Tentative Rulings for December 19, 2024
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

(03)

Tentative Ruling

Re: ***L.O. v. Fresno County Department of Social Services***
Case No. 21CECG00289

Hearing Date: December 19, 2024 (Dept. 501)

Motion: by Defendant Fresno County Department of Social Services for Summary Judgment or, in the Alternative, Summary Adjudication

Tentative Ruling:

To grant defendant County of Fresno Department of Social Services' motion for summary judgment as to plaintiff's entire Complaint against it. Defendant shall submit a proposed judgment consistent with this order for the court's approval within ten days of the date of service of the order.

Explanation:

To the extent plaintiff seeks to hold Fresno County Department of Social Services (County) vicariously liable based on the theory that Alberto Rodriguez was County's agent or employee at the time he molested plaintiff, County cannot be held vicariously liable for the torts of Rodriguez as a matter of law. (*J.J. v. County of San Diego* (2014) 223 Cal.App.4th 1214, 1228 [foster parent was not employee or agent of County and his threats and intimidation of plaintiff could not be attributed to County].) "We reject plaintiffs' suggestion that defendants are 'arguably quasi-state employees, paid by the state for providing foster care ....' There is no evidence that by becoming a foster parent, a private person somehow becomes an 'employee' of the state or of any other public entity." (*Becerra v. Gonzales* (1995) 32 Cal.App.4th 584, 591.) Therefore, County is not vicariously liable for the actions of Rodriguez.

In addition, County has presented evidence that it was not directly involved in the placement of plaintiff with the Rodriguez family, and did not certify the Rodriguez home for placement of foster children. According to County's evidence, it placed plaintiff with Valley Teen Ranch (VTR), which then placed plaintiff in the Rodriguez home. (Defendant's Undisputed Material Fact Nos. 5, 6.) VTR was also the entity which certified the Rodriguez home for foster child placement. (UMF Nos. 1, 2, 3.) County is not involved in the process of certifying foster homes for placement of children, or in the process of placing the foster children in a certified foster home. (UMF Nos. 8-10.)

Also, while plaintiff was placed in the Rodriguez home, County's social workers had regular monthly contact with her in November and December 2000 and February 2001. (UMF Nos. 11, 12.) However, plaintiff never reported to any County social worker that she had been molested by Alberto Rodriguez during this time period. (UMF No. 13.) She also never disclosed to any County social worker after she was removed from the Rodriguez home that she had been touched by Rodriguez in a sexual manner. (UMF No. 14.) The molestation occurred late at night, and plaintiff did not report it to anyone until

2010, when she reported the molestation to law enforcement personnel. (UMF Nos. 15, 16.)

Thus, there was no direct, proximate causal link between County's actions and plaintiff's molestation at the hands of Alberto Rodriguez. "The connection between defendants' conduct and the injury suffered is too attenuated to show the later accident to be within the scope of the risk created by defendants' conduct: 'the injury suffered is connected only distantly and indirectly to the defendant's negligent act.'" (*Novak v. Continental Tire North America* (2018) 22 Cal.App.5th 189, 197, citation omitted.) "Causation is ordinarily a question of fact but '"where the facts are such that the only reasonable conclusion is an absence of causation, the question is one of law, not of fact."' A number of courts have found, as a matter of law, that a defendant is not liable for an injury only distantly connected to defendant's conduct." (*Id.* at pp. 197–198, citations omitted.)

Any connection between County's conduct and plaintiff's injuries was extremely attenuated. County did not certify the Rodriguez home for foster child placement, and County did not decide to place plaintiff in the Rodriguez home. County only placed plaintiff with VTR, which was the entity which had certified the Rodriguez home for foster placement, and which then decided to place plaintiff with Rodriguez. Also, plaintiff never reported that she was being molested to the County's social workers. Therefore, since plaintiff's injuries were not caused by County, plaintiff cannot hold County liable for the harm she suffered.

In addition, even if there was a remote causal connection between County's actions and plaintiff's injuries, County has statutory immunity for the discretionary decisions of its employees regarding the placement of plaintiff. Under Government Code section 820.2, "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." Also, under Government Code section 821.6, "A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." Furthermore, "Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability." (Gov. Code, § 815.2, subd. (b).)

