

**TENTATIVE RULINGS
DEPARTMENT C13 - LAW AND MOTION CALENDAR**

Judge Jonathan Fish

May 13, 2024

LAW AND MOTION IS HEARD ON MONDAYS AT 1:30 P.M.

Court Reporters: Official court reporters (i.e., court reporters employed by the Court) are **NOT** typically provided for law and motion matters in this Department. If a party desires a record of a law and motion proceeding, it must provide a court reporter. Parties must comply with the Court's policy on the use of privately-retained court reporters, which can be found at:

- [Civil Court Reporter Pooling](#);
- Please see the Court's website at [Court Reporter Interpreter Services](#) for additional information regarding the availability of court reporters.

Tentative Rulings: The Court endeavors to post tentative rulings on the Court's website by 5 p.m. on the preceding Friday. Do NOT call the Department for a tentative ruling if none is posted. Tentative rulings may not be posted on every case – or may be posted the morning of the hearing – due to the Court's other commitments or the nature of a particular motion. **The Court will NOT entertain a request for continuance or the filing of further documents once a tentative ruling has been posted.**

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5213. Please do not call the Department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the Court, the tentative ruling shall become the Court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the Court's signature, if appropriate under Cal. R. Ct. 3.1312.

Non-appearances: If no one appears for the hearing and the Court has not been notified that all parties submit on the tentative ruling, the Court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Appearances: Remote and In-Person Proceedings. Parties are referred to the Court's "Appearance Procedures and Information – Civil Unlimited and Complex" and "Guidelines for Remote Appearances" available on the Public Website.

#	Case Name	

1	<p>23-01346697</p> <p>Ally Bank v. Vargas</p>	<p>1) Application for Writ of Possession</p> <p>2) Application for Writ of Possession</p> <p>Plaintiff Ally Financial, Inc.’s Unopposed Application for Writ of Possession against Defendant David L. Vargas for the 2017 Ford Mustang motor vehicle, Vehicle Identification No. 1FATP8FF6H5213946 (“Vehicle”) is GRANTED as follows.</p> <p>The Court ORDERS Defendant to turn over to Plaintiff the 2017 Ford Mustang located at 3775 Boyd Ave., Apt. 74, San Diego, California 9211 or 469 N. 1st Unit 3, El Cajon, California 92144 – which are both places where Defendant resides. (See Singleton Decl., ¶10.)</p> <p>Absent Defendant’s posting of an undertaking, the failure to turn over the vehicle to Plaintiff may subject Defendant to being held in contempt of court. The court finds that Defendant has no interest of value in the vehicle, and thus, the requirement of Plaintiff to post an undertaking is waived. (CCP § 515.010(b).) Should Defendant wish to prevent Plaintiff from obtaining possession of the vehicle, Defendant is required to post an undertaking in the amount of \$37,566.76.</p> <p>Moving Party is to give notice.</p>
3	<p>23-01317103</p> <p>BKC Entertainment LLC v. K1 Speed Franchising, Inc.</p>	<p>Motion to Strike or Tax Costs</p> <p>The motion of plaintiff BKC Entertainment LLC and former plaintiff MB Racing LLC to strike or tax the memorandum of costs filed by defendants K1 Speed Franchising, Inc.; Kart 1 LLC; Protex Karting Barrier, LLC; David Danglard; and Uli Perez is moot.</p> <p>The prevailing party in any civil action is entitled to recover costs as a matter of right. Code Civ. Proc. §1032. To claim those, the prevailing party must file and serve a memorandum of costs within 15 days from the date the clerk (or any party) mails out notice of dismissal or entry of judgment. CRC 3.1700; <i>Daniels v. Robbins</i> (2010) 182 Cal. App. 4th 204, 228. The memorandum must include a supporting declaration affirming that the costs were reasonable and necessarily incurred. CRC 3.1700(a)(1). No proposed judgment is required in order to perfect the memo of costs. <i>Fries v. Rite Aid Corp.</i> (2009) 173 Cal. App. 4th 182, 185.</p>

