Defendants, Cross-Defendants fail to specify what the alleged contradictions are. As to Cross-Defendants' contention that the second cause of action's allegations are conclusory, the Court agrees that the cause of action is insufficiently supported by facts, and thus fails to state a cause of action.

Accordingly, Cross-Defendants' demurrers to Cross-Complainant's first and second causes of action are sustained, with leave to amend. Cross-Complainant is cautioned that leave to amend will not be granted indefinitely.

### *Third Cause of Action*

Cross-Defendants demur to the third cause of action on the grounds that it fails to state sufficient facts, and is a bad faith effort by Cross-Complainant to convert a breach of contract claim into a tort.

A complaint is adequate if its factual allegations are sufficient to support a cause of action on any available legal theory, whether that theory is specifically pleaded or not. (*Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.) It is error to deny leave to amend on demurrer where sufficient facts are alleged to support "relief under any possible legal theory." (*Smith v. Wells Fargo Bank, N.A.* (2005) 135 Cal.App.4th 1463, 1485, *emphasis in original*.) "As stated in *Standard Brands of California v. Bryce*, 1 Cal.2d 718, 'The subject-matter of an action and the issues involved are determinable from the facts pleaded, rather than from the title or prayer for relief.'" (*Coffelt v. Coffelt* (1964) 229 Cal.App.2d 659, 665.)

Here, Cross-Complainant again acknowledges error in its drafting, in that conversion is not the proper cause of action. Cross-Complainant seeks to use the same facts to allege fraud. As such, Cross-Complainant does not appear to be engaging in a bad faith effort to convert its cause of action. The demurrer to the third cause of action is sustained, with leave to amend.

### *Fourth Cause of Action*

Cross-Defendants demur to the fourth cause of action on the ground that because Cross-Complainant has alleged an enforceable contract, a cause of action for unjust enrichment is impermissible. Cross-Complainant states this cause of action is pled in the alternative, in the event that the contract at issue is found to be unenforceable.

Generally speaking, it is permissible for a plaintiff to plead alternative theories "in varied and inconsistent counts." (*Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 29.)

"[T]here is no cause of action in California for unjust enrichment. [Citations.] Unjust enrichment is synonymous with restitution. [Citation.]." (*Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1370.) Restitution may be awarded in lieu of breach of contract damages where there was an express contract, but it was procured by fraud

or is unenforceable or ineffective for some reason. (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 388; see also *Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 234.) Where a party alleges that it was fraudulently induced to enter into a contract, the party may either rescind the contract, offer to restore any benefits received, and seek restitution, or retain the benefits of the contract and seek damages for fraud. (*Denevi v. LGCC, LLC* (2004) 121 Cal.App.4th 1211, 1220.)

In the case at bench, Cross-Complainant seeks to allege fraud. If Cross-Complainant successfully alleges fraud, then a claim of unjust enrichment may be viable. The demurrer to the fourth cause of action is sustained, with leave to amend.

#### Motion to Strike

Where the defect raised by a motion to strike is reasonably capable of cure, leave to amend is routinely and liberally granted. (*CLD Const., Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1146.)

Cross-Defendants seek to strike the entire Second Amended Cross-Complaint as a false pleading, and/or to strike the request for punitive damages on the ground that a claim for punitive damages is improper in a breach of contract action.

#### *Sham Pleading*

A sham complaint may be stricken pursuant to the court's inherent power to prevent frustration, abuse, or disregard of its processes. (*People v. Oken* (1958) 159 Cal. App. 2d 456, 462.) For a court to strike a pleading as a sham, it must find that the allegations are false or that the action is without merit, while resolving all reasonable doubts in favor of the pleader. (*Duffy v. Campbell* (1967) 250 Cal.App.2d 662, 666; see also *Triodyne, Inc. v. Superior Court for Los Angeles County* (1966) 240 Cal.App.2d 536, 543.)

Here, Cross-Defendants provide no evidence that the Second Amended Cross-Complaint is a sham. The Second Amended Cross-Complaint contains some new allegations, and the opposition concedes that counsel made some drafting errors. The allegations of the Second Amended Cross-Complaint do not appear to be false, and the pleading does not appear to be without merit. Resolving all reasonable doubts in Cross-Complainant's favor, the Second Amended Cross-Complaint is valid, but in need of amendment. Accordingly, Cross-Defendants' motion to strike the Second Amended Cross-Complaint is denied.

#### *Punitive Damages*

To support punitive damages, a complaint must allege ultimate facts of the defendant's oppression, fraud, or malice. (Civ. Code §3294.) Generally, the pleading of fraud itself is sufficient to support punitive damages; in other words, it is unnecessary to allege the fraud was motivated by a malicious desire to cause harm to the pleading party. (*Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 610.)

Punitive damages are not recoverable in an action for breach of contract regardless of how willful, malicious or fraudulent the breach may be. (Civ. Code §3294;



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**Tentative Ruling**

Re: **Sicairos v. Ramirez**  
Court Case No. 16CECG01625

Hearing Date: November 8, 2016 **(Dept. 402)**

Motion: 1) Petition to Approve Compromise of Disputed Claim of Minor in Pending Action (Morelia Sicairos)  
2) Petition to Approve Compromise of Disputed Claim of Minor in Pending Action (Gabriel Sicairos)

**Tentative Ruling:**

To deny without prejudice. In the event that oral argument is requested minor is excused from appearing.

