Tentative Rulings for November 29, 2023
Department 501

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

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 above rule also applies to cases listed in this "must appear" section.

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

23CECG00707 ***Megan Zupancic v. Providence Health & Services*** **is continued to December 20, 2023 at 3:30 p.m. in Department 501**

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Tentative Rulings for Department 501

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Tentative Ruling

Re: ***Lasha Johnson v. City of Fresno***
Superior Court Case No. 21CECG00057

Hearing Date: November 29, 2023 (Dept. 501)

Motion: by Specially Appearing Defendant William Dooley to Quash Service of Summons Based on Unreasonable Delay

Tentative Ruling:

To grant specially appearing defendant William Dooley's motion to quash.

Explanation:

Code of Civil Procedure section 474 provides a mechanism when a plaintiff is unaware of the name of a defendant at the time of filing the complaint. It allows the plaintiff to name said defendant by a fictitious name and later amend the complaint to substitute the true name of the defendant. (Code Civ. Proc., § 474.) When plaintiffs filed their Complaint on January 7, 2021, they were purportedly unaware of several defendants' names. Six months later, on July 16, 2021, they filed three amendments to the Complaint naming Justin Bell, Martin Padilla and Nicholas Palomino. On July 18, 2023, two and a half years after filing their Complaint, they filed another amendment to correct Doe 4 to William Dooley. William Dooley now specially appears to request the court quash service of summons as to him based on unreasonable delay in naming him as a defendant.

Plaintiffs were first made aware of Dooley's involvement as a decision-maker during the incident where decedent was killed when they received the "Follow-Up Report" in discovery on June 16, 2021. Dooley argues that failing to add him as a defendant around that time bars plaintiffs from adding him two years later. Where a defendant named pursuant to Code of Civil Procedure section 474 moves to quash service for unreasonable delay in filing the amendment, the defendant must show that plaintiffs were dilatory *and* that the delay will cause defendant to suffer prejudice. (*A.N. v. County of Los Angeles* (2009) 171 Cal.App.4th 1058, 1066.) That an action would otherwise be time barred as to the amended defendant is insufficient to demonstrate prejudice, but a specific prejudice to the amended defendant must be shown. (*Ibid*.)

Regarding the issue of unreasonable delay, plaintiffs assert that they did not add Dooley as a defendant because the Follow-Up Report did not provide sufficient evidence of Dooley's potential liability, but that sufficient evidence was contained in the Internal Affairs Report received on the eve of Dooley's deposition in May 2023. Plaintiffs may delay in amending Doe defendants until they have "knowledge of sufficient facts to cause a reasonable person to believe liability is probable." (*Dieckmann v. Superior Court* (1985) 175 Cal.App.3d 345, 363.) The Follow-Up Report details Dooley's involvement during the incident which resulted in decedent's death. He is named in this report as a decision-maker. The Complaint alleges negligent tactics used by the officers

during the incident. The Follow-Up Report, which described Dooley as a decision-maker during the incident, had sufficient information by which a reasonable person would believe Dooley was liable, if indeed any of the officers were liable. In fact, at this time, plaintiffs did amend the Complaint to add three of the named officers. The receipt of evidence which reinforces the evidence already received is not a sufficient excuse for the two-year delay in amending the Complaint to add Dooley as a defendant. (*See A.N. v. County of Los Angeles, supra*, 171 Cal.App.4th at p. 1067 [finding no reasonable explanation for two-year delay in filing Doe amendments where it appeared counsel knew of potential defendants' involvement.])