		<p>A motion to tax costs must be filed within 15 days after service of the memorandum of costs. CRC 3.1700(b)(1). This time is extended 5 days if the memorandum of costs is served by mail. <i>Id.</i>; Code Civ. Proc. § 1013.</p> <p>In this case, both the memorandum of costs and the motion to strike or tax costs were timely filed. [ROA ## 69, 77, 84.]</p> <p>Then, however, Defendants withdrew their memorandum of costs “without prejudice.” [ROA # 34.]</p> <p>As a result, there is nothing left for the court to strike or act on.</p>
4	<p>22-01284565</p> <p>Castillo v. City of Orange</p>	<p>1) Motion for Summary Judgment/Adjudication</p> <p>2) Motion for Summary Judgment/Adjudication</p> <p>The court recuses itself. CCP 170.1(a)(6)(iii)</p>
5	<p>23-01329927</p> <p>Clayton-Tarvin v. City of Huntington Beach</p>	<p>Petition for Writ</p> <p>There is no tentative. The court will hear argument.</p>
6	<p>22-01268008</p> <p>Dental Practices of Charles Zahedi, Inc. v. Saatchi</p>	<p>Motion to be Relieved as Counsel of Record</p> <p>The motion of Absolute Law Group, by John Bussman, counsel of record for defendant and cross-complainant Farid Saatchi seeking an order relieving him as counsel for Defendant and Cross-Complainant is granted.</p> <p>The court will sign the proposed order submitted by counsel.</p> <p>Upon the signing of the proposed order, counsel shall serve the signed order on Defendant and Cross-Complainant and the other party to the action. Counsel will be relieved as counsel of record for Defendant and Cross-Complainant effective upon the filing of the proof of service of the signed order upon Defendant and Cross-Complainant and the other party to the action. Counsel shall give notice of the ruling.</p>

7	<p>21-01233091</p> <p>Gonzalez v. Tilly's INC.</p>	<p>1) Motion to Enforce Settlement / Order to Show Cause</p> <p>Before the Court is Plaintiff Azucena Pacheco Gonzalez’s Motion to Enforce the Settlement Agreement pursuant to CCP §664.6.</p> <p>This Motion was heard on 4/9/24 and was continued to allow for Plaintiff to file the Settlement Agreement with the Court. (ROA 116) Plaintiff subsequently filed the Settlement Agreement with the Court, but redacted the amount of the settlement. (ROA 122).</p> <p>The Settlement Agreement has a confidentiality provision, but it permits Plaintiff to disclose the terms of the Agreement to Court. (Settlement Agreement, ¶6(c), “This subsection does not prohibit disclosures to the extent necessary to enforce this Agreement in a legal proceeding (the Companies will jointly file it under seal), to the extent required by law, or to the extent applicable law invalidates such a prohibition.”)</p> <p>Neither Plaintiff nor the BaronHR Defendants filed a motion to seal any portion of the Agreement. The Court cannot enter judgment in favor of Plaintiff in an unknown amount.</p> <p>The Court will continue the hearing to permit Plaintiff to remedy this issue and provide a new proposed judgment for the Court. This matter is continued to Monday, July 29, 2024 at 1:30 p.m.</p>
8	<p>21-01223241</p> <p>Leon v. Panda Motors Inc.</p>	<p>1) Motion to Deposit by Stakeholder, for Discharge of Stakeholder and for Attorney Fees</p> <p>The Court now grants Cross-Complainant Old Republic Surety Company’s Motion for interpleader of the Surety Bond of Dealer No. W150383570 in the penal sum of \$50,000. (See Cross-Complaint, ¶6.)</p> <p>Interpleader is a procedure whereby a person holding money or personal property to which conflicting claims are being made by others can join the adverse claimants and force them to litigate their claims among themselves. (<i>Hancock Oil Co. of Calif. v. Hopkins</i> (1944) 24 Cal.2d 497, 508; <i>City of Morgan Hill v. Brown</i> (1999) 71 Cal.App.4th 1114, 1122.)</p> <p>Interpleader is an equitable procedure through which those who face conflicting claims to money or</p>

