Tentative Rulings and Resolution Review Hearings
June 26, 2017
Department 3

NOTE: This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court's website (www.shasta.courts.ca.gov) and are available by clicking on the "Tentative Rulings" link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

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8:30 a.m. – Law & Motion

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BOLDS VS. NORTH STATE GROCERY, INC.
Case Number: 180557

Proposed Tentative Ruling on Motion to Tax Costs: Plaintiff, Jasmine Bolds, by and through her Guardian Ad Litem, Isaac Bolds moves to tax costs totaling $9,005 for the Memorandum of Costs filed by Defendant, North State Grocery, Inc. dba Holiday Quality Foods, Inc. Plaintiffs seek to tax costs the following costs:

- $150 for Jury Fees (Item 2)
- $541.20 for Depositions Cost – Travel (Item 4)
- $4,850 for Experts Witness costs (Item 8)
- $3,463.80 for Other (Item 13)

Pursuant to CCP § 1032, the party prevailing in most civil cases may recover costs of suit in any action or proceeding. See CCP § 1032(b); *Santisas v. Goodin* (1998) 17 Cal.4th 599, 606. The award of costs pursuant to section 1032 is discretionary, and the costs recoverable are restricted to only those costs that are both reasonable in amount and reasonably necessary to the conduct of the litigation. CCP § 1033.5(c)(2)(3). The Court has the power to disallow costs, even those allowable as a matter of right, if they are not reasonably necessary or in a reasonable amount. *Perkos Enterprise, Inc. v. RRNS Enterprises* (1992) 4 Cal.App.4th 238, 245. Whether a cost item is reasonably necessary is a question of fact for the trial court. *Applegate v. St. Francis Lutheran Church* (1994) 23 Cal.app.4th 361, 363–364.

CCP § 1033.5 sets forth categories of costs that are presumed allowable under section 1032 if incurred, whether or not paid, by the prevailing party. The categories are itemized on the Judicial Council memorandum of cost form and sequentially numbered. Verification of the memorandum of costs by the prevailing party's attorney establishes a prima facie showing that the claimed costs are proper. *Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1267. The burden is on the objecting party to show that the costs are not reasonably necessary. *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131. On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs. *Ladas v. California State Auto Assn.* (1993) 19 Cal.app.4th 761, 774. The mere filing of a motion to tax costs constitutes a proper objection to an item, the necessity of which appears doubtful, or which does not appear to be proper on its face. *Oak Grove School Dist. v. City Title Ins. Co.* (1963) 217 Cal.App.2d 678, 698–699.

Jury Fees: CCP § 1033.5(a) allows for jury fees. Plaintiff's request to tax this cost is based on an alleged waiver of the jury. The Case Management Order dated January 26, 2015 reflects that Defendant waived its

right to a jury. Thereafter Defendant posted jury fees on March 4, 2015. Plaintiff argues that the jury fees were gratuitous based on the timing. The jury fees are a recoverable cost in the present scenario; not only are they expressly provided for in CCP § 1033.5(a) but the cost was actually incurred. The waiver of a jury could have been rescinded or relief granted from the waiver. The Court finds that this cost was reasonably necessary and for a reasonable amount. The request to tax this cost is denied.

Deposition Costs - Travel: Plaintiff agrees that travel costs may be recoverable but they are not mandatory. Plaintiff requests a reduction based on Defendant's choice of counsel. This argument is unavailing. Defendant incurred the travel costs and they are permitted. See *Thon v. Thompson* (1994) 29 Cal.App.4th 1546, 1548. The Court finds that these costs were reasonably necessary and for a reasonable amount. The request to tax these costs is denied.

Expert Witness Costs: Plaintiff does not argue that the cost was not reasonably necessary or is an unreasonable amount. Plaintiff objects to the expert witness fees on other grounds, each of which is addressed by the Court:

(1) Plaintiff argues that although Plaintiff has received the billing invoice from the defense expert, Dr. Heyerman, Plaintiff should be allowed to see the contract between Defendant's counsel and Dr. Heyerman. Generally speaking, there is no requirement that Defendant provide the expert's contract. Plaintiff has not shown good cause to require it in this case. Therefore, the expert witness costs will not be taxed on this ground.

(2) Plaintiff argues Defendant's 998 offer was conditional on obtaining approval of the minor's compromise from the Court, and the Court would not have approved a settlement in an amount which is half the amount previously rejected by the Court. Given that it was half the amount previously rejected by the Court, there was little if any reasonable prospect of acceptance. The Court takes this into consideration in exercising its discretion. The Court also takes into consideration that the minor is required to litigate through a Guardian Ad Litem and has no input on the direction of the litigation.

