

Tentative Rulings for May 26, 2022
Department 403

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).)

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 Ruling

Re: **Kimberlee Gobel v. Allen Clyde, DPM**
Superior Court Case No. 20CECG00500

Hearing Date: May 26, 2022 (Dept. 403)

Motion: By Plaintiff to compel responses to Plaintiff's request for production (set two)

Tentative Ruling:

To grant the motion to compel responses, without objection, to plaintiff's request for production of documents, set two. Defendant Allen Clyde, DPM shall provide the requested documents for inspection within 5 days from the date of this order.

To deny the request for monetary sanctions, as set forth below.

Explanation:

Merits

Ordinarily, discovery proceedings are required to be completed before the 30th day before trial and a trial continuance does not automatically reopen discovery. (Code Civ. Proc., § 2024.020.) Nevertheless, urgency legislation related to the state of emergency proclaimed by the Governor on March 4, 2020 specified that a continuance or postponement of a trial “*extends any deadlines that have not already passed as of March 19, 2020, applicable to discovery ...*” (Code Civ. Proc., § 599, subd. (a), emphasis added.) In addition, subdivision (b) of section 599 specifies that the end date of relief eligibility is solely contingent upon the duration of the Governor's state of emergency proclamation. In other words, the Legislature specifically excluded from relief discovery deadlines expiring prior to March 19, 2020 and discovery deadlines expiring after the state of emergency ends.

Defendant does not assert that the state of emergency proclaimed by the Governor on March 4, 2020 has ended. Rather, defendant emphasizes and interprets Code of Civil Procedure section 599's language restricting relief to only “deadlines that have not already passed” as barring plaintiff's request for production, set two, because discovery had already closed when trial was last continued.

The Legislature, however, qualified subdivision (a) of Code of Civil Procedure section 599 by establishing a specific date - March 19, 2020 - to measure threshold eligibility for relief. The Legislature is presumed to have known how the selection of a specific date would affect the discovery cut off dates associated with future trial continuances. (See *People v. Frahs* (2020) 9 Cal.5th 618, 634 [“the Legislature is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted.”] [Citation.]”). Furthermore, a statute's words are given a “plain and commonsense” meaning. (*Flannery v. Prentice* (2001) 26 Cal.4th 572, 577.)

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Tentative Ruling

Re: **Marilou Moya vs. Saint Agnes Medical Center**
Superior Court Case No. 20CECG00975

Hearing Date: May 26, 2022 (Dept. 403)

Motion: (1) Plaintiff's Motion For Final Approval of Class Settlement
(2) Plaintiff's Motion for Attorneys' Fees, Costs, Service Award

Tentative Ruling:

To grant sign the proposed order.

To order the parties to return on May 4, 2023, at 3:30 p.m. in Department 403 to inform the court of the total amount actually paid to the class members, pursuant to Code of Civil Procedure section 384, subdivision (b), so that the judgment can be amended and the distribution of any *cy pres* funds can be ordered. Documentation as to the amount paid to class members must be filed on or before April 13, 2023.

Explanation:

Final Approval of Settlement

California Rules of Court, rule 3.769(g) states: "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." Subsection (h) states: "If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment." (Emphasis added.)

The Court has vetted the fairness of the settlement through prior hearings, each with its own filings. The settlement here generally meets the standards for fairness, and the class has approved it, with no objections, opt-outs or disputes. Ultimately none of the 105 notices were undeliverable. The court finds that the method of notice followed, which this court approved at the prior hearing, comports with due process and was reasonably calculated to reach the absent class members:

"Individual notice of class proceedings is not meant to guarantee that every member entitled to individual notice receives such notice," but "it is the court's duty to ensure that the notice ordered is reasonably calculated to reach the absent class members." *Hallman v. Pa. Life Ins. Co.*, 536 F.Supp. 745, 748-49 (N.D.Ala.1982) (quotation marks and citation omitted); see also *In re Viatron Computer Sys. Corp. Litig.*, 614 F.2d 11, 13 (1st Cir.1980); *Key v. Gillette Co.*, 90 F.R.D. 606, 612 (D.Mass.1981); cf. *Lombard*, at 155. *After such appropriate notice is given, if the absent class members fail to opt out of the class action, such*

(03)

Tentative Ruling

Re: **Thomas Wash v. John Wash**
Superior Court Case No. 09CECG00933

Hearing Date: May 26, 2022 (Dept. 403)

Motion: Defendant John Wash's Motion for Satisfaction of Judgment, or in the Alternative Motion to Stay Action Pending Outcome of the Appeal in Case No. F080399

Tentative Ruling:

To deny defendant's motion for an order for satisfaction of the judgment or attorney's fees orders against him. (Code Civ. Proc. § 724.050.) To deny defendant's motion for an order staying the action pending the outcome of the appeal in case no. F080399.

Explanation:

Defendant John Wash moves for an order declaring him to have satisfied the orders for attorney's fees under Code of Civil Procedure section 724.050. Section 724.050 states,

(a) If a money judgment has been satisfied, the judgment debtor, the owner of real or personal property subject to a judgment lien created under the judgment, or a person having a security interest in or a lien on personal property subject to a judgment lien created under the judgment may serve personally or by mail on the judgment creditor a demand in writing that the judgment creditor do one or both of the following:

(1) File an acknowledgment of satisfaction of judgment with the court.

(2) Execute, acknowledge, and deliver an acknowledgment of satisfaction of judgment to the person who made the demand.

...

(c) If the judgment has been satisfied, the judgment creditor shall comply with the demand not later than 15 days after actual receipt of the demand.

