

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

Wednesday, November 7, 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-04010 AMBER FERRARI VS. EPC COMPUTER SOLUTIONS, INC., ET AL.

AMBER FERRARI
EPC COMPUTER SOLUTIONS, INC.

ROBERTO RIPAMONTI
NICOLAS A. FLEGEL

MOTION FOR SUMMARY OF JUDGMENT/ADJUDICATION OF ISSUES

TENTATIVE RULING:

This matter is dropped from calendar as a dismissal was filed on
October 1, 2018.

9:00

LINE: 2

18-CIV-00750 CHRISTINA ROMERO VS. FRY'S ELECTRONICS, INC., ET AL.

CHRISTINA ROMERO
FRY'S ELECTRONICS, INC.

DAVID L. HART
THOMAS A. RECTOR

FRY'S ELECTRONICS, INC.'S MOTION FOR LEAVE TO FILE CROSS-COMPLAINT

TENTATIVE RULING:

Fry's Electronics unopposed motion for leave to file a cross-complaint is GRANTED.

Defendant shall file the proposed cross-complaint no later than November 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 is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 3

18-CIV-01925 MAXIMO INVESTMENTS, LLC VS. WORKING DIRT R2, ET AL.

MAXIMO INVESTMENTS, LLC
WORKING DIRT R2

BENJAMIN C. GRAVES
MATTHEW D. ZUMSTEIN

CROSS-DEFENDANTS' MAXIMO INVESTMENTS, MOHAMMED AND FAEZEH REZAIAN, AND MOHAMMED AND ZARAH HADIPOUR HEARING ON DEMURRER TO CROSS-COMPLAINT

TENTATIVE RULING:

Cross-Defendants' Maximo Investments, Mohammed and Faezeh Rezaian, and Mohammed and Zarah Hadipour demurrer to the Cross-Complainant of Working Dirt R2 (WDR2) is ruled on as follows:

The demurrer to the First through Third causes of action is SUSTAINED, with leave to amend.

WDR2 has alleged that the parties to the alleged oral partnership agreement (COA1) and implied partnership agreement (COA2) were CHV and WDR2. As WDR2 has not alleged the demurring defendants were parties to the oral or implied agreement, WDR2 has failed to assert a cause of action for breach against the demurring defendants.

Similarly, WDR2 asserts a breach of fiduciary duty (COA3) arising from the oral or implied agreement between WDR2 and CHV. Because WDR2 has not alleged the demurring defendants were parties to the oral or implied agreement, WDR2 cannot establish that the demurring defendants owed fiduciary duties arising from the alleged agreement.

WDR2 is granted leave to amend to allege facts indicating that the demurring defendants were parties to the alleged partnership agreement, to the extent such facts exist. An amended cross-complaint shall be filed on or before November 16, 2018.

WDR2's remaining causes of action against the demurring defendants are sufficiently pled, taking into consideration the detailed conspiracy allegations set forth at Paragraphs 31-36 of the Cross-Complaint. Accordingly, Cross-Defendants' demurrer is OVERRULED as to WDR2's Fourth through Ninth causes of action. These are the same reasons that Defendant Rosenbledt's almost identical demurrer to these same causes of action were previously overruled.

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, DEMURRING 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: 4

18-CIV-03643 MEHRDAD ELIE VS. CRAIG CHANG, ET AL.

MEHRDAD ELIE
CRAIG CHANG

ALLONN E. LEVY

MOTION FOR ORDER TO DEEM FACTS 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.

The request for sanctions is also granted pursuant to CCP §2033.280(c). Defendants shall pay plaintiff \$1,070 within 14 days.

On July 25, 2018, plaintiff filed proofs of service indicating that defendants were served with the summons and complaint by substitute service on July 17, 2018. Service became effective on July 28, 2018. Defendants have never filed a responsive pleading or otherwise appeared in the action.

CCP §2033.020 provides that a plaintiff may serve requests for admission on a party at any time that is 10 days after service of the summons on, or appearance by, that party, whichever occurs first. The declaration of Allonn Levy and the attached exhibits indicate plaintiff served defendants with the request for admission on August 21, 2018. CCP §2033.020 permits service of the discovery prior to a party's answer and §2033.280 requires the court to grant the instant motion unless substantially compliant responses are served prior to the hearing.

The request for sanctions is also granted. CCP §2033.280(c) states it is mandatory that the court impose a monetary sanction against the party or attorney whose failure to serve a timely response necessitated the motion. However, the amount requested is not reasonable. Plaintiff seeks compensation for a total of 11 hours spent drafting the motion by two attorneys and one paralegal. Plaintiff also seeks time anticipated to be spent attending the hearing. Given the proposed tentative, an appearance should not be necessary. Consequently, the total amount of sanctions are reduced to two hours to draft the motion at \$535 for a total of \$1,070.