Thus, the usual rule is that a government entity is immune from liability for the discretionary decisions of its employees. "[G]overnmental immunity is the rule, and liability is the exception." (*Amylou R. v. County of Riverside* (1994) 28 Cal.App.4th 1205, 1213, citation omitted, disapproved on other grounds by *Leon v. County of Riverside* (2023) 14 Cal.5th 910.) Also, counties are generally immune for the discretionary decisions of their social workers regarding removal and placement of children. (*Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 882-883 [holding County and social workers were absolutely immune from liability for their actions in investigating and instigating dependency proceeding to remove child, as well as for their subsequent conduct in juvenile case, as their conduct was discretionary and not ministerial]; *Thompson v. County of Alameda* (1980) 27 Cal.3d 741, 748-749 [holding County was immune from liability for

discretionary decision to release juvenile from custody who subsequently killed plaintiff's child].)

Here, County DSS was not the entity that made the decision to place plaintiff in the Rodriguez home, nor did it certify that the Rodriguez home was a suitable home for foster children. As discussed above, it was VTR that certified the Rodriguez home for placement of foster children, and it was VTR that decided to place plaintiff in the home. Even if County had a role in the placement of plaintiff in the home, the decisions of its social workers in making the placement were discretionary and, thus, County is immune from liability.

In her Second Amended Complaint, plaintiff alleges that several statutes imposed a mandatory duty on County, and that County failed to discharge its duties as required by law. (SAC, ¶¶ 51, 52, 64, 65.) In particular, plaintiff alleges that "County is directly liable for negligence under California Government Code Section 815.6 for their failure to discharge mandatory duties set forth in, *inter alia*, Welfare and Institutions Code sections 328, 16501(f), and 16504; Health and Safety Code section 1522, *et seq*., Penal Code sections 11165.7, 11165.9 and 11166; Department of Social Services Child Welfare Services Manual sections 31-320, 31-401, *et seq*., and 31-501; and Section 7-2100 of the Evaluator Manual by exempting a non-exemptible crime." (*Id*. at ¶ 64.) However, none of the statutes cited by plaintiff impose a mandatory duty that would apply here, and even if they do, there is no evidence that County violated that duty.

Welfare and Institutions Code section 328 only requires a social worker to make an investigation to determine whether child welfare services should be offered to the family and whether proceedings in juvenile court should be commenced if the social worker has cause to believe that there is a child who has suffered or is at substantial risk of suffering serious physical harm. Here, plaintiff has not alleged that County's social workers failed to conduct an investigation and provide child welfare services to her after learning that she was suffering or was a risk of suffering physical harm. Also, the evidence indicates that plaintiff never reported Rodriguez's sexual molestation of her to County or anyone else until years after she was removed from the Rodriguez household. Therefore, section 328 does not apply here, and there is no evidence that County violated section 328.

Welfare and Institutions Code section 16501, subdivision (f), states that "County welfare departments shall respond to any report of imminent danger to a child immediately and all other reports within 10 calendar days." Here, the facts show that there was no report by plaintiff or anyone else that would have caused County DSS to suspect that she was in any imminent danger at any time while she was in the Rodriguez home. In fact, she did not even report the molestation until 2010, about nine years after she was removed from the home. Therefore, there is no evidence that County violated any mandatory duty under section 16501(f).

Even if there had been a report that placed County on notice of possible danger to plaintiff during her time in the Rodriguez home, the decision to respond would have been discretionary rather than ministerial in nature and thus would not have created a mandatory duty. As a result, County is immune from liability for any alleged failure to respond to such reports. (*Jacqueline T. v. Alameda County Child Protective Services* (2007) 155 Cal.App.4th 456, 477 [County and its employees' determination that no

imminent danger to child existed is discretionary and thus subject to broad immunity under sections 820.2 and 821.6].)

Welfare and Institutions Code section 16504, subdivision (a), states that "Any child reported to the county child welfare services department to be endangered by abuse, neglect, or exploitation shall be eligible for initial intake and evaluation of risk services… An immediate in-person response shall be made by a county child welfare services department social worker in emergency situations in accordance with regulations of the department. The person making any initial response to a request for child welfare services shall consider providing appropriate social services to maintain the child safely in his or her own home. However, an in-person response is not required when the county child welfare services department, based upon an evaluation of risk, determines that an in-person response is not appropriate. An evaluation of risk includes collateral contacts, a review of previous referrals, and other relevant information." Section 16504, subdivision (c), also requires the child welfare services department to report "suspected abuse, neglect, or exploitation by a licensed or approved caregiver to the appropriate licensing or approval agency and, as appropriate, to law enforcement."

