

**Judge Mosbarger – Law & Motion – Wednesday, October 30, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1. 22CV00073 DUGUB NO 7, INC, A CALIFORNIA CORPORATION V. SODERLING, JAY ET AL

EVENT: Defendant/Cross-Complainant Laurie Hansen's Motion for Summary Judgment

On the Court's own motion, this matter is continued to November 6, 2024 at 9:00 a.m.

2. 22CV02187 A, C v. COUNTY OF BUTTE

EVENT: Motion to be Relieved as Counsel

There is no proof of service in the Court's file therefore the Court cannot confirm whether notice complies with Cal Rules of Ct 3.1362(d) or Code of Civil Procedure §1005. The Motion is continued to November 20, 2024 at 9:00 a.m. to allow sufficient time for notice and filing of a proof of service.

3. 23CV01437 HENRY, MONICA V. MOORE, JELLEETHER MARIE ET AL

EVENTS: Defendant Jellether Marie Moore's Motion for Order Deeming Truth of Matters Admitted and/or to Compel Verified Responses Without Objections to Discovery, Set One, and for Sanctions Against Plaintiff Henry

In its discretion, the Court has considered Plaintiff's untimely filed Opposition. Defendant Jellether Marie Moore's Motion for Order Deeming Truth of Matters Admitted and/or to Compel Verified Responses Without Objections to Discovery, Set One, and for Sanctions Against Plaintiff Henry is denied as moot, Defendant having subsequently received Code compliant responses. However, Defendant's request for sanctions is granted, the Court finding that Defendant was forced to seek this relief prior to Plaintiff providing such Code compliant responses without substantial justification. The Court awards sanctions against Plaintiff in the amount of \$550, which are to be paid within 30 days' notice of this ruling. Counsel for the Defendant shall submit a form of order consistent with this ruling within two weeks.

4. 24CV00001 BRISTER, MAKENA V. RABORN, ASHLI ET AL

EVENT: Motion to Strike General Denial of Defendant Ashli Raborn and Enter Default

Plaintiff's Request for Judicial Notice is granted. The general rule is that once default has been entered, the defendant's ability to file an answer, or any motion other than a motion for relief from default, is cut off. *In re Marriage of Nurie* (2009) 176 Cal.App.4th 478, 495 n16; *Devlin v Kearny Mesa AMC/Jeep/Renault, Inc.* (1984) 155 Cal.App.3d 381, 385. However, if the plaintiff substantively amends the complaint after obtaining entry of default, the defendant may respond to the amended complaint. CCP §1010. An example of amendment of substance, as opposed to one of form, includes an amendment that seeks substantially higher damages. See, *Leo v Dunlap* (1968) 260 Cal.App.2d 24, 28. Here, Plaintiff argues that the only amendments to the original Complaint were: (1) changing how co-Defendant Richard Johnson was named as a defendant; and (2)

removing the 8th cause of action for punitive damages against all parties (which was duplicative of the existing punitive damages claims in the Complaint and in the prayer for relief). However, this is inaccurate. Based upon the Court's review of the allegations of the Complaint and First Amended Complaint there is also a change to the caption wherein the damages amount is changed from "exceeds \$25,000" to "exceeds \$35,000". This is a change of \$10,000 in the damage amount sought by Plaintiff and the Court finds that change to be substantive. Thus, the filing of the First Amended Complaint opened the default, Defendant Ashli Raborn was permitted to file an Answer thereto, and the default entered on February 13, 2024 is of no effect. The Motion is denied.

5-6. 24CV00006 MCENDARFER, JACOB V. MASULA, LARRY ERNEST, DC ET AL

EVENTS: (1) Defendant Larry Ernest Masula, D.C.'s Motion to Compel Responses to Form Interrogatories, Set One; and Request for Monetary Sanctions; and Defendant Larry Ernest Masula, D.C.'s Motion to Deem Admitted Defendant's Requests for Admission, Set One; and Request for Monetary Sanctions

*(2) Case Management Conference *Special Set*

Defendant Larry Ernest Masula, D.C.'s Motion to Compel Responses to Special Interrogatories, Set One; and Request for Monetary Sanctions is unopposed and is GRANTED. Plaintiff Jacob McEndarfer shall provide verified responses without objection to Defendant Larry Ernest Masula, D.C.'s Form Interrogatories, Set One within 14 days' notice of this order. Additionally, the Court awards sanctions against Plaintiff Jacob McEndarfer in the amount of \$1,140 to be paid within 30 days' notice of this order. The Court will sign the form of order submitted by Defendant.

Defendant Larry Ernest Masula, D.C.'s Motion to Deem Admitted Defendant's Requests for Admission, Set One; and Request for Monetary Sanctions is unopposed and is GRANTED. Additionally, the Court awards sanctions against Plaintiff Jacob McEndarfer in the amount of \$1,140 to be paid within 30 days' notice of this order. The Court will sign the form of order submitted by Defendant.

The Court will conduct a Case Management Conference. Counsel are to appear. However, this is not an invitation to present oral argument in regard to Plaintiff's Motion for Trial Preference. If counsel wishes to argue the tentative ruling, they must comply with Butte County Local Rule 2.9 and California Rules of Court Rule 3.1308(a)(1).

7. 24CV02514 JANE CDE DOE ET AL V. CHICO UNIFIED SCHOOL DISTRICT ET AL

EVENT: Motion for Trial Preference

The Proof of Service shows that the Motion was served by mail on October 4, 2024, which is only 16 Court days, plus 4 calendar days for mailing. *Code of Civil Procedure* §1005 requires one additional calendar day. Notice is therefore insufficient, and the Motion is continued to December 3, 2024 at 9:00 a.m. to allow for proper notice. The

Court is inclined to grant the Motion for Trial Preference, deny the request for severance, and on December 3, 2024 set the matter for a jury trial within 120 days of that date.