

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

Tuesday, June 19, 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

17-CIV-01123 SEAN STOUT, ET AL. VS. THE SWINGIN' DOOR, ET AL.

SEAN STOUT
THE SWINGIN' DOOR

ALBERT L. THUESEN
GEOFFREY T. MACBRIDE

MOTION TO COMPEL FURTHER

TENTATIVE RULING:

The motion is granted as to Interrogatories 77, 80, 83, 114, 117, 132, 141, 155, 164.

A. Interrogatories 77, 80, 83, 114, 117, 132, 155.

For each response in which Plaintiff has provided the name of a person with knowledge, Plaintiff shall supplement the response to provide the address and telephone number of that person: Bruce Johnson, Sonia Pahl, Joel Caldero, Julie Sontag, Michaela Favella, Mary Kahn, Dennis Rae, Alexis Perlmutter. If any person is an employee of Defendant Warac, then Plaintiff's supplemental response may so indicate in lieu of providing address or phone number.

B. Interrogatories 77, 80, 83, 114, 117.

Plaintiff shall identify by name and provide the address and phone number of all "employees, agents, and past customers identified in production in this matter," and "prior consumers" to the extent possible. If names are unknown, then Plaintiff shall identify each of these persons to the fullest extent possible, such as by physical description, dates when the employee, agent, or past customer was at the restaurant, or any other information by which Defendant can identify or locate the person (Code Civ. Proc. § 2030.220, subd. (b) ["If an interrogatory cannot be answered completely, it shall be answered to the extent possible"].)

Contrary to Plaintiff's Opposition, the present motion is not a substitute for supplemental discovery under Code of Civil Procedure section 2030.070. Rather, the motion seeks information about persons Plaintiff has already identified, under oath, as having knowledge of various facts. Generic descriptions of individuals are insufficient, unless Plaintiff can state under oath that he has absolutely no further information to identify or describe those persons.

Also, Plaintiff's response implies that "prior customers" have posted on Defendant's social media accounts. Defendant would have access to the accounts. But the response is insufficient because it does not identify which prior customers posted to which accounts. Plaintiff shall supplement his response by identifying by name (or screen name) each person Plaintiff contends posted, and the social media account to which that person posted. The information is not equally available to Defendant. Although Defendant allegedly owns the account, Defendant has no way to identify the "prior customers" to whom Plaintiff deficiently refers.

The Court rejects Plaintiff's contention that identification of persons with knowledge constitutes work product. The party asserting a 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.) Plaintiff offers none. A witness statement might be subject to a qualified work product protection (*Coito v. Superior Court* (2012) 54 Cal.4th 480, 499-500), but the interrogatories ask only for identifications of witnesses, not the result of any interview. Further, the interrogatories do not seek an attorney's writings that are protected by Code of Civil Procedure section 2018.030(a.)

C. Interrogatory 141, 164.

In addition to the above, Plaintiff shall identify by name, address, and phone number the "friends, family, neighbors, work colleagues, and confidants" identified in this response. Further, although the response fully identifies two health care providers by name and contact information, it does not fully identify "her staff." Plaintiff must identify the staff to whom he refers; alternatively, he must identify them to the extent possible (physical description, job, where Plaintiff encountered the person), or he must amend his response to indicate that no staff members have knowledge. (Code Civ. Proc. § 2030.220, subd. (b) ["If an interrogatory cannot be answered completely, it shall be answered to the extent possible"].)

Also, the two named health care professionals are impliedly only a portion of health care providers. The Response states, "health care professionals, *including* ...," which implies that the response is not exhaustive. Plaintiff shall amend his response to identify all other health care professionals not listed, or to state that Plaintiff knows of none.

D. Sanctions.

Defendant's request for sanctions is granted in the amount of \$2,220.00. The amount could potentially increase if a hearing is required.

Plaintiff Sean Stout shall pay a monetary sanction of \$2,220.00 to Defendant Warac Corporation and shall serve verified supplemental responses as set forth above, no later than July 3, 2018, or one week after service of written notice of this order, whichever is later.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant Warac Corporation 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.

9:00

LINE: 2

17-CIV-05079 JOHN HERNANDEZ VS. CASTLE AURA ENTERPRISE INC., ET AL.

