

**Judge Mosbarger – Law & Motion – Wednesday, October 23, 2024 @ 9:00 AM  
TENTATIVE RULINGS**

**1. 21CV02330 DECKER, MICHAEL P ET AL V. SIERRA PACIFIC LAND & TIMBER COMPANY ET AL**

*EVENT: Motion for Order Sealing Documents re Motion for Summary Judgment*

The Court recognizes that there exists an agreement between the parties as to the sealing of documents that are deemed confidential by the Defendants, and that the Motion for Order Sealing Documents re Motion for Summary Judgment is unopposed. However, California Rules of Court Rule 2.551(a) indicates that “[t]he court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties.” As such, just because the documents have been marked “Confidential” and therefore presumably fall under the purview of the parties’ agreement, Plaintiffs have failed to satisfy their burden to establish each of the required elements for the Court to order the requested records sealed pursuant to California Rules of Court Rule 2.550(d). The Motion is denied.

**2. 22CV00400 ALFARO, TIFFANY V. ENLOE MEDICAL CENTER ET AL**

*EVENT: Ex Parte Application for an Order Shortening Time*

The Court will hear from counsel.

**3. 24CV03193 22CV01821 CHAMBERS, PATRICIA V. NEWBERN, MICHAEL ET AL**

*EVENT: Patricia Chambers’ Motion to Strike and Tax Costs*

As an initial matter, the Court is aware of Defendant Michael Newbern’s attempt to file a Memorandum of Costs (Summary) [MC-010] on October 8, 2024, which was erroneously rejected by the Court. The Court advises Mr. Newbern that should he resubmit the document for filing, it will be accepted as originally presented. However, because Defendant Michael Newbern has not yet filed a Memorandum of Costs, this Motion is limited to the Memorandum of Costs filed by Defendant Clayanna Newbern on September 13, 2024.

The Proof of Service shows that the Motion was served electronically on Clayanna Newbern and my mail on Michael Newbern, 17 Court days prior to the noticed hearing date. Pursuant to *Code of Civil Procedure* §1005(b) and 1010.6(a)(3)(B), 1 additional Court days’ notice is required in relation to the service on Clayanna Newbern, and 4 additional calendar days’ notice is required in relation to the service on Michael Newbern. Notice is therefore insufficient; however, Defendant did file a substantive Opposition, albeit late, which the Court has considered, and in its discretion, has considered the merits of the Motion.

Based upon the Court’s review of the invoices attached to the Memorandum of Costs, the following filing fees are supported:

|                   |                         |       |
|-------------------|-------------------------|-------|
| November 20, 2024 | Answer/General Denial   | \$435 |
| August 14, 2023   | Mtn to Excuse Sanctions | \$60  |

|                   |                            |      |
|-------------------|----------------------------|------|
| February 27, 2024 | Mtn to Expunge Lis Pendens | \$60 |
| February 28, 2024 | Mtn to Quash               | \$60 |

These total \$615. Thus, the entirety of the claimed filing and motion fees are sufficiently substantiated, and the Motion is denied in this regard.

In regard to “Attachment Expenses”, those are made available pursuant to *Code of Civil Procedure* (hereinafter “CCP”) §1033.5(a)(5), which provides for recovery of “Expenses of attachment including keeper’s fees.” This does not include mileage or Court Call related costs. However, the Court notes that if these costs were properly categorized as “Other” costs, travel and Court Call costs are not listed as recoverable costs under CCP §1033.5(a), and the only travel expenses that are permitted under CCP §1033.5 are expenses incurred by counsel to travel to attend necessary depositions. See *Ladas v. Cal. State Auto. Ass’n* (1993) 19 Cal.App.4th 761, 775-76. Therefore, these costs are permitted only within the discretion of the court and only where the prevailing party proves that such costs were necessary to prepare the litigation, and not merely out of convenience. CCP §1033.5(c). The Court concludes that Defendant has made such a showing and the Court awards travel/mileage costs of \$2,668.72 and Court Call costs of \$195.

In regard to Fees for Electronic Filing or Service, Defendant argues that AMS Legal Support Services, Inc. is not an approved e-service provider by Butte County Superior Court, but that is inaccurate. AMS is, in fact, listed as a service provider on the Odyssey eFileCA website, which is linked on the Butte County Superior Court website. The Court finds that the invoices submitted substantiate the total amount of electronic filing and service fees of \$543.19 which differs from the amount of \$1,186.78 stated in the Memorandum of Costs by \$643.59. As such, the Court awards the amount of \$543.19 and strikes the remaining sum.

Lastly, postage and mailing costs are explicitly excluded from recovery in CCP §1033.5(b) [“The following items are not allowable as costs, except when expressly authorized by law: ... (3) Postage, telephone, and photocopying charges, except for exhibits.”] As such, the Court taxes the entire amount of \$708.31 relating to postage and copy costs.

The Court awards costs to Defendant in the total amount of \$4,021.91. Plaintiff shall submit a form of order within two weeks.

The Court advances the Case Management Conference on October 23, 2024 at 10:30 a.m. to 9:00 a.m. and directs Defendants to submit a proposed Judgment within thirty days. The Court sets a Review Hearing for status of judgment on January 29, 2025 at 10:30 a.m.

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**4. 22CV02114 BANEGAS, KIMBERLY V. WITTMEIER, INC ET AL**

*EVENT: Motion for Equitable Relief*

The Court finds that before trial, Defendants' position was that only the Court could decide rescission and restitution and therefore the jury was not instructed that Plaintiff could rescind the contract based on fraud, and the jury was not told that Plaintiff was entitled to restitution on the basis of the Consumers Legal Remedies Act violation. Thus, the Court is not persuaded that the jury has already decided these issues. Nor does the Court find that there was a delay in seeking these equitable remedies as they were alleged in the Complaint and not presented to the jury based solely in response to the Defendants' request for bifurcation of the issue. The Court grants Plaintiff's Motion in part and awards Plaintiff the equitable remedy of rescission. Plaintiff shall maintain and be current with her payments and return the vehicle to Defendant Wittmeier, Inc. dba Wittmeier Chevrolet within 30 days' notice of this ruling. Defendant Wittmeier, Inc. dba Wittmeier Chevrolet shall be required to pay off the balance owed to Defendant Americredit Financial Services, Inc., dba GM Financial within 60 days' notice of this ruling. The Court further finds that the monetary relief awarded by the jury in the amount of \$24,000 is sufficient as to restitution based upon the jury's finding of misrepresentation by Defendant Wittmeier, Inc. dba Wittmeier Chevrolet. Plaintiff is not entitled to a double recovery which the Court finds would be inequitable, and no further damages (including further restitution or prejudgment interest) shall be awarded. Counsel for the Plaintiff shall submit a form of order within two weeks.

**5. 24CV02662 IN RE: GRUNSPAN, SARAH BELLE**

*EVENT: Petition for Change of Name*

The Court will hear from the Petitioner regarding the incomplete and unsigned Declaration at Paragraph 3.f. of the Petition which requires Petitioner to declare she is not under the jurisdiction of the California Department of Corrections and Rehabilitation (in state prison or on parole), nor required to register as a sex offender.

**6. 24CV03193 IN RE: BOCA BAY, LLC**

*EVENT: Petition for Approval for Transfer of Structured Settlement Payment Rights*

There is no Proof of Service evidencing compliance with the notice requirements of *Insurance Code* §10139.5(f)(2). In addition, based upon the heavily redacted information submitted by the Petitioner, the Court is unable to determine whether the transfer complies with the requirements of *Insurance Code* §10137, including whether it is in the best interests of the Real Party in Interest. The Petition is therefore denied without prejudice.