**Explanation:**

There are numerous problems with these petitions. First, there are some issues not necessarily mandating denial, but which should be addressed in the amended petitions: 1) Each one fails to accurately describe the accident at ¶6, at least how it is described in the Police Report, as the petitions state Ms. Reyna-Sanchez was the one driving westbound and attempting a left turn (i.e., the driver identified as at fault for the accident), whereas the police report indicates she was travelling eastbound and going straight and Ms. Ramirez was the one traveling westbound and turning; 2) Gabriel's petition fails to describe his injuries at ¶8; and 3) Morelia's petition states she was born in 2011, when it appears from the medical records she was born in 2001.

Second, no information is given as to why resort had to be made to Uninsured Motorist coverage; the police report states that Ms. Ramirez (the driver at fault) was insured by Alliance. Further, no information is given regarding investigation of other assets owned by Ms. Ramirez.

Third, some of the medical costs to be deducted from each minor's award are not supported:

- Morelia's petition:
  - The cost of \$545.00 for Canyon Medical Billing, MRI Imaging Center is not supported. No bills are attached for a "Canyon Medical Billing" and the "MRI Imaging Center of Fresno" bills (pp. 65-69, 79)<sup>1</sup> show a different address than is shown for Canyon at page 5, and furthermore the only bill shown for the latter entity is for \$95.00 (p. 79). Also, Attachment 12 (p. 102) indicates the MRI Imaging charges for Morelia only totaled \$450.00.
  - Dr. Garnica's charges of \$890.00 are not supported. The petition at pages 80, 81, and 83 show charges totaling only \$740.00 (which, curiously, is what

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<sup>1</sup> All page numbers refer to the scanned image of each petition in the court's online case management program.





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**Tentative Ruling**

Re: ***United Hmong Council, Inc. v. Hmong International New Year Foundation, Inc., et al.***  
Court Case No. 11 CECG 04276

Hearing Date: November 8, 2016 (Dept. 402)

Motion: Defendants' Motion for Attorney's Fees and Expenses  
Plaintiff's Motion to tax Costs

**Tentative Ruling:**

To grant the motion for attorney's fees and award attorney's fees in the amount of \$603,283.50. To award nothing in costs via this motion.

To grant the motion to tax costs in the total amount of \$5,375.25. The sum of \$563.00 is taxed from the category of service of process. The sum of \$4,812.25 is taxed from the category of Models, Blowups and Photocopies of Exhibits.

**Explanation:**

**Motion for Attorney's Fees**

*1. Plaintiff is the Prevailing Party on the Contract*

"Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties . . ." (Code Civ. Proc., § 1021.) Code of Civil Procedure section 1033.5 provides, in subdivision (a)(10), that attorney fees are "allowable as costs under Section 1032" when they are "authorized by" either "Contract," "Statute," or "Law."

Here, the relevant clause in the parties' agreement states:

10. Professionals' Fees. Should any litigations be commenced between the parties hereto concerning this Agreement, or the rights and duties of any party in relation thereto, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover from the losing party a reasonable sum for its attorneys', paralegals', and other professionals' fees and costs in such litigation, or any other separate action brought for that purpose.

(Second Amended Complaint, Ex. A.)

Civil Code section 1717 provides, in relevant part:

In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party,

then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

(Civ. Code § 1717, subd. (a).)

“[T]he party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section.” (Civ. Code, § 1717, subd. (b).) If a party has an unqualified win, the trial court has no discretion to deny the party attorney fees as a prevailing party under Civil Code section 1717. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 876.)

Here, the Second Amended Complaint alleges a declaratory relief cause of action, averring that a controversy exists with respect to which party possesses the sole right to conduct the Hmong New Year Celebration at the Fresno Fairgrounds, which is controlled by two written agreements, one of which contains the subject attorney's fees clause. A declaratory relief action that seeks to establish the parties' rights under a contract is an action on a contract within the meaning of section 1717. (*Excess Electronix v. Heger Realty Corp.* (1998) 64 Cal.App.4th 698, 710–711; *Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 347.)

Moreover, if a party prevails in the litigation, which plaintiff has done by virtue of obtaining the dismissal of the entire action, that party is entitled to his fees for litigating that entire action. (*Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1134.) “Where a cause of action based on the contract providing for attorney's fees is joined with other causes of action beyond the contract, the prevailing party may recover attorney's fees under [Civil Code] section 1717 [, rendering unilateral attorney's fees provisions reciprocal,] only as they relate to the contract action.” (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129.) Nonetheless, attorney fees are recoverable on other causes of action to the extent the other causes of action or other issues therein are so “ ‘inextricably intertwined’ ” with the issues raised in the contract causes of action as to make apportionment of the attorney fees “ ‘impracticable, if not impossible.’ ” (*Abdallah v. United Savings Bank* (1996) 43 Cal.App.4th 1101, 1111.) “Attorney's fees need not be apportioned when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed.” (*Reynolds Metals Co. v. Alperson, supra*, 25 Cal.3d at pp. 129–130.)

