

TENTATIVE RULINGS

DEPT N-6

LAW AND MOTION CALENDAR

Hon. Glenn R. Salter

Date: May 2, 2024

Law and Motion is heard on Thursday at 1:30 pm. Tentative rulings will ordinarily be posted no later than 3 pm on the immediately preceding court date.

No request for a continuance of any law and motion hearing will be entertained after the tentative rulings have been posted.

If the parties intend to submit on the tentative ruling, they shall advise the Court Clerk by calling (657) 622-5606. The tentative will become the Court's final ruling and the prevailing party will give notice and prepare any required order pursuant to California Rules of Court, rule 3.1312. Please do not call the Department unless all parties submit on the tentative ruling.

Appearances may be made in person or by Zoom. For remote appearances, the log-in is on the Court's website (see <https://www.occourts.org/media-relations/aci.html>). This is not an endorsement, but it has been reported that the link seems to work better with Microsoft Edge or Google Chrome.

The parties are reminded that official court reporters are not provided by the Court for law and motion hearings. For additional information on the Court's policies in this regard, please visit the Court website.

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3	Quick Bridge Funding, LLC v. Nona Transport, LLC (23-1351097)	<p>The motion of plaintiff Quick Bridge Funding, LLC, for summary judgment or, in the alternative, for summary adjudication of issues, is GRANTED.</p> <p>The motion is unopposed. The court notes defendants are no longer represented by counsel.</p> <p>The court has reviewed the motion and finds that plaintiff has met its initial burden of proof. The burden of proof has thus shifted. Given defendants have not met their burden to show a triable issue of material fact, the motion is granted.</p> <p>The plaintiff shall prepare the appropriate order and judgment and give notice.</p>
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6	DFS Services, LLC v. Paragon Relocation Resources, Inc. (22-1266130)	<p>The motion of attorney Phillip R. Guerts to be relieved as attorney of record for defendant Jim Davis is GRANTED.</p> <p>The court notes no opposition has been filed.</p>

		<p>Pursuant to the California Rules of Court, the order will become effective only upon the filing of a proof of service of the signed order on defendant and the other parties.</p> <p>Movant shall give notice.</p>
7	Brun v. FCA US, LLC (22-1262992)	<p>The motion for attorney fees in this lemon law case is CONTINUED on the court's own motion to May 30, 2024, at 1:30 pm in this department.</p> <p>The court is not inclined to apply the requested lodestar of 1.5 as there was nothing particularly novel or difficult in this action. Although the court always has the discretion to include a fee enhancement, it is "not required to." (See <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1138.)</p> <p>The court is further inclined to reduce the hourly rates of the attorneys and paralegals. Some are excessive by any reasonable standard.</p> <p>For example: Amanda Vitanatchi is billed out at \$250 an hour even though she has served only as a paralegal since 2022. Paralegals Rebecca Evans and Florence Goldson are billed out at an astonishing rate of \$300 an hour. Further, the court will not approve the rate of \$750 per hour for attorney Richard Wirtz. The rates of other attorneys will also need to be reduced appropriately.</p> <p>The parties are ORDERED to meet and confer meaningfully as to a reasonable attorney fee award.</p> <p>The parties are FURTHER ORDERED to file a Joint Statement at least seven court days prior to the continued hearing date as to whether they have resolved the matter and the motion may go off calendar.</p> <p>However, if the issue has not been resolved, the Joint Statement shall provide a detailed explanation as to the status of those negotiations. The statement shall not include any of the vitriol now inhabiting the papers.</p> <p>The plaintiff shall give notice.</p>
8	Do v. Green (23-1301784)	<p>Defendant filed two motions to compel the plaintiff to provide further responses.</p> <p>This action involves a claim of injuries resulting from an automobile accident filed and maintained by a self-represented plaintiff.</p> <p>The motion as to Special Interrogatory (Set Two) No. 21 is GRANTED. This interrogatory seeks information about plaintiff's income for the past five years, which is relevant because plaintiff is claiming loss of income. No opposition was filed, and no arguments have been made as to why this information should not be disclosed.</p> <p>The motion as to Requests for Production (Set Two), Nos. 21-31 and 34 is GRANTED. These requests also seek</p>

