

Judge Benson – Law & Motion – Wednesday, November 22, 2023 @ 9:00 AM
TENTATIVE RULINGS

1. 21CV02431 Rivera, David L et al v. Annichero, Maria et al.

EVENT: Motion to Enforce Settlement and Lift Stay of Proceedings Continued from 8/30/23 and 10/25/23)

Motion to Enforce Settlement and Lift Stay of Proceedings is GRANTED in its ENTIRETY.

Weil & Brown Civil Procedure Before Trial (Rutter Group) [12:664.5]

....

A court also does not have the power to adjudicate a dispute as to the offer's terms before entering judgment. [*Roden v. Bergen Brunswig Corp.* (2003) 107 CA4th 620, 630, 132 CR2d 549, 557, fn. 3]

In *Roden*, the 4th District Court of Appeal noted that the trial court in that case “carefully directed that the judgment be entered as a ministerial act, with the adjudication of the dispute to take place afterward.” (*Roden, supra*, at p. 557 fn.3) The Court’s research indicates that, under the circumstances, including the fact moving party has presented a section 998 compromise signed by both parties, the Court is required to enter judgment. However, to be clear, as in *Rosen*, the judgment is being entered as a ministerial act.

The Court will prepare the order.

2. 23CV01884 John C. Peterson Trustees of the Peterson Family Trust of 2017, dated April 6, 2017, et al. v. McConnel, Ronald E et al.

EVENT: Motion By Plaintiffs For Leave To File a Second Amended Complaint

Motion By Plaintiffs For Leave To File a Second Amended Complaint is GRANTED. The Court will sign the Proposed Order.

3. 23CV02229 In re: Coulier, Taline

EVENT: Change of name (minor)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

4. 155442 Equitable Ascent Financial, LLC v. Kelley Carey

EVENT: Motion to Enter Renewal of Judgment Nunc Pro Tunc

Motion to Enter Renewal of Judgment Nunc Pro Tunc is GRANTED. The Court will sign the Proposed Judgment.

5. 20CV00558 Snider, Elizabeth v. FDM Community Services, Inc.

EVENT: Plaintiff's Motion for Preliminary Approval of Class Action Settlement

The Court will hear from counsel. The Court is inclined to deny the motion as set forth below. The Court notes that there is a Case Management Conference currently scheduled for December 6, 2023 at 9:00am. In the interests of economy, the Court would consider scheduling the Case Management Conference at a date and time in conjunction with Plaintiff's renewed motion.

Plaintiff's Motion for Preliminary Approval of Class Action Settlement is DENIED WITHOUT PREJUDICE. The factual record supporting a determination that the settlement is fair has not been sufficiently developed, see *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal. App. 4th 116, 131. The moving papers provide no data concerning the potential recovery if the case went to trial.

Although many factors must be considered in making this determination, and the court is not required to decide the ultimate merits of the class members' claims before approving a proposed settlement, an informed evaluation cannot be made without an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. (*Kullar*, supra, at p. 120) As presently framed, the Court has no reference point to determine whether the proposed \$150,000 settlement is reasonable.

Additionally, the Court notes that the proposed notice does not comply with CRC 3.766(d)(5) in that it does not inform class members of their right to appear through counsel. Further, the moving papers do not provide any supporting documentation concerning costs. While the Court does not expect a final accounting at this point, there should be some substantiation of the \$20,000 amount.

The Court will prepare the form of Order.

6. **23CV02388 In re: Smith, Evelyn Adell**

EVENT: Change of Name (Adult) (Continued from November 8, 2023)

There is no proof of publication on file. If the Court does not receive the proof of publication by the hearing and there are no appearances, the Petition will be dismissed without prejudice.