Here, the entire action concerned the right to conduct the Hmong New Year celebrations and the determination of any loss of revenue to the plaintiff. All of the causes of action were interrelated.

## 2. Amount of Fees

The court may only award a reasonable fee. First, attorney's fees are costs, and, by statute, all costs must be reasonable in amount. (Code Civ. Proc., §§ 1032, 1033.5, subd. (c)(3).) Second, Civil Code section 1717 specifically provides for an award of only

"reasonable" attorney fees. (*Deane Gardenhome Assn. v. Denktas* (1993) 13 Cal.App.4th 1394, 1399.)

#### A. *The Lodestar*

A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case.'" (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48.) Here, defendants seek a lodestar of 844,107.12 in attorney's fees and costs. According to the face sheet of Exhibit F to Jamison's Declaration, the fee component is \$792,800.50. As our Supreme Court has repeatedly made clear, the lodestar consists of "the number of hours *reasonably expended* multiplied by the *reasonable* hourly rate. . . ." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.) The California Supreme Court has noted that anchoring the calculation of attorney fees to the lodestar adjustment method "is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.'" (*Serrano III, supra*, 20 Cal.3d at p. 48, fn. 23.)

##### i. *Number of Hours Reasonably Expended*

While the fee awards should be fully compensatory, the trial court's role is not to simply rubber stamp the defendant's request. (*Ketchum v. Moses, supra*, 24 Cal.4th at p. 1133.) Rather, the court must ascertain whether the amount sought is reasonable. (*Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 361.) However, while an attorney fee award should ordinarily include compensation for all hours reasonably spent, inefficient or duplicative efforts will not be compensated. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321.) The person seeking an award of attorney's fees "is not necessarily entitled to compensation for the value of attorney services according to [his] own notion or to the full extent claimed by [him]. [Citations.]" (*Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 950.)

"Counsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary ... " (*Hensley v. Eckerhart, supra*, 461 U.S. at p. 434, citing *Copeland v. Marshall* (1980) 641 F.2d 880, 891 (en banc).)

Here there are categories of hours that are concerning and should be excluded:

##### *Fees Previously Submitted:*

By the court's calculations, defendants' law firm has previously submitted the invoices dated February 8, 2012, March 6, 2012, April 5, 2012, May 2, 2012, and \$15,573.00, \$2,311.00, \$3,383.50, and \$1,675.00 in fees eventually billed on the invoices dated June 5, 2012, July, 9, 2012, August 3, 2012, and September 10, 2012, respectively. This is the fee request that resulted in the initial fee award of \$88,742.47. Since the court has already reviewed these billings and determined that a fair award is \$88,742.47, there is no justification for submitting these bills again.

Furthermore, by the court's reckoning, defendants' law firm has previously submitted \$7,768.50 of the \$15,500.50 June 3, 2015 invoice, \$21,992.50 of the \$32,202.50 July 22, 2015 invoice, \$3,446.50 of the \$7,463.50 August 13, 2015 invoice, \$5,292.50 of the \$8,249.00 August 28, 2015 invoice, \$12,947.50 of the \$34,621.00 October 15, 2015 invoice, \$2,225.00 of the \$45,528.50 October 28, 2015 invoice and \$2,664.50 of the \$50,873.00 invoice. This resulted in the \$37,961.00 award. The court will not revisit the entries already submitted, considered and awarded or discounted. The billing entries not previously submitted will be considered.

Once these previously submitted billing entries are eliminated, the lodestar is reduced by \$137,370.00.

#### *Clerical Tasks*

"[P]urely clerical or secretarial tasks should not be billed ..., regardless of who performs them." (*Missouri v. Jenkins* (1989) 491 U.S. 274, 288.) Certain tasks such as scheduling court reporters and interpreters, preparing and filing proofs of service, and mailing and serving documents, are clerical or secretarial and should not be billed. (See for example, entries dated: August 17, 2012, "telephone conference with court reporter regarding record on appeal and payment for same" by timekeeper DOJ for .2 hours; May 5, 2015, "review and attend to service of Court's Order to Show Cause why sanctions, including dismissal of lawsuit, should not be entered for violating Turnover Order" by timekeeper DOJ for .3 hours; May 15, 2015 "attend to preparation and filing of proofs of service or Order to Show Cause" by timekeeper DOJ for .2 hours; June 4, 2015 "work on securing an interpreter for depositions" by timekeeper DOJ for .2 hours.) A total deduction of \$539.00 is will be imposed.

#### *Excessive Time*

Based on the court's calculations, counsel spent at least 17 hours preparing, revising and consulting on a Joint Status Report in an about November 2014. This is excessive. The court has reviewed the status report. While detailed, it is only 15 substantive pages long. As Mr. Jamison notes, the Report calls for a list of the disputed and undisputed facts, disputed and undisputed law, discovery status and plan, California Rule of Court, rule 3-400(b) factors, list of witnesses, bifurcation election, jury or non-jury election, and anticipated law and motion. Although Mr. Jamison characterizes the order as "essentially require[ing] an extensive pretrial work-up of the case as of that time," the report called for lists, not analysis, and a law firm should know these elements of its case three years into the litigation. It should not have taken more than one hour per page to draft the Report. A total deduction of \$3,500 will be taken.

