June 20, 2025
Dept. 9
Tentative Rulings

1.	22CV0884	SANCHEZ v. GENERAL MOTORS, LLC
Motion To Tax		

The Notice does not comply with Local Rule 7.10.05. Another violation will be grounds for sanctions pursuant to Local Rule 7.12.13.

This is a Lemon Law case that settled without trial. Plaintiff's counsel seeks $5,048.17 in costs, which Defense argues includes at least $4,473.86 in meritless costs and tactics that were unnecessary to advance the merits of Plaintiff's case. Defendant seeks to strike or tax costs from Plaintiff's counsel's Memorandum of Costs.

Costs are given only by statutory direction. (*Stockton Theatres, Inc. v. Palermo* (1956) 47 Cal.2d 469, 477.) Code of Civil Procedure, section 1032, provides for recovery of costs by a prevailing party. Section 1033.5(a), in turn, lists allowable expenses, and section 1033.5(b) lists costs that are not allowable.

Tracy Zwerenz is

> In ruling upon a motion to tax costs, the trial court's first determination is whether the statute expressly allows the particular item and whether it appears proper on its face, if so, the burden is on the objecting party to show the costs to be unnecessary and unreasonable. Where costs are not expressly allowed by statute, the burden is on the party claiming the costs to show that the charges were reasonable and necessary.
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> (*Foothill-De Anza Comm College Dist V Emerich* (2007) 158 Cal.App.4th 11, 29.

Defense argues it should not be required to pay the $1,343.56 in filing costs associated with Plaintiff's motions to compel because they were unnecessary, the $150.00 jury fees since the case did not proceed to trial, the $446.70 associated with non-appearance deposition costs because Plaintiff was aware Defendant would not produce its PMQ at that time, the $1,144.00 for court reporter fees for Plaintiff's motion to compel and trial setting conference, the $890.00 in interpreter fees for the mandatory settlement conferences, nor the $499.60 in fees related to Plaintiff's counsel's remote appearance and MSC Statement Courtesy Copy.

Plaintiff's counsel opposes, arguing as the prevailing party, they are entitled to costs and expenses; however, since the case settled it is unclear whether Plaintiff can be considered a prevailing party. A buyer prevailing in an action brought pursuant to Song-Beverly Consumer Warranty Act "shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." Civ. Code § 1794(d). Under the Song Beverly Act, "expenses" includes items above and beyond the enumerated items of "costs" set forth in Code of Civil Procedure section 1033.5. *Jensen v. BMW of North America*, 35 Cal.App.4th 112, 137-138 (1995) ("The addition of awards of 'costs and expenses' by the court to the consumer to cover such out-of-pocket expenses as filing fees, expert witness fees, marshall's fees, etc., should open the litigation process to everyone.")

Plaintiff's counsel argues the motions to compel and courtesy copies of the MSC statement were required by the Court and necessary. The Court does not find that motions to compel are ever required by the Court, and the parties likely could have resolved the issues with dedicated meet and confer efforts. However, in terms of the motions to compel, based on the Court record of those hearing, the motions did advance Plaintiff's case, so the filing fees of those motions are allowed as costs. Since the courtesy copies were filings required by the Court, they will also be allowed.

In terms of the jury fees, they are allowable under CCP § 1033.5. The interpreter fees are allowed as reasonable and necessary.

The non-appearance deposition cost was unnecessary as the Court finds Plaintiff had notice that Defendant would not be participating, and this Court does not require a certificate of non-appearance to compel a deposition. The court reporter fees were unnecessary at those hearings, and Plaintiff has not shown why a court reporter was reasonable or necessary, as these are overhead costs that were not required. Lastly, the Court finds Defendant should not be required to reimburse Plaintiff's counsel's remote appearance fees, when counsel knowingly agreed to take a case so far from their office, knowing some appearances would be required.

TENTATIVE RULING #1:

COSTS AWARDED IN THE AMOUNT OF $2,957.87, PAYABLE TO PLAINTIFF WITHIN 30 DAYS OF THE SERVICE OF THE ORDER.

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2.	**23CV1961**	**O'DELL v. SINCLAIR OIL CORP. et al**
Attorney Withdrawal		

Counsel for the Plaintiff has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362.

A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that it is not feasible to engage with the client and there has been an irreparable breakdown in the attorney-client relationship.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Plaintiff at her last known address was filed on May 15, 2025. There is no proof of service showing notice on the other parties who have appeared in the case, which is required under Rule 3.1362(d).

A Case Management Conference is currently scheduled on July 1, 2025, and the date is listed in the proposed Order as required by California Rules of Court, Rule 3.1362(e).

The court continues the motion to July 25, 2025 at 8:30 a.m. in Department 9 to allow Plaintiff to properly serve all parties.

TENTATIVE RULING #2:

THE COURT CONTINUES THE MOTION TO JULY 25, 2025 AT 8:30 A.M. IN DEPARTMENT 9 TO ALLOW PLAINTIFF TO PROPERLY SERVE ALL PARTIES.

