Tentative Rulings for March 6, 2025
Department 501

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(36)

Tentative Ruling

Re:	***Davis, et al. v. Hyundai Motor America, et al.*** Superior Court Case No. 23CECG04428
Hearing Date:	March 6, 2025 (Dept. 501)
Motions (x2):	by Defendants and Cross-Complainants Hyundai Motor America and Hyundai Motor Company for an Order: (1) Setting Aside Determination of Good Faith Settlement; and (2) Compelling the Depositions of Cross-Defendants Donald Stallings and Michael Bransey and for Monetary Sanctions

Tentative Ruling:

To grant the motion to set aside determination of good faith settlement. (Code Civ. Proc., § 437, subd. (b).) To take the motion to compel depositions off calendar.

Explanation:

Motion to Set Aside

Hyundai Motor America and Hyundai Motor Company (together "Hyundai") move for relief from the determination of good faith settlement under Code of Civil Procedure section 473, subdivision (b). They indicate that the motion to contest the determination of good faith settlement was filed one day late, due to a calendaring mistake in their office. A declaration from counsel (Patrick R. Ball) is provided, wherein he provides that his firm's calendaring system showed that the due date for the motion to contest the determination of good faith settlement erroneously showed that it needed to be filed by January 7, 2025. After counsel's office was served with a Notice of Entry of Order by Cross-Defendants Donald Stallings and Michael Bransley indicating that the court had entered an Order approving Cross-Defendants' Good Faith Settlement Application on January 28, 2025, Mr. Ball recalculated the date, and only then did he realize that the correct due date of the motion to contest was actually on January 6, 2025. (Ball Decl., ¶ 10.)

Cross-defendants present three arguments in support of denying the motion: (1) the mandatory provision of Code of Civil Procedure section 473, subdivision (b), does not apply to a determination of good faith settlement; (2) the exclusive method for challenging a good faith determination is through writ review; and (3) Hyundai has not established that the settlement was not made in good faith.

Hyundai's challenge on the merits of the determination of good faith is not the proper subject of this motion to set aside and, thus, these arguments are not considered in this ruling. The remaining two arguments are considered in turn.

Code of Civil Procedure section 473, subdivision (b)

The court need not decide whether Hyundai are entitled to mandatory relief under Code of Civil Procedure section 473, subdivision (b), because there is a sufficient showing entitling Hyundai to discretionary relief.

"The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Code Civ. Proc., § 473, subdivision (b).) Where relief is based on a showing of mistake, inadvertence, surprise, or excusable neglect, the party moving for relief must show specific facts demonstrating that one of these conditions was met. (Code Civ. Proc., § 473, subd. (b); *Hopkins & Carley v. Gens* (2011) Cal.App.4th 1401, 1410.) Relief may be granted on a showing of mistake by a party or attorney. Such mistake may be one of fact or law, but in either case, it must be material. Relief is proper where the party (or lawyer) was mistaken as to some fact material to the party's duty to respond, by reason of which the party failed to make a timely response. (*Lieberman v. Aetna Ins. Co.* (1967) 249 Cal.App.2d. 515, 523-524.)

Here, a declaration from Hyundai's counsel (Mr. Ball) is submitted with the moving papers, wherein Mr. Ball indicates that the motion to contest the application for determination of good faith settlement was untimely filed as a result of his firm's inadvertent calendaring error. Nothing more is required to show that Hyundai are warranted discretionary relief.

Writ Review

"When a determination of the good faith or lack of good faith of a settlement is made, any party aggrieved by the determination may petition the proper court to review the determination by writ of mandate. The petition for writ of mandate shall be filed within 20 days after service of written notice of the determination, or within any additional time not exceeding 20 days as the trial court may allow." (Code Civ. Proc., § 877.6, subd. (e).)

At issue is whether writ review is the exclusive means for challenging a determination of good faith settlement. Cross-defendants rely on *Housing Group v. Superior Court* (1994) 24 Cal.App.4th 549, which provides: "The determination of the good faith of a settlement may only be reviewed by a timely petition for writ of mandate ([Code of Civil Procedure section] 877.6, subd. (e))." (*Housing Group v. Superior Court* (1994) 24 Cal.App.4th 549, 552.) Hyundai distinguishes *Housing Group*, but does not otherwise present any other authority which addresses the issue.

