

Tentative Rulings for May 11, 2022
Department 501

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).)

19CECG03517 *J&J Funding, Inc. v. American Transport Service, LLC* (Dept. 501)

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

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(03)

Tentative Ruling

Re: **Paul v. Serimian, et al.**
Superior Court Case No. 21CECG03270

Hearing Date: May 11, 2022(Dept. 501)

Motion: Plaintiff's Application for Writ of Possession

Tentative Ruling:

To deny plaintiff's application for a writ of possession. (Code Civ. Proc. § 512.010, *et seq.*) To issue an injunction barring defendants from encumbering, transferring, damaging, or selling the subject Jeep and rims until plaintiff's claims have been finally resolved.

In the event of a timely request for oral argument, such argument will be entertained on May 12, 2022, at 3:30 p.m. in Department 501.

Explanation:

The court shall issue a writ of possession if it finds that the plaintiff's claim is probably valid and the other requirements for issuing the writ have been satisfied. (Code Civ. Proc. §§ 512.040, subd. (b); 515.060, subd. (a)(1).) Among other things, the plaintiff's application must show the basis of the plaintiff's claim, that the plaintiff is entitled to possession of the property claimed, and that the property is wrongfully detained by the defendant. (Code Civ. Proc. § 512.010, subd. (b).) The plaintiff must also satisfy the requirements for posting an undertaking under Code of Civil Procedure section 515.010 in order to obtain the writ of possession. (Code Civ. Proc. § 512.060, subd. (a)(2).)

Under section 515.010, the court shall not issue a writ of possession until the plaintiff has filed an undertaking with the court, unless the exception under section 515.010, subdivision (b) applies. (Code Civ. Proc. § 515.010, subd. (a).) The undertaking shall be in an amount of not less than twice the value of the defendant's interest in the property or in a greater amount. (*Ibid.*) However, if the court finds that the defendant has no interest in the property, the court shall waive the requirement of the undertaking and shall include in the order for issuance of the writ the amount of the defendant's undertaking sufficient to satisfy the requirements of section 515.020, subdivision (b). (Code Civ. Proc. § 515.010, subd. (b).)

Finally, "If the defendant desires to oppose the issuance of the writ, he shall file with the court either an affidavit providing evidence sufficient to defeat the plaintiff's right to issuance of the writ or an undertaking to stay the delivery of the property in accordance with Section 515.020." (Code Civ. Proc. § 512.040, subd. (c).)

Here, plaintiff seeks a writ of possession for the 1945 Willys Jeep and a set of rims for a 1985 Camaro. Plaintiff claims that the Jeep and rims were collateral for a \$10,000 loan that he obtained from defendant Serimian in 2011, and that he offered to repay the

loan in 2021 but Serimian has refused to accept payment or return the Jeep and rims to him. However, defendants Serimian and Balakian claim that there was no loan, that Balakian paid plaintiff \$10,000 in 2009 for the purchase of a 1985 Camaro and an extra set of rims, and that the parties later agreed to exchange the Camaro for the Jeep in 2014.

Both parties' versions of the events leading up to defendants' possession of the Jeep have serious problems. Plaintiff's claim that there was a loan agreement is undermined by the fact that there was no written loan agreement, the loan apparently had no due date, and the parties never agreed on an interest rate or any specific terms to the loan. Serimian allegedly simply told plaintiff that he could pay off the loan whenever he had enough money to pay off the entire loan at once. Serimian also never demanded repayment, despite the passage of about ten years since he made the loan, and plaintiff did not offer to repay the loan until 2021. It is also unclear what amount plaintiff now owes on the loan, as the parties apparently never agreed on an interest rate. Plaintiff claims that he offered to repay the full amount of the loan plus a reasonable interest rate, but he does not state what amount that would be after ten years. Assuming a 10% per annum rate, defendants claim that plaintiff would owe at least another \$12,000 in interest. Plaintiff states that he did offer to pay some interest on the loan, but not the actual amount that he offered to pay back. Therefore, plaintiff's claim that the Jeep and rims were collateral for the loan and that he offered to repay the full amount owed on the loan is somewhat problematic.