(3) Plaintiff argues the offer was made in bad faith because it was made early in the litigation. The injury occurred six years prior to the offer, but the offer indeed was made early in the litigation – 10 days after the answer was filed. The fact that the offer was made early in the litigation is not dispositive, but is a factor the Court takes into consideration in exercising its discretion.

The Court exercises its discretion and rules that the expert fees are not recoverable in this case despite the service of a CCP section 998 offer.

Other Costs: Defendant's opposition provides the multiple invoices from Unisource to show that exact nature of the charges. All charges appear related to obtaining medical records. These costs are recoverable pursuant to *Naser v. Lakeridge Athletic Co.* (2014) 227 Cal.App.4th 571, 576-78 as deposition costs. The *Naser* Court impliedly rejected the argument that costs of this nature were prohibited as photocopying costs in ruling that costs of this nature were recoverable as deposition costs. The Court finds that these costs were reasonably necessary and for a reasonable amount. The Court also finds that the costs are appropriate deposition costs. See CCP § 1033.5(a)(3). The request to tax these costs is denied.

The motion is GRANTED IN PART and DENIED IN PART. A proposed order was lodged with the Court which will be modified to reflect the ruling.

BROS. TRUCKING, INC VS. NOAKES
Case Number: 185679

Tentative Ruling on Application for Judgment Debtor Examination: Judgment Creditor, Bros. Trucking, Inc. seeks to conduct a debtor examination of Judgment Debtor, Rebecca Noakes, individually and dba NorCal Performance Diesel. The Court issued an Order to Appear for Examination on May 10, 2017 which set a debtor examination for June 5, 2017. The hearing was later rescheduled to today, June 26, 2017. CCP § 708.110 requires 10 calendar days personal service to be made on the Judgment Debtor. No proof of personal service has been filed. On or before the date of this hearing, the Judgment Creditor is to file with the Court a proof of service indicating timely service of the original Order and Amended Notice on the Judgment Debtor. Otherwise, the debtor examinations will be dropped from the calendar.

CAPITAL ONE BANK VS. ACEITUNO
Case Number: 16CV439

Tentative Ruling on Motion for Order to Deem Matters Admitted: The present motion is unopposed. Plaintiff, Capital One Bank (USA), N.A., seeks to have the matters contained in its Request for Admission, Set One deemed admitted.

Plaintiff's has established that the Request for Admissions, Set One was properly served and that Defendant failed to provide a response. CCP § 2033.280. The motion is GRANTED. A proposed order has been lodged with the Court and will be executed.

CAPITAL ONE BANK VS. SUTHERLAND
Case Number: 06CV1019

Tentative Ruling on Motion to Set Aside and Vacate Default Judgment; Dismissing with Prejudice: Plaintiff, Capital One Bank obtained a default judgment against Defendant, Carmen J. Sutherland in 2007 based on a credit account. Plaintiff now moves to vacate that judgment as it agrees the account may have been fraudulent opened or used.

The motion is GRANTED. The Court vacates the default and default judgment entered on February 26, 2007. A proposed order was not lodged with the Court for execution. Plaintiff shall prepare the order. After the order is lodged and executed, Plaintiff is ordered to file a separate Request for Dismissal. This matter is set for resolution review regarding status of order vacating the default and default judgment and status of request for dismissal on **Monday, August 28, 2017 at 9:00 a.m. in Department 3**. An appearance is not required if the order and request for dismissal are entered before that date.

HURD, ET AL VS. BRESKA, ET AL
Case Number: 184036

Tentative Ruling on Motion for Judgment on the Pleadings: A Notice of Intent to Withdraw Motion was filed on June 23, 2017. Accordingly, this matter has been dropped from calendar. No appearance is necessary on today's calendar.

IN RE JONES
Case Number: 187271

Tentative Ruling on Petition for Change of Name: Adult Petitioner seeks to change his name. The Court requires proof of publication before the Petition may be granted. Additionally, the Court notes that the

Declaration contained within is incomplete. The declaration fails to identify whether the Petitioner *is* or *is not* a registered sex offender. If proper proof is provided and the Petitioner appears to testify that he is not a registered sex offender, then the Petition may be granted and all future dates vacated.

