

Tentative Rulings for September 29, 2022
Department 502

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 Rulings for Department 502

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Tentative Ruling

Re: **Ayers v. Lewis**
Superior Court Case No. 19CECG00014

Hearing Date: September 29, 2022 (Dept. 502)

Motion: by Defendant for an order compelling Plaintiff's appearance at deposition; sanctions

Tentative Ruling:

To grant Defendant Robert Lewis's motion to compel Plaintiff Stephanie Ayers to appear at a deposition set within 15 days of the clerk's service of the minute order. (Code Civ. Proc. §§ 2025.450(a), 2025.280(a).)

To impose monetary sanctions in favor of Defendant Robert Lewis, and against Plaintiff. (Code Civ. Proc. §§ 2023.010(d), 2025.450(g).) Plaintiff is ordered to pay \$1,007.90 in sanctions to the Wilkins, Drolshagen & Czeshinski LLP law firm, within 30 days of the clerk's service of the minute order.

Explanation:

Proper service of a notice of deposition compels the opposing party to appear, to testify, and to produce documents if requested. (Code Civ. Proc. § 2025.280(a); see Code Civ. Proc. § 2025.410 [party served with deposition notice may serve objections on party that noticed the deposition].) Where a party deponent fails to appear at a properly noticed deposition, the party giving the notice may move for an order compelling the deponent's attendance and testimony. (Code Civ. Proc. § 2025.450(a).) Where a party fails to appear for a properly noticed deposition, the party noticing the deposition is entitled to sanctions. (Code Civ. Proc. § 2025.450(g).)

In the case at bench, the moving party has properly noticed Plaintiff's deposition five times. The first four notices were rescheduled at the request of Plaintiff's former counsel. Following the withdrawal of Plaintiff's counsel, the last, fourth amended noticed deposition, scheduled for June 28, 2022, went forward, as Plaintiff failed to notify defense counsel that she did not intend to appear. Accordingly defense counsel and the court reporter appeared for the deposition and Plaintiff failed to appear. Plaintiff has not served any objections or provided any reason for her failure to appear. Plaintiff has not filed an opposition to this motion.

Defendant is entitled to depose Plaintiff. (Code Civ. Proc. §§ 2017.010, 2019.010, 2025.010.) Plaintiff's failure to appear for deposition is hampering Defendant's ability to prepare for trial. Accordingly, Defendant Lewis's motion to compel Plaintiff to appear for deposition is granted.

Defendant's request for sanctions is granted. Plaintiff is ordered to pay \$1,007.90 to the Wilkins, Drolshagen & Czeshinski LLP law firm, within 30 days of the clerk's mailing of

the minute order.

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: RTM on 9/26/2022.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: **Switzer v. Flournoy Management, LLC et al.**
Superior Court Case No. 11CECG04395

Hearing Date: September 29, 2022 (Dept. 502)

Motion: Motion for Approval of Settlement

Tentative Ruling:

To grant.

Explanation:

Cross-Complainant Dixie Switzer and the remaining cross-defendants McCormick, Barstow, Sheppard, Wayte & Carruth, LLP, Gordon Park, Dana Denno, and Irene Fitzgerald (“the McCormick Barstow Parties”), move for approval of their settlement. Since Switzer is settling derivative claims brought on behalf of the LLC, court approval is required (*Spellacy v. Superior Court in and for Los Angeles County* (1937) 23 Cal.App.2d 142, 147–148, quoting *Whitten v. Dabney* (1915) 171 Cal. 621, 630-632), and she must show that the proposed settlement is fair and reasonable in light of all relevant factors. (*Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 449.) There is no opposition to this motion. The court finds that the settlement of the derivative claims as against the McCormick Barstow Parties is fair and reasonable, and approves the settlement.

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: **RTM** **on** **9/26/2022** .
 (Judge's initials) (Date)