On the other hand, defendants' claim that Balakian purchased the Jeep and rims outright from plaintiff also has serious problems. Defendants have not provided any documentation indicating that there was ever a sale of the Camaro or the Jeep, and while they have possession of the certificate of title for the Jeep, they admit that plaintiff never signed the certificate of title to transfer ownership to Balakian. Nor was the transfer ever recorded with the DMV, as required under Vehicle Code section 5600, subdivision (a). As defendants admit that they are avid car collectors, it is implausible that they would forget to take the basic step of having plaintiff sign over his pink slip to Balakian and record the transfer for both the Camaro and the Jeep. Also, it seems implausible that plaintiff would be willing to sell his 1945 Willys Jeep for only \$10,000, when the Jeep is valued at approximately \$50,000. In addition, plaintiff continued to pay registration and insurance for the Jeep for years after the claimed sale to Balakian, which is inconsistent with defendants' claim that they bought the Jeep from him in 2014. By contrast, Balakian has not offered any evidence that he ever paid registration or insurance on the Jeep. Also, to the extent that defendants may be claiming that plaintiff still owes them money, there is no evidence that defendants have a lien against the Jeep to secure the alleged loan. Thus, their claim that they have a right to possess the Jeep and rims has serious problems as well.

Given the conflicting evidence as to the nature and terms of the agreement, and the disputed evidence as to whether the agreement was for a loan or for a sale of the Jeep, as well as the exact terms, due date, and interest rate for the alleged loan, the court intends to find that plaintiff has not established the probable validity of his claims for breach of contract, trespass to chattels, and conversion. It is simply not clear at this point in the litigation whether plaintiff is entitled to possession of the Jeep and rims or not, or that defendants have wrongfully retained possession of the property in violation of

plaintiff's rights. As a result, the court intends to deny the application for a writ of possession.

However, the court does intend to issue an order enjoining defendants from encumbering, selling, damaging, or transferring the Jeep and rims until the litigation is resolved. This order will preserve the status quo and prevent the Jeep from being damaged, sold, or lost before the merits of plaintiff's claims can be heard.

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: DTT **on** 5/9/2022 .
 (Judge's initials) (Date)

(27)

Tentative Ruling

Re: **Mohammadi v. City of Fresno, et al.**
Superior Court Case No. 16CECG01808

Hearing Date: May 11, 2022 (Dept. 501)

Motion: by Defendants to Tax Costs

Tentative Ruling:

To grant in part and deny in part, for the reasons mentioned below. To tax \$2,354.60 from the amended total requested in the opposition (\$9,077.45).

In the event of a timely request for oral argument, such argument will be entertained on May 12, 2022, at 3:30 p.m. in Department 501.

Explanation:

Untimely Opposition

Plaintiff's counsel attributes the untimely opposition to his "clerical error." Defendants were able to file a reply and do not assert prejudice. Therefore, the opposition was considered in determining this motion. (See *Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal.App.5th 1197, 1202.)

Defendants' reply notes that the requested amount is now \$9,077.55, and requests that it be taxed and reduced to \$4,759.22.

Allowable Costs 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.

[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, 1113-1114.)

Models, blowups, and photocopies of exhibits

Defendants object to the combined \$6,985.09 for section 12 contending that the original attorney did not present the subject evidence, the evidence did not reasonably aid the jury, and the evidence was encompassed by expert testimony, which is unrecoverable. Defendants further contend that plaintiff is entitled to, at most, \$1,255.11, for section 12 because "plaintiff and defendants shared the costs of trial exhibits" (See Jeffcoach Decl. ¶ 3.)

