

Tentative Rulings for September 28, 2016
Departments 402, 403, 501, 502, 503

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).)

14CECG00191 *Leon v. County of Fresno et al.* (Dept. 403)

11CECG04432 *Rodriguez v. Rodriguez* (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.

15CECG00061 *Palmer v. Selma Unified School District, et al.* both motions are continued to Wednesday, October 5, 2016, at 3:30 p.m. in Dept. 403.

15CECG00659 *Reyes v. Barnell* is continued to Tuesday, October 4, 2016 at 3:30 p.m. in Dept. 402.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

(19)

Tentative Ruling

Re: **MUFG v. Mahal**
Court Case No. 16CECG01846

Hearing Date: September 28, 2016 (Department 402)

Motion: by plaintiff for order approving Final Account and Report of the Receiver, Allowance of Receiver's Fees and Costs, Discharge of Receiver and Exoneration of Bond, and Instructions

Tentative Ruling:

To order that plaintiff pay \$3,768.82 into the receivership estate. To continue the hearing to November 2, 2016 at 3:30 p.m. in this Department, and require that receiver provide a further declaration with detailed explanations of his work and the fees showing on the exhibits, along with any substantiating paperwork (such as bills or receipts), on or before October 19, 2016.

Explanation:

"Receivers are officers of the court appointing them." *In re Estevez* (2008) 165 Cal. App. 4th 1445, 1459.

Specific court approval is required before a receiver may employ an attorney. California Rules of Court, Rule 3.1180. Here, there is a charge for "legal or professional expenses," but there has been no order permitting legal expenses. An explanation of the nature of these expenses is needed, along with a bill or some other substantiation. Details of the receiver's work are necessary. California Rules of Court, Rule 3.1184(d).

The receiver admits he was informed on July 27, 2016 that the defendant had cured the default, which would terminate the receivership. Ahart. Enforcing Judgments and Debts (TRG 2016) section 4:940 – 4:941.

Yet several expenses here are listed as incurred after the receiver's duties were terminated. The management fees show a date of July 29, and one wonders why such a fee appears when there are over \$2,600 in receiver fees already. The maintenance fees were not charged until August 8, 2016. There's a "service of process" fee of \$121, but no reason why the receiver would be serving process. There's also \$29.43 in postage on July 31, without explanation.

(24)

Tentative Ruling

Re: **Employer Network, LLC v. Synergy Group**
Court Case No. 13CECG00789

Hearing Date: **September 28, 2016 (Dept. 402)**

Motion: Plaintiff's Motion for Attorney Fees

Tentative Ruling:

To order off calendar in light of the bankruptcy stay in place pursuant to the bankruptcy filed by defendant Synergy Group HCM, Inc. on September 1, 2016, subject to the motion being re-calendared in the event plaintiff obtains relief from the stay from the Bankruptcy Court.

Explanation:

Even though no party has yet filed a Notice of Stay, the court has independently verified that defendant did indeed file a bankruptcy petition on September 1, 2016.

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 ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

Tentative Ruling

Issued By: JYH on 09/27/16
 (Judge's initials) (Date)

(29)

Tentative Ruling

Re: **Sameer v. Moreno, et al.**

Case No. 15CECG00351

Hearing Date: September 28, 2016 (Dept. 403)

Motion: Set aside

Tentative Ruling:

To deny.

Explanation:

Plaintiff moves to set aside the attorneys' fees and costs awarded to Defendants Benett, Becker, and the Benett & Becker law firm on July 2, 2015; and Defendant Schreiber on July 16, 2015, pursuant to Code of Civil Procedure sections 473(b), 473.1, and 475; and Rule 60(b).

Code of Civil Procedure section 473, subdivision (b), provides that the court may "relieve a party...from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." Section 473.1 applies where "a court of this state has assumed jurisdiction, pursuant to Section 6180 or 6190 of the Business and Professions Code, over the law practice of the attorney" for a party against whom a judgment or order has been taken. Section 475 directs the court to disregard "any error, improper ruling, instruction, or defect, in the pleadings or proceedings which, in the opinion of said court, does not affect the substantial rights of the parties." Rule 60, subdivision (b), is a federal rule, and thus inapplicable in this Court. (See Fed. Rules Civ. Proc., rule 1.)