Dooley argues that he will be prejudiced if the court allows this late amendment because trial is set for this matter in April 2024 and he would not have time to engage in sufficient discovery and prepare a motion for summary judgment. The court in *A.N.* noted that allowing the unreasonably late Doe amendments there would result in "bringing in entirely new parties who would have had to prepare to defend against a case in short order; and, although they may have been involved in discovery, they had no advance notice they were being sued." (*Id*. at p. 1069.) This is similar to the amendment of Dooley here. While he may have been involved in some discovery, as he was deposed in May of 2023, he did not have advance notice he was being sued. Plaintiffs argue there is no prejudice because Dooley can request a trial continuance and because the City and Dooley knew, based on the Internal Affairs report, that Dooley was exposed to liability. This argument relies on the court granting a motion to continue the trial and fails to consider the statement made in *A.N.* that despite participating in discovery, the Doe defendants did not have advance notice they were being sued. (*Ibid*.)

Plaintiffs argue that there is no real prejudice because Dooley is likely to be represented by the same counsel for the other defendants and his interests in the action are identical to that of the City. Plaintiffs have not provided any authority indicating that defendants having similar interests means that a late added defendant would not be prejudiced. Here, Dooley has shown that there was an unreasonable delay in amending the Complaint to name him as a defendant and that he would be prejudiced by allowing this late amendment. Thus, the court grants Dooley's motion to quash.

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 11/21/2023.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Nermal v. Lopez***
Superior Court Case No. 21CECG02258

Hearing Date: November 29, 2023 (Dept. 501)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

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

Explanation:

Medi-Cal and Medical Liens

Item 12b (page 5), regarding the minor's medical expenses, is not filled out as required, and in general the information regarding medical expenses is confusing. Item 12a(1) states that the total medical expenses are $1,457.00, but the (rather unclear) chart at .pdf page 38 appears to state that the total was $1,432.00. Items 12a(4) and 12b(1) state that petitioner paid a total of $902.71, which is to be reimbursed from the settlement proceeds, but Item 14a checks the box indicating she has paid none of the fees or expenses, and this amount is not shown as being deducted from the minor's settlement at Item 16b.

Further, the medical records for Premium Urgent Care show payment by "Healthnet CalViva," which would mean the minor was covered by Medi-Cal, and yet petitioner did not indicate this at Item 12b(4), or attach a lien letter from Medi-Cal indicating what it would accept in full satisfaction of its lien rights. If there was Medi-Cal usage, this must be shown and the lien must be paid from the minor's settlement. If there were providers who did not accept Medi-Cal and have a balance owing, this must also be paid from the settlement, or petitioner must show any negotiated reduction, with evidence from the provider that they have agreed to the reduction.

Attorney Fees and Costs

Mr. Shirvanian's declaration is woefully insufficient to justify the 40% attorney fee requested. Much more credible detail must be provided beyond saying that the case "was a heavily disputed liability case given the facts and circumstances involved in the subject accident," and that his office was involved in conducting written discovery and depositions. The court must be given some idea of the amount of time counsel expended. Further, the declaration fails to discuss the fee request in light of the factors listed in California Rules of Court, rule 7.955(b), as required.

Moreover, petitioner was originally represented by a different attorney when this action was filed in August 2021, and Mr. Shirvanian did not substitute into the case until

August 2022. Since he mentions prior counsel's "thorough investigation and initial analysis" (Shirvanian Dec., ¶5, at 2:10-11) and he seeks to have the costs paid by prior counsel reimbursed (*Id.*, ¶ 7), it is not clear whether there was a fee-splitting agreement between counsel, and if so, whether the requirements of the Rules of the State Bar of California, rule 1.5.1, were followed. If there was such an agreement, this must be fully disclosed and clarified. If not, then the court does not understand why current counsel should be reimbursed for former counsel's costs.

As for the costs themselves, these need further explanation. It is not clear which of these costs were incurred by former counsel and, as noted above, counsel must explain why these should be reimbursed to current counsel. Also, the following charges will not be approved without further justification: 1) "filing" to "courthouse" in the amount of $33.70 (no such charge is reflected in the court's file); 2) "administrative fee" to "J&Y Law" in the amount of $395; and 3) "sign up fee" to "Rapid Sign Now" in the amount of $183.50. The efiling cost of $569.20 must also be explained and broken down; the only cost the court's file shows as being paid was $435 on August 5, 2021. Finally, it is not clear why the cost counsel incurred in hiring another attorney to appear from him at the "OSC/MSC/Trial Readiness Hearing" should constitute a recoverable cost as opposed to being absorbed in the attorney's fees.

