

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar
Judge: HONORABLE RICHARD H. DUBOIS
Department 16

400 County Center, Redwood City
Courtroom 7A

Monday, November 5, 2018

NOTICE TO ALL COUNSEL

Until further order of the Court, no endorsed-filed "courtesy copy" of pleadings is required to be provided to the Law and Motion Department.

IF YOU **INTEND TO APPEAR** ON ANY CASE ON THIS CALENDAR YOU MUST DO THE FOLLOWING:

1. YOU MUST CALL (650) 261-5019 BEFORE 4:00 P.M. TO INFORM THE COURT OF YOUR INTENT TO APPEAR.
2. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do both items 1 and 2 will result in no oral presentation.

Notifying CourtCall with your intent to appear is not an alternative to notifying the court.

All Counsel are reminded to comply with California Rule of Court 3.1110. The Court will expect all exhibits to be tabbed accordingly.

Case

Title / Nature of Case

9:00

LINE: 1

16-CIV-02044 MALAETELE V. IAULUALO, ET AL. VS. STATE OF CALIFORNIA, ET AL.

MALAETELE V. IAULUALO
COUNTY OF SAN MATEO

THOMAS J. BRANDI
MARGARET TIDES

DEFENDANT COUNTY OF SAN MATEO'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION

TENTATIVE RULING:

Defendant COUNTY OF SAN MATEO's Motion for Summary Judgment is GRANTED as to Plaintiffs' sole cause of action for dangerous condition of public property against the County.

Summary judgment / summary adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Code Civ. Proc. § 437c(c). Summary judgment in favor of a defendant is proper if (1) the defendant shows that one or more elements of a cause of action cannot be established or there is a complete defense to it; and (2) the plaintiff fails to meet his or her burden of showing the existence of a triable issue of material fact. Code Civ. Proc. § 437c(p)(2); *Calvillo-Silva v. Home Grocery* (1998) 19 Cal.4th 714, 735.

Here, Plaintiffs do not raise a triable issue of material fact as to any of the County's 108 Undisputed Material Facts (UMFs). The County's Evidentiary Objections are SUSTAINED as to the Declaration of Dale R. Dunlap, Paragraphs 34, 53, 54, and 55, as well as to Exhibits G, H, I, and 11.

- UMF 47: "Lanes traveling in the same direction were separated by raised, white, circular pavement markers (also known as Bott's dots) in a dashed line pattern."
Disputed with reference to Decl. Dunlap ¶ 34 and Exhibit H, which is a diagram he created apparently depicting roadway conditions on the date of the accident, which did not conform to the County's plans. However, this diagram and Mr. Dunlap's statements based thereon are inadmissible on grounds of (1) hearsay; (2) lack of foundation; (3) lack of personal knowledge; (4) the best evidence rule; (5) weaker evidence; and (6) inadmissible speculation.
 - UMF 49: "Detail 33 on the resurfacing plans indicates the pavement markings placed between the medians at the Park
-

entrance: a combination of yellow reflective and non-reflective raised markers forming two 65-foot double parallel yellow lines, one of which is broken."

Disputed again with reference to Decl. Dunlap ¶ 34 and Exhibit H, which are inadmissible.

The County's evidentiary objections to the Declaration of Dale R. Dunlap, P.E. are SUSTAINED as to ¶¶ 34, 53, 54, 55, as well as to Exhibits G, H, I, and I1. This testimony by Mr. Dunlap either contradicts other sworn statements he has made, or attempts to introduce his interpretation of County design plans. Mr. Dunlap has no evidence of the condition of the road or its markings on the date of the accident, having never personally observed the condition of the road on or near November 5, 2015, and not having reviewed the video taken by Plaintiffs' attorneys in January 2016. The "best evidence rule", Evid. Code § 1520, provides that "the content of a writing may be proved by an otherwise admissible original". Mr. Dunlap's interpretation of the County's design diagrams is not the "best evidence" here; the plans themselves are. (Evid. Code § 412, "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.")

The County's motion demonstrates that two of the required elements for Plaintiffs' dangerous condition claim cannot be established.

First, there was no dangerous condition, i.e. "a condition of property that creates a substantial (as distinguished from a minor, trivial, or insignificant" risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used." Gov. Code § 830(a). There were no substantially similar accidents at this accident location. *Salas v. Dept. of Transportation* (2011) 198 Cal.App.4th 1058, 1071. Moreover, there was no "physical deficiency" that "made the road unsafe when used by motorists and pedestrians exercising due care." *Id.* at 1070. Gov. Code § 830.8 provides public entities with immunity based on the failure to provide "traffic or warning signals, signs, markings, or devices described in the Vehicle Code," absent a "hidden trap". *Compton v. City of Santee* (1993) 12 Cal.App.4th 591, 600. Plaintiffs' only proffered dispute, supported by material to which the County's evidentiary objections are sustained, concern the number of Botts' dots, road stripings, markings, and other traffic or warning signals or devices they claim should be present at the accident location.