Notably, the language of *Housing Group* quoted by cross-defendants is merely dicta in that case, as *Housing Group* also did not meaningfully address the issue.

The court's independent research on the matter reflects "an apparent split of authority regarding whether a writ petition filed pursuant to [Code of Civil Procedure] section 877.6, subdivision (e), is the sole means of challenging a trial court's order that determines a settlement by one or more defendants was made in good faith and dismisses a cross-complaint filed by a nonsettling defendant." (*Cahill v. San Diego Gas &*

Electric Co. (2011) 194 Cal.App.4th 939, 951.) There, after reviewing the language and legislative history of Code of Civil Procedure section 877.6, subdivision (e), and a number of case authorities which have discussed the statute, the Fourth District Court of Appeal in *Cahill* "conclude[d] a writ petition that 'may' be filed pursuant to section 877.6[, subdivision](e) is a *permissive*, not mandatory, means of challenging a good faith settlement determination. . ." (*Id*., at p. 955, emphasis in original.)

Accordingly, Hyundai's motion is not foreclosed by the language in Code of Civil Procedure section 877.6, subdivision (e). The court further notes that Hyundai's motion is one for relief from the order of a determination of good faith settlement, rather than one challenging the merits of the determination.

Motion to Compel Deposition

The motion, brought under Code of Civil Procedure sections 2025.410 and 2025.420 (see Notice of Motion), falls under the scope of the Superior Court of Fresno County Local Rules, rule 2.1.17, which provides in pertinent part,

> [N]o motion under sections 2016.010 through 2036.050, inclusive, of the California Code of Civil Procedure shall be heard in a civil unlimited case unless the moving party has first requested an informal Pretrial Discovery Conference with the Court and such request for a Conference has either been denied and permission to file the motion is expressly granted via court order or the discovery dispute has not been resolved as a consequence of such a conference and permission to file the motion is expressly granted after the conference.

(Superior Court of Fresno County Local Rules, rule 2.1.17(a).)

Hyundai's counsel has not filed a request for Pretrial Discovery Conference, and has not been granted permission to file the instant motion.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 3/4/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Lesley Dresser v. Mad Duck Brewing, LLC***
Superior Court Case No. 22CECG04047

Hearing Date: March 6, 2025 (Dept. 501)

Motion: by Plaintiff to Tax Costs as to Both Defendants

Tentative Ruling:

To grant in part and tax costs of defendant Mad Duck Brewing, LLC in the sum of $6,463.96. Said defendant's recoverable costs are reduced to $53,683.97. (Code Civ. Proc., § 1033.5.)

To grant in part and tax costs of defendant Patrick Walker in the sum of $1,200. Said defendant's recoverable costs are reduced to $79,733.88. (Code Civ. Proc., § 1033.5.)

Explanation:

Under Code of Civil Procedure section 1032, subdivision (b), "a prevailing party" is entitled as a matter of right to recover costs in any proceeding. The losing party may dispute any or all of the items in the prevailing party's costs memorandum by a motion to strike or tax costs. (See Cal. Rules of Court, rule 3.1700(b).)

The party seeking to tax costs bears the burden of showing that the requested costs were unreasonable or unnecessary. (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131.) Once the party seeking to tax costs demonstrates that the costs are not permitted under statute, not reasonably necessary to the conduct of the litigation, or not reasonable in amount, the burden shifts to the party claiming those costs to establish that they are proper. (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774.)

Recoverable costs under section 1032 include (i) filing and motion fees; (ii) costs related to "[t]aking, video recording, and transcribing necessary depositions", (iii) "[s]ervice of process by a . . . "registered process service", (iv) ordinary witness fees; (v) court reporter fees; and (vi) fees for "[m]odels and blowups of exhibits and photocopies of exhibit [that are] reasonably helpful to aid the trier of fact." (Code Civ. Proc., §1033.5, subd. (a).) A cost that is not compulsory under section 1033.5(a) or specifically prescribed under section 1033.5(b), still may be recoverable, subject to the court's discretion under section 1033.5(c) as to reasonable and necessary costs. (See *El Dorado Meat15 Co. v. Yosemite Meat and Locker Service, Inc.* (2007) 150 Cal.App.4th 612, 616.)