IN RE LADESIC
Case Number: 187375

Tentative Ruling on Petition for Change of Name: Petitioner seeks to change her name from Linda Gail Ladesic to Linda Gail Byan. The Petition suffers from three procedural defects. First, there is no proof of publication on file as required by CCP § 1277. The Court requires proof of publication before the Petition may be granted. Second, CCP § 1276(a) requires the Petition state the Petitioner's place of birth. Petitioner did not provide this information. Third, Petitioner failed to complete the declaration required by CCP § 1297.5(e) related to whether she is subject to the Department of Corrections or is a registered sex offender. An appearance is required by the Petitioner to provide proof of publication and to testify under oath as to her place of birth, whether she is subject of the Department of Correction and whether she is a registered sex offender. If all three requirements are satisfied, the Court intends on granting the Petition and vacating all future dates.

IN RE LOWRY
Case Number: 187327

Tentative Ruling on Petition for Change of Name: Petitioner, Megan Lowry, seeks to change the names of her three minor children. Petitioner has provided proper proof of publication and proof of service on the non-petitioning parents. The Petition is GRANTED. Future dates may be VACATED and the file may be closed upon the processing of the decree.

IN RE NEVAREZ
Case Number: 187311

Tentative Ruling on Petition for Change of Name: Petitioner, Sarah Nevarez, seeks to change the name of her minor daughter. The Court requires proof of publication and proof of service on the non-petitioning parent (Vincent Becerril) before the Petition may be granted. If proof of publication and proof of service are provided, the Court intends on granting the Petition and vacating all future dates.

IN RE ROVENSTINE
Case Number: 187275

Tentative Ruling on Petition for Change of Name: Petitioner, Britny Ann Rovenstine seeks to change her name to Britny Ann Andrews. The Court requires proof of publication before the Petition may be granted. If proper proof of publication is provided the Court intends on granting the Petition and vacating all future dates.

JASON VS. READ, ET AL
Case Number: 186961

Tentative Ruling on Demurrer and Motion to Strike: This is a dispute over alleged violations of CC&Rs applicable to certain parcels of real property. The complaint was filed March 16, 2017. It alleges causes of action for injunctive relief, fraud, and economic loss. On May 26, 2017, defendants Michael Reed and Michelle Young filed a demurrer to the First, Second, and Fourth Causes of Action as well as a motion to strike. Oppositions were filed June 12, 2017 and replies were filed June 19, 2017.

Request for Judicial Notice. The defendants' request for judicial notice seeks judicial notice of the complaint in this case, and will be granted under Evidence Code § 452(d).

Procedural Requirements. Both parties have ignored the applicable rules. The defendants failed to meet and confer prior to bringing the demurrer (as required by CCP § 430.41), and failed to itemize or specify the matter that is the subject of their motion to strike (CRC 3.1322). The defendants offer three arguments to get around these failures. First, they admit, wholesale, that they did not engage in meet and confer efforts because their attorney "believe[s] engaging in the meet and confer process would only incite more harassment from [the plaintiff]" and attempt to frame the plaintiff as a potential vexatious litigant. Meidas Decl., ¶ 12. The present matter is not a vexatious litigant motion, such that those arguments are irrelevant. Second, the defendants argue that "[c]onsidering the Complaint is 61 pages in length, isolation of relevant, unharassing, and appropriate allegations, if there are any, is a burden that should not be carried by the defendants' counsel or the Court." Motion to Strike, p. 5:6-8. Third, the defendants argue that a motion to strike may be treated as a motion for judgment on the pleadings under *Pierson v. Sharp Memorial Hospital, Inc.* (1989) 216 Cal.App.3d 340, 342-343. From this proposition, the defendants conclude that, since meet and confer efforts are not required for a motion to strike, or for a motion for judgment on the pleadings, the Court can essentially use the motion to strike as a vehicle to grant what would, in essence, be a demurrer, but without requiring the defendants to follow the meet and confer requirements imposed on a demurrer or the itemization requirements that apply to a motion to strike. The Court declines to use its discretion to apply the principle in *Pierson* to the context of the instant case, where it appears the party demurring and moving to strike is essentially trying to circumvent the procedural requirements applicable to those motions.