To establish a right to relief pursuant to section 473, subdivision (b), a plaintiff must show that the acts that brought about the judgment he or she seeks to set aside were the acts that a reasonably prudent person under the same circumstances would have undertaken. (See, e.g., *Hughes v. Wright* (1944) 64 Cal.App.2d 897 [only occasion for application of section 473 is when a party is unexpectedly placed in situation to his or her injury without fault or negligence of his or her own, and against which ordinary prudence would not have guarded].) A party seeking to set aside a judgment pursuant to section 473 carries the initial burden of proof, and must establish his or her entitlement to the relief sought by a preponderance of the evidence. (*Price v. Hibbs* (1964) 225 Cal.App.2d 209, 215.)

In the case at bench, Plaintiff has not provided evidence of mistake, inadvertence, surprise or excusable neglect. Rather, Plaintiff states that Defendants scheduled hearings on dates that Defendants knew Plaintiff would be unavailable due

Tentative Rulings for Department 501

(20)

Tentative Ruling

Re: ***Alvarez v. Sandoval Enterprises, Inc., et al.***, Superior Court
Case No. 16CECG00253

Hearing Date: **September 28, 2016 (Dept. 501)**

Motion: Golden Eagle Insurance Company's Unopposed Motion For
Leave to Intervene and File Complaint in Intervention

Tentative Ruling:

To grant. Golden Eagle Insurance Company shall file its proposed complaint in intervention within 10 days of service of the order by the clerk. (Code Civ. Proc. § 387(b).)

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 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: **MWS** on **09/27/16**
(Judge's initials) (Date)

Tentative Rulings for Department 502

(19)

Tentative Ruling

Re: **Logoluso v. CUSD**
Court Case No. 15CECG00077

Hearing Date: September 28, 2016 (Department 502)

Motion: by plaintiff to compel further responses and production of responsive documents for Request for Production, Set No. Two.

Tentative Ruling:

To deny as to Request No. 13. To grant as to all others, but to limit the requests for production to incidents occurring prior to the incident in question. To also order redaction of all personally identifiable information about students other than Fowles, and that such materials be used for this case only. A further response and responsive documents shall be served by October 19, 2016.

Explanation:

In *Farley v. El Tejon USD* (5th Dist. 1990) 225 Cal. App. 3d 371, a child was killed by a car while crossing the street after getting off the school bus. The principal of the school he attended had sent out a notice that kids were not to cross the street in front of or behind the bus, but that they were continuing to do so, "a very dangerous problem." The principal threatened possible "loss of bus transportation privileges" if the problem continued. In the trial court, the school district successfully asserted it was immune from liability under Education Code section 44808. There have been no changes in that statute since it was enacted in 1976.

The Fifth District Court of Appeal reversed summary judgment in favor of the school, citing *Hoyem v. Manhattan Beach City School District* (1978) 22 Cal. 3d 508, 517, fnt. 2:

"That the 'reasonable care' exception in the statute is not accidental is clear from the legislative history. The original bill, passed by the Assembly, was identical to the current statute but did not include the final phrase about reasonable care. That phrase was added by Senate amendment (4 Sen. J. (1972 Reg.Sess.) p. 6247) and then approved unanimously by the Assembly. (4 Assem. J. (1972 Reg. Sess.) p. 7049.) The intent of the Legislature is clear: when a school district fails to exercise reasonable care the immunity of this section evaporates."

The bus driver told the kids they must not cross the street while the bus was in sight. The school district argued that the children were not "under the

immediate and direct supervision of any employee of respondent" as the statute called for.

"Respondent's argument begs the question. Whether or not Michael should have been 'under the immediate and direct supervision of an employee of the District' depends on whether the exercise of reasonable care under the circumstances required respondent's school bus driver to supervise Michael's crossing of Lebec Road after being discharged from the bus." *Farley, supra*, 225 Cal. App. at 377.

