

Tentative Rulings
July 17, 2017
Department 6
9:00 a.m.

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.

LIU ET AL VS. DECKER ET AL
Case Number: 184523

Tentative Ruling on Motion for Undertaking: Defendant, State of California, Department of Transportation (hereinafter "Caltrans") moves for an order requiring out-of-state Plaintiffs to post an undertaking in the amount of \$300,000, pursuant to CCP Section 1030. That section permits a defendant to file a noticed motion requesting that an out of state Plaintiff post an undertaking. The purpose of the undertaking is to secure an award of costs and attorney's fees that might be awarded if the defendant prevails in the action.

Request for Judicial Notice: Caltrans' request for judicial notice is unopposed and is granted. The Court's judicial notice is limited to Caltrans contentions to establish a reasonable possibility of obtaining a judgment and not for the truth of the matters asserted therein.

Merits of Motion: In addition to establishing that the plaintiffs reside out of state [CCP Section 1030(a)], CCP Section 1030(b) requires the moving party to establish a reasonable possibility that it will obtain a judgment. CCP § 1030(b). It is undisputed that all Plaintiffs reside outside California. Caltrans alleges it has a reasonable possibility of obtaining a judgment against Plaintiff's sole cause of action for a dangerous condition on public property. Caltrans' position is based on a declaration filed by its counsel, but also by a request for judicial notice of Caltrans' pending motion for summary judgment. These documents are sufficient to demonstrate a reasonable possibility of obtaining judgment.

Plaintiffs make an argument that they are indigent and will need relief from the undertaking, but that issue is not presently before the Court.

As for the amount of the undertaking, Caltrans is requesting a \$300,000 bond. This amount is not substantiated with sufficient evidence and appears to be an estimate based on a recent similar case. Caltrans estimates that its attorney's fees through the MSJ will be \$45,000 and its costs through trial will be \$75,000. Based on these figures, it would be appropriate to double the attorney's fees of \$45,000 through the MSJ to obtain a reasonable estimate of the attorney's fees through trial. The Court accepts Caltrans estimate of \$75,000 in costs through trial. Therefore the bond or undertaking will be required in the amount of \$165,000.

The motion is **GRANTED**. Plaintiffs are required to provide an undertaking in the amount of \$165,000. A proposed order was lodged with the Court and will be modified to reflect the decreased undertaking amount.

The Court acknowledges that the ruling on this motion has no effect on the determinations of any issues on the merits, including the pending motion for summary judgment. CCP Section 1030(f).