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, DEMURRING 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: 5

CIV455572 CLARA BROWN VS. CALVIN CARROLL, ET AL.

CLARA M BROWN
CALVIN D CARROLL

PRO/PER
MARYANN DRESNER

ORDER TO SHOW CAUSE RE: CONTEMPT

TENTATIVE RULING:

This matter is dropped from calendar as being procedurally improper. An Order to Show Cause re Contempt is a quasi-criminal matter. The Order to Show Cause must be signed by a judicial officer and set for a date for arraignment, entry of plea, and either a hearing or set for a hearing. Such hearings are not heard in the law and motion department and, therefore, should be set before the presiding judge. The hearing consist of testimonial evidence and a finding of guilty or not guilty is based on that evidence - not on the moving papers.

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: 6

CIV511997 FIREMAN'S FUND INSURANCE COMPANY VS. DOMINIQUE BLACK

FIREMAN'S FUND INSURANCE COMPANY
DOMINIQUE BLACK

JEREMY SUGERMAN
PRO/PER

MOTION TO CONTINUE TRIAL DATE

TENTATIVE RULING:

The Motion to Continue Trial Date, filed 10-24-18, is DENIED AS MOOT. The 11-13-18 trial date was vacated. No trial date is currently set.

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

CIV511997 FIREMAN'S FUND VS. DOMINIQUE BLACK

FIREMAN'S FUND INSURANCE COMPANY
DOMINIQUE BLACK

JEREMY SUGERMAN
PRO/PER

MOTION TO BE RELIEVED AS COUNSEL

TENTATIVE RULING:

Attorney Kim Dincel's 10-24-18 Motion to Be Relieved as Counsel for Cross-Complainant Dominique Black is GRANTED.

Black is behind on paying the attorney's invoices. Failure to pay for the legal fees is often found to be good cause to withdraw.

There is no trial date currently set, thus any prejudice is reduced. When this motion was filed, trial was set for Nov. 13. But the trial date was vacated. Thus, the stated urgency of an impending trial date doesn't exist anymore.

Finally, Kim Dincel's firm has only represented Black for about 90 days total (they filed this motion just 45 days after being retained). Because the period of representation is so short, this also decreases the prejudice.

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, ATTORNEY is directed to prepare, circulate, and submit a written order on the appropriate judicial council form 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

CIV511997 FIREMAN'S FUND VS. DOMINIQUE BLACK

FIREMAN'S FUND INSURANCE COMPANY
DOMINIQUE BLACK

JEREMY SUGERMAN
PRO/PER

MOTION TO CONTINUE TRIAL DATE

TENTATIVE RULING:

The Motion to Continue Trial Date, filed 10-24-18, is DENIED AS MOOT. The 11-13-18 trial date was vacated. No trial date is currently set.

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: 8

CIV538688 CHRIS SHAFFER, ET AL. VS. RALPH J. LEWIS

SHARON SHAFFER
MASOUD SALAMAT

EVAN D. WILLIAMS
PRO/PER

MOTION TO SET ASIDE DEFAULT/JUDGMENT

TENTATIVE RULING:

Defendant MASOUD SALAMAT's Motion to Vacate Default Judgment is DENIED.

The circumstances of this case do not warrant setting aside the default, which was obtained on July 22, 2016, or the default judgment, obtained two years later following a prove-up hearing on June 7, 2018.

After the Complaint was served on Defendant, Plaintiffs served and filed a request for entry of default, which was entered on July 22, 2016. On July 28, 2016, an attorney named Nathaniel Leeds contacted Plaintiffs' counsel, stating that he had been hired by Defendant to help him address the default. Counsel exchanged several emails, but Defendant made no request that the Court set aside the default. Plaintiffs learned that Mr. Leeds was no longer representing Defendant in March 2017. (Decl. Williams ¶ 3.)

Plaintiffs settled the case with Defendant LEWIS in April 2018, and afterward scheduled the prove-up hearing to obtain default judgment against Defendant SALAMAT. The evidence included a declaration from Plaintiff CHRIS SHAFFER regarding the scope of work and charges by Defendant, and a declaration from engineer Edwin Nicholson who stated that Defendant's work fell below the standard of care, and that Defendant had overcharged for his work. Mr. Nicholson had prepared repair drawings and assisted with completing the remodeling project at a cost of \$9,500. He believed Defendant should not have charged Plaintiffs more than \$13,000 for his services, meaning Defendant was paid \$10,000 above what should have been charged. Ultimately, these figures were used by the Court in entering judgment against Defendant in the amount of \$19,500. (Decl. Williams ¶ 4.)

It was only after the judgment was entered against him that Defendant sought to have the default set aside. Defendant has clearly been aware of this lawsuit from its inception, and has made no effort to participate or to have the default set aside in a timely manner. Thus, relief under Code Civ. Proc. § 473(b) is unwarranted

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, DEMURRING 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