

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar
HONORABLE DANNY CHOU Y. CHOU
Department 22
1050 Mission Road, South San Francisco
Courtroom SSF-K

Thursday, December 2, 2021

IF YOU INTEND TO APPEAR ON ANY CASE ON THIS CALENDAR YOU MUST DO ONE OF THE FOLLOWING:

1. EMAIL Dept22@Sanmateocourt.org BEFORE 4:00 P.M. CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING
2. YOU MUST CALL (650) 261-5122 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.
3. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308 (a) (1) .

Failure to do both items 1 or 2 and 3 will result in no oral presentation.

At this time, all appearances will be by Zoom. No personal appearances will be allowed.

Zoom Video/Computer Audio Information:

<https://sanmateocourt.zoomgov.com/>

Meeting ID: 160 135 4419

Password: 845111

Zoom Phone Information Please note: You must join by dialing in from a telephone:

Dial in: +1 (669)-254-5252

(Meeting ID and passwords are the same as above)

TO ASSIST THE COURT REPORTER, the parties are ORDERED to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case

Title / Nature of Case

2:00

19-CIV-02492 HOI HO CHU VS. JOSEPH VALLENTE MANGOBA, ET AL.

HOI HO CHU
JOSEPH VALLENTE MANGOBA

ANTHONY TALL
JORDAN S. STANZLER

DEFENSE COUNSEL JORDAN STANZLER'S MOTION TO BE RELIEVED AS COUNSEL
TENTATIVE RULING:

The motion to be relieved as counsel of record for Joseph Mangoba is DENIED WITHOUT PREJUDICE for failure to provide proof that the moving papers were properly served on all parties who have appeared in the action. (Cal. Rule of Court, rule 3.1362, subd. (d).) The proof of service states that plaintiff was served by mail addressed to his attorney at 1600 Rosencrans Ave. in Manhattan Beach. Plaintiff's counsel's address of record, however, is P.O. Box 642409 in Los Angeles.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

2:00

20-CIV-00446

DAVID WEINER VS. NORDSTROM, INC., ET AL

DAVID WEINER
NORDSTROM, INC.

PRO PER
STEPHEN PELLETIER

PLAINTIFF DAVID WEINER'S MOTION TO COMPEL COMPLIANCE WITH THE COURT'S DISCOVERY ORDERS
TENTATIVE RULING:

Plaintiff's Motion to Compel Compliance with the Court's Discovery Orders is DENIED WITHOUT PREJUDICE for failure to hold an Informal Discovery Conference prior to the filing the motion as required by Local Rule 3.700. The motions may be re-noticed, if necessary, after the conclusion of an Informal Discovery Conference.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

2:00

20-CIV-00446

DAVID WEINER VS. NORDSTROM, INC., ET AL

DAVID WEINER
NORDSTROM, INC.

PRO PER
STEPHEN PELLETIER

PLAINTIFF DAVID WEINER'S MOTION TO COMPEL FURTHER RESPONSES PURSUANT TO THE COURT'S DISCOVERY ORDER

TENTATIVE RULING:

Plaintiff's Motion to Compel Further Responses Pursuant to the Court's Discovery Orders is DENIED WITHOUT PREJUDICE for failure to hold an Informal Discovery Conference prior to the filing the motion as required by Local Rule 3.700. The motions may be re-noticed, if necessary, after the conclusion of an Informal Discovery Conference.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

2:00

20-CIV-00446

DAVID WEINER VS. NORDSTROM, INC., ET AL

DAVID WEINER
NORDSTROM, INC.

PRO PER
STEPHEN PELLETIER

PLAINTIFF DAVID WEINER'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT/ANSWER FIFTH AMENDED COMPLAINT

TENTATIVE RULING:

Plaintiff's Motion for Leave to File a Fifth Amended Complaint is GRANTED pursuant to Code of Civil Procedure section 473. Plaintiff must file the Fifth Amended Complaint attached to his declaration within 10 days from the date of service of notice of entry of this order.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. **The proposed order may be e-filed and MUST ALSO be emailed to the Court at dept22@sanmateocourt.org in Word format. The subject heading of the email shall include the case name, case number, and the phrase "Proposed Order."**

2:00

20-CIV-01636

TERESA MCATEE VS. SHAKE SHACK INC., ET AL.

TERESA MCATEE
SHAKE SHACK INC.

GREGORY C. LYON
JILL L. SCHUBERT

DEFENDANT SHAKE SHACK'S APPLICATION FOR MICHAEL K. CLARKSON TO APPEAR AS COUNSEL PRO HAC VICE
TENTATIVE RULING:

Because Defendant has withdrawn this application, it is taken OFF CALENDAR.

2:00

20-CIV-01778

BERKELEY CEMENT, INC. VS. THOMPSON BUILDERS CORPORATION, ET AL.

BERKELEY CEMENT, INC.
THOMPSON BUILDERS CORPORATION

SEAN A. COTTLE
TIMOTHY L. MCINERNEY

PLAINTIFF AND CROSS-DEFENDANT BERKELEY CEMENT INC.'S MOTION TO COMPEL DISCOVERY RESPONSES, PRODUCTION OF DOCUMENTS, AND REQUESTS FOR MONETARY SANCTIONS
TENTATIVE RULING:

Plaintiff and Cross-Defendant Berkeley Cement Inc.'s (Plaintiff) Motion to Compel Discovery Response (Motion) is MOOT with respect to the Form Interrogatories, Special Interrogatories, and Requests for Production of Documents. Defendant and Cross-Plaintiff Thompson Builders Corporation (Defendant) provided verified responses without objections on November 17, 2021.

