

1. JACOBS v. PAPEZ, ET AL., 22CV0891**Motion to Tax Costs**

On January 8, 2024, the court granted defendant Thomas Papez's ("defendant") motion to dismiss. On January 10, 2024, defendant filed a Memorandum of Costs claiming \$1,300.48. Plaintiff objects and opposes the Memorandum of Costs in its entirety, claiming defendant is not the prevailing party. (Mtn. at 1:26–27.) According to plaintiff, "[t]he court has merely deferred the issues to a different case filed by Papez." (*Id.* at 1:27–28.)

"The right to recover any of the costs of a civil action 'is determined by statute.' " (*Anthony v. City of Los Angeles* (2008) 166 Cal.App.4th 1011, 1014.) " '[I]n the absence of an authorizing statute, no costs can be recovered by either party.' " (*Davis v. KGO-T.V., Inc.* (1998) 17 Cal.4th 436, 439, disapproved and superseded by statute on other grounds as stated in *Williams v. Chino Valley Independent Fire Dist.* (2015) 61 Cal.4th 97, 105–107 & fn. 1.) "[Code of Civil Procedure] Section 1032 governs the award of costs of trial court litigation." (*Acosta v. SI Corp.* (2005) 129 Cal.App.4th 1370, 1375.)

Under Code of Civil Procedure section 1032, subdivision (b), a "prevailing party" is entitled to recover costs "as a matter of right" unless otherwise provided by statute. Section 1032, subdivision (a)(4) defines who is a prevailing party entitled to costs. The first sentence of that subdivision "describes four categories of litigants who automatically qualify as prevailing parties. It reads: ' "Prevailing party" includes [1] the party with a net monetary recovery, [2] a defendant in whose favor a dismissal is entered, [3] a defendant where neither plaintiff nor defendant obtains any relief, and [4] a defendant as against those plaintiffs who do not recover any relief against that defendant.' " (*Wakefield v. Bohlin* (2006) 145 Cal.App.4th 963, 975, disapproved on other grounds in *Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1338.)

"[T]he trial court has no discretion to deny prevailing party status to a litigant who falls within one of the four statutory categories in the first [sentence] of the provision. 'As

rewritten [in 1986], section 1032 now declares that costs are available as “a matter of right” when the prevailing party is within one of the four categories designated by statute.’ ” (*Wakefield, supra*, 145 Cal.App.4th at p. 975; see *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 129.)

In this case, defendant clearly falls within one of the four statutory categories because a dismissal was entered in defendant’s favor. Therefore, defendant is a prevailing party and entitled to costs as a matter of right. Plaintiff’s motion to tax or strike is denied.

TENTATIVE RULING # 1: MOTION IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT’S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

2. KUSHNER v. RIGHTPATH SERVICING, LLC, ET AL., 23CV1329

Oral Argument Re: Preliminary Injunction

**TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY,
MARCH 8, 2024, IN DEPARTMENT FOUR.**