

Tentative Rulings for June 13, 2024
Department 503

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.

22CECG03491 *Sarah Correia v. General Motors, LLC* is continued to Thursday, July 11, 2024, at 3:30 p.m. in Department 503

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Tentative Rulings for Department 503

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Tentative Ruling

Re: **Rocio Alvarado Camarillo v. Abraham Topete**
Superior Court Case No. 19CECG02252

Hearing Date: June 13, 2024 (Dept. 503)

Motion: Default Prove-up Hearing

Tentative Ruling:

To grant. The court intends to sign and enter the proposed judgment submitted with the default judgment application. No appearances are necessary.

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: jyh on 6/10/24 .

(Judge's initials) (Date)

(37)

Tentative Ruling

Re: **Corporate America Lending, Inc. v. Justin Harris**
Superior Court Case No. 23CECG01520

Hearing Date: June 13, 2024 (Dept. 503)

Motion: By Defendant Justin Harris for Attorney's Fees

Tentative Ruling:

To grant defendant Justin Harris an award of \$35,672.60 in attorney's fees and costs, payable by plaintiff Corporate America Lending, Inc. within 30 days of notice of this order.

Explanation:

Evidentiary Objections

The court overrules plaintiff's objections to paragraph 4 of Sommer's Supplemental Declaration. The court did not consider paragraphs 2 and 3 for this motion.

Merits

A special motion to strike ("anti-SLAPP motion") provides a procedural remedy to dismiss nonmeritorious litigation meant to chill the valid exercise of the constitutional rights to petition or engage in free speech. (Code Civ. Proc., §425.16, subd. (a).) On January 11, 2024, this court granted, in part, defendant Harris' anti-SLAPP motion. In the First Amended Complaint, three out of four of the causes of action were alleged against defendant Harris: the first cause of action for intentional interference with a contractual relationship, the second cause of action for breach of fiduciary duty, and the fourth cause of action for breach of a contract's nondisclosure agreement. The court struck portions of the language contained in the first cause of action and the entirety of the fourth cause of action as against defendant Harris. Defendant Harris did not bring the motion as to the second cause of action. Defendant Harris now brings this motion for attorney's fees, arguing that he is the prevailing party on the anti-SLAPP motion.

Prevailing Party

The prevailing defendant on an anti-SLAPP motion is entitled to recover his or her attorney's fees and costs. (Code Civ. Proc., § 425.16, subd. (c).) A defendant who partially succeeds on an anti-SLAPP motion is generally considered a prevailing party, "unless the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion." (*Mann v. Quality Old Time Service, Inc.* (2006) 139 Cal.App.4th 328, 340.) The court has broad discretion when determining whether a party prevailed on an anti-SLAPP motion. (*Ibid.*) Where there is partial success on such a motion, courts look to the practical benefit, either achieved or not achieved,

toward the litigation by defendant's motion. (*Maleti v. Wickers* (2022) 82 Cal.App.5th 181, 232; *Moran v. Endres* (2006) 135 Cal.App.4th 952, 955; *City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 783-784.)

Here, defendant succeeded in removing intentional interference with a contractual relationship as to the Orandis in the first cause of action and the entirety of the fourth cause of action as alleged against defendant Harris. In doing this, defendant Harris has obtained the practical effect of reducing his potential liability, the issues for discovery, and the issues for trial. As such, the court finds that defendant Harris is a prevailing party on the anti-SLAPP motion, entitling him to reasonable attorney's fees.

Attorney's Fees

The prevailing defendant on a special motion to strike "shall be entitled" to recover his or her attorney fees and costs, and this fee award is mandatory. (Code Civ. Proc., § 425.16, subd. (c); *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.) In awarding attorneys' fees under Code of Civil Procedure section 425.16, courts generally apply the lodestar approach, i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate prevailing in the community for similar work. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 639.) To determine what is reasonable "trial courts must carefully review attorney documentation of hours expended; 'padding' in the form of inefficient or duplicative efforts is not subject to compensation." (*Ketchum v. Moses, supra*, 24 Cal.4th 1122, 1132, internal citation omitted.) Courts apply the lodestar approach (number of hours reasonably expended multiplied by reasonable hourly rate prevailing in community) in determining the fee award under Code of Civil Procedure section 425.16. (*Id.* at p. 1136.) The prevailing defendant is entitled to recover fees incurred in making the motion for attorneys' fees. (*Id.* at p. 1141.)