#### *Redacted Entries*

Many billing entries are redacted to the point the relevancy of the task cannot be identified. (See for example, 10/22/13 by timekeeper DOJ, "Brief research regarding \_\_\_\_" for .6 hours at \$350.00 per hour for a total of \$210.00; 8/28/15 by timekeeper DOJ "Analyze and prepare memorandum \_\_\_\_" for .5 hours at a rate of \$350 per hour for a total of \$175.00; and 2/10/16 by timekeeper DOJ "Analyze \_\_\_\_" for .4 hours at a rate of \$365.00 per hour for a total of \$146.00.) This frustrates the court's ability to determine

whether the time spent on a particular task was reasonable. While it may be appropriate to redact billing statements to protect the attorney-client privilege (See *Banning v. Newdow* (2004) 119 Cal.App.4th 438, 454; *Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1327), it remains the burden of the party seeking attorney fees to prove that the fees it seeks are reasonable. (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 98.) If the redaction is too aggressive, the court cannot perform its gatekeeping task of determining a reasonable fee.

Particularly concerning is the entry dated May 29, 2015 by timekeeper DOJ "Exchange correspondence with opposing counsel and clients regarding \_\_\_\_" for .8 hours at a rate of \$350.00 for a total of \$280.00. If the information is not so sensitive that it may be shared with opposing counsel, why must it be redacted and kept from the court? This redaction casts a pall over the propriety of the heavy handed redactions. The court counted 160 entries redacted into unintelligibility, totaling \$48,108.00. If the court can't tell what counsel is doing in his or her billing entry, then it cannot pass on whether that task, and the time allocated to it, were reasonable. Consequently, the court deducts the sum of \$48,108.00 for excessive redaction.

#### *Costs Claimed in Motion for Attorney's Fees*

Defendants seek \$55,492.17 in costs paid directly by them and \$33,775.45 in costs invoiced. These costs include, but are not limited to: photocopying, computerized legal research, word processing charges, delivery and mileage charges, meals, travel charges, courier fees, transcript charges, and outside printing charges. A contractual attorney fees award may not include expenses expressly denominated by statute as nonrecoverable cost items, such as postage, telephone, copying charges and the miscellaneous charges sought by defendants. Such expenses cannot be made recoverable costs by characterizing them as attorney fees or counsel's costs disbursements. (*Hsu v. Semiconductor Systems, Inc.* (2005) 126 Cal.App.4th 1330, 1340-1342, (disapproving *Bussey v. Affleck* (1990) 225 Cal.App.3d 1162, 1166; see also *Jones v. Union Bank of Calif.* (2005) 127 CA4th 542, 550-551.) In *Hsu*, the parties' fee agreement stated that the prevailing party shall recover "all fees, costs and expenses," nevertheless, the appellate court reversed a fee award that included expert witness fees and general photocopying expenses. The court held, "In the absence of some specific provision of law otherwise, attorney fees and the expenses of litigation, whether termed costs, disbursements, outlays, or something else, are mutually exclusive, that is, attorney fees do not include such costs and costs do not include attorney fees.'" (*Id.* at p. 1342.)

Accordingly, none of the \$89,267.62 in costs paid either directly by the client or invoiced by defense counsel will be imposed on plaintiff.

#### *ii. Reasonable Hourly Compensation*

Reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type" (*Ketchum v. Moses, supra*, 24 Cal.4th at p. 1133.) Ordinarily, "the value of an attorney's time . . . is reflected in his normal billing rate." (*Mandel v. Lackner* (1979) 92 Cal. App. 3d 747, 761.)

The rates charged by the members of the Dowling Aaron firm are reasonable for the area and the experience of the timekeepers.

Attorney's fees of \$603,283.50 will be awarded.

#### *The Court Will Not Award Attorney's Fees Pursuant to Code of Civil Procedure 1218*

Defendants seek an award of attorney's fees of "at least \$79,761" against plaintiff, Chen Lee, Eugene Her, Michael Vang, Nao Vang Vue, and Teng Xiong for the second contempt proceeding. Code of Civil Procedure section 1218, subdivision (a), states, in relevant part: "a person who is subject to a court order as a party to the action, or any agent of this person, who is adjudged guilty of contempt for violating that court order may be ordered to pay to the party initiating the contempt proceeding the reasonable attorney's fees and costs incurred by this party in connection with the contempt proceeding." The key language here is "adjudged guilty of contempt." None of these persons were formally adjudged guilty of contempt.

This court's order found that though plaintiff's and the individual's conduct was contemptuous, no finding of contempt would be sufficient, thus it dismissed plaintiff's complaint instead.