Here, plaintiff seeks to tax costs as to both defendants.

Defendant Mad Duck Brewing

On October 29, 2024, defendant Mad Duck Brewing, LLC ("Mad Duck") filed a Memorandum of Costs asserting a total of $70,350.17 in costs. The following day, Mad

Duck filed a second Memorandum of Costs asserting a total of $60,147.93. The $10,202.24 difference is as to the expert witness fees. The court will only consider the Memorandum of Costs filed October 30, 2024.

Deposition Costs (Item 4)

Deposition costs are recoverable pursuant to Code of Civil Procedure section 1033.5, subdivision (a)(3). Plaintiff requests the court tax deposition costs for the depositions of Caitlin McCormick, Christopher Johnson and Dr. Shashi Bains. Mad Duck consents to taxing $900 in costs for the Deposition of Caitlin McCormick.

Regarding Christopher Johnson, plaintiff argues that this cost should be taxed because he was not called as a witness at trial and therefore his deposition was unnecessary. Mad Duck argues that Mr. Johnson's deposition was necessary because he was listed as a witness in plaintiff's discovery responses, was the son of plaintiff's fiancé, and was employed at Mad Duck. It was reasonable for Mad Duck to take the deposition of a witness listed by plaintiff in order to assess the merits of the case. Plaintiff has not provided any authority for her argument that the witness must be used at trial to be deemed necessary, and such an argument is preposterous. The court will not tax the costs associated with this deposition.

Regarding Dr. Bains, plaintiff argues that there was only one deposition taken for Dr. Bains, as opposed to the two dates listed in the Memorandum of Costs. Also, plaintiff argues that Dr. Bains was unnecessary as she was not called as a witness at trial. Mad Duck acknowledges that there was an error with the dates provided in the Memorandum of Costs for the deposition of Dr. Bains. The correct dates are 1) February 8, 2024, when Dr. Bains had confirmed attendance, but then failed to appear at the noticed deposition and 2) August 21, 2024, when Dr. Bains' deposition went forward. Dr. Bains was plaintiff's treating physician and Mad Duck took this deposition to address plaintiff's claims for emotional distress. Plaintiff argues that costs are not recoverable for a non-appearance unless there was a court order compelling attendance and sanctions imposed. The argument lack merit. The court will not tax the costs associated with this deposition.

Thus, the court will tax $900 in costs here.

Expert Fees (Item 8)

Code of Civil Procedure section 998 provides for expert witness fees incurred where an offer of compromise is made by a defendant, not accepted, and then a plaintiff fails to obtain a more favorable judgment. (Code Civ. Proc., § 998, subd. (c).) Plaintiff argues that the offer from Mad Duck was invalid because it indicated a term and condition of acceptance that was contradictory and vague. A valid offer "shall include a statement of the offer, containing the terms and conditions of the judgment or award, and a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted." (Code Civ. Proc., § 998, subd. (b).) Plaintiff argues the offer was vague because it included, "the entry of a request for dismissal, with prejudice of the Complaint in its entirety." Notably, there are two defendants in this matter and plaintiff argues the offer made it seem that the entire matter would be dismissed, not just the portions relating to Mad Duck. However, any

confusion about this would not be justified. Plaintiff's counsel should know that Mad Duck could only have been making an offer to resolve the case as to it. The court is not inclined to tax the costs, as asserted in the Memorandum of Costs filed October 30, 2024. Defendant Mad Duck will be entitled to the $20,715.76 for expert witness fees as recoverable costs.

Court Reporter Fees (Item 12)

Code of Civil Procedure section 1033.5, subdivision (a)(11), provides that court reporter fees "as established by statute" are recoverable costs. Government Code section 68086 allows parties to retain a court reporter where one is not provided by the court and fees associated with retaining a court reporter can be recoverable by the prevailing party. (Gov. Code, § 68086, subd. (d)(2).) Plaintiff argues that the fees here should be taxed because the court did not order transcripts. (Code Civ. Proc., § 1033.5, subd. (a)(9).) However, Mad Duck does not seek the fees for transcripts, but rather for the court reporter's appearance at the trial. Mad Duck acknowledges a miscalculation, and agrees to tax $150 from the fees asserted here.

Other Fees (Item 16)

Mad Duck consents to taxing the $5,413.96 in costs here.

