

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

Law and Motion Calendar  
Judge: HONORABLE SUSAN GREENBERG  
Department 3

400 County Center, Redwood City  
Courtroom 2B

Monday, June 18, 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

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9:00

LINE: 1

17-CIV-01881 MARILYN DANIELS VS. ESTHER SIMONE ORENSTZAJN, ET AL.

MARILYN DANIELS  
ESTHER SIMONE ORENSTZAJN

SEAN P. RILEY  
PATRICK O'BRIEN

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HEARING ON DEMURRER

**TENTATIVE RULING:**

Defendant ESTHER ORENSTZAJN's Demurrer to First Amended Complaint is OVERRULED. Plaintiff's Third cause of action for fraud is sufficiently alleged.

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 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 2

17-CIV-01881 MARILYN DANIELS VS. ESTHER SIMONE ORENSTZAJN, ET AL.

MARILYN DANIELS  
ESTHER SIMONE ORENSTZAJN

SEAN P. RILEY  
PATRICK O'BRIEN

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MOTION TO STRIKE

**TENTATIVE RULING:**

Defendant ESTHER ORENSTZAJN's Motion to Strike First Amended Complaint is GRANTED WITHOUT LEAVE TO AMEND as to the punitive damages allegations and the prayer for attorney's fees.

In establishing a claim for punitive damages, Plaintiff must show by "clear and convincing" evidence that Defendant is guilty of oppression, fraud or malice. Civil Code § 3294(a). The cases interpreting Section 3294 unequivocally provide that in order to assert a claim for punitive damages, the act alleged must not only be willful in the sense of *intentional*, but it must also be accompanied by aggravating circumstances amounting to malice. *Ebaugh v. Rabkin* (1972) 22 Cal.App.3d 891, 894. Plaintiff has not met this burden. Moreover, Plaintiff's prayer for attorney's fees fails to assert any basis in contract, statute or law. Code Civ. Proc. § 1033.5(a)(10). Accordingly, these allegations are stricken.

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 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 3

17-CIV-01923 SALVADOR MIRANDA VS. FRANCISCO SUAREZ, ET AL.

SALVADOR MIRANDA  
FRANCISCO SUAREZ

JASON LUNDBERG  
PRO/PER

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MOTION TO DEEM FACTS AS ADMITTED

**TENTATIVE RULING:**

It is hereby ordered that:

- (1) Plaintiff's motion is GRANTED and the truth of any matter specified in Plaintiff's Request for Admissions, Set Two, is hereby deemed admitted.
- (2) Defendant Francisco Suarez is ordered to pay monetary sanctions to Plaintiff in the amount of \$660.00, forthwith.

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 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 4

17-CIV-03501 NAPEAN CAPITAL GROUP, LLC, ET AL. VS. SELECT PORTFOLIO  
SERVICING INC., ET AL.

NAPEAN CAPITAL GROUP, LLC  
SELECT PORTFOLIO SERVICING INC.

CARLOS A. ALVAREZ  
THOMAS A. WOODS

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MOTION TO COMPEL

**TENTATIVE RULING:**

The motion to compel One Key Escrow to respond further to Form Interrogatory 4.1 and Request for Production of Documents category 23 is denied as to both matters, as moot. Defendant served supplemental responses on April 26, 2018. Although Plaintiffs contend that those supplemental responses are deficient, they are not the subject of the present motion.

Plaintiffs' request for sanctions is granted in the amount of \$680.00 (Declaration of Cohoe para. 12; CRC Rule 3.1348 (sanctions may be awarded even though the requested discovery was provided after the motion was filed).) Defendant explains that it failed to respond fully because the insurance policy and other information were not in Defendant's counsel's possession when the responses were prepared. (See Opposing Declaration of Rapaport, para. 4-6.) Defendant further states that the failure to respond fully was the result of "an administrative error," which amounts to no explanation at all.

Defendant's reasons for failing to respond fully to Interrogatory 4.1 and Document Request 23 were within Defendant's knowledge at the time the responses were prepared. Yet, Defendant's responses omitted that information, rendering them deficient. (See Code of Civ. Proc. Sect. 2030.220, subd. (b) ("If an interrogatory cannot be answered completely, it shall be answered to the extent possible") & 2031.220-.240 (document response must explain why responding party cannot comply with request).) Defendant's explanation also was not set forth in any of the meet-and-confer communications. (See Exhibits 5 through 8 to Decl Cohoe.) Plaintiffs had no choice but to bring this motion.

Defendant One Key Escrow Corporation and its counsel the Law Offices of Adam C. Rapaport, P. C., shall jointly and severally pay \$680.00 to Plaintiffs Napean Capital Group, LLC, Frederic Shih-Hsing Yang, and Jihong Anna Yang, as Co-Trustees of The Yang Family Trust, U/A/ dated May 14, 2012, no later than July 3, 2018, or one week after service of written notice of this ruling, whichever is later.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, Plaintiffs shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties

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who have appeared in the action, as required by law and the California Rules of Court.