Section 16504 only creates a discretionary duty to respond and consider providing social services to maintain a child safely in his or her home, including evaluating risk factors and other relevant information. Nor is there any evidence that County's duties under section 16504 were ever triggered, as plaintiff did not report that she was being molested while she was placed in the Rodriguez home. Likewise, to the extent that a social worker has a mandatory duty to report abuse, neglect or exploitation of children to law enforcement or others, here there is no evidence that plaintiff or anyone else reported the molestation to County while she was in the Rodriguez home. Plaintiff only reported the abuse years later, long after she had been removed from the home. Therefore, section 16504 does not apply here, and there is no evidence that County violated any mandatory duty under that section.

Plaintiff also cites to Health and Safety Code section 1522, *et seq*., which deals with licensing, permits and approvals of persons who operate foster family homes and other care facilities. However, as discussed above, the evidence shows that County was not involved in the process of certifying the Rodriguez home for placement of foster children, nor did County make the decision to place plaintiff with the Rodriguez family. The certification and placement decisions were made by VTR, not County. Thus, even if section 1522 creates a mandatory duty with regard to approving the Rodriguez family as foster parents and placing plaintiff with them, here the evidence shows that County was not the entity that placed plaintiff in the home or approved the home for foster child placements. As a result, there is no evidence that County breached any mandatory duty under section 1522.

Next, plaintiff alleges that defendants violated Penal Code sections 11165.7, 11165.9 and 11166, which define "mandatory reporters" to include social workers, and impose mandatory reporting duties on such workers when they know or reasonably suspect that a child has been a victim of child abuse or neglect. However, while sections 11165.7, 11165.9 and 11166 do impose mandatory reporting duties on social workers, here the evidence shows that plaintiff did not report Rodriguez's molestation of her until several years after she was removed from the home. Therefore, there is no evidence to support

plaintiff's allegation that County violated any mandatory duties under sections 11165.7, 11165.9 and 11166.

Finally, plaintiff alleges that County violated its mandatory duties under "Department of Social Services Child Welfare Services Manual sections 31-320, 31-401, *et seq*., and 31-501; and Section 7-2100 of the Evaluator Manual…" (SAC, ¶ 64.) Defendant claims that these sections of the manuals are not applicable here and, in any event, Count did not violate them because it provided appropriate social worker visits with plaintiff during her placement with the Rodriguez family, it was not involved in the placement of plaintiff with the family, and it received no reports of abuse or neglect regarding plaintiff during her placement.

Defendant has not submitted copies of the relevant manual sections for the court's review and consideration. Fortunately, the Child Welfare Service Manual is available online at https://www.cdss.ca.gov/inforesources/letters-regulations/legislation-and-regulations/child-welfare-services-regulations , and the Child Welfare Services Evaluator Manual is available online as well. The court intends to take judicial notice of the manuals as official acts of government agencies. (Evid. Code, § 452, subd. (c).)

In any event, the cited sections of the manual do not apply here, as they only impose minimum visitation requirements on social workers, impose rules regarding placement of a child with a foster family, and set forth reporting requirements where there is a suspicion of abuse or neglect. (Child Welfare Services Manual, §§ 31-320, 31-401, 31-501.) None of the allegations of plaintiff's Amended Complaint indicate that her claims are based on the failure to provide the minimum number of social worker visits with her. Also, the evidence shows that the social worker assigned to plaintiff did in fact visit with her once a month during her placement with the Rodriguez family. (UMF Nos. 11, 12.) Furthermore, the evidence shows that plaintiff never reported any abuse or molestation to County while she was placed with the Rodriguez family, so there is no basis for her apparent claim that County failed to report the abuse. Finally, County was not involved in placing plaintiff with the family, so County did not violate any duty under the manual regarding the placement of children with foster families.

Section 7-2100 of the Evaluator Manual deals with "non-exemptible crimes" in considering whether to grant certification of a foster family. However, as discussed above, County DSS was not involved in the certification of the Rodriguez family for placement of foster children, nor did the County place plaintiff with the Rodriguez family. Instead, VTR certified the home and placed plaintiff there. (UMF Nos. 2, 3, 6.) County was not involved in the process of reviewing certifying the home for foster child placement. (UMF Nos. 8-10.) Therefore, County did not violate section 7-2100 of the Evaluator Manual, because it did not certify the Rodriguez home for placement or grant an exemption to Alberto Rodriguez so that he could act as a foster parent. Consequently, section 7-2100 does not provide a basis for liability against County here.