Total

In total, the court is taxing $6,463.96 ($900+$150+$5,413.96) in costs from the Memorandum of Costs filed October 30, 2024, by Mad Duck. Thus, Mad Duck's total recoverable costs are $53,683.97 ($60,147.93-$6,463.96).

<u>Defendant Patrick Walker</u>

Deposition Costs (Item 4)

Plaintiff requests the court tax deposition costs associated with Christopher Johnson and Dr. Bains. For the same reasons as those discussed above, the court is not inclined to tax such costs.

Expert Fees (Item 8)

Plaintiff requests the court tax expert fees for this defendant because, at the time that counsel served the expert witness disclosures, counsel had been temporarily deemed ineligible to practice law. Defense counsel acknowledges that she was deemed ineligible to practice law on the date the expert witness disclosures were served. (Crane Decl., ¶ 7.) However, plaintiff's counsel had an opportunity to challenge the expert disclosure prior to trial. (Crane Decl., ¶ 8.) Plaintiff's counsel has not countered the assertion that plaintiff's counsel could have knowingly challenged the expert disclosure. As such, the court is not inclined to tax this cost.

Models, Enlargements, Photocopies of Exhibits (Item 11)

Fees associated with models, enlargement of exhibits, and photocopies of exhibits are recoverable. (Code Civ. Proc., § 1033.5, subd. (a)(13).) Plaintiff asserts that defendant Walker (Walker) did not file or lodge his own exhibit binder and did not use models or enlargements in the trial. Walker asserts that he did use digital graphics during the opening statement and closing argument and has attached billing for these. (Crane Decl., Exh. E.) Walker concedes that $600 was for the production of trial boards which were not used in trial. As such, the court is inclined to tax $600 from the costs asserted.

Court Reporter Fees (Item 12)

Plaintiff requests the court tax court reporter fees for the same reasons as those discussed above. For the same reasons, the court is not inclined to tax the entirety of the costs. However, it does appear that Walker miscalculated the costs for the court reporter's appearance at the trial. The billing records provided total $4,402.50, not $5,002.50. The court is inclined to tax the costs $600 here.

Other (Item 16)

The court has discretion to allow recovery of costs not listed in Code of Civil Procedure section 1033.5, subdivision (a). (Code Civ. Proc., § 1033.5, subd. (c)(4).) Plaintiff requests the court tax $31,002.97 in costs for Magna Trial Consultation and Presentation. Plaintiff argues that it is difficult to ascertain what these costs are for as there is no invoice provided. Walker asserts that Magna was retained as a trial technology consultant, primarily for presenting video surveillance to witnesses throughout the trial and that plaintiff would have observed this during the trial. Video evidence dominated the trial. Defendant also provides an invoice from Magna. (Crane Decl., Exh. F.) As such, the court is not inclined to tax the cost.

Total

In total, the court is taxing $1,200 ($600+$600) in costs from the Memorandum of Costs filed October 31, 2024, by Walker. Thus, Walker's total recoverable costs are $79,733.88 ($80,933.88-$1,200).

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 3/4/2025.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Vernick v. Costco Wholesale Corporation***
Superior Court Case No. 22CECG01113

Hearing Date: March 6, 2025 (Dept. 501)

Motion: by Defendant Costco Wholesale Corporation to Disqualify Downtown L.A. Law Group

Tentative Ruling:

To deny.

Explanation:

Defendant's Evidentiary Objections to Declaration of Amira Rezkallah

Defendant Costco Wholesale Corporation's (Costco's) Evidentiary objections 1 and 2 are sustained, since plaintiff did not present sufficient evidence to establish the business records exception to the hearsay rule as to the supporting exhibits 1 and 2. (Evid. Code, § 1271.) However, the remaining objections are overruled. Ms. Rezkallah's statements in paragraphs 6 through 9 (which relate to objections 3 through 6) are setting forth the investigation she conducted, in her capacity as Human Resources Manager and Administrative Director at Downtown L.A. Law Group (DTLA), upon learning that a case had been filed against Costco on July 1, 2024, which showed disqualified attorney Anthony Werbin as the counsel of record. These statements are offered of her personal knowledge and provide circumstantial evidence of her state of mind in concluding that there had been a gross violation of the firm's rules and procedures, and in deciding that this warranted disciplinary action and a formal write-up and reprimand against the employee who had erred. Essentially, defendant is arguing on this motion that DTLA does not take its ethical wall seriously, and this testimony is offered to rebut that contention. Paragraphs 11 and 12 (relating to objections 7 and 8) are overruled because the court is satisfied that Ms. Rezkallah has sufficiently established her personal knowledge of the firm's policy related to its ethical screen and the firm's software switch to strengthen that screen, due to her role at the firm.