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3.	**24CV2415**	**BAZAN v. SUGAR INC. et al**
Motion to Set Aside		

Defendant STAN CAYLOR was served the Summons and Complaint for this action on November 27, 2024. (Caylor Declaration, ¶ 2.) Defendant CAYLOR thought that the service of the Summons and Complaint was only for the corporation, SUGAR INC., and did not realize that it was for him as an individual. (Caylor Decl., ¶¶ 3- 4.) Defendant CAYLOR filed an Answer (General Denial) for the corporation, SUGAR INC., on December 4, 2024. Defendant did not know that the corporation has to be represented by an attorney in a lawsuit and its Answer filed by an attorney. Furthermore, he did not file the Answer on behalf of himself as an individual because he believed that had been served on behalf of the corporation. (Caylor Decl., ¶¶ 3-4.) During the Christmas holiday, on December 27, 2024, a default was entered against Defendant STAN CAYLOR as an individual. (Caylor Decl., ¶ 6; Hamilton Decl., ¶ 5.)

Code of Civil Procedure §473(b) allows the Court to vacate defaults which are entered as the result of mistake, inadvertence, surprise or excusable neglect. Under C.C.P. §473(b):

> The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.
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> These discretionary relief provisions include two requirements:
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> (1) A party seeking relief from default must show the neglect leading to the Default was excusable (*Jackson v. Bank of America* (1983) 141 Cal.App.3d 55, 88), and (2) within a "reasonable time" after the discovery of the default (*Elston v. Turlock* (1985) 38 Cal.3d 277, 234).

Defendant has demonstrated that his failure to file an Answer on behalf of himself as an individual was based on excusable neglect. He brought this Motion within 6 months of the default, which is reasonable.

TENTATIVE RULING #3:

MOTION TO SET ASIDE DEFAULT IS GRANTED. DEFENDAND IS ORDERED TO FILE THE ANSWER BY JUNE 27, 2025.

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4.	**22CV0794**	**OAKLEY DESIGN BUILD v. CHAN et al**
OSC		

The case is set for an Order to Show Cause regarding Dismissal under CCP § 583.420(a)(2)(A). The matter has not been brought to trial, so the case is dismissed.

TENTATIVE RULING #4:

CASE DISMISSED PURSUANT TO CCP § 583.420(a)(2)(A).

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5.	**24CV0532**	**VILT v. POLSTON**
Motion to Confirm Sale		

On May 28, 2025, the court signed an order confirming sale and approving the referee's report. It appears that the motion set for June 20, 2025 should have been vacated from calendar. The court therefore drops the matter from calendar, finding it to be duplicative.

TENTATIVE RULING #5:

MATTER DROPPED FROM CALENDAR.

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6.	**24CV1700**	**JP MORGAN CHASE BANK v. TRULL**
Judgment on the Pleadings		

Plaintiff has filed a request for the Court to take judicial notice of the February 7, 2025, Order in this case. Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including "records of (1) any court in this state." Evidence Code §452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453.

Plaintiff's request for judicial notice is granted.

Motion

On February 7, 2025, this Court issued an Order deeming certain facts admitted based on Defendant's failure to respond to Requests for Admissions propounded by Plaintiff. Based on those admitted facts, Plaintiff moves for judgment on the pleadings pursuant to Code of Civil Procedure §438. Plaintiff's counsel filed a declaration confirming his meet and confer efforts with Defendant prior to filing the motion, as required by Code of Civil Procedure §439.

All elements of the cause of action for common counts having been conclusively established by the Court's Order, there is no possibility that granting leave to amend would alter the result.

Proof of service of notice of the hearing was filed on March 18, 2025. There is no opposition.

TENTATIVE RULING #6:

MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITHOUT LEAVE TO AMEND.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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7.	**24CV2404**	**DEMTECH SERVICES, INC. v. DM SOLUTIONS et al**
Demurrer (3)		

Plaintiff filed a Complaint on October 25, 2024.

On February 26, 2025, Defendants David McLaury, Owen Mackendrick, and DM Solutions, Inc. each filed a Demurrer to the Complaint.

On June 5, 2025, Plaintiff filed its First Amended Complaint.

Because an amended pleading supersedes the original one, "the filing of an amended complaint moots a motion directed at a prior complaint." *JKC3H8 v. Colton*, 221 Cal. App. 4th 468, 477 (2013) *citing State Compensation Ins. Fund v. Sup. Ct.,* 184 Cal. App. 4th 1124, 1130-1131 (2010). "Thus, the filing of an amended complaint renders moot a demurrer to the original complaint. [Citation]." *Id.*

Given the filing of the First Amended Complaint, the Court finds all three Demurrers to be moot. The matter is dropped from calendar.

TENTATIVE RULING #7:

HEARING DROPPED FROM CALENDAR.

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