The Motion is DENIED to the extent Plaintiff seeks an order deeming matters in its requests for admission to be admitted. Defendant provided responses on November 17, 2021. These responses are in substantial compliance with Code of Civil Procedure section 2033.220.

Plaintiff's request for sanctions is GRANTED IN PART and DENIED IN PART. The discovery responses were provided only after this Motion was filed and Defendant's opposition provides no basis for a finding that the late responses were substantially justified or that the imposition of sanctions would be unjust. The amount requested by Plaintiff, however, is excessive and also includes fees that were not incurred due to misuse of the discovery process. Accordingly, Defendant shall pay Plaintiff \$1,400 within 14 days from the date of service of notice of entry of this order.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. **The proposed order may be e-filed and MUST ALSO be emailed to the Court at dept22@sanmateocourt.org in Word format. The subject heading of the email shall include the case name, case number, and the phrase "Proposed Order."**

2:00

20-CIV-02380

LUCIA RAMIREZ VS. ADAN RAMIREZ, ET AL.

LUCIA RAMIREZ
ADAN RAMIREZ

MARK C. WATSON
PRO PER

PLAINTIFF LUCIA RAMIREZ'S MOTION TO COMPEL DISCOVERY RESPONSES AND FOR SANCTIONS
TENTATIVE RULING:

Plaintiff Lucia Ramirez's Motion to Compel Discovery Responses and for Sanctions (Motion) is DENIED WITHOUT PREJUDICE for failure to provide proof that the moving papers were properly served on Defendants.

With respect to Defendants David and Francisca Ramirez, the proof of service states that they were served by mail addressed to their attorney at 555 Price Ave., Suite 280 Redwood City, CA 94063. However, counsel's address of record is P.O Box 2632 Redwood City, CA 94064.

With respect to Defendant Adan Ramirez, the proof of service states that the service address was 606 Grandview Blvd., Halfmoon Bay but omitted the state or zip code. Absent a state and zip code for the service address, it is impossible for the Court to determine whether Adan Ramirez actually received the motion.

Finally, the proof of service for the underlying discovery does not indicate that Adan Ramirez was served with the interrogatories. It only reflects service of those interrogatories on David Ramirez, Francisca Ramirez, and Sandra Ramirez.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

2:00

20-CLJ-05176

AMERICAN EXPRESS NATIONAL BANK VS. WEI CHEN, ET AL.

AMERICAN EXPRESS NATIONAL BANK
WEI CHEN

JANET L. BROWN
PRO PER

PLAINTIFF AMERICAN EXPRESS'S MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY
ADJUDICATION
TENTATIVE RULING:

Plaintiff American Express National Bank's Motion for Summary Judgment/Adjudication, filed 8-30-21, is taken
OFF CALENDAR at the moving party's request. (See 11-19-21 Decl. of Martin Hoffman.)

2:00

CLJ535257

CAPITAL ONE BANK VS EVELING ALVAREZ

CAPITAL ONE BANK
EVELING ALVAREZ

ROBERT S. KENNARD
PRO PER

DEFENDANT EVELING ALVAREZ'S MOTION TO DISMISS FOR FAILURE TO BRING TO TRIAL
TENTATIVE RULING:

Defendant Eveling Alvarez's Motion to Dismiss for Failure to Bring to Trial is GRANTED pursuant to Code of Civil Procedure sections 583.310 and 583.360. This action was filed on September 1, 2015. As a result, the time period in which to bring this matter to trial, as extended by Emergency Rule 10 of the California Rules of Court, would have expired in March 2021 absent further tolling. Plaintiff Capital One Bank has not, however, established that this time period was further tolled. The only ground for tolling cited by Plaintiff is Code of Civil Procedure section 583.340, subdivision (c). But the critical factor in applying this exception is "whether the plaintiff exercised reasonable diligence in prosecuting his or her case" (*Bruns v. E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717, 730-731 (*Bruns*)), and Plaintiff has not made this showing. The record reveals that Plaintiff took no action to bring this matter to trial from the time it was commenced on September 1, 2015 until it filed a Memorandum to Set on December 1, 2020. After the Memorandum to Set was filed, Plaintiff again did nothing until it filed a case management conference statement almost 10 months later.

Despite this, Plaintiff argues that it was "impossible, impracticable, or futile" to bring the case earlier because October 7, 2021 was the first available case management conference date. (Code Civ. Proc., § 583.340, subd. (c).) But " '[t]ime consumed by the delay caused by ordinary incidents of proceedings, like disposition of demurrer, amendment of pleadings, and the normal time of waiting for a place on the court's calendar are not within the contemplation of these exceptions.' " (*Bruns, supra*, 51 Cal.4th at p. 731, italics added.) Furthermore, there is no evidence that Plaintiff made any attempt to seek an earlier date for the case management conference or otherwise move the case forward before the deadline to bring the matter to trial expired. Where, as here, the plaintiff possesses the means to bring a matter to trial before the expiration of the five-year period by filing a motion to specially set the matter for trial, the failure to do so will preclude a later claim of impossibility or impracticability. (See *Sanchez v. City of Los Angeles* (2003) 109 Cal.App.4th 1262, 1274; *De Santiago v. D&G Plumbing, Inc.* (2007) 155 Cal.App.4th 365, 374.)

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. **The proposed order may be e-filed and MUST ALSO be emailed to the Court at dept22@sanmateocourt.org in Word format. The subject heading of the email shall include the case name, case number, and the phrase "Proposed Order."**

POSTED: 3:00 PM