Second, the County had no notice of a dangerous condition. Again, there is no history of any substantially similar accidents at this location. The County submits survey data indicating that millions of cars have passed through this location without any issues. Five CHP officers testified that they frequently travel along this roadway at

night, and that there are no visibility issues or problems with observing the road markings. Indeed, Defendant HAN herself testified that she had driven along this road on her daily commute for 18 months.

Given that these two elements of Plaintiffs' dangerous condition claim cannot be established, summary judgment in the County' favor is warranted. Even if a dangerous condition were established, however, the County has shown that it is entitled to design immunity as a complete affirmative defense. Gov. Code § 830.6.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

9:00

LINE: 2

16-CIV-02044 MALAETELE V. IAULUALO, ET AL. VS. STATE OF CALIFORNIA, ET AL.

MALAETELE V. IAULUALO
COUNTY OF SAN MATEO
STEPHANIE HAN

THOMAS J. BRANDI
MARGARET TIDES
MARTIN AMBACHER

DEFENDANT STEPHANIE HAN'S JOINDER TO PLAINTIFFS' OPPOSITION TO
DEFENDANT COUNTY OF SAN MATEO'S MOTION FOR SUMMARY JUDGMENT, OR IN THE
ALTERNATIVE, SUMMERY ADJUDICATION

TENTATIVE RULING:

The joinder of Defendant STEPHANIE HAN is DENIED. The joinder is untimely, and Han has no standing to oppose the County's motion. See *Eckert v. City of Sacramento & Union Pac. R.R. Co.* (E.D. Cal. Sept. 30, 2009) No. 2:07-CV-00825-GEB-GGH, 2009 U.S. Dist. LEXIS 95655 (denying co-defendant permission to oppose motion for summary judgment).

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 3

17-CIV-03590 ALLAN REYNA VS. JAINENDRA KARAN, ET AL.

ALLAN REYNA
JAINENDRA KARAN
ALLIED BUILDING PRODUCTS

JOHN C. BOLLIER
ANTHONY F. PINELLI
FRANCIS TORRENCE

PLAINTIFF ALLAN REYNA'S MOTION FOR COURT ORDER COMPELLING DEFENDANT ALLIED BUILDING PRODUCTS CORP. TO SERVE FURTHER RESPONSES TO FORM INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS; AND REQUEST FOR SANCTIONS

TENTATIVE RULING:

The unopposed motion to compel further responses is GRANTED in its entirety, for the reasons set forth in the supporting Separate Statement of Responses in Dispute.

Defendant's request for a continuance is reasonable, but would not achieve anything. Defendant admits that by the time of a continued hearing, Defendant will have served supplemental responses already, implying that Defendant does not intend to oppose the motion on the merits.

The Court notes that Plaintiff's motion is procedurally defective. Plaintiff filed the Notice of Motion on September 28, 2018, but did not file any supporting papers until October 12, 2018. This violates the requirement that all papers be filed together. (Code of Civ. Proc. § 1010 [supporting papers "must accompany the notice"; see also CRC 3.1113(j) ["all supporting memorandums and declarations must be attached to the notice of motion" to the extent practicable]; *Quantum Cooking Concepts, Inc. v. LV Assocs., Inc.*, 197 Cal. App. 4th 927, 932 [failure to comply with rule 3.1113(j) as grounds to deny motion.]

Plaintiff's request for sanctions is denied. As a matter of due process, a request for a sanction "shall, in the notice of motion," identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought." (Code of Civ. Proc. 2023.040.) The Notice of Motion fails to comply with this requirement.

Defendant shall serve (1) verifications to its original responses and (2) verified supplemental responses to all of the discovery requests at issue, no later than November 16, 2018. If, prior to the November 5, 2018 hearing date, Defendant has already served verified supplemental responses, then those responses may be deemed to be

Defendant's response to this order.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 4

17-CIV-05569 JEFFREY A TOOMASSON VS. VALIDPATH, INC., ET AL.

JEFFREY A TOOMASSON
VALIDPATH, INC.

JEFFREY F. RYAN
PHILIP J. WANG

PLAINTIFF AND CROSS-DEFENDANT JEFFREY A. TOOMASSON'S MOTION FOR
PROTECTIVE ORDER RE: DEFENDANTS' SPECIAL INTERROGATORIES, SET NUMBER
ONE

TENTATIVE RULING:

This matter is dropped from calendar as a Request for Dismissal of the
entire action was filed on October 26, 2018.

9:00

LINE: 5

17-CLJ-04122 CAVALRY SPV I, LLC VS. VAN ALEX NARCISSO, ET AL.

CAVALRY SPV I, LLC
VAN ALEX NARCISSO

MATTHEW W. QUALL
PRO/PER

CAVALRY SPV I, LLC'S MOTION FOR ORDER: TRUTH OF MATTERS SPECIFIED IN
REQUESTS FOR ADMISSIONS BE DEEMED ADMITTED

TENTATIVE RULING:

Plaintiff's motion is GRANTED. The genuineness of any documents and the truth of any matters in the requests for admission are deemed admitted.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

9:00

LINE: 6

18-CIV-02037 FRANCISCO ESPINOSA, ET AL. VS. FCA US LLA, ET AL.