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 11/27/2023.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Lee Pointer v. Resmae Mortgage Corporation***
Superior Court Case No. 22CECG00417

Hearing Date: November 29, 2023 (Dept. 501)

Motion: by Defendants HSBC Bank, USA and Mortgage Electronic Registration Systems to Set Aside Entry of Defaults

Tentative Ruling:

To grant. Defendants are to file their responsive pleadings within ten (10) days from the date of this order.

Explanation:

"The law favors judgments based on the merits, not procedural missteps." (*Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 134; see also *Riskin v. Towers* (1944) 24 Cal.2d 274, 279 ["the provisions of section 473 of the Code of Civil Procedure are to be liberally construed and sound policy favors the determination of actions on their merits."].) In other words, "Section 473 is often applied liberally where the party in default moves promptly to seek relief, and the party opposing the motion will not suffer prejudice if relief is granted. [Citations.] In such situations 'very slight evidence will be required to justify a court in setting aside the default.'" (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 234 superseded by statute as stated in *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 983.)

Moving defendants' unified motion was filed within six months of entry of their defaults, and the motion is supported by a counsel declaration attributing the error to miscommunication. There is also evidence from counsel that plaintiff proceeded to entry of default without notification. (Scott, Decl. ¶ 11; see *Lasalle v. Vogel, supra,* 36 Cal.App.5th at p. 135 ["It is now well-acknowledged that an attorney has an *ethical* obligation to warn opposing counsel that the attorney is about to take an adversary's default."]; see also *Smith v. Los Angeles Bookbinders Union No. 63* (1955) 133 Cal.App.2d 486, 500, disapproved on other grounds as stated in *MacLeod v. Tribune Pub. Co.* (1959) 52 Cal.2d 536, 551 ["The quiet speed of plaintiffs' attorney in seeking a default judgment without the knowledge of defendants' counsel is not to be commended."].) Therefore, defendants' motion is granted.

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 11/27/2023.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***County of Fresno v. Carter-Callahan, et al.***
Superior Court Case No. 23CECG00989

Hearing Date: November 29, 2023 (Dept. 501)

Motion: by Plaintiff to Discharge Interpleader and Award Attorneys' Fees and Costs

Tentative Ruling:

To grant and award Plaintiff attorneys' fees and costs in the sum of $4,670.

Explanation:

Discharge of Interpleader:

Plaintiff County of Fresno seeks an order under Code of Civil Procedure section 386 discharging it from liability for funds deposited with the court and dismissing it from this action. Defendants Stephanie E. Carter-Callahan and Victor Carter have made conflicting claims for excess proceeds from a sale of real property by the Auditor-Controller/Treasurer-Tax Collector of the County, in the amount of $113,553.09. The County claims no interest in the funds and has deposited the disputed funds with the court. The court finds that County of Fresno has complied with the requirements of Code of Civil Procedure section 386 and is entitled to be discharged from any liability to any of the defendants and dismissed from the action.

Attorneys' Fees:

Attorneys' fees may be awarded in the court's discretion pursuant to Code of Civil Procedure section 386.6, subdivision (a). Plaintiff seeks $13,886 in attorneys' fees, plus costs in the amount of $695. The trial court may use a lodestar calculation to determine the reasonableness of the fee award. (*Bernardi v. City of Monterey* (2008) 167 Cal.App.4th 1379, 1393-1394.) Counsel's declaration indicates that she spent 166.60 hours pursuing the instant interpleader action; but, attorneys' fees are only sought for 52.4 hours at an hourly rate of $265. (Tran Decl., ¶¶ 6 and 8.) The court finds the rate sought to be reasonable; however, awards fees in the reduced amount of $3,975. The court also awards costs in the amount of $695.

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 11/27/2023.
(Judge's initials) (Date)