Request for Judicial Notice

The court grants defendant's request for judicial notice.

Merits

On April 26, 2023, this court granted Costco's motion to disqualify attorney Anthony Werbin from representing plaintiff in this case, but denied Costco's additional request to disqualify DTLA. The denial of vicarious disqualification regarding DTLA was based on finding that the firm had created an effective ethical screen designed to prevent the sharing of confidences held by Mr. Werbin with other members of the firm.

(*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1153-1154; *Kirk v. First American Title Ins. Co.* (2010) 183 Cal.App.4th 776, 800-801.)

Costco's renews its motion to disqualify DTLA based on recently discovered information regarding a case DTLA filed in the San Bernardino County Superior Court against Costco (*Grimes v. Costco*) wherein Mr. Werbin is shown as the attorney of record on both the summons and complaint. (RJN, Ex. C.) Costco argues that this demonstrates the ineffectiveness of DTLA's ethical screen. Since this evidence was not available at the time of its previously filed motion, it appears a renewed motion is proper under Code of Civil Procedure section 1008, subdivision (b). Costco argues that the evidence showing that Mr. Werbin is actively representing a DTLA plaintiff against Costco shows that there is no ethical screen at DTLA, much less an effective one.

Plaintiff argues that Mr. Werbin was not assigned to the *Grimes v. Costco* case filed in San Bernardino County, and he does not represent the plaintiff in that case. Instead, his electronic signature was inadvertently placed on the summons and complaint because an administrative employee mistakenly put his name on the case. Amira Rezkallah's recitation of her investigation of this matter reflects that two cases were assigned to two different attorneys on the same day. The *Grimes v. Costco* matter was assigned to attorney Alex Vandenberg and a non-Costco case (the *Schuman* case) was assigned to Anthony Werbin. Once the administrative employee responsible for filing all complaints received these files back from each of the attorneys, she inadvertently switched the electronic signatures, stating that this was due to confusion over the similarity of the two attorneys' initials. Once the firm learned of this error, Ms. Rezkallah conducted an investigation and disciplinary action was taken against the employee.

Plaintiff also supplies the declaration of Mr. Werbin, who states that he has never been assigned to the *Grimes v. Costco* case, and he had never heard of this case. He has never seen any documents from the case, and he has never had any access to information about the case. He states that he reviewed and finalized the summons and complaint in the *Schuman* case and sent it to the above-mentioned administrative employee with instructions to electronically add his name and signature to the complaint and file it with the court. This testimony is unrefuted, and provides a basis for denial of this motion even if all evidentiary objections to Ms. Rezkallah's declaration had been sustained.

Costco argues that even if this was simply a clerical error, as plaintiff argues, it is difficult to ascertain how such an error could occur since the evidence DTLA presented on the earlier motion was that their attorneys are divided into teams that have their own set of attorneys, paralegals, and office staff, and that they do not share personnel. Costco's concludes that this means either (a) this was not a clerical error or (b) the "purported" ethical screen is nonexistent. (See Memo., at 5:26-27) However, this conclusion does not follow. It seems apparent that even though there are separate teams, DTLA has a policy in place to have an administrative employee *unrelated to any specific attorney team* do the actual clerical tasks to get the cases from all teams filed. While it must be noted that this is a very dubious policy (since it clearly contributed to the clerical error), the court cannot conclude that this inadvertent switching of counsel of record between two cases means there is no ethical screen, and/or that the evidence

submitted has been falsified. Instead, the evidence shows that despite this error, the ethical screen was in place and prevented Mr. Werbin from being assigned to the *Grimes v. Costco* case and prevented him from having any information about it. The evidence also shows that DTLA reacted swiftly when it learned about this error and took it seriously. There is no basis to disqualify the firm.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 3/5/2025.
(Judge's initials) (Date)