

**Judge Benson – Law & Motion – Wednesday, May 7, 2025 @ 9:00 AM
TENTATIVE RULINGS**

1-3. 20CV01781 Leland, Morrissey & Knowles, LLP v. Bailey, Catherine et al.

EVENT:

- (1) *Motion for Terminating Sanctions or, in the Alternative, For Issue/Evidence Sanctions Due to Disobedience of Prior Court Order; and For Monetary Sanctions*

(Continued from 3/19/25 and 4/9/25)

- (2) *Plaintiff Leland, Morrissey & Knowles, LLP's Motion on Petition to Correct and Confirm Arbitration Award*
- (3) *Case Management Conference*

Motion for Terminating Sanctions

The parties and counsel are ordered to appear. A factual dispute exists as to whether discovery responses were served, and if so, when they were served. The Court will hear from Robert Bush, the person who purportedly mailed the discovery responses to counsel. On March 14, 2025, Ms. Bailey filed an ex parte application which included discovery responses as an attachment. However, there is no proof of service in the Court's file which corresponds with this filing. The Court will hear from counsel as to whether she has received Ms. Bailey's March 14 ex parte application including the attached discovery responses.

Plaintiff Leland, Morrissey & Knowles, LLP's Motion on Petition to Correct and Confirm Arbitration Award

Plaintiff's motion is denied. The fee award was non-binding.

Business & Professions Code § 6204

- (a) The parties may agree in writing to be bound by the award of arbitrators appointed pursuant to this article at any time after the dispute over fees, costs, or both, has arisen. In the absence of such an agreement, either party shall be entitled to a trial after arbitration if sought within 30 days, pursuant to subdivisions (b) and (c), except that if either party willfully fails to appear at the arbitration hearing in the manner provided by the rules adopted by the board of trustees, that party shall not be entitled to a trial after arbitration.

This action was filed on 9/9/2020. A notice of stay was filed by Ms. Bailey on 10/8/2020. The arbitration award is dated 3/18/24.

In support of her contention that she preserved her right to a trial de novo, Ms. Bailey asks us to take judicial notice of her answer filed on April 22, 2024. The Court takes judicial notice of the answer. The reasonable inference from the answer is that Ms. Bailey requested a trial de novo. Thus, the questions are 1) whether the request was timely and 2) whether her failure to appear at arbitration was willful.

The proof of service attached to the award indicates the award was served on the parties on 3/22/24. There are 32 days between 3/18/24 and 4/22/24. However, CCP § 12 provides:

The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

Here, applying CCP § 12, and excluding the first day, the last day for Ms. Bailey to file a rejection of the arbitration was April 21 – a Sunday.

CCP § 10. Holidays

Holidays within the meaning of this code are every Sunday and any other days that are specified or provided for as judicial holidays in Section 135.

Because Sunday is a holiday, April 21 is excluded which means Ms. Bailey's filing on 4/22/24 complies with the 30-day requirement of B & P § 6204(b). The remaining question is whether Ms. Bailey's failure to appear at the arbitration hearing was willful as prescribed by B & P 6204(a). The only evidence before us is that it was not, based on Ms. Bailey's testimony that she could not access zoom. Consequently, Ms. Bailey adequately preserved her right to a trial de novo. Therefore, the motion is denied.

4. 22CV00822 Grimes, Emma v. Kennemer, Franklin R et al.

EVENT: Order to Show Cause as to Liliuokalani Haslop for Failure to File a Judgment

(Continued from 4/9/25)

The Court will conduct a hearing.

5. 22CV01196 Renteria Graciano, Agustina v. Hignell, Incorporated

EVENT: Motion for Preliminary Approval of Class & Representative Action Settlement and Provisional Class Certification for Settlement Purposes Only

Counsel is ordered to appear. According to the Court's calculation, notice to Defendant is one day short. If Defendant appears and waives notice, the Court is inclined to grant the motion with the following items that need to be addressed. (The Court finds the settlement is reasonable)

The settlement provides a distribution of the PAGA portion of the settlement as 75% to the LWDA and 25% to aggrieved employees. While this used to be the rule under Labor Code section 2699, the current iteration of the statute requires 65% to go to the LWDA and 35% to go to aggrieved employees. Accordingly, Plaintiff shall submit a revised order which is consistent with the current requirements of section 2699.

Regarding the notice to prospective class members, there are two items that need to be corrected. First, on page 1, the notice refers to preliminary approval by the Los Angeles County Superior Court.

Second, CRC 3.766(d)(2) requires that the class members be informed of the deadline to opt-out. While that date is to be determined, there should be a sentence similar to the sentence in the objection portion of the notice addressing the deadline.

Plaintiff shall file an updated notice with the Court addressing these items. Once filed, the Court will sign the revised order to be filed by Plaintiff.

6. 23CV00238 State Farm Mutual Automobile Insurance Company v. Jacobs, Janae

EVENT: Plaintiff's Motion to Deem Requests for Admissions Admitted

Plaintiff's Motion to Deem Requests for Admissions Admitted is GRANTED. It is undisputed that the response provided was untimely. Consequently, the objection only response is effectively a nullity. As a result, there has been no legally effective response for purposes of CCP § 2033.280(c) which could relieve Defendant from the admissions being deemed admitted. The Court will sign the proposed order.

7. **23CV02904 Salvagno, Rachelle v. Tri Counties Bank**

EVENT: Defendant's Motion to Consolidate Proceedings

Defendant's Motion to Consolidate Proceedings is GRANTED. The Court will sign the proposed order.

8. **23CV03172 Wilson, Olga v. Tri Counties Bank**

EVENT: Defendant's Motion to Consolidate Proceedings

Defendant's Motion to Consolidate Proceedings is GRANTED. The Court will sign the proposed order in Case# 23CV02904.

Regarding Plaintiff's procedural arguments, Plaintiff has had more than ample time to file an opposition. Indeed, Plaintiff has filed a thorough opposition. The moving papers were served on 4/4 with a hearing date of 5/7; well beyond the minimum requirements of CCP § 1005. While Defendant may not have strictly complied with the requirements of CRC 3.350, it has substantially complied.

9. **24CV01455 US Bank National Association as Co-Trustee for Mortgage Equity Conversion Asset Trust 2011-1 v. Husinger, Nathan C.**

EVENT: Plaintiff's Motion for Summary Judgment

Plaintiff's Motion for Summary Judgment