

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

Law and Motion Calendar
HONORABLE SUSAN GREENBERG
Department 3

400 County Center, Redwood City
Courtroom 2B

Tuesday, July 17, 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-01828 WEI HU VS. SINO-USA ENTREPRENEUR ASSOCIATION, INC., ET
AL.

WEI HU
SINO-USA ENTREPRENEUR ASSOCIATION, INC.

EILEEN MA
JAMES CAI

MOTION FOR SUMMARY ADJUDICATION OF ISSUES

TENTATIVE RULING:

The motion is continued to February 5, 2019 by stipulation and 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 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 2

17-CIV-03369 NORMA NAJARRO VS. OCEANA SENIOR HOUSING CORPORATION, ET
AL.

NORMA NAJARRO
OCEANA SENIOR HOUSING CORPORATION

PRO/PER
TIMOTHY C. DAVIS

MOTION FOR SUMMARY OF JUDGMENT/ADJUDICATION OF ISSUES

TENTATIVE RULING:

The motion for summary judgment is denied without prejudice for failure to establish that it was served in compliance with CCP §437c (a)(2). The statute states that the notice of motion and supporting papers shall be served on all parties to the action at least 75 days before the hearing date. If the notice is served by overnight delivery, the notice period shall be increased by two court days. The court cannot cure a notice defect by continuing the hearing. Instead, the notice period must begin anew. *Robinson v. Woods* (2008) 168 Cal.App.4th 1258, 1268-1268.

Although plaintiff has not objected to the lack of statutory notice, a waiver of the notice period should not be inferred from silence. *Urshan v. Musicians' Credit Union* (2004) 120 Cal.App.4th 758, 768. Nor, in the absence of an opposition on the merits, is plaintiff required to show prejudice from the lack of proper notice. *Robinson*, 168 Cal.app.4th at 1267.

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

18-CIV-02044 COMERICA BANK VS. HELP PAIN MEDICAL NETWORK, PC, INC.

COMERICA BANK
HELP PAIN MEDICAL NETWORK, PC, INC.

BRECK E. MILDE
CATHERINE S. ROBERTSON

WRIT OF ATTACHMENT

TENTATIVE RULING:

This matter is dropped from calendar. A dismissal was filed 7/2/18.

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-02044 COMERICA BANK VS. HELP PAIN MEDICAL NETWORK, PC, INC.

COMERICA BANK
HELP PAIN MEDICAL NETWORK, PC, INC.

BRECK E. MILDE
CATHERINE S. ROBERTSON

WRIT OF ATTACHMENT
TENTATIVE RULING:

This matter is dropped from calendar. A dismissal was filed 7/2/18.

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-CIV-02489 BEKAH DUBOIS VS. ISMAEL PEREZ, ET AL.

BEKAH DU BOIS
ISMAEL PEREZ

PRO/PER

MOTION TO TRANSFER

TENTATIVE RULING:

The Motion of Defendant Ismael Perez (“Defendant”) to Transfer Venue to Santa Clara County is CONTINUED to 9:00 a.m. on August 16, 2018 in the Law and Motion Department to give Plaintiff Bekah Du Bois (“Plaintiff”) adequate time to file and serve a substantive opposition. Defendant failed to timely serve this motion on Plaintiff as it was supposed to be served by Friday, June 15, 2018, instead of Monday, June 18, 2018. Plaintiff still had time to timely file and serve an opposition though, and has not established any prejudice from the shortened notice. Nevertheless, Plaintiff did not substantively oppose the motion, and therefore the motion is continued to allow Plaintiff time to file a substantive opposition.

Plaintiff’s supplemental opposition is to be filed and served by August 3, 2018.

Defendant’s supplemental reply is to be filed and served by August 9, 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: 6

CIV535986 AUDIO VISUAL SERVICES GROUP, INC. VS. PENINSULA
SPECIAL LIONS
CLUB, ET AL.

AUDIO VISUAL SERVICES GROUP, INC.
PENINSULA SPECIAL INTEREST LIONS CLUB

LORNA WALKER
PRO/PER

MOTION FOR ORDER

TENTATIVE RULING:

Defendant Eleanor Britter's Motion to Strike and/or Reduce Costs, filed 6-22-18, is DENIED. The costs claimed in Plaintiff's 6-18-18 Memorandum of Costs (signed 6-13-18) are recoverable.