"Respondents have been and are engaged in a pattern of severe, egregious, deliberate, inveterate and breathtaking misconduct that includes disobeying Court Orders, testifying falsely, and setting in motion an unconscionable scheme calculated to disrupt the judicial system by misleading the Court and finder of fact, interfering with their impartiality, interfering with a rightful decision in the case, and hampering the opposing parties' presentation of their defenses. The Court finds that Respondents will not move forward in an honest and truthful way and will render the trial on the merits in this case a sham and unfair for the defendants. By the applicable standard of proof, further contempt sanctions are warranted, but monetary sanctions, and even imprisonment up to five days, or some other sanction, will not cure or prevent the Respondents' pattern of misconduct. By clear and convincing evidence, the Court finds that only dismissal of the action is adequate to prevent an unfair trial, prevent fraud on the Court, protect the integrity of the Court as an institution of justice, and preserve the fairness of trial."

(RFJN, Ex. 7)

Although defendants cite cases containing language highlighting the legislative determination that one who undertakes the risk of successfully prosecuting a contempt proceeding should be compensated for his or her time, in each case someone had actually been found in contempt. Section 1218 requires a formal finding of contempt, which is lacking in this case, as such, attorney's fees may not be awarded against plaintiff, Chen Lee, Eugene Her, Michael Vang, Nao Vang Vue, and Teng Xiong for the second contempt proceeding.

#### **Plaintiff's Motion to Tax Costs**

## A. Motion to Tax — Generally

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. “If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they were not reasonable or necessary. On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs.” (*Ladas v. Calif. State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774.) “The court’s first determination, therefore, is whether the statute expressly allows the particular item, and whether it appears proper on its face. If so, the burden is on the objecting party to show them to be unnecessary or unreasonable.” (*Ibid.*) 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.)

## B. Specific Costs

### 1. Jury Fee of \$150

Plaintiff claims that defendants should have sought a refund of their advance jury fee deposit of \$150. However, Code of Civil Procedure section 631, subdivision (b) provides, in relevant part: “[a]t least one party demanding a jury on each side of a civil case shall pay a *nonrefundable fee* of one hundred fifty dollars (\$150) ...” (Emphasis added.) This fee was properly claimed and will not be stricken.

### 2. Service of Process Costs

Plaintiff challenges the charges for: 1) service of Michael Vang re: OSC for \$401.00; 2) service of Eugene Her re: OSC for \$436.39; 3) service of Cheng Lee re: OSC \$563.00; 4) service of Cheng Lee re: OSC for \$223.00; 5) deposition-service of Lo Thao for \$711.10; 6) deposition-service of Cheng Lee for \$354.40; and 8) deposition-service of Youa Tou Yang for \$846.93, as excessively and unreasonably costly. Plaintiff further complains that defendants do not provide dates for service, provide the name of the company providing the services, give any explanation as to what extraordinary efforts were necessary to effect service, or why these fees are well above ordinary service of process fees.

First, costs for service of process are expressly allowed as costs by Code of Civil Procedure section 1033.5, subdivision (a) (4)(B). Thus, they are proper on their face. Second, plaintiff’s counsel’s verification of the costs establishes that they were

necessarily incurred. (*Rappenecker v. Sea-Land Service, Inc.* (1979) 93 Cal.App.3d 256, 266.) As the reasonableness of the costs of service depend on factual matters the motion to tax costs must support the attack on the service of process costs by a declaration. (*County of Kern v. Ginn, supra*, 146 Cal.App.3d at pp. 1113-4.) No declaration is included with the motion to tax costs. Accordingly, plaintiff has failed to meet its burden of challenging the service of process costs as unreasonable in amount.

Furthermore, the declaration of Kay Burnett in opposition to the motion details the difficulty defendants encountered in serving these witnesses and the many stakeouts that had to be conducted. She also concedes that the cost item of \$563.00 should be withdrawn. Although plaintiff contends that defendants have failed to show that they asked plaintiff's counsel where these witnesses could be served or to accept service on their behalf, this is insufficient. Counsel cannot accept service for an OSC re: contempt; it must be personally served. (*Cedars-Sinai Imaging Medical Group v. Superior Court* (2000) 83 Cal.App.4th 1281, 1287.) Finally, it is plaintiff's burden, as the party contesting a facially valid cost, to affirmatively show that defense counsel knew where the witnesses could be served as part of its motion.

The service of process costs will not be taxed, except for the \$563.00 which was withdrawn.

### 3. Expert Witness Fees

Defendants seek to recover the following charges as expert witness fees: 1) Veritas Hmong International Services-Roby Lor in the amount of \$1,500.00; 2) Veritas Hmong International Services-Roby Lor in the amount of \$300.00; 3) Hemming Morse in the amount of \$17,855.15; and 4) Hemming Morse in the amount of \$2,6281.25, for a combined total of \$25,936.30. Fees of experts are not allowed as statutory costs unless they are 1) ordered by the court (Code Civ. Proc., § 1033.5, subd. (a)(8)) or 2) expressly authorized by law, if not ordered by the court (Code Civ. Proc., § 1033.5, subd. (b)(1).) Here, Civil Code section 1717 allows the recovery of the expert fees because the instant attorney's fees clause specifically allows the recovery of "other professionals' fees" (*Thrifty Payless, Inc. v. Mariners Mile Gateway, LLC* (2010) 185 Cal.App.4th 1050, 1065 [when "sophisticated parties" specifically provide for recovery of expert witness fees "in a freely negotiated contract," such fees may be recovered by including them on memorandum of costs and proving them if motion to tax costs is filed].) The expert interpreting costs and document management costs have been adequately proved in opposition to the motion to tax.