JOHN HERNANDEZ
CASTLE AURA ENTERPRISE, INC.

WILLIAM L. MARDER
ELISE O'BRIEN

MOTION TO COMPEL

TENTATIVE RULING:

This matter is dropped from calendar. A Stipulation and Order resolving the motion was filed June 12, 2018.

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.

9:00

LINE: 3

17-CLJ-04470 PENINAH NJERI KANIU VS. GOLDEN STATE LUMBER, INC.

PENINAH NJERI KANIU
GOLDEN STATE LUMBER, INC.

PRO/PER

MOTION FOR ATTORNEY FEES

TENTATIVE RULING:

Defendant GOLDEN STATE LUMBER, INC.'s Motion for Attorney's Fees is GRANTED pursuant to Code Civ. Proc. § 425.16(c). Plaintiff is ordered to pay Defendant its reasonable attorney's fees in the amount of \$8,050.00, as well as its costs in the amount of \$490.00, for a total of \$8,540.00.

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.

9:00

LINE: 4

18-CIV-01928 ARTHUR ZANELLO, ET AL. VS. MICHAEL MULLIGAN, ET AL.

ARTHUR ZANELLO
MICHAEL MULLIGAN

KEITH C. BOWER
THOMAS MORONEY

MOTION FOR CHANGE OF VENUE

TENTATIVE RULING:

The Motion of Defendants Michael Mulligan and Gina Mulligan (“Defendants”) for Change of Venue is GRANTED. This action is ordered transferred to Los Angeles.

Plaintiffs bring this action for financial elder abuse seeking personal relief, and thus this action is transitory. Proper venue for transitory actions is where the defendants or some of them reside at the commencement of the action, except as otherwise provided by law and subject to the power of the court to transfer actions or proceedings as provided in this title. (C.C.P. § 395(a).) It is undisputed that both Defendants reside in Los Angeles County, and thus venue is proper there.

Plaintiffs have not identified any statutory exception to support that venue is proper in San Mateo County. Plaintiffs have not established that Code of Civil Procedure section 393(a) applies. This section provides for venue in the county in which the cause, or some part of the cause, arose, “[f]or the recovery of a penalty or forfeiture imposed by statute....” (C.C.P. § 393(a).) However, Plaintiffs have not identified any penalty or forfeiture that they are seeking pursuant to a statute such that venue is determined under section 393(a) here.

To the extent that Plaintiffs seek to have the action remain here based on the convenience of witnesses under Code of Civil Procedure section 397(a), such a motion must be brought before the Los Angeles court after the action is transferred there.

Defendants’ request for reasonable attorney’s fees and expenses is DENIED.

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

9:00

LINE: 5

18-CLJ-00469 THE PEOPLE OF THE STATE OF CALIFORNIA VS. BANKERS
INSURANCE COMPANY

THE PEOPLE OF THE STATE OF CALIFORNIA
BANKERS INSURANCE COMPANY

PETER FINCK

MOTION TO DISMISS

TENTATIVE RULING:

The unopposed motion is granted.

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.

9:00

LINE: 6

18-CLJ-01161 JOSEPH NORTHINGTON VS. DANIEL MULREADY, ET AL.

JOSEPH NORTHINGTON
DANIEL MULREADY

PRO/PER
JOANNA KOZUBAL

MOTION TO STRIKE

TENTATIVE RULING:

The motion to strike is granted with leave to amend. The complaint fails to allege facts to show that defendant is guilty of oppression, fraud or malice within the meaning of Civil Code §3294.

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.

9:00

LINE: 7

CIV538012 DAVID C EBLOVI VS. JESSICA BLAIR, ET AL.