Nevertheless, the jury viewed at least one of the prepared animations, and the preparation of the second reasonably assisted in identifying which animation would be comparatively more likely to aid the jury. (See Code Civ. Proc., § 1033.5, subd. (c)(4) ["Items not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion."]; see also *Segal v. ASICS America Corp.* (2022) 12 Cal.5th 651, 667 [costs awards for demonstratives unused during trial are discretionary].) In addition, although moving counsel's declaration implies an agreement to share costs, there is no evidence offered to the formation or scope of such an agreement. Accordingly, defendants have not satisfied their burden as to the \$5,629 stated in the October 13, 2022, declaration. As it relates to this cost, the motion is denied.

On the other hand, plaintiff's opposition does not address the \$1,355.60 claimed by Rodney Haron, which appears doubtful considering his substitution before trial. Consequently, because the opposition does not address the doubt raised, defendants' objection is meritorious. Therefore, the amount requested in plaintiff's opposition is taxed and reduced by \$1,355.60.

Filing Fees, Deposition Costs, and Electronic Filing or Service

The amounts requested in both memorandums for filing fees, deposition costs, and electronic filing or service do not appear facially doubtful. Defendants contend these costs should be taxed essentially because they are not itemized, but offer no support how the requested amounts are unreasonable. Furthermore, plaintiff's opposition provides sufficient itemization and support for such costs, and such support is unchallenged in defendants' reply. Therefore, defendants' have not met their burden. (See *Nelson, supra*, 72 Cal.App.4th at p. 131 ["the burden of showing that an item is not properly chargeable or is unreasonable is upon the [objecting party]."] [Citation.]") The motion is denied as it relates to these costs.

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Tentative Ruling

Re: ***Huerta v. Bath Farms, Inc.***
Superior Court Case No. 21CECG01833

Hearing Date: May 11, 2022 (Dept. 501)

Motion: by Defendant Bath Farms, Inc., for Order Compelling Deposition of Plaintiff Ramon Huerta and Imposition of Sanctions

Tentative Ruling:

Defendant's motion to compel deposition of plaintiff is rendered moot by plaintiff's attendance at the deposition conducted on March 23, 2022.

To impose monetary sanctions in the total amount of \$2,275 against defendant and its attorney of record, jointly and severally, payable within 30 days of the date of this order, with the time to run from the service of this minute order by the clerk.

The request for an order compelling plaintiff's answers or productions to deposition questions in defendant's reply is not considered. If defendant seeks such relief, defendant must file a motion to compel pursuant to Code of Civil Procedure section 2025.480.

In the event of a timely request for oral argument, such argument will be entertained on May 12, 2022, at 3:30 p.m. in Department 501.

Explanation:

Monetary Sanctions:

If a motion to compel is granted, the court shall impose a monetary sanctions "unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2025.450, subd. (g)(1).) Monetary sanctions can also be imposed against a party or attorney engaging in the misuse of the discovery process, such as, "employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense..." or unsuccessfully making a motion to compel without substantial justification. (Code Civ. Proc., § 2023.030, subd. (a); 2023.010, subd. (c); 2023.010, subd. (h).) The California Rules of Court authorizes an award of sanctions for failure to provide discovery even if "the requested discovery was provided to the moving party after the motion was filed." (Cal. Rules of Court, rule 3.1348(a).)

- Defendant's Request:

1. The September 24, 2021 Deposition:

Defendant's motion includes a series of emails between plaintiff's counsel and defense counsel, indicating that plaintiff was not available to appear for the September 24, 2021, deposition. Provided that plaintiff's counsel offered alternative dates—November 5 or 19, 2021, for re-scheduling, it appears the imposition of monetary sanctions against plaintiff would be unjust. Although defendant argues that: (1) plaintiff's communication as to his unavailability was untimely; (2) plaintiff unreasonably failed to provide specific reasons and/or documentation for his unavailability; and (3) plaintiff's proposed dates were unreasonably delayed, defendant provides no authority to support these arguments. Additionally, plaintiff attributes his unavailability as a result of the commencement of his new employment and inability to obtain time-off. (Huerta, Decl., ¶ 4.)