### 4. Models, Blowups and Photocopies of Exhibits

Code of Civil Procedure section 1033.5, subdivision (a)(13) indicates the cost of "[m]odels and blowups of exhibits and photocopies of exhibits may be allowed if they were reasonably helpful to aid the trier of fact." According to the declaration of Sean Peterson, 176 slides were created for, and used during, the contempt trial. However, Peterson's declaration also states that in preparing the Memorandum of Costs, he included "the amount expended on the preparation of potential exhibits," i.e., all the documents copied and scanned during the entire case. This is inappropriate. Documents not actually presented were not reasonably helpful to aid the trier of fact. (See *Seever v. Copley Press, Inc.* (2006) 141 Cal.App.4th 1550, 1559-1560 [costs for



# Tentative Rulings for Department 403

(30)

## Tentative Ruling

Re: **Anjelica Ramirez v. Eric Benitez**  
Superior Court Case No. 15CECG02562

Hearing Date: November 8, 2016 (Dept. 403)

Motion: Default Hearing

### **Tentative Ruling:**

To deny.

### **Explanation:**

#### *Notice*

In all default judgments, the demand sets a ceiling on recovery. (*David S. Karton, a Law Corp. v. Dougherty* (2009) 171 Cal.App.4th 133, 150.) And the amount demanded is determined both from the *prayer* and from the *damage allegations* of the complaint. (*National Diversified Services, Inc. v. Bernstein* (1985) 168 Cal.App.3d 410, 417-418.) Further, due process requires such *formal notice* of the amount demanded and is not satisfied by *constructive notice* from other sources. (*Stein v. York* (2010) 181 Cal.App.4th 320, 326—where complaint did not specify amount of damages sought, defaulted defendant's participation in discovery and other pretrial procedures did not waive his right to object to amount of damages awarded.)

In her Complaint, Plaintiff asserts that Defendant made one \$1000 payment (Complaint, ¶ FR-2). This leaves a balance of \$24,000. However, Plaintiff seeks judgment in the amount of \$24,500. This is \$500 above that which was formally noticed. *In her declaration (filed 4/8/16), Plaintiff asserts damages in the amount of \$24,500, but declarations do not provide formal notice (Stein, supra.)* Upon resubmission, Plaintiff must either amend her request or her Complaint.

#### *Interest*

Under California Rules of Court 3.1800 Default judgments, “[t]he following must be included in the documents filed with the clerk: (3) Interest computations as necessary . . .”

Here, if Plaintiff reduces her request to \$24,000, interest calculations must be adjusted accordingly and resubmitted.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 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:           KCK           on 11/04/16  
(Judge's initials)      (Date)

# **Tentative Rulings for Department 501**

# **Tentative Rulings for Department 502**

# Tentative Rulings for Department 503

(5)

## Tentative Ruling

Re: **Max Rossiter and Roberta Rossiter v. Ali Najafi, M.D.**  
Superior Court Case No. 15 CECG 03899

Hearing Date: November 8, 2016 (**Dept. 503**)

Motion: By Defendant to Dismiss

### **Tentative Ruling:**

To grant the motion. The case will be dismissed with prejudice. See *Leader v. Health Industries of America, Inc.* (2001) 89 CA4th 603, 611.

### **Explanation:**

On December 23, 2015, Plaintiff Max Rossiter, representing himself filed a complaint alleging a cause of action for "medical negligence." He alleged that while undergoing an anterior cervical discectomy and fusion performed by Dr. Najafi, there was a slight dural tear while removing the longitudinal ligament at the C3-C4 level. DR. Najafi placed "Gelfoam" on top and following the procedure at that level, "bio glue" was injected around the interbody case for adequate sealing of the dural tear. Plaintiff was released on September 23, 2014. See ¶¶ 11-12 of the Complaint.

Plaintiff alleges that on September 27, 2015, he was taken to ER at Community Medical Center after experiencing increasing worsening lower extremity weakness. An MRI revealed postoperative fluid collection in the paravertebral soft tissues extending from C1- C7. As a result, Plaintiff underwent a second surgery. See ¶13. In addition, the Complaint attempts to state a cause of action for loss of consortium. See ¶¶ 15-23.

Defendant filed a demurrer and motion to strike. It was heard on August 3, 2016. The Court granted the motion to strike on the grounds that Mr. Rossiter is not authorized to represent his wife. Leave to amend was granted. The demurrer brought on similar grounds was deemed moot. The Order was served by mail August 8, 2016. Plaintiffs were given 30 days to file an Amended Complaint. See Minute Order filed on August 3, 2016. No amended complaint was filed.

On September 28, 2016, Defendant filed and served a motion to dismiss pursuant to CCP § 581 "Dismissal of action or complaint by parties or court". Subsection (f)(4) states: The court may dismiss the complaint as to that defendant when:

After a motion to strike the whole of a complaint or portion thereof is granted with leave to amend the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.

The Plaintiffs have filed no opposition to the motion. They have not filed an amended complaint. Accordingly, the motion will be granted pursuant to CCP § 581 (f)(4).