	<p>property they hold but have no interest in (referred to as “stakeholders”) may compel the claimants to interplead and litigate their claims to the money or property among themselves. (CCP § 386; <i>Hood v. Gonzales</i> (2019) 43 Cal. App. 5th 57, 571-574 (conflicting claims to funds or property do not have to exceed amount deposited).)</p> <p>A stakeholder has the right to bring an interpleader action on receipt of conflicting demands for the money or property held, and it owes no duty to attempt to resolve the dispute between the claimants before initiating the action. (<i>Cantu v. Resolution Trust Corp.</i> (1992) 4 Cal. App. 4th 857, 876).</p> <p>The stakeholder must allege in the “complaint in interpleader” that: (1) the defendant claimants have made conflicting demands with respect to the money or property held by the plaintiff; (2) the stakeholder cannot determine the validity of the various claims; (3) the plaintiff may be exposed to multiple liability if the stakeholder delivers the money or property to any of the claimants; and (4) the stakeholder requests an order from the court determining to whom the money or property belongs. (<i>See Fidelity Sav. & Loan Ass’n v. Rodgers</i> (1919) 180 Cal. 683, 684.)</p> <p>Regardless of what procedure is used, the first step in an interpleader action is a trial or hearing by the court on the issue of the right to interplead. If the proof is sufficient, or the right is admitted by failure to object or by stipulation, the court makes an interlocutory order directing the stakeholder to deposit the amount of deliver the property and requiring the defendant claimants to interplead and litigate their claims among themselves. (<i>Lincoln Nat. Life Ins. Co. v. Mitchell</i> (1974) 41 Cal. App. 3d 16, 18.)</p> <p>A motion for discharge motion must be supported by an affidavit by the stakeholder establishing the ground for interpleader. (Code Civ. Proc., §§ 386(a), 386.5.) Notice of the motion must be served on each of the adverse claimants to the funds or property. (Code Civ. Proc., §§ 386(a), 386.5.)</p> <p>Here, all of the requirements have been met. (See also ROA 486, Order overruling the Demurrer to the Cross-Complaint in Interpleader.</p> <p>Old Republic will be discharged upon deposit of the \$50,000. “Once the person admits liability and deposits the money with the court, he or she is discharged from liability and freed from the obligation of</p>
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	<p>participating in the litigation between the claimants.” (<i>City of Morgan Hill v. Brown</i> (1999) 71 Cal.App.4th 1114, 1122.)</p> <p>Code of Civil Procedure section 386, subdivision (f) provides: “After any such complaint or cross-complaint in interpleader has been filed, the court in which it is filed may enter its order restraining all parties to the action from instituting or further prosecuting any other proceeding in any court in this state affecting the rights and obligations as between the parties to the interpleader until further order of the court.” The Court will restrain all named Cross-Defendants and Roes in accordance with Section 386(f).</p> <p>The stakeholder may seek reimbursement for its costs and reasonable attorney fees. (Code Civ. Proc., § 386.6; <i>UAP-Columbus JV 326132 v. Nesbitt</i> (1991) 234 Cal.App.3d 1028, 1036; <i>Southern Calif. Gas Co. v. Flannery</i> (2016) 5 Cal.App.5th 476, 486 [finding court has authority to award fees and costs not only to initiate interpleader and obtain discharge but also for “subsequent motions, writ petitions, and appeals.”].) The court may order payment thereof out of the funds deposited by the stakeholder. (Code Civ. Proc., § 386.6.) However, an interpleader plaintiff can only be awarded the plaintiff's fees and costs from the funds deposited with the court; thus, a plaintiff that does not comply with the statutory prerequisite of depositing the disputed funds with the court is not entitled to an award of attorney's fees and costs. (<i>Wells Fargo Bank, N.A. v. Zinnel</i> (2004) 125 Cal. App. 4th 393, 403; <i>Hood v. Gonzales</i> (2919) 43 Cal. App. 5th 57.)</p> <p>Here, Old Republic chose not to deposit the \$50,000 when it filed its interpleader cross-complaint and has still not deposited it. Thus, per the statute, it does not qualify for fees and costs.</p> <p>The Court has analyzed the parties to the pending Cross-Complaint and all have appeared, been defaulted, or dismissed:</p> <ol style="list-style-type: none">1. Benito Bello Leon – Answered but was later dismissed. (ROA 36, 388)2. Bertha H. Guillen – Now dismissed. (ROA 145.)3. Lydia J. Aguilar – Now dismissed. (ROA 295.)4. Maribel Mondragon – Answered. (ROA 63)5. Francisco Javier Benitez – Answered. (ROA 178)6. Abhishek Shrivastava – Now dismissed. (ROA 208)7. Roe 6 is Aime Z. Sankoh – Answered. (ROA 66)8. Roe 7 is Natasha Romero – Now dismissed. (ROA 145)9. Roe 8 is Abdulla Aliyeva – Answered. (ROA 178)10. Roe 9 is Samira Aliyeva – Answered. (ROA 178)
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10	<p>22-01296395</p> <p>Mirzayans v. Vondeylen</p>	<p>2) Case Management Conference</p> <p>Motion to Vacate</p> <p>Defendant Allyson Vondeylen (“Defendant”) seeks an order vacating and setting aside the default and default judgment entered against Defendant pursuant to CCP section 473.5, and recalling and quashing any writs of execution and abstracts of judgment issued, and returning all funds levied upon to Defendant via counsel.</p> <p>Defendant’s requests for the Court to take judicial notice of the proof of service of summons filed in this case is denied because it is unnecessary to ask the court to take judicial notice of materials previously filed in this case. A party may “simply call the court’s</p>