Plaintiff has not filed an opposition or made any attempt to show that there are any triable issues of material fact with regard to her claims against County. As a result,

the court intends to grant summary judgment in favor of County as to all plaintiff's claims against it.

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 12/11/2024.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Prafford v. Trust-All Roofing, Inc.***
Case No. 24CECG01227

Hearing Date: December 19, 2024 (Dept. 501)

Motion: by Defendant Trust-All Roofing, Inc., for Summary Judgment or, in the Alternative, Summary Adjudication

Tentative Ruling:

To grant the motion of defendant Trust-All Roofing, Inc., for summary adjudication of the third and fourth causes of action. Defendant shall submit a proposed judgment consistent with this order within ten days of the date of service of the order.

Explanation:

While plaintiffs have requested a continuance of the summary judgment hearing in order to conduct further discovery, plaintiffs have not shown good cause to grant a continuance. Under Code of Civil Procedure section 437c, subdivision (h), "[i]f it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just."

In order to obtain a continuance under subdivision (h), the party seeking the continuance must submit a declaration stating (1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts. (*Jade Fashion & Co., Inc. v. Harkham Industries, Inc*. (2014) 229 Cal.App.4th 635, 656; *Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 254.) Continuance of a summary judgment hearing is not mandatory when no affidavit is submitted or when the submitted affidavit fails to make the necessary showing as provided for by statute governing continuance. (*Menges v. Department of Transportation* (2020) 59 Cal.App.5th 13, 25.)

"'The purpose of the affidavit required by ... section 437c, subdivision (h) is to inform the court of outstanding discovery which is necessary to resist the summary judgment motion.' However, it 'is not sufficient under the statute merely to indicate further discovery or investigation is contemplated. The statute makes it a condition that the party moving for a continuance show "facts essential to justify opposition may exist."'" (*Insalaco v. Hope Lutheran Church of West Contra Costa County* (2020) 49 Cal.App.5th 506, 518, citations omitted.) Also, if a lack of diligence results in a party's having insufficient information to know if facts essential to justify opposition may exist, and the party is therefore unable to provide the requisite affidavit to continue summary judgment motion, the trial judge may deny the request for continuance of the motion. (*Id.* at p. 519.)

In the present case, plaintiffs have requested a continuance to conduct further discovery under subdivision (h). However, they do not explain what facts they need to obtain, why those facts are essential to support their opposition, or why they were not able to obtain the facts earlier through the exercise of diligence. The only declaration submitted in support of their request for a continuance is the declaration of their attorney, Jason Ingber, who says nothing about what facts he hopes to find and how those facts are essential for the opposition. (See Ingber decl. in support of Ex Parte Application for Continuance.) Nor does he state what discovery remains incomplete, how much time he needs to complete it, or why he has not been able to obtain the facts that he seeks earlier. Indeed, he provides no specific information about the need to conduct additional discovery or the facts that he seeks, and instead merely states that he is requesting that the court "Grant a continuance of the Motion for Summary Judgment hearing date to allow for necessary discovery to be completed…" (*Id*. at ¶ 10 a.) Therefore, plaintiffs' counsel has completely failed to make the required showing of good cause to support his request for a continuance, and the court intends to deny the request.

Next, with regard to the merits of the motion for summary judgment or adjudication, the court intends to find that Trust-All has met its burden of showing that it is entitled to summary adjudication of the remaining two causes of action against it.

Defendant's evidence shows that Trust-All was not an active corporation at the time that plaintiffs resided in their home and Trust-All did not do the allegedly negligent work on their roof. Plaintiffs allege that the negligent remediation work was done between November 2019 and November 2021, and that they moved out of the home in November 2021. (Defendant's Undisputed Material Fact Nos. 1, 2.) However, Trust-All was not in operation during this time period. (UMF No. 3.) Trust-All did not begin business operations until January 1, 2022. (UMF Nos. 4-7, 12.) Trust-All's contractor's license number is also different from the contractor's license number of Steven Brant, dba Trust-All Roofing. (UMF Nos. 8, 10.) Steven Brant, dba Trust-All Roofing, performed the work on plaintiffs' home. (UMF No. 9.) The invoices for the work done on plaintiffs' home show that the work was done under Brant's contractor's license number. (UMF No. 11.)