Pursuant to California Rules of Court, rule 3.1312, subd.(a) and Code of Civil Procedure section 1019.5, subd. (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 11/07/16**  
(Judge's initials) (Date)

(6)

**Tentative Ruling**

Re: **Agadzhanyan v. Drury**  
Superior Court Case No.: 15CECG00491

Hearing Date: November 8, 2016 (**Dept. 503**)

Motion: By Defendants First Solar Electric, LLC, and CLP Resources, Inc., for summary judgment

**Tentative Ruling:**

To deny.

The Court has not considered the “response to Plaintiff’s further disputed material facts submitted in support of opposition to motion for summary judgment.” There is no statutory provision permitting supplemental separate statements to be filed with the reply. (Code Civ. Proc. § 437c, subd. (b)(4); *San Diego Watercrafts v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 312-316.)

**Explanation:**

*Summary judgment*

“As a summary judgment motion raises only questions of law regarding the construction and effect of supporting and opposing papers, this court independently applies the same three-step analysis required of the trial court. We identify issues framed by the pleadings; determine whether the moving party’s showing established facts that negate the opponent’s claim and justify a judgment in the moving party’s favor; and if it does, we finally determine whether the opposition demonstrates the existence of a triable, material factual issue. ... There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” The evidence of the party opposing the motion must be liberally construed, and that of the moving party strictly construed.” (*Halliburton Energy Services, Inc. v. Department of Transportation* (2013) 220 Cal.App.4th 87, 93.)

If a plaintiff would bear the burden of proof at trial on an issue by a preponderance of the evidence, when the defendant moves for summary judgment against such a plaintiff, the defendant may present evidence that would require such a trier of fact *not* to find any underlying material fact more likely than not. In other words, even if the plaintiff bears the burden on the issue at trial, the moving party bears the burden of persuasion on the motion for summary judgment that there is no genuine issue of material fact and that the defendant is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 845.)

Under the rule of completeness, the moving party must set forth all material evidence on point, not just the evidence favorable to it. Omitting deposition answers

that raise triable issues of fact might be treated as an attempt to mislead the court as to the state of the discovery record. (*Rio Linda Unified School District v. Superior Court* (1997) 52 Cal.App.4th 732, 740.)

### *Respondeat superior*

“The modern justification for vicarious liability [under the doctrine of respondeat superior] is a rule of policy, a deliberate allocation of a risk. The losses caused by the torts of employees, which as a practical matter are sure to occur in the conduct of the employer's enterprise, are placed upon that enterprise itself, as a required cost of doing business. They are placed upon the employer because, having engaged in an enterprise which will, on the basis of past experience, involve harm to others through the torts of employees, and sought to profit by it, it is just that he, rather than the innocent injured plaintiff, should bear them; and because he is better able to absorb them, and to distribute them, through prices, rates or liability insurance, to the public, and so to shift them to society, to the community at large. The employer is liable not because the employer has control over the employee or is in some way at fault, but because the employer's enterprise creates inevitable risks as a part of doing business. Under respondeat superior, an employer is liable for the risks that may fairly be regarded as typical of or broadly incidental to the enterprise the employer has undertaken, the risks inherent in or created by the enterprise.” [Internal citations and quotation marks omitted.] (*Halliburton Energy Services, Inc. v. Department of Transportation, supra*, 220 Cal.App.4th 87, 94.)

Under the “going and coming” rule, an employee going to and from work is ordinarily considered outside the scope of employment so that the employer is not liable for the employee's torts. The “going and coming” rule is sometimes rationalized on the theory that the employment relationship is “suspended” from the employee leaves the employer's premises until he returns, or that in commuting, the employee is not rendering service to his employer. Nevertheless, there are exceptions to the rule: one is the “incidental benefit” exception when the commute involves “an incidental benefit to the employer, not common to commute trips by ordinary members of the work force. When the employer incidentally benefits from the employee's commute, that commute may become part of the employee's work day for the purposes of respondeat superior liability.” (*Halliburton Energy Services, Inc. v. Department of Transportation, supra*, 220 Cal.App.4th 87, 95-96.)

The incidental benefit exception (also called the “required vehicle” exception) has been applied when the employer furnishes, or requires the employee to furnish, a vehicle for transportation on the job, and the negligence occurs while the employee is traveling to or from work in that vehicle. The theory is that the employer benefits from the employee driving the vehicle to and from work because the vehicle is then available for use in the employer's business during the working day. It is also available to the employee during off-duty hours in case it is needed for emergency business trips or to make business stops on the way to or from the work place. “[W]hen a business enterprise requires an employee to drive to and from its office in order to have his vehicle available for company business during the day, accidents on the way to or from the office are statistically certain to occur eventually, and, the business enterprise having required the driving to and from work, the risk of such accidents are risks incident to the business enterprise.” (*Halliburton Energy Services, Inc. v. Department of*

*Transportation, supra*, 220 Cal.App.4th 87, 96, citing *Huntsinger v. Glass Containers Corp.* (1972) 22 Cal.App.3d 803, 810.)