Defense counsel asserts that he expended 130.5 hours toward the underlying anti-SLAPP motion, 5 hours in preparing this motion, and 13.9 hours regarding the opposition and reply. The court is reducing the overall number of hours toward the underlying anti-SLAPP motion to 74.5 hours. This reduces the total hours spent researching for the anti-SLAPP motion, reviewing the records, preparing to draft the Marroquin and Orandi declarations, and revising and finalizing the brief. The court is also reducing the overall number of hours toward this attorney's fees motion to a total of nine hours. Thus, the total hours the court finds to be reasonable is 83.5 hours.

Plaintiff also argues that there is insufficient evidence that \$425 per hour is a reasonable hourly rate for defense counsel. Reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type" (*Ketchum v. Moses, supra*, 24 Cal.4th at p. 1133.) Defense counsel is a founding partner in the law firm and a certified specialist by the California State Bar with respect to Legal Malpractice Law. (Sommer Decl., ¶¶ 1, 9.) The court finds that counsel's billing rate of \$425 per hour is reasonable.

Thus, the total attorney's fees would be reduced to \$35,487.50, to include 83.5 hours at \$425 per hour.

Costs

The requested amount of costs is not appropriate. The court is eliminating the first appearance fee, which would still be required of defendant regardless of the anti-SLAPP motion. This would reduce the costs to \$185.10 to include the filing and e-filing fees associated with the anti-SLAPP motion and this attorney's fees motion.

Thus, the court awards defendant \$35,487.50 in attorney's fees and \$185.10 in costs, totaling \$35,672.60.

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: jyh **on** 6/10/24 .
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: **Garcia v. Lightning Source, LLC**
Superior Court Case No. 20CECG01641

Hearing Date: June 13, 2024 (Dept. 503)

Motion: Report by Class Counsel Pursuant to Code of Civil Procedure
Section 384, Subdivision (b)

Tentative Ruling:

To approve the report by the settlement administrator and sign the proposed amended order.

Explanation:

In the 6/21/2023 order granting final approval of the class action settlement the court set a hearing date for 6/13/2024 to inform the court of the total amount actually paid to the class members, pursuant to Code of Civil Procedure section 384, subdivision (b), so that the judgment can be amended and the distribution of any *cy pres* funds can be ordered.

The declaration submitted establishes proper payment of the amounts required by the settlement was made and that 13 checks to class members totaling \$30,154.14 remain uncashed after the 120-day deadline. The approved settlement calls for payment of such funds to the State Controller's Office, Unclaimed Property Division, in accordance with Code of Civil Procedure section 384, subdivision (b).

The court notes, however, that the remaining funds were prematurely paid to the designated entity. According to Code of Civil Procedure section 384, subdivision (b), the funds are not to be disbursed to the *cy pres* until *after* the court has reviewed the report of the total amount actually paid to class members, and the court amends the judgment to direct the unpaid residue to be paid out. The settlement administrator's declaration states that the funds have already been paid to the *cy pres*. (See Pavlik Decl., ¶ 8.) Class counsel and Simpluris are advised that in the future the remaining funds shall not be paid out until authorized by the court.

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: jyh on 6/11/24 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Evans v. Tyrell, et al.***
Superior Court Case No. 23CECG01862
Nationwide Insurance Company of America v. Evans, et al.
Superior Court Case No. 23CECG04714

Hearing Date: June 13, 2024 (Dept. 503)

Motion: by Nationwide Insurance Company of America to Consolidate Actions

Tentative Ruling:

To grant in part and consolidate Superior Court Case Nos. 23CECG01862 and 23CECG04714 for purposes of discovery only. A copy of this order shall be filed in each case. *Evans v. Tyrell, et al.*, Superior Court Case No. 23CECG01862 is designated as the lead case.

Explanation:

“When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” (Code Civ. Proc., § 1048, subd. (a).)

Consolidation promotes trial convenience by avoiding duplicative procedures, particularly in proving issues common to both actions. (See *McClure v. Donovan* (1949) 33 Cal.2d 717, 722.) Furthermore, “[t]he fact that evidence in the one case might not have been admissible in the other does not bar a consolidation. Nor does the fact that all the parties are not the same.” (*Jud Whitehead Heater Co. v. Obler* (1952) 111 Cal.App.2d 861, 867.) Accordingly, consolidation is appropriate where witness testimony is the same and the court clearly instructs the jury concerning the evidence to be considered in each case. (*Johnson v. Western Air Exp. Corp.* (1941) 45 Cal.App.2d 614, 622 [consolidation of a personal claim for damages with a survivor claim for damages arising from a single plane crash]; see also *Todd-Stenberg v. Delkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 979 [consolidation appropriate where witnesses in consolidated actions addressed probable cause, extent and result of a particular product].)