The relevance of prior incidents is established by this case, as California courts have found such may be proof sufficient to show knowledge or a reason to know of the need for supervision of Fowles. The requests for production are therefore limited to incidents occurring prior to the incident giving rise to the complaint in this action.

As stated by the parties, records which are confidential under 20 U.S.C. 1232g (aka the "Family and Educational Privacy Act") may be disclosed pursuant to a court order. In *Ragusa v. Malverne Union Free School District* (E.D.N.Y. 2008) 459 F. Supp. 2d 288, the Court ordered disclosure of student grades and evaluations of a professor's performance where sought by a teacher as part of her discrimination action. The Court there used a balancing test. "[A] party seeking disclosure is required to demonstrate a genuine need for the information that outweighs the privacy interests of the students." (*Id.* at 292.) That Court made a determination it would protect the students' privacy by having all personal identifying information redacted before protection occurred. It also limited use of the information to the lawsuit before it, and limited access to the information to plaintiff, her attorney, and any expert retained for trial. The information also had to be returned at the end of the lawsuit.

In *BRV, Inc. v. Superior Court* (2006) 143 Cal. App. 4th 742 (*rev. denied*), a California Court of Appeals considered the impact of this federal statute. The records sought consisted of an investigative report of alleged misconduct by a school superintendent. The school agreed to let the superintendent resign for a payment and a promise to keep the report confidential. It noted that only "educational records" were protected by the federal statute, on which Education Code section 49076 was based, and order the report produced. It discussed an unpublished federal circuit court opinion where:

"[A] school official sent reports to the parents of victims and witnesses of a particular student's verbal and physical harassment. In one instance, the report explained the investigation conducted in response to a complaint, the facts discerned, and the discipline taken against the offending student. In another instance, the reports summarized the incident, explained the addressee's child had been involved and had been interviewed, and stated the alleged perpetrator had been warned."

Tentative Ruling

Re: ***IRA Services Trust Company CFBO Shakuntla Saini, Account No. 296181, et al. v. Pradeep Bali, et al.***
Case No. 16 CE CG 01988

Hearing Date: September 28th, 2016 (Dept. 502)

Motion: Plaintiffs' Motion to Disqualify Opposing Counsel

Tentative Ruling:

To deny the plaintiffs' motion to disqualify opposing counsel.

Explanation:

"A trial court's authority to disqualify an attorney derives from the power inherent in every court '[t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.' Ultimately, disqualification motions involve a conflict between the clients' right to counsel of their choice and the need to maintain ethical standards of professional responsibility." (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145, internal citations omitted.)

Under Rules of Professional Conduct, Rule 3-310, subdivision (E), "A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment." (Cal. Rules Prof. Conduct, Rule 3-310, subd. (E).)

"An attorney engaged in employment adverse to a former client is subject to disqualification where a 'substantial relationship' exists between the lawyer's current employment and the lawyer's representation of the former client. 'Where an attorney successively represents clients with adverse interests, and where the subjects of the two representations are substantially related, the need to protect the first client's confidential information requires that the attorney be disqualified from the second representation.'" (*Brand v. 20th Century Ins. Co./21st Century Ins. Co.* (2004) 124 Cal. App. 4th 594, 602, internal citations omitted.)

"To determine whether there is a substantial relationship between successive representations, a court must first determine whether the attorney had a direct professional relationship with the former client in which the attorney personally provided legal advice and services on a legal issue that is closely related to the legal issue in the present representation. If the former representation involved such a direct relationship

with the client, the former client need not prove that the attorney possesses actual confidential information. Instead, the attorney is presumed to possess confidential information if the subject of the prior representation put the attorney in a position in which confidences material to the current representation would normally have been imparted to counsel. When the attorney's contact with the prior client was not direct, then the court examines both the attorney's relationship to the prior client and the relationship between the prior and the present representation. If the subjects of the prior representation are such as to 'make it likely the attorney acquired confidential information' that is relevant and material to the present representation, then the two representations are substantially related. When a substantial relationship between the two representations is established, the attorney is automatically disqualified from representing the second client." (*City and County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839, 847, internal citations omitted.)