FRANCISCO ESPINOSA
FCA US LLA

MARK ROMANO
JON D. UNIVERSAL

PLAINTIFFS, ALICIA AND FRANCISCO ESPINOSA'S MOTION TO COMPEL FCA US LLC'S DEPOSITION AND REQUEST FOR SANCTIONS IN THE AMOUNT OF \$2,500.00

TENTATIVE RULING:

The Motion of Plaintiffs Alicia Espinosa and Francisco Espinosa ("Plaintiffs") to Compel Deposition and Request for Sanctions is CONTINUED to December 19, 2018 at 9:00 a.m. in the Law and Motion Department.

The court is inclined to grant the motion to compel the deposition of Defendant FCA US LLC's ("Defendant") Person Most Knowledgeable. Defendant's contention that there is no good cause for Defendant's deposition because it made a good faith settlement offer is unsupported by any authority.

However, the parties are to meet and confer in person or by telephone in a reasonable and good faith attempt to resolve each of the Request for Production of Documents. The court notes that as to Request Nos. 2-3, 16-19, 21-22 and 26, Defendant agrees to amend its responses to produce documents subject to a protective order, and thus the parties should discuss whether they are able to agree to a protective order. As to Request Nos. 1, 4-6, 8-9, 10-11, 13-14, 20 and 23-24, Defendant claims that it has already provided responsive documents to these requests, and thus the parties should discuss whether the motion as to these requests are now moot.

The court reserves its ruling on Plaintiffs' request for sanctions until the continued hearing.

Also, Defendant is admonished in the future to comply with California Rules of Court Rule 3.1345 with respect to Defendant's Separate Statement. Defendant's Separate Statement omits Plaintiffs' reasons why further response should be compelled, and only includes Plaintiffs' requests, Defendant's responses, and Defendant's reasons why further response should not be compelled. (See CRC Rule 3.1345(c)(3).)

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10,

effective immediately, and no formal order pursuant to Rule 3.1312 is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 7

18-CIV-02629 WELLS FARGO BANK, N.A. VS. ANNA C. FULGENCIO

WELLS FARGO BANK, N.A.
ANNA C. FULGENCIO

GOLNAZ HEIDARI
PRO/PER

MOTION BY WELLS FARGO BANK, N.A. FOR JUDGMENT ON THE PLEADINGS AND
OF NON-APPEARANCE

TENTATIVE RULING:

Plaintiff's unopposed motion for judgment on the pleadings is GRANTED. Defendant has admitted the allegations of the complaint. Those allegations are sufficient to state causes of action for breach of contract and common counts of open book, account stated, and money had and received. CCP § 438(c)(1)(A).

Judgment shall be entered in favor of Plaintiff in the amount of \$32,116.27. Costs and attorney's fees may be sought pursuant to applicable post-judgment procedures.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

9:00

LINE: 8

18-CIV-03397 FRANCIS BAGNAROL, ET AL. VS. CAROLINA BAGNAROL, ET AL.

FRANCIS BAGNAROL
CAROLINA BAGNAROL

W. GEORGE WAILES

CAROLINA BAGNAROL'S MOTION TO QUASH SERVICE OF SUMMONS AND FOR
SANCTIONS OR OTHER APPROPRIATE RELIEF PER CA COURT AND LOCAL RULES

TENTATIVE RULING:

Defendant Carolina Bagnarol's Motion to Quash, filed 9-27-18, is
DENIED.

The moving party's default was entered on 10-3-18, and thus the Court
lacks jurisdiction to rule on any motion filed by Carolina Bagnarol
except a motion for relief from default. [W.A. Rose Co. v. Mun.Ct.](#)
[\(1959\) 176 Cal.App.2d 67, 71; Devlin v. Kearny Mesa AMC/Jeep/Renault,](#)
[Inc. \(1984\) 155 Cal.App.3d 381, 385-386.](#)

The motion was also untimely-filed. See [Code Civ. Proc. § 418.10\(a\)](#).
The Court notes that Carolina Bagnarol has also filed a Motion to Set
Aside Default, which is set for a hearing on 12-6-18. This Order does
not preclude her from asserting these same arguments in the context of
the Motion to Set Aside Default.

The request for sanctions is DENIED.

If the tentative ruling is uncontested, it shall become the order of
the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10,
effective immediately, and no formal order pursuant to Rule 3.1312 is
required as the tentative ruling affords sufficient notice to the
parties. Prevailing party shall provide written notice of the ruling
to all parties who have appeared in the action, as required by law and
the California Rules of Court.

9:00

LINE: 9

18-CLJ-02342 CITIBANK, N.A. VS. ENRIQUE C. IGLESIAS

CITIBANK, N.A.
ENRIQUE C. IGLESIAS

DEVIN JACOBSEN
PRO/PER

MOTION by CITIBANK, N.A. FOR ORDER THAT MATTERS IN REQUEST FOR
ADMISSION OF TRUTH OF FACTS BE ADMITTED

TENTATIVE RULING:

Plaintiff's motion is GRANTED. The genuineness of any documents and the truth of any matters in the requests for admission are deemed admitted.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

POSTED: 3:00 PM