

These are the tentative rulings for civil law and motion matters set for Thursday, December 1, 2016, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, November 30, 2016. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. S-CV-0022986 Aguirre, Dione vs. Amscan Holding, Inc.

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall heard in Department 43:

Plaintiff's Motion for Final Approval of Class Action Settlement

The unopposed motion is granted. The court has broad discretion to determine whether a settlement is fair, adequate, and reasonable. (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235.) When reviewing the fairness of the settlement, the court is to give due regard to the parties' agreement, ensuring that the agreement is not a product of fraud, overreaching parties, or collusion and that the settlement, as a whole, is fair, reasonable, and adequate. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145.) A presumption of fairness exists where: (1) the settlement was reached through arms-length bargaining; (2) the investigation and discovery were sufficient to allow class counsel and the court to act intelligently; (3) class counsel is experienced in similar litigation; and (4) there is a small percentage of objectors. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) The court has carefully reviewed and considered the stipulation of settlement and plaintiffs' moving papers filed in connection with the motion. The court determines a sufficient showing has been made that the settlement is fair, adequate, and reasonable.

Plaintiff's Motion for Attorneys' Fees and Costs

The unopposed motion is granted. Determining the reasonable amount of attorney's fees begins with the lodestar method, i.e the number of hours reasonably expended multiplied by the reasonable hourly rate. (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48-49.) The lodestar figure may then be adjusted, based upon factors specific to the case, to fix the fees at a fair market value. (*Ibid.*) This adjustment may be an increase or a decrease, often referred to as a multiplier or negative multiplier, after the court considers several factors. (*Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322.) The factors may include (1) the nature of the litigation; (2) the difficulty of the case; (3) the amount involved; (4) the skill required to handle the case; (5) the skill employed by counsel; (6) the attention given the case; (7) the success or failure of the case; and (7) any other circumstances in the case. (*PLCM Group, supra at p. 1096*; see *Serrano III, supra at p. 48-49*; *Press, supra at p. 322, fn. 12.*) The court specifically finds that an hourly rate of \$525 is reasonable under the circumstances. The court also finds that 553 hours were reasonably expended in this action, setting the lodestar for attorneys' fees at \$290,325. In light of this, the \$289,553.19 requested by plaintiff is reasonable and the court grants the request for attorneys' fees in its entirety.

The court also finds that the \$5,446.81 in costs and \$5,000 enhancement incentive are reasonable and grants these requests in their entirety.

2. S-CV-0032447 Westwood Montserrat, Ltd. vs. AGK Sierra de Montserrat

Defendant's motion to compel further responses to request for production of documents is granted in part. Plaintiff shall provide further verified responses and responsive documents to requests for production of documents nos. 3, 4, 5, 11, and 15. The request is denied as to no. 6. Defendant's request for sanctions is also denied.

3. S-CV-0035435 Anderson, Tela vs. Aml, Inc., et al

The motion for summary judgment is continued to December 8, 2016 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones. The court apologizes to the parties for any inconvenience.

4. S-CV-0035542 Jackson, Adam vs. Green Valley Security, Inc., et al

Plaintiff's motion for summary adjudication is denied. A party to the action may move for summary adjudication where the party contends there is no merit to one or more of the causes of action. (CCP§437c(f)(1).) Where the motion is brought by the plaintiff, the moving party meets the initial burden by proving each element of the cause of action. (CCP§437c(p)(1).) Only when this initial burden is met does the burden shift to defendant to a triable issue of material fact. (*Ibid.*) In the current motion, plaintiff seeks summary adjudication of the third cause of action for failure to furnish accurate itemized wage statements; fourth cause of action for waiting time penalties; fifth cause of action

for failure to provide meal breaks; seventh cause of action for failure to reimburse for business expenses; and twelfth cause of action for PAGA claims.