In ruling on a motion for consolidation, a court should consider: 1) the timeliness of the motion: i.e., whether granting consolidation would delay the trial of any of the cases involved; 2) the complexity of the resulting case: i.e., whether joining the actions involved would make the trial too confusing or complex for a jury; and 3) any resulting prejudice: i.e., whether consolidation would adversely affect the rights of any party. (See *State Farm Mut. Auto. Ins. Co. v. Superior Court* (1956) 47 Cal.2d 428, 432 [consolidation of insurer's

declaratory relief action with personal injury action against insured would result in prejudice to insured due to disclosure of liability insurance to the jury].)

In the case at bench, Nationwide Insurance Company of America ("Nationwide") is moving to consolidate for all purposes its interpleader action with the personal injury action alleging its insured is liable for damages. Nationwide is not a party to the personal injury action. Nationwide asserts consolidation is appropriate based on shared issues of apportionment of its policy limits between claimants in the personal injury action giving rise to the claim against the policy. However, adding a defendant's insurance company as a party in the action for all purposes would necessarily disclose the fact of the defendant's liability insurance to a jury, which is generally understood to be prejudicial.

Accordingly, consolidation appears appropriate for purposes of discovery only. A joint trial would result in prejudice to Nationwide's insured which prevents the court from consolidating these actions for all purposes. In *State Farm Mut. Auto. Ins. Co. v. Superior Court*, the consolidation for all purposes of State Farm Mutual Automobile Insurance Company's action for declaratory relief with respect to questions of coverage and the personal injury action giving rise to the claim was found to be an abuse of discretion. (*State Farm Mut. Auto. Ins. Co. v. Superior Court, supra*, 47 Cal.2d at p. 432.) A separate trial of the interpleader action may ultimately prove unnecessary following the factfinder's determination of the issues within the personal injury action.

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: jyh **on** 6/11/24 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: **Parra, et al. v. General Motors, LLC**
Superior Court Case No. 23CECG00441

Hearing Date: June 13, 2024 (Dept. 503)

Motions (x2): Defendant's Demurrer and Motion to Strike Portions of the First Amended Complaint

Tentative Ruling:

To take the demurrer and motion to strike off calendar for failing to comply with Code of Civil Procedure sections 430.41 and 435.5.

Explanation:

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: jyh on 6/11/24 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: **A.G., et al. v. Anglican Diocese of San Joaquin, et al.**
Superior Court Case No. 21CECG01100

Hearing Date: June 13, 2024 (Dept. 503)

Motions (x3): by Defendant Anglican Diocese of San Joaquin for an Order Compelling Responses to 1) Form Interrogatories, Set One; 2) Special Interrogatories, Set One; 3) Request for Production of Documents, Set One; and for Monetary Sanctions

Tentative Ruling:

To deny without prejudice. (Code Civ. Proc., § 1015; Cal. Rules of Court, rule 1.21(a).)

Explanation:

The court notes that this is defendant Anglican Diocese of San Joaquin's (hereinafter "defendant") second set of motions to compel plaintiff M.S.'s responses to Form Interrogatories, Special Interrogatories, and Document Production Requests, served upon plaintiff M.S. on September 1, 2022. However, as the court indicated in its previous ruling, these motions cannot be granted, because the service of the subject discovery requests is defective.

The proofs of service accompanying the subject discovery requests indicate that defendant served these requests to plaintiff M.S., directly, instead of serving them to her counsel of record. (Index of Ex., Exs. A-C.) Service to plaintiff was improper, because when a party is represented, the service must be made on the party's attorney. (Code Civ. Proc., § 1015; Cal. Rules of Court, rule 1.21(a).)

Plaintiff M.S. was represented by counsel, Abigail Leaf, at the time defendant served its discovery requests to plaintiff on September 1, 2022.

Although Ms. Leaf filed a motion to be relieved as plaintiff M.S.'s counsel and that motion was granted on July 12, 2022, the order granting the motion *expressly specified* that Ms. Leaf's withdrawal was effective upon the filing of the proof of service of the signed order upon the client. The proof of service of the order was not filed until January 2, 2024, and thus, Ms. Leaf was plaintiff M.S.'s counsel of record until January 2, 2024.

Therefore, service of the discovery requests directly on M.S. was defective service and the motions to compel discovery responses cannot be granted. Proper service of the *moving papers* does not cure this defect.

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: jyh **on** 6/11/24 .

(Judge's initials)

(Date)