		<p>documents relevant to a calculation of plaintiff's alleged damages. No opposition has been filed, and no arguments have been made, as to why the documents should not be disclosed.</p> <p>Sanctions have been requested. The discovery requests were served on May 18, 2023, and were re-served March 8, 2024, after plaintiff stated the discovery requests had been lost. Plaintiff served objections only on March 9, 2024. The court finds sanctions in the amount of \$847.50 for each motion (for a total award of \$1,695.00), payable within 30 days, is appropriate.</p> <p>The court notes that trial in this matter is currently scheduled for June 24, 2024. A Mandatory Settlement Conference was unsuccessful.</p> <p>Defendant shall prepare the appropriate order for the court's signature and give notice.</p>
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10	Garcia v. San Bernardino Unified School District (23-1340499)	<p>The demurrer of defendant San Bernardino Unified School District to the complaint is SUSTAINED with leave to amend.</p> <p>In plaintiff's opposition, she states she "will be filing an amended complaint." Then, plaintiff argues the merits of the demurrer and asks for leave if the demurrer is sustained as to any cause of action.</p> <p>As drafted, the complaint fails to state a cause of action for the reasons stated in the demurrer.</p> <p>The defendant shall give notice.</p>
11	Spence v. Pham (22-1279754)	<p>Plaintiff filed a motion "to compel entry and inspection of defendant's property located at 176 Sidney Bay Drive, Newport Beach." Reduced to its essence, the complaint seeks damages for the alleged wrongful withholding of a residential security deposit under Civil Code section 1950.5.</p> <p>No opposition has been filed. Trial in this matter is scheduled for May 6, 2024.</p> <p>The motion is CONTINUED on the court's own motion to May 6, 2024, at 9 am. This is a matter better addressed at the time of trial. If the trial date is continued (a proposed stipulation to continue trial was rejected by the clerk's office), the matter will be continued to the same date as trial.</p> <p>The plaintiff shall give notice.</p>
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13	Kinder v. Gallant (22-1282519)	<p>The motions of attorney Brook J. Changala of FitzGerald Kreditor Bolduc Risbrough, LLP, to be relieved as attorney of record for defendants Tradability, LLC, and Amadou Diallo is GRANTED.</p>

		<p>No opposition has been filed. The court notes the Case Management Conference is currently scheduled for August 15, 2024. The court further notes that the plaintiffs have appealed from an order granting in part and denying in part an anti-SLAPP motion (Code Civ. Proc., § 425.16) as to a cross-complaint filed by other defendants. (See G062546.)</p> <p>Pursuant to the California Rules of Court, the orders will become effective only upon the filing of proofs of service of the signed orders on defendants and all other parties to this action.</p> <p>Movant shall give notice.</p>
14	Ziak v. Kazarian (23-1363096)	<p><u>Demurrer</u></p> <p>The demurrer of defendants to the fourth cause of action of the first amended complaint for intentional infliction of emotional distress is SUSTAINED with 10 days leave to amend.</p> <p>At its core, this is a boundary line dispute between residential neighbors.</p> <p>The fourth cause of action alleges “unknown defendants” threw several concrete chunks into plaintiff’s yard. The plaintiffs believe it was done intentionally while defendants were demolishing a swimming pool. The allegations are insufficient as to whether this was intentional on the part of defendants or just mere negligence on the part of the construction/demolition crew.</p> <p><u>Motion to Strike</u></p> <p>The motion of defendants to strike portions of the first amended complaint is GRANTED in part and DENIED in part.</p> <p>As to Item No. 11, the court is aware of no legal authority allowing a claim for punitive damages in a declaratory relief cause of action. The motion is therefore GRANTED.</p> <p>As to Item Nos. 3-8 and 12, the motion is DENIED as MOOT as the demurrer was sustained.</p> <p>As to the other Items, the motion is DENIED. The allegations are that defendants intentionally and with a willful and conscious disregard of the property rights of plaintiffs took portions of plaintiffs’ property. That would support a claim for punitive damages.</p> <p><u>Case Management Conference</u></p> <p>The complaint was filed November 14, 2023, and involves an on-going neighbor dispute over a boundary line, a boundary line fence, and allegations that plaintiffs have been deprived of the use of their property.</p>

		<p>Plaintiff's request that trial be postponed until the fall of 2025, or the spring of 2026, is unrealistic. Moreover, their claim that the trial will take 10 to 15 days also seems unrealistic under the facts as alleged.</p> <p>Plaintiffs indicate in their pleadings that they commissioned a survey, and that it shows the fence is in large part on their property. Did plaintiffs' surveyor locate the original monuments? Did defendants have a similar survey conducted?</p> <p>The court would encourage the parties to consider jointly hiring a surveyor, and to bifurcate the issue as to the location of the boundary line and resolve that issue as soon as practical.</p> <p>The court intends to set a 5-day jury trial in this matter for April 1, 2025, at 9 am. The parties are ORDERED to comply with Orange County Local rule 317. The court also intends to set a Mandatory Settlement Conference for January 24, 2025, at 8:30 am.</p> <p><u>Notice</u></p> <p>The defendants shall give notice.</p>
15	Linskey v. The Regents of the University of California (20-1147285)	<p>This matter, scheduled for 2:30 pm, was continued from last week's hearing.</p> <p>The continuance was to permit input from defendant The Regents of the University of California.</p>
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