2. The November 22, 2021 Deposition:

Both parties attach a series of emails attributing plaintiff's failure to appear for deposition to an unexpected medical emergency. Again, provided that plaintiff's counsel offered four alternative dates for the following week for re-scheduling, the imposition of monetary sanctions against plaintiff is unjust. Although plaintiff provided notice of his inability to appear less than 24 hours prior to the scheduled deposition, the nature of a medical emergency is often unforeseen and unpredictable. Defendant's argument that plaintiff was required to provide adequate explanation and medical documentation is unfounded. Moreover, despite defendant's claim that plaintiff refused to provide any declaration regarding the emergency, plaintiff's counsel attaches multiple emails offering such declaration to defense counsel. (Aviles, Decl., ¶ 9, Exh. 3.) Additionally, defendant provides insufficient evidence to support his contentions that plaintiff has intentionally delayed his appearance at deposition to accommodate his counsel's schedule.

Finally, although defendant further argues that plaintiff's credibility should be questioned as a result of the "pattern of refusing to appear, canceling depositions, and [plaintiff's counsel's] refusing to make more than one trip to Fresno..." (Reply, 4:5-11) defendant fails to sufficiently provide evidence supporting this argument.

Thus, the court intends to deny defendant's request for sanctions.

- Plaintiff's Request:

Plaintiff argues that defendant has unnecessarily brought the instant motion to compel, causing undue burden and expense by requiring plaintiff to respond to such a motion. Plaintiff provides email correspondence indicating that on November 23, 2021, defense counsel inquired as to plaintiff's availability for his deposition on December 27, 2021, to which plaintiff's counsel responded by inquiring as to defendant's availability on December 28 and 29, 2021. Defense counsel never meaningfully responded to that inquiry and instead brought the instant motion. On the other hand, defendant indicates

that but for the instant motion, plaintiff never would have appeared at deposition. However, as previously discussed, it appears there was substantial justification for plaintiff's nonappearance at the September 24, 2021, and November 22, 2021, deposition sessions. Moreover, the court does not find defendant's repeated demands for plaintiff's medical documentation to be in good faith. Thus, the court intends to grant plaintiff's request for monetary sanctions.

The court finds it reasonable to allow 5.5 hours for the preparation of plaintiff's opposition and 1.5 hours for reviewing defendant's reply brief at the hourly rate of \$325. Defendant argues that counsel's hourly rate of \$475 is unreasonable in Fresno County and that the reasonable rate should be between \$150 - \$200; however, defense counsel concedes that a reasonable range of attorneys' fees in the Central Valley is \$200 to \$450. (Sagaser, Decl., ¶ 26.) Since no further information is provided by plaintiff's counsel as to the reasonableness of his hourly rate, the court will apply the average of the \$200 - \$450 rate provided by defense counsel, \$325. Therefore, the total amount of sanctions awarded against defendant is \$2,275. Should the parties' appearance be necessary at hearing, the court will consider imposing additional sanctions.

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: DTT on 5/10/2022.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***In Re: Mountain View Cemetery Improvement Association***
Superior Court Case No. 22CECG01058

Hearing Date: May 11, 2022 (Dept. 501)

Motion: Petition for Vacation of Minor Cemetery Roadways and Pathways for Replat into Plots

Tentative Ruling:

To continue the hearing to Wednesday, June 8, 2022, to allow the petitioner to submit a verification of the Petition. (Health & Saf. Code, § 8704.)

In the event of a timely request for oral argument, such argument will be entertained on May 12, 2022, at 3:30 p.m. in Department 501.

Explanation:

“The petition shall be verified and shall specify the facts of such ownership and shall state the reasons for the proposed change and what provisions have theretofore been made for the endowment care of the cemetery.” (Health & Saf. Code, § 8704.)

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: DTT **on** 5/9/2022 .
 (Judge's initials) (Date)