\$25 fee for Writ of Execution. Plaintiff seeks recovery of the \$25 fee paid for the "2-25-18" Writ of Execution. The stated "2-25-18" date is incorrect. Plaintiff apparently paid the \$25 fee in February, but the Writ of Execution issued on 3-9-18. Nonetheless, the \$25 fee is recoverable. Code Civ. Proc. § 685.050.

\$75 Service of Process fee. Plaintiff's counsel's 6-13-18 declaration states that the service of process fee for the March 2018 Writ of Execution was \$75, which is recoverable. Code Civ. Proc. § 1033.5(a)(4).

\$2,617.78 in post-Judgment interest. A judgment creditor may recover post-interest on the principal amount of the unsatisfied Judgment at a rate of 10% per annum. Code Civ. Proc. § 685.010(a). Based on the \$50,288.99 Judgment x 10% (\$5,028.89), divided by 365 days = \$13.77/day. \$13.77/day x 190 days (from the 12-5-17 Judgment to 6-13-18, the date Plaintiff filed the Memorandum of Costs) = \$2,617.78.

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.

9:01

LINE: 7

17-CIV-05483 RAE & LETSON VS. RALPH HAKSEW

RAEL & LETSON
RALPH HAKSEW

STEPHEN A. DENNIS
FARLEY J. NEUMAN

MOTION TO STRIKE

TENTATIVE RULING:

Defendant's motion to strike paragraphs 18, 19, 20, 21, 22, 24, and 26 is denied.

The motion to strike allegations of damage in the form of attorney's fees and costs in the Clark Litigation is denied. The tort-of-another doctrine partially applies to this action. Although Plaintiff had a basis to sue Clark without regard to any act or omission by Defendant HASKEW, the Complaint alleges, or at least strongly implies, that a portion of damages caused by Clark might have been avoided or mitigated if Defendant HASKEW had discovered Clark's wrongful acts and reported them to the Plaintiff's Board sooner than Plaintiff eventually learned of Clark's acts. To this extent, at least some of the losses litigated in the Clark Litigation were possibly avoidable and are alleged to flow from the alleged negligence of Defendant HASKEW.

Further, Defendant HASKEW is not a joint tortfeasor with Clark. Their torts were distinct. The complaint does not allege that HASKEW committed any act that aided or contributed to Clark's tortious acts. The complaint alleges only that HASKEW's failure to act permitted the damages from Clark's deeds to increase.

The motion is denied as to tax damages. Collateral estoppel does not apply. The Court ruled that tax damages were not recoverable against Clark, but expressly did not rule that R&L could not recover those damages from the accountant. (Decision at 1.) Further, the issue of whether tax damages could be recovered in an action for accountant negligence was not an issue that was litigated or could have been litigated in the Clark action.

Further, Defendant argues that Plaintiff is seeking to avoid tax liability on the "reimbursement for Clark's embezzlement." (Moving P&A at 14:14-15.) The Complaint contains no such allegation or prayer. Plaintiff's claim is that Defendant HASKEW's negligence caused Plaintiff to incur a tax liability that could have been avoided.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, Plaintiff 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.

9:01

LINE: 8

17-CIV-05483 Rael & Letson vs. Ralph Haksew

RAEL & LETSON
RALPH HAKSEW

STEPHEN A. DENNIS
FARLEY J. NEUMAN

MOTION TO STRIKE
TENTATIVE RULING:

Defendant's motion to strike Paragraph 28, at page 5, lines 23-25, denied.

The tort-of-another doctrine partially applies to this action. Although Plaintiff had a basis to sue Clark without regard to any act or omission by Defendant CASSANO, the Complaint alleges, or at least strongly implies, that a portion of damages caused by Clark might have been avoided or mitigated if Defendant CASSANO had discovered Clark's wrongful acts and reported them to the Plaintiff's Board sooner than Plaintiff eventually learned of Clark's acts. To this extent, at least some of the losses litigated in the Clark Litigation were possibly avoidable and are alleged to flow from the alleged negligence of Defendant CASSANO.

Further, Defendant CASSANO is not an alleged joint tortfeasor with Clark. Their torts were distinct. The complaint does not allege that CASSANO committed any act that aided or contributed to Clark's tortious acts. The complaint alleges only that CASSANO'S failure to act permitted the damages from Clark's deeds to increase.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, Plaintiff 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.

POSTED: 3:00 PM