Therefore, defendant has met its burden of showing that it was not in operation at the time that the allegedly negligent work was done on plaintiffs' home, and it did not perform the work. As a result, defendant cannot be held liable for negligently performing the work, which was done by a different entity. Nor can defendant be held liable for violating the Unfair Competition Law, as it was not in operation during the relevant time period when plaintiffs allege that they were harmed by the unfair competition.

Plaintiffs have not filed opposition to the motion or submitted any evidence that would raise a triable issue of material fact with regard to the issues raised by defendant's motion. Therefore, the court intends to grant summary adjudication of the third and fourth causes of action in favor of Trust-All.

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 12/12/2024.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***In re Iris Guzman Hernandez***
Superior Court Case No. 24CECG05139

Hearing Date: December 19, 2024 (Dept. 501)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To grant. Orders signed. No appearances necessary.

The court sets a status conference on Wednesday, March 19, 2025, at 3:30 p.m. in **Department 403** for confirmation of deposit of the minor's funds into a blocked account. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

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 12/12/2024.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Velasquez v. Pulido***
Superior Court Case No. 23CECG04721

Hearing Date: December 19, 2024 (Dept. 501)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To deny without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.) Petitioner must give notice of the hearing on the amended petition to Araceli Solorio via her attorney.

Explanation:

While notice is generally not required with a petition for approval of a compromise of a minor's claim, here the Petition informs the court that defendant's insurance policy limits are being apportioned between the minor and her family and non-party Araceli Solorio. (See Petn., Attachments 11b(3) and 11b(6).) Ms. Solorio is separately represented and has filed her own action with this court (Case No. 23CECG04915). The court finds that it is in the interest of due process that all parties to the settlement be given notice of the hearing on this Petition.

Additionally, the Petition cannot be granted at this time because insufficient information is given regarding the amount the Petition proposes to pay the Selma Fire Dept. Administration – Collectibles Management Resources. First, no statement from this provider was attached so the amount due has not been substantiated. Second, no documentation has been submitted to substantiate the agreement of the Selma Fire Dept. Administration to accept a reduced amount in full satisfaction of the amount due. Third, since the minor is a Medi-Cal recipient, if this provider accepted Medi-Cal payments, then any payments to it by the Department of Health Care Services constitutes payment in full and it does not have a lien on the minor's settlement. This must be clarified.

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 (Judge's initials) on 12/16/2024 (Date).

(37)

Tentative Ruling

Re: ***The State of California v. Buzz Oates Enterprises II***
Superior Court Case No. 16CECG00347

Hearing Date: December 19, 2024 (Dept. 501)

Motion: by Plaintiff to Compel Defendant Joginder Singh's Responses to Special Interrogatories (Set One) and Request for Production of Documents (Set One) and for Monetary Sanctions

Tentative Ruling:

To grant plaintiff's motions to compel for Special Interrogatories (Set One) and Request for Production of Documents (Set One). Defendant Joginder Singh is ordered to serve verified responses, without objections, to plaintiff within 30 days of service of the minute order by the clerk.

To grant monetary sanctions against defendant Joginder Singh in the total amount of $330. Monetary sanctions are ordered to be paid within 30 calendar days from the date of service of the minute order by the clerk.

Explanation:

Defendant was properly served discovery on April 30, 2024. As of the filing of the motions on November 18, 2024, no responses had been received. Nothing has been filed indicating the responses were received. Defendant has asserted he is seeking counsel regarding filing a Disclaimer of Interest. However, plaintiff proposed this as a potential resolution five months ago, on July 31, 2024.

Defendant has had sufficient time to respond to the discovery propounded by plaintiff, and has not done so. Failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and work product protection. (Code Civ. Proc., § 2030.290, subd. (a) [interrogatories]; Code Civ. Proc., § 2031.300, subd. (a) [production demands]; see *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905–906.) Here, no responses have been received and no Disclaimer of Interest has been filed.

Regarding the interrogatories, where a party seeks monetary sanctions, the court "shall" impose such a sanction against the unsuccessful party, unless the court finds that party acted with substantial justification or other circumstances would render such sanctions as unjust. (Code Civ. Proc., § 2030.290, subd. (c).) The court finds it reasonable to allow for a total of one hour for preparation of the motions and half an hour for the

reply, at the hourly rate of $220 provided by counsel. Therefore, the amount in sanctions is $330.