In assessing whether plaintiff has met his initial burden, the court first looks to the operative complaint. It is the complaint that frames the issues subject to summary adjudication since the pleading serves as the “outer measure of materiality” for the motion. (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98; *Lambs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.) Upon review, plaintiff’s motion fails to address the actual allegations stated in his first amended complaint or submit evidence to address the allegations that actual frame the issues raised in the third, fourth, fifth, seventh, and twelfth causes of action. For example, plaintiff’s third cause of action alleges defendant Green Valley failed to furnish accurate, itemized wage statements. (FAC ¶42.) His separate statement, however, fails to present facts addressing plaintiff’s receipt of inaccurate, non-itemized statements. (see generally Plaintiff’s SSUMF.) The same is true for the fourth cause of action. While plaintiff alleges in his FAC that defendant Green Valley failed and refused to pay him all compensation at the end of his employment (FAC ¶46), his separate statement fails to sufficiently address this (see generally Plaintiff’s SSUMF). This same deficiency in addressing the allegations stated in the FAC follows with the fifth, seventh, and twelfth cause of action. Since plaintiff has not addressed the issues as framed in his FAC, he is unable to establish each element within the causes of action. In light of this, plaintiff has failed to meet his initial burden and the motion is denied.

5. S-CV-0036316 Gisler, Margarete, et al vs. Del Webb California Corp., et al

Intervenor Peerless Insurance Company’s unopposed motion or leave to file a complaint in intervention is granted. The clerk shall file the complaint in intervention, lodged with the court on October 19, 2016, forthwith.

6. S-CV-0037670 Gilchrist, Debra vs. Greene, Casey et al

Defendants’ unopposed motion to compel further responses to requests for production of documents is granted. Plaintiff shall provide further verified responses and responsive documents to RPDs, set one, nos. 1 through 21 on or before December 30, 2016. Sanctions are denied as the motion was unopposed. (CCP§2031.310(h).) However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.)

7. S-CV-0037700 Kocsis, Sandra vs. Lopez, Ysidro

Defendant’s demurrer is sustained in part without leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff’s allegations or accuracy of the described conduct.

(*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court has carefully reviewed the SAC, which when read as a whole, alleges sufficient facts to support the second and fifth causes of action. The demurrer is overruled as to these two claims.

The remainder of the causes of action are insufficiently pleaded. Despite being afforded three opportunities to allege claims for breach of express contract and accounting; quantum meruit; money had and received; equitable estoppel quiet title; slander of title; and partition, the allegations in the SAC are still conclusory and insufficient to support these claims. Plaintiff fails to sufficiently identify an ability to remedy the deficiencies and has been provided ample opportunity to allege a viable claim. For these reasons, the demurrer is sustained without leave to amend as to the first, third, fourth, sixth, seventh, eighth, and ninth causes of action.

Defendant shall file and serve his answer and/or general denial on or before December 30, 2016.

8. S-CV-0037826 Spencer III, Frank Hillier vs. Park, Stephen James

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall heard in Department 43:

Respondent's motion for attorneys' fees and costs is granted. Code of Civil Procedure section 527.6(s) states, "[t]he prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any." The court previously made a finding that respondent was the prevailing party at the September 9, 2016 hearing, entitling him to recover attorneys' fees and costs under Section 527.6(s). The court also finds the number of hours claimed by counsel are also reasonable. Respondent is awarded \$13,675.00 in attorneys' fees and \$3,455.00 in costs for a total award of \$17,130.00.

9. S-CV-0037893 Rymel, Christopher et al. vs. Save Mart Suprmrkt, Inc. et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 43:

Defendants' unopposed motion to quash service of summons on defendant John Davis is granted. The plaintiff has the burden to prove the facts establishing proper service upon the defendant. (*Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413.) Defendants have sufficiently established plaintiff did not properly serve Mr. Davis and plaintiff offers no opposition to the current motion. In light of this, the service of summons filed on September 8, 2016 is quashed.

10. S-CV-0038106 Morris, David, et al vs. County of Placer, et al

The petition for writ of mandate is continued to December 22, 2016 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

11. S-CV-0038272 Adenwala, Muhammed A. vs. Placer County, et. al.

The demurrer is continued to January 12, 2017 at 8:30 a.m. in Department 40 at the request of the moving party.

12. S-CV-0038390 Tyshkevich, Aleksandr et al vs. Wells Fargo Bank, N.A. et al

The demurrer, motion for vexatious litigant determination, and motion for sanctions is continued to January 12, 2017 at 8:30 a.m. in Department 43. The court apologizes to the parties for any inconvenience.

13. S-PR-0006637 Davidson Neece, Barbara Ann - In re the Estate of

The motion for reconsideration is dropped from the calendar as no moving papers were filed with the court.

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