(d) If the judgment creditor does not comply with the demand within the time allowed, the person making the demand may apply to the court on noticed motion for an order requiring the judgment creditor to comply with the demand. The notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. If the court determines that the judgment has been satisfied and that the judgment creditor has not complied with the demand, the court shall either (1) order the judgment creditor to comply with the demand or (2) order the court clerk to enter satisfaction of the judgment.

(Code Civ. Proc., § 724.050, emphasis added.)

“This section has been interpreted to require the trial court to first determine whether the judgment has been satisfied in fact before ordering entry of satisfaction of judgment.” (*Schumacher v. Ayerve* (1992) 9 Cal.App.4th 1860, 1863, internal citations omitted.) “A trial court’s decision to apply a credit in partial satisfaction of the judgment is an exercise of the court’s equitable discretion.” (*Jhaveri v. Teitelbaum* (2009) 176 Cal.App.4th 740, 749, internal citations omitted.)

Here, defendant was ordered to pay attorney’s fees of over \$18,000 by the court on three separate occasions over the course of several years. He claims that he is now entitled to an order deeming him to have paid those fees because plaintiff Maria Wash allegedly owes him money from the profits of past seasons from their farming partnership.

Yet there is no evidence that defendant has actually paid the attorney’s fees as he was ordered to do. In fact, he implicitly admits that he has *not* paid the fees, as he states that he does not have the means to pay and that he is in danger of being held in contempt for failure to pay the court-ordered fees if the case is not stayed pending the appeal. Instead, defendant contends that the court should deem him to have paid the fees because Maria allegedly owes him money from the income of the farm partnership from several past seasons. Yet the amounts that Maria may owe to defendant from the partnership and any expenses that may be owed are still in dispute, and defendant cites to no authorities that would require Maria to apply them to the attorney’s fees that defendant indisputably owes to her. Regardless of whether Maria may ultimately have to pay John some money when an accounting of the partnership’s income and expenses is completed at some time in the future, John has been ordered to pay attorney’s fees to Maria, and there is no indication that he has actually paid those fees to her at this time. As a result, John is not entitled to an order determining that he has satisfied the orders for attorney’s fees. Consequently, the court intends to deny John’s motion for an order declaring that he has satisfied the judgment against him.

In addition, the court intends to deny John’s alternative request for an order staying the action pending the latest appeal. As a general rule, “‘the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.’” (§ 916, subd. (a).) The purpose of the automatic stay provision of section 916, subdivision (a) ‘is to protect the appellate court’s jurisdiction by preserving the status quo until the appeal is decided. The [automatic stay] prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it.’” (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189, internal citation omitted.)

“To accomplish this purpose, section 916, subdivision (a) stays all further trial court proceedings ‘upon the matters embraced’ in or ‘affected’ by the appeal. In determining whether a proceeding is embraced in or affected by the appeal, we must consider the appeal and its possible outcomes in relation to the proceeding and its possible results. ‘[W]hether a matter is “embraced” in or “affected” by a judgment [or

order] within the meaning of [section 916] depends on whether postjudgment [or postorder] proceedings on the matter would have any effect on the 'effectiveness' of the appeal.' 'If so, the proceedings are stayed; if not, the proceedings are permitted.'" (*ibid*, internal citations omitted.)

Also, money judgments are not stayed while an appeal is pending, unless the appellant posts an undertaking to stay the case. (Code Civ. Proc. 917.1, subd. (a)(1).)

Here, defendant has not filed an appeal with regard to the attorney's fees orders that he now seeks to stay. Nor has he posted an undertaking to stay enforcement of the orders. There is an appeal pending, but it concerns a different set of orders made by the court, namely the court's December 3, 2019 order regarding partition of the property based on the receiver's status report. (Fifth District Court of Appeal case no. F080399.) Therefore, it does not appear that defendant is entitled to a stay based on the pending appeal, as the attorney's fees orders at issue in the present motion would not affect the outcome of the appeal.

Nevertheless, defendant argues that Judge Hamilton has already granted a stay of the entire action while the appeal in case number F080399 was pending, and thus the action is stayed with regard to the orders imposing attorney's fees against him as well. (See court's order of February 6, 2020.) However, while Judge Hamilton's February 6, 2020 order did stay the entire action while the appeal was pending, the order was intended to only stay enforcement of the matters encompassed by appellate case number F080399.

"The appeal of the December 3, 2019 order therefore has the effect of staying the partition, plaintiff's purchase of defendant's interest, plaintiff's recovery of certain costs and fees, and defendant's payment of half the cost of the account to be performed under the judgment. Because it is not economical or feasible to proceed with the enforcement of the few terms of the judgment set forth in the June 7, 2019 order, which are not automatically stayed by the current appeal, this court hereby exercises its inherent discretionary powers to stay the entire action. This stay will be effective immediately on filing of this order and will continue until resolution of the appeal in Case No. F080399, now pending in the Fifth District Court of Appeal. The Receiver is directed to take no further action in this case until advised to do so by this court." (See February 6, 2020 order, pp. 2:21-3:5.)

However, the fee orders that defendant seeks to stay here were not part of the order that is on appeal in case number F080399, and thus the order staying the action does not appear to apply to them. The February 6, 2020 order was intended to stay further enforcement of the December 3, 2019 order, not to prevent the trial court from enforcing its other orders that are only tangentially related to the merits of the case, such as orders for attorney's fees. Nor are the fees orders covered under the normal automatic stay provisions of Code of Civil Procedure section 916, as they are not matters that are encompassed by or that would affect the outcome of the appeal pending in case number F080399. As a result, the court intends to deny defendant's request for a stay of the attorney's fees orders pending the outcome of the appeal in case number F080399.