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 12/17/2024.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Wayne Schedler v. James Watts, Deceased***
Superior Court Case No. 24CECG01828

Hearing Date: December 19, 2024 (Dept. 501)

Motion: Application for Default Judgment

Tentative Ruling:

To deny the application for default judgment, without prejudice.

Explanation:

All Adverse Claims

James D. Watts and Mildred Jane Watts' other son, Larry E. Watts, may have a potential claim to the property and he has not been properly served with notice of this quiet title action.

In a quiet title action, if a defendant to be named is dead or believed to be dead, a plaintiff can sue the decedent pursuant to Code of Civil Procedure section 762.030:

> If a person required to be named as a defendant is dead and the plaintiff knows of a personal representative, the plaintiff shall join the personal representative as a defendant. If a person required to be named as a defendant is dead, or is believed by the plaintiff to be dead, and the plaintiff knows of no personal representative: the plaintiff shall state these facts in an affidavit filed with the complaint. Where it is stated in the affidavit that such person is dead, the plaintiff may join as defendants "the testate and intestate successors of [the decedent], deceased, and all persons claiming by, through, or under such decedent," naming them in that manner.

Plaintiff asserts that James D. Watts and Mildred Jane Watts are deceased, attaching death certificates as Exhibits A and B to the initial Complaint, and also to the declaration of Richard A. Harris. A deceased person cannot be sued directly. Plaintiff named David Watts as a defendant upon discovering that he is the decedents' son, but makes no assertions that he is their personal representative. Plaintiff states there was no probate of the estates of either decedent. (Memo. P&A., ¶ 4.)

Plaintiff admits that James and Mildred had another son, Larry Eugene Watts. Larry may have a potential claim to the property. Plaintiff argues that Larry was allegedly disinherited by Mildred in her will before she died. (Harris Decl., 2:17.) This does not negate his potential ability to raise a claim with regard to the property. Plaintiff states he attempted to locate Larry and was able to find his Facebook account, confirmed by his brother David, and then contact him via Facebook messenger. (*Id*., 2:21-25.) This profile

for "Larry" responded to a message and provided his telephone number and e-mail address, but not a physical address. (*Id*., Exhs. D, E.) Plaintiff has not been able to serve Larry E. Watts. (*Id*., 2:23-28.) Given that plaintiff has potentially been in contact with Larry, and has not shown that Larry has no potential ability to raise a claim, there is no excuse for lack of service.

Dismissal of All Parties Not Subject to Judgment

An application for judgment by default must include "[a] dismissal of all parties against whom judgment is not sought or an application for separate judgment against specified parties under Code of Civil Procedure section 579, supported by a showing of grounds for each judgment." (Cal. Rules of Court, rule 3.1800(a)(7).)

No dismissal or separate request for judgment was filed in regard to James D. Watts, deceased; Mildred Jane Watts, deceased; and "All Other Persons Unknown…"/Does 1-20.

Plaintiff has named "all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property" as defendants in this action. (Compl., ¶ 3.) The application seeks judgment only as to David Watts and does not appear to seek an *in rem* judgment as to all persons unknown, however, the "unknown" defendants remain parties to this action and have been not been served or dismissed.

An *in rem* judgment quieting title against the whole world, is allowed where plaintiff names "all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff's title, or any cloud upon plaintiff's title thereto." (Code Civ. Proc., § 762.060, subd. (a).) This statutory language is required if an *in rem* judgment is sought. However, in that case, plaintiff must serve such defendant (or class of defendant) by publication of the summons, after obtaining an order therefor. (Code Civ. Proc., §§ 763.010, subd. (b), 764.030.) Otherwise, any judgment obtained cannot include (cannot be rendered against) this class of defendant. Persons not made parties to the action are not bound by the judgment. (*Gerhard v. Stephens* (1968) 68 Cal.2d 864; *Taliaferro v. Riddle* (1958) 166 Cal.App.2d 124.)

Plaintiff's Complaint includes as defendants "all persons" claiming an interest in the subject property. To the extent plaintiff seeks *in rem* judgment against this class of defendants, proof of service by publication has not been sought and such judgment cannot be granted.

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 12/17/2024.
(Judge's initials) (Date)