Also, " '[b]efore an attorney may be disqualified from representing a party in litigation because his representation of that party is adverse to the interest of a current or former client, it must first be established that the party seeking the attorney's disqualification was or is "represented" by the attorney in a manner giving rise to an attorney-client relationship. [Citations.]' The burden is on the party seeking disqualification to establish the attorney-client relationship." (*Koo v. Rubio's Restaurants, Inc.*, 109 Cal. App. 4th (2003) 719, 729, internal citations omitted.)

"Where the requisite substantial relationship between the subjects of the prior and the current representations can be demonstrated, access to confidential information by the attorney in the course of the first representation (relevant, by definition, to the second representation) is presumed and disqualification of the attorney's representation of the second client is mandatory; indeed, the disqualification extends vicariously to the entire firm." (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 283, internal citations omitted.)

Here, there is a dispute between the parties as to whether an attorney-client relationship ever existed between plaintiffs and Mr. Gates. Plaintiffs claim that they consulted with Gates and confided confidential information to him sometime between November of 2015 and March of 2016 in connection with his filing of a proof of claim in a bankruptcy case regarding one of the loans at issue in the present case. Mr. Gates denies that he consulted with plaintiffs or received any confidential communications or information from plaintiffs, and instead claims that he filed the claim on behalf of the "Trust" based on information that he received from defendants.

While plaintiffs claim to have "confided and shared confidences" with Gates, they are extremely vague as to who exactly confided in Gates, or when or how the confidences were conveyed. Plaintiffs merely state that they "confided and shared confidences" with Gates sometime between November of 2015 and March of 2016, but provide no details about exactly when they spoke with him, who spoke to him, how the communications were made, or any other details about the relationship. Indeed, they do not specifically state that they communicated with Gates at all before the proof of claim was filed.

Also, to the extent that plaintiff Reenu Saini claims that she shared confidences with Gates "regarding Defendants' questionable professional practices and Defendants' breach of the assorted promissory notes securing the Hard Money Loans" (Reenu Saini decl., ¶ 13), again she does not state exactly when she shared these confidences, other than that it was sometime between November of 2015 and March of 2016. Also, it is unclear whether these expressions of discontent contained any specific or truly confidential information. It is certainly no secret that plaintiffs are not happy with defendants, as they have filed suit against them. The expressions of anger and frustration contained in her emails to Gates do not appear to be the communications of a client with her attorney, but rather attempts to negotiate with an adverse party's attorney. (Gates decl., Exhibits 3, 5, 6 and 7.) If these are the "confidential communications" to which plaintiffs are referring, they appear to have been conveyed after Gates clearly expressed that he was not representing plaintiffs, and that he was in fact representing the defendants. For example, in his letter of March 7th, 2016, Gates stated that, "As I told you last Friday, I represent Daljit Singh pursuant to issues pertaining to a loan in the sum of \$100,000.00." (Gates decl., Exhibit 2.)

Gates also claims that he filed the proof of claim at the request of defendants, not plaintiffs, and that he based the proof of claim on information obtained from defendants. Gates' email of March 30th, 2016 supports this contention, as he states that he filed the proof of claim at defendants' request. (Exhibit E to Reenu Saini's decl.) Thus, the plaintiffs have failed to meet their burden of showing that they formed an attorney-client relationship with Gates, or that he obtained any confidential information from him related to the case.

Also, Gates denies ever meeting, speaking to, or exchanging letters with Shakuntla Saini, and she does not state that she ever met or spoke with him. Although Gates does admit communicating with Reenu Saini, all of the letters and emails attached to the declarations were apparently sent after the proof of claim had already been filed. Also, the letter of March 10th, 2016 from Gates to Reenu indicates that he is representing the defendants, not Reenu, her mother, or her mother's IRA account. (Exhibit C to Reenu Saini decl.) However, the same letter also states that "The information set forth in this correspondence comes from several sources **including you**, Bankruptcy Court's for the Eastern District of California docket sheet, Daljeet Singh and Harpeet Bali." (*Ibid*, emphasis added.) The letter then goes on to state that Gates is "acting as a scrivener for the proposal to resolve and obtain resolution of 9 disputed balances on investments."