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9:00

LINE: 5

17-CIV-03501 NAPEAN CAPITAL GROUP, LLC, ET AL. VS. SELECT PORTFOLIO  
SERVICING INC., ET AL.

NAPEAN CAPITAL GROUP, LLC  
SELECT PORTFOLIO SERVICING INC.

CARLOS A. ALVAREZ  
THOMAS A. WOODS

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**MOTION TO COMPEL**

TENTATIVE RULING:

The Court continues this matter to July 13, 2018.

Plaintiffs bring the present motion under Code of Civil Procedure sections 2031.285 and 2031.310. (Notice of Motion at 2:9-10.)

The motion under section 2031.285 is denied. Section 2031.285 pertains to electronically stored information, which is not at issue.

A motion under section 2031.310 requires a Separate Statement setting forth the specific discovery requests and responses at issue, along with an explanation of why each response is deficient. (CRC Rule 3.1345.) Plaintiffs' motion fails to comply with this requirement. The Court cannot discern which discovery responses are at issue. Instead of denying the motion on that ground, the Court overlooks Plaintiff's failure, since it appears that the entire motion turns upon the single issue of whether an attorney-client relationship existed between counsel for Quality Loan Service and Select Portfolio Servicing.

The party asserting the privilege has the initial burden of proving the preliminary facts to show the privilege applies. (*Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal. App. 4th 417, 442.) Defendant Quality Loan Service offers no evidence explaining how its own counsel could be in an attorney-client relationship with SPS. The only opposing evidence is the Declaration of Corriveau, which contains no evidence on the issue, other than a statement by SPS's counsel Carissa Beecham, who stated that "it was her client's position" that Quality Loan Service's counsel was counsel also for SPS. (Opposing Declaration of Corriveau para. 18.) The statement of Ms. Beecham is hearsay, and it is a mere conclusion. Paragraph 18 is insufficient to demonstrate an attorney-client relationship.

The letter from attorney Beecham to attorney Corriveau suggests that facts might exist to support finding an attorney-client relationship. (See Exhibit M to Opposing Declaration of Corriveau.) The Court continues this matter to July 13, 2018. Defendant Quality Loan Service shall file and serve, no later than June 29, 2018, admissible evidence to support the contention that, at the time of the communications at issue, an attorney-client relationship existed between Quality's counsel

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and SPS. Quality may also file and serve a supplemental brief on this narrow issue, not to exceed four pages, no later than June 29, 2018.

Plaintiffs may file and serve, no later than July 6, 2018, a supplemental Reply brief not to exceed four pages.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, Plaintiffs shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and 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.

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9:00

LINE: 6

17-CIV-03804      MIGUEL SANTOYO, ET AL. VS. ZEGA BUILDERS, INC., ET AL.

MIGUEL SANTOYO  
ZEGA BUILDERS, INC.

JOHN C. STEIN  
KEVIN P. CODY

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APPLICATION TO APPEAR AS COUNSEL PRO HAC VICE

**TENTATIVE RULING:**

The application to appear pro hac vice is denied without prejudice for failure to establish that it was served on all parties. The POS does not indicate that the motion was served on cross-defendant Pacific Tile & Marble, Inc.

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 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 7

17-CIV-03804 MIGUEL SANTOYO, ET AL. VS. ZEGA BUILDERS, INC., ET AL

MIGUEL SANTOYO  
ZEGA BUILDERS, INC.

JOHN C. STEIN  
KEVIN P. CODY

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MOTION FOR LEAVE

**TENTATIVE RULING:**

The motion to intervene is denied without prejudice for failure to establish that it was served on all parties. The POS does not indicate that the motion was served on cross-defendant Pacific Tile & Marble, Inc.

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 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 8

CLJ538927 PORTFOLIO RECOVERY ASSOCIATES, LLC VS. CHRISTINA  
CABELLO

PORTFOLIO RECOVERY ASSOCIATES, LLC  
CHRISTINA CABELLO

EMILY PIERCE

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MOTION FOR JUDGMENT

**TENTATIVE RULING:**

The unopposed motion for entry of judgment is granted. Judgement shall be entered for plaintiff in the amount of \$2,843.98. Plaintiff may seek an award of costs through applicable post judgment procedures.

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 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:01

LINE: 9

17-CIV-04490 JOHN T. BOOTH, ET AL. VS. THE BANK OF NEW YORK MELLON, ET AL.

JOHN T. BOOTH  
THE BANK OF NEW YORK MELLON

SARAH SHAPERO  
JORDAN S. YU

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THE BANK OF NEW YORK MELLON'S MOTION FOR ORDER SETTING BOND AMOUNT  
**TENTATIVE RULING:**

The motion is granted. The court finds the fair market rental value of the property to be \$9,450 per month. Plaintiffs shall deposit this amount with the court on the first business day of each month beginning July 2, 2018 and continuing for the duration of the litigation.

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 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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POSTED: 3:00 PM