“Where the incidental benefit exception applies, the employee's commute directly between work and home is considered to be within the scope of employment for respondeat superior purposes. Minor deviations from a direct commute are also included, but there is no respondeat superior liability if the employee substantially departs from the employer's business or is engaged in a purely personal activity at the time of the tortious injury.” (*Halliburton Energy Services, Inc. v. Department of Transportation, supra*, 220 Cal.App.4th 87, 97.)

However, even where the incidental benefit exception applies, an employer will not be liable under the doctrine of respondeat superior if the employee was engaged in purely personal business at the time of the accident, and was not acting within the scope of his employment for purposes of respondeat superior liability. (*Halliburton Energy Services, Inc. v. Department of Transportation, supra*, 220 Cal.App.4th 87, 96-97.)

Courts have applied the rule by distinguishing between activities that are typical of, or broadly incidental to, the employer's enterprises, and activities that are purely personal to the employee, in determining whether activities during the work day are within the scope of the employment. For example, the general rule is that, when an employee is traveling to or from lunch, even in the employer's vehicle, he is not acting within the scope of his employment. (*Halliburton Energy Services, Inc. v. Department of Transportation, supra*, 220 Cal.App.4th 87, 101.)

The incidental benefit exception to the going and coming rule may bring the employee's commute to and from work within the scope of the employee's employment, if the employee does not deviate substantially from a direct commute in order to carry out his own personal business. But the exception does not apply if the employee substantially departs from his or her employment duties during the commute. The incidental benefit exception also does not apply if the employer's entire trip serves only his or her own personal purposes. (*Halliburton Energy Services, Inc. v. Department of Transportation, supra*, 220 Cal.App.4th 87, 102.)

*There is a triable issue of material fact as to whether the incidental benefit exception to the going and coming rule applies*

Here, the motion is denied because there is a triable issue of material fact as to whether the whether the incidental benefit exception to the going and coming rule applies.

Mr. Drury testified at deposition that he was “inspecting several sites at a time a lot of the times. There was a project in Bakersfield, there was a project in Lost Hills, there was a project in Mendota, a project in several other areas, and I was the high voltage electrical inspector on all those sites driving from site to site.” Mr. Drury routinely drove out to job sites. (Depos. of David Drury, pp. 20:12-17; 94:14-16.) On the morning of the accident on his way out to Mendota, he stopped at Smart & Final. (Depos. of David Drury, p. 29:2-3, 6-7.) Mr. Drury testified that he would start billing when he started driving to the job. (Depos. of David Drury, p. 75:4-14.) There was quite a bit of redundant testimony that Mr. Drury started billing at 7:00 a.m. each day, no matter when he

actually started work because that is when “the men” were needed, or, inferentially, just for purposes of convenience. (Depos. of David Drury, pp. 116:2-6; 117:16-23; 118:14-25; 123:8-13; 124:3-6; 131:20-132:22; 134:9-22.) Mr. Drury testified was told he was supposed to bill for his time traveling to the job site, and then also traveling back from the job site, as part of his work. “My travel time is included period.” His travel time included traveling between seven different job sites that had inspections that were needed, and that sometimes he stopped for lunch while he was traveling to these different projects. (Depos. of David Drury, pp. 81:4-25; 100:14-23, 116:24-117:5; 125:19-126:4.) He testified on the day of the accident, had he not stopped at the Smart & Final to pick up lunch, he would have gone over to the Costco gas station, got gas, and headed directly to the job site. (Depos. of David Drury, pp. 134:25-135:17.) He testified that his job was to inspect six and a half miles, three and a half miles, sometimes more of a “genti” or generation tile line and there was mileage being put on the car during those inspections and sometimes “you need gas.” He was asked he if sometimes used his vehicle on the job site, and he responded: “Always.” “Not sometimes. Always.” The questioning attorney, Nancy Vance, said she was picturing somebody going to the job site and parking their car and walking around? Mr. Drury responded: “No. This was – “ and the Plaintiff's attorney interrupted and said there was “no question.” Defense counsel, Ms. Vance, then asked: “So when you went to the job sites, then you would be driving your vehicle around the job sites to go out and look at the installation?” Mr. Drury replied: “Yes, ma'am, always.” “On all the sites.” (Depos. of David Drury, pp. 142:25-143:22.)

Liberalizing the opposing evidence to the motion, as the Court must, a reasonable trier of fact could find there is a triable issue of material fact as to whether the incidental benefit exception to the going and coming rule applies. There was testimony from Mr. Drury that he was routinely required to use his vehicle for work, traveling from job site to job site, that his commuting time was considered to be included, and that on the day of the accident, had he not deviated to pick up lunch and a few snacks at Smart & Final, he would have traveled straight to the Costco gas station to get gas before traveling to Mendota, which a reasonable trier of fact could conclude benefited the businesses of Defendants CLP Resources, Inc., and First Solar Electric, LLC, so that the allocation of the loss to them as a required cost of doing business might be justified. (*Halliburton Energy Services, Inc. v. Department of Transportation, supra*, 220 Cal.App.4th 87, 94.)

Pursuant to California Rules of Court, rule 3.1312(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 11/07/16**  
(Judge's initials)            (Date)