Plaintiffs contend that this letter shows that Gates filed the proof of claim based partly on information obtained from them, which establishes that there was in fact an attorney-client relationship between Gates and themselves. However, it appears that the letter is referring to information obtained from plaintiffs after the proof of claim was filed, as Gates was apparently acting as an intermediary in attempting to resolve the dispute between the parties, but also stated that he was representing defendants and not plaintiffs. (*Ibid*.) Therefore, Gates' reference to obtaining information from plaintiffs does not necessarily establish that they were in an attorney-client relationship.

Tentative Rulings for Department 503

(2)

Tentative Ruling

Re: ***Eller v. Arax et al.***
Superior Court Case No. 15CECG01279

Hearing Date: September 28, 2016 (Dept. 503)

Motion: Patrick Eller's motion to compel initial responses to form interrogatories, set one, special interrogatories, set one, deem request for admissions, set one admitted and sanctions

IN THE EVENT THAT ORAL ARGUMENT IS REQUESTED THEY WILL BE HELD ON WEDNESDAY, OCTOBER 5, 2016 AT 3:30 IN DEPT. 503.

Tentative Ruling:

To grant plaintiff Patrick Eller's motions to compel defendant Jenny Hill to provide initial verified responses to form interrogatories, set one and special interrogatories, set one. Code of Civil Procedure sections 2030.290(b). Defendant Jenny Hill to provide complete verified responses to all discovery set out above, without objection within 10 days after service of this order.

To grant plaintiff Patrick Eller's motion that the truth of the matters specified in the request for admission, set one, be deemed admitted as to defendant Jenny Hill unless she serves, before the hearing, a proposed response to the requests for admission that is in substantial compliance with Code of Civil Procedure sections 2033.210, 2033.220 and 2033.240. Code of Civil Procedure §2033.280.

To find plaintiff Patrick Eller's motions to compel defendant Joseph Simka to provide initial verified responses to form interrogatories, set one moot.

To find plaintiff Patrick Eller's motions to compel defendant Mane Arax to provide initial verified responses to form interrogatories, set one and special interrogatories, set one and motion that the truth of the matters specified in the request for admission, set one, be deemed admitted as to defendant Mane Arax moot.

To grant plaintiff's motion for sanctions as to Jenny Hill. Jenny Hill is ordered to pay monetary sanctions to Pascuzzi, Pascuzzi & Stoker, A Professional Corporation in the amount of \$335 within 30 days after service of this order. CCP §§2030.290(c), §2033.290.

To grant plaintiff's motion for sanctions as to Joseph Simka. Joseph Simka is ordered to pay monetary sanctions to Pascuzzi, Pascuzzi & Stoker, A Professional

Corporation in the amount of \$335 within 30 days after service of this order. CCP §§2030.290(c).

To grant plaintiff's motion for sanctions as to Mane Arax. Mane Arax is ordered to pay monetary sanctions to Pascuzzi, Pascuzzi & Stoker, A Professional Corporation in the amount of \$335 within 30 days after service of this order. CCP §§2030.290(c), §2033.290.

Explanation:

Prior to the filing of the motions Joseph Simka and Mane Arax served discovery responses. Decl. Armo. The responses were in substantial compliance with Code of Civil Procedure sections 2030.210, 2030.220 and 2033.220.

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: A.M. Simpson on 09/22/16
(Judge's initials) (Date)

(2)

Tentative Ruling

Re: ***In re Xavier Sebastian Fabela***
Superior Court Case No. 16CECG02460

Hearing Date: September 28, 2016 (Dept. 503)

Motion: Petitions to Compromise Minors' Claims

**IN THE EVENT THAT ORAL ARGUMENT IS REQUESTED THEY WILL BE HELD ON WEDNESDAY,
OCTOBER 5, 2016 AT 3:30 IN DEPT. 503.**

Tentative Ruling:

To grant. Orders signed. Hearing off calendar.

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: A.M. Simpson **on 09/22/16**
(Judge's initials) (Date)