On the other hand, the plaintiff admits that he filed a complaint that contains large amounts of matter that are improper and should be stricken. See Partial Opposition and Partial Non-Opposition to Motion to Strike (f: 06/12/17), p. 8:10-16 ("Plaintiff has stipulated to strike thirty-nine (39) specific paragraphs…). In addition to initially *filing* a complaint that contains such large portions of matter that the plaintiff admits are improper, the plaintiff subsequently declined to take advantage of the opportunity to amend as of right to remove those paragraphs even though he has no opposition to them being stricken by the Court. Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group, 2016) ¶ 6:603, citing CCP § 742 ("if defendant files a *demurrer*, plaintiff has a right to amend the complaint without leave of court *up to the date for filing an opposition to the demurrer*."). Thus, although the plaintiff argues that the defendant failed to meet and confer, much of the weight of that argument is deflated by the fact that the plaintiff is agreeing to strike significant matters from the complaint, but chose not to do so of his own accord as the law permits. Opposition to Motion to Strike, p. 8:21-24 ("Defendants should have met and conferred with Plaintiff as to these matters, and Plaintiff would have stipulated to striking the above itemized paragraphs from Plaintiff's complaint…").

The law is designed to require parties to meet and confer to avoid exactly the kind of issue that has been created by the parties' tactics in the instant situation. However, "any determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer." CCP § 430.41(a)(4). Here, the meet and confer effort was more than "insufficient"—it was non-existent. The Court will not exercise is discretion or overlook defects where those defects are designed to dodge the spirit for which the procedural requirements were created.

Moreover, the Court notes that the plaintiff is now represented by counsel. As such, the defendants' prior argument that meet and confer efforts would be fruitless because they would be *directly with a pro per litigant who had made disparaging allegations against counsel* are no longer applicable, as the Court would expect meet and confer efforts between two professionals to be civil, respectful and productive. Additionally, in light of the fact that the plaintiff has conceded to striking significant portions of the complaint, it appears to the Court that meet and confer efforts should, at a minimum, yield a stipulation for leave to amend to remove some material, which, in turn, should sharpen any issues raised by future demurrers and/or motions to strike.

As to the cause of action for "Economic Loss", the parties should be mindful that "Economic Loss" is an item of damage; not a cause of action. If this cause of action is intended to be a breach of contract cause of action, it should be so pled and labeled.

Disposition. The demurrer is continued to **Monday, July 24, 2017 at 8:30 a.m. in Department 3**. The motion to strike is continued to **Monday, July 24, 2017 at 8:30 a.m. in Department 3**. Counsel for both parties are **ORDERED** to meet and confer regarding the issues raised in the demurrer and motion to strike. The Court expects the meet and confer to be productive. Failure to meet and confer in a meaningful and good faith manner may result in the issuance of an Order to Show Cause re Monetary Sanctions for failure to comply with a Court Order as well as for failure to comply with CCP § 430.41. The settlement conference set for November 13, 2017 and the trial set for February 14, 2018 are **confirmed**. The Court notes that, other than the dates set forth above, there are no future hearing dates on calendar in this matter.

MATTINGLEY VS. BURKE
Case Number: 186581

Tentative Ruling on Motion to Compel Further Responses: The present motion is unopposed. Defendant, Mervin Burke moves for an order compelling further responses from Plaintiff, Scott Mattingley, to Form Interrogatories 17.1 and 50.1 pursuant to CCP § 2030.300. Defendant also seeks sanctions in the amount of $915 against Plaintiff.

Defendant's motion to compel further responses is GRANTED. Plaintiff shall provide further responses to Form Interrogatory 17.1 for each of the denied Requests for Admissions and to Form Interrogatory 50.1 within 30 days of service of notice of entry of order. The Court finds that Defendant's sanction request is reasonable. Sanctions are awarded in the amount of $915. Sanctions are also due and payable to Defendant with 30 days of notice of entry of the order. No proposed order was lodged with the Court. Defendant shall prepare the order.

NORTHRUP VS. ANDERSON
Case Number: 186459

Tentative Ruling on Order to Show Cause Re: Sanctions: An Order to Show Cause Re: Sanctions issued on April 25, 2017 to Petitioner's failure to appear at the April 24, 2017 review hearing. Petitioner's Counsel has submitted a declaration explaining his absence and apologizing to the Court. In light of the declaration, sanctions will not be imposed.

Tentative Ruling on First Amended Petition for Preservation of Evidence: The present Amended Petition is unopposed. Petitioner, Angel Northrup, seeks an order requiring Respondent, Johnny Alan Anderson to preserve evidence and to conduct pre-litigation discovery. The Amended Petition is properly verified and satisfies the pleading requirements of CCP § 2035.030. The Petition will be granted. The Court notes that the vehicle in question is alleged to be in the possession of the Shasta County District Attorney's Office (hereinafter the "DA"). The DA was not a named Respondent in the Amended Petition. Therefore the Court does not have jurisdiction to issue an order that requires any action on the part of the DA.