DAVID C. EBLOVI PRO SE
INTERIM CITY CLERK OF THE CITY OF HALF MOON BAY

MOTION FOR ORDER

TENTATIVE RULING:

Judgment creditor Allan Alifano's "Motion for Earnings Withholding Order to Charge Spouse With Co-Spouse's Community Debt," filed May 17, 2018, is DENIED WITHOUT PREJUDICE. This motion is essentially the same motion the Court previously denied without prejudice on 11-16-17, on largely procedural grounds. First, because this motion directly affects third-party Monica Eblovi, it must be personally served on her. *See The Rutter Group: Enforcement of Judgments and Debts*, § 6:1105.1 ("The motion and supporting papers should be personally served on both the judgment debtor and the nondebtor spouse."). Further, the Court's docket indicates two Writs of Execution have been issued in this case, on 3-9-17 and 3-20-17. It appears no Writ of Execution was issued within the past 180 days. A judgment creditor may apply for an earnings withholding order only if (a) a writ of execution has been issued to the county where the judgment debtor's (or spouse's) employer is to be served; and (b) the writ has not been outstanding for more than 180 days. Code Civ. Proc. §§ 699.530; 706.102(a); *The Rutter Group: Enforcement of Judgments and Debts*, § 6:1103.

The request for sanctions is DENIED.

The Court admonishes judgment debtor for his late-filed Opposition papers (misabeled as "reply" papers), and requests that, going forward, he strictly comply with the statutory requirements for filing and serving papers with the Court. *See* Code Civ. Proc. § 1005(b); 10-6-16 Order ("Moving party needs to accept that if he wishes to litigate in pro per he is chargeable with the same rules as would apply to counsel."). Mr. Eblovi's 6-11-18 Opposition papers were filed and served late. The Opposition was due 6-6-18, but was filed 6-11-18. Service of the Opposition papers on 6-11-18 was defective for the additional reason that it was served by regular mail. Per § 1005(b), Oppositions must be served by means of overnight delivery. This may explain why no Reply brief was filed; the moving party may not have received the Opposition papers in time. The Court has nonetheless considered the Opposition brief.

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.

9:00

LINE: 8

CIV538480 E & E CO. LTD VS. CHUNG MAN TANG, ET AL.

E & E CO. LTD
CHUNG MAN TANG

MICHAEL W. ELLISON

MOTION FOR ASSIGNMENT ORDER

TENTATIVE RULING:

The unopposed motion by Plaintiff E&E Co. LTD for order assigning to Plaintiff E&E Co. LTD all payments of commissions, and or other broker or consulting fees that are due or become due and payable to Chung Man Tang or Keystone Brokerage and Consulting from (a) Anthem, Inc., (b) Anthem Blue Cross Life and Health Insurance Co., (c) Anthem Life Insurance Company, (d) The Anthem Companies, Inc., (e) The Anthem Companies of California, Inc., (f) United Healthcare Services, Inc., (g) Blue Shield of California Life & Health Insurance Company, (h) Crump Life Insurance Services, Inc., (i) Aetna Life Insurance Company, (j) Ameritas Life Insurance Corporation, (k) DeCare Dental Health International LLC, (l) Choice Administrators Insurances Services, Inc., (m) Vector Insurance Solutions, LLC, and (n) Sun Life Assurance Company of Canada, is GRANTED.

The unopposed motion for restraining order enjoining Chung Man Tang or Keystone Brokerage and Consulting from encumbering, assigning, or otherwise disposing of the right to payments from (a) Anthem, Inc., (b) Anthem Blue Cross Life and Health Insurance Co., (c) Anthem Life Insurance Company, (d) The Anthem Companies, Inc., (e) The Anthem Companies of California, Inc., (f) United Healthcare Services, Inc., (g) Blue Shield of California Life & Health Insurance Company, (h) Crump Life Insurance Services, Inc., (i) Aetna Life Insurance Company, (j) Ameritas Life Insurance Corporation, (k) DeCare Dental Health International LLC, (l) Choice Administrators Insurances Services, Inc., (m) Vector Insurance Solutions, LLC, and (n) Sun Life Assurance Company of Canada, is GRANTED.

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.

9:00

LINE: 9

CLJ459532 ADVANCE RESTAURANT FINANCE, LLC VS. BA DA BING RESTAURANTS,
INC.

ADVANCE RESTAURANT FINANCE, LLC
BA DA BING RESTAURANTS, INC.

ANGELA A. VELEN

MOTION FOR ORDER

TENTATIVE RULING:

Plaintiff Advance Restaurant Finance, LLC's unopposed Motion for Turnover Order In Aid of Execution is GRANTED.

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.

POSTED: 3:00 PM