		<p>attention to such papers.” (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) ¶ 9:53.1a.)</p> <p>Defendant’s objection to Palmer’s electronic signature is overruled.</p> <p>Defendant’s motion is timely filed. Default judgment was entered on 8/15/2023. (ROA No. 30.) Defendant served and filed this motion on 12/6/2023, less than four months after default judgment was entered against her. (<i>Schenkel v. Resnik</i> (1994) 27 Cal.App.4th Supp. 1, 4.) Plaintiff did not show a notice of entry of default or notice of entry of default judgment was served on Defendant.</p> <p>Defendant did not show her lack of actual notice in time to defend the action was not caused by her inexcusable neglect. Although Defendant contends her packages would be incorrectly delivered to her neighbor, Defendant did not show some type of process in place to ensure she would receive her deliveries. Defendant’s declaration is craftily drafted and does not state whether she ever received a copy of the summons and complaint by means other than personal delivery or the mail. In addition, Defendant does not disclose when she first discovered this action against her. Instead, Defendant states she “first became aware of the <i>judgment</i> against [her] on 11/01/2023.” (Vondeylen Decl., ¶ 5 [emphasis added].) Accordingly, the motion is denied.</p> <p>Plaintiff shall give notice.</p>
12	<p>22-01286426</p> <p>Quick Bridge Funding, LLC v. Wolf Construction LLC</p>	<p>Motion to be Relieved as Counsel of Record</p> <p>On the motion of The Sands Law Group, APC, by Thomas D. Sands, attorney of record for defendant Dain Wolf Ivey for an order relieving it as counsel for Defendant Ivey, the court will hear from counsel for all parties on a number of matters.</p> <p>The court notes that Counsel’s to be relieved as counsel for Defendant Wolf Construction LLC was previously granted. [ROA #43.]</p> <p>The order relieving counsel as to Defendant Wolf Construction will be effective upon the filing of proof of service of the signed order upon on each of Defendant Wolf Construction, Defendant Ivey, and plaintiff Quick Bridge Funding, LLC.</p>

		<p>[<i>Id.</i>]</p> <p>The court does not find in its file, however, any proof of service of the signed order. It would appear, then, that Counsel remains counsel of record for Defendant Wolf Construction LLC.</p> <p>The language of the January 23, 1996 order relieving counsel mandated the filing of a proof of service on the clients before it had any effect.</p> <p>As no such proof of service is in the record or found in an independent search of the superior court file, it would appear the corporation's counsel, Horton, Barbaro & Reilly, was never actually relieved because the order never became operative.</p> <p><i>Gamet v. Blanchard</i> (2001) 91 Cal.App.4th 1276, 1285–1286.</p> <p>Additionally, the court notes that the OSC re striking of Wolf Construction's answer was set for 11/9/23, and was directed only at Wolf Construction, on that date both Defendants' answers were stricken, apparently on Plaintiffs' motion. [ROA ## 43, 56.] The court will hear from all counsel on this.</p>
13	<p>23-01312263</p> <p>Ware v. Stater Bros Markets</p>	<p>1) Demurrer to Complaint</p> <p>Defendant Stater Bros. Markets' demurrer to the complaint is SUSTAINED WITH 20 DAYS LEAVE TO AMEND.</p> <p>“The party against whom a complaint... has been filed may object, by demurrer” on the ground that “[t]he pleading does not state facts sufficient to constitute a cause of action.” (Code Civ. Proc., § 430.10, subd. (e).)</p> <p>Plaintiff filed a Judicial Council form complaint and in paragraph 10 checked off box 10b “general negligence” and box 10e “premises liability.” She was required to attach an addition form to set forth statements for each cause of action but she did not do so.</p> <p>Defendant shall serve notice of ruling.</p> <p>2) Case Management Conference</p> <p>The CMC is continued to Monday, July 22, 2024 at 9:00 a.m.</p>