The Amended Petition is GRANTED. Petitioner is entitled to an order requiring Respondent to preserve the vehicle and to permit Petitioner to conduct discovery pursuant to CCP § 2035.020(b). A proposed order was included as part of the Amended Petition but a separate copy was not lodged with the Court. The Court will require the preparation of a new order consistent with the ruling above. Today's review hearing set for 9:00 a.m. is continued to **Monday, July 31, 2017, at 9:00 a.m. in Department 3** for confirmation of lodging of the order.

PHH MORTGAGE CORPORATION VS. DUMLAO, ET AL
Case Number: 182461

Tentative Ruling on Motion for an Order to Correct Clerical Error in Judgment and to Amend Judgment Nunc Pro Tunc: The present motion is unopposed. Plaintiff, PHH Mortgage Corp. seeks to correct a clerical error located in the September 14, 2016 Judgment pursuant to CCP § 473(d). Plaintiff has established that the Judgment contains a clerical error that must be corrected.

The motion is GRANTED. A proposed order and amended Judgment were lodged with the Court and will be executed.

SLACK VS. GAMBLE, ET AL
Case Number: 185243

Tentative Ruling on Demurrer to First Amended Complaint: Defendants, The Roles Company, Inc and Eric Roles (hereinafter collectively "Role") demurs to the first and second causes of action in Plaintiff, Lonnie Slack's First Amended Complaint. CCP § 430.41(a) imposes a meet and confer requirement on the parties prior to filing a demurrer. Roles admits that no such meet and confer process was attempted but argues that any meet and confer efforts would be an idle act based on the prior actions of the Plaintiff. The Court cannot find that the meet and confer process would have been an idle act on the present facts and therefore it cannot excuse the failure to meet and confer. This matter is continued to **Monday, July 31, 2017, at 8:30 a.m. in Department 3.** Roles is ORDERED to meet and confer as required by CCP § 430.41(a) with the Plaintiff. Roles shall file a declaration no later than July 24, 2017, providing their specific efforts to meet and confer**.** Today's review hearing set for 9:00 a.m. in continued to **Monday, July 31, 2017, at 9:00 a.m. in Department 3.**

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9:00 a.m. – Review Hearings

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DAHLE-TABER, ET AL VS. CARRINO, JR, ET AL
Case Number: 185207

This matter is on calendar for review regarding trial re-setting, the previous trial date having been vacated by the Court's order dated February 1, 2017. The Court designates this matter as a Plan II case and intends on setting the matter for trial no later than January 9, 2018. Jury fees have not been posted. The parties are granted 10 days leave to post jury fees. A failure to post jury fees in that time will be deemed a waiver of the right to a jury. The parties are ordered to appear to provide the Court with available trial dates.

GOVE VS. MARICLE
Case Number: 183753

This matter was on calendar for review regarding status of the default judgment. The Court has received and granted a request to continue this Review Hearing to August 21, 2017. No appearance is required on today's calendar.

KUMA VS. COLE
Case Number: 185929

This matter is on calendar for review regarding status of judgment/dismissal. A Notice of Settlement was filed

on March 14, 2017 which indicates that the case would be dismissed within 45 days. No dismissal is on file. The Court intends on dismissing this case pursuant to California Rule of Court 3.1385(b) unless the parties appear at today's hearing and show good cause why the case should not be dismissed.

NORTHRUP VS. ANDERSON
Case Number: 186459

This matter is on calendar for review regarding confirmation of filing of the Amended Petition and for setting on the Amended Petition. This matter was continued at this morning's 8:30 law and motion calendar. The Court confirms the future hearing date of July 31, 2017. No appearance is necessary on today's calendar.

SLACK VS. GAMBLE, ET AL
Case Number: 185243

This matter is on calendar for review regarding trial re-setting. This matter was continued at this morning's 8:30 law and motion calendar. The Court confirms the future hearing date of July 31, 2017. No appearance is necessary on today's calendar.

WASON VS. GUJRAL, ET AL
Case Number: 183255

This matter is on calendar for review regarding trial re-setting. The Court was previously advised that the parties were attempting to settle this matter. No documentation has been filed in anticipation of today's hearing. The Court notes the setting of a trial date has been postponed on a number of occasions. The Court designates this matter as EXEMPT for the case disposition time standards. The Court intends on setting this matter for trial. Jury fees have not been posted. The parties are granted 10 days leave to post jury fees. A failure to post jury fees in that time will be deemed a waiver of the right to a jury. The parties are ordered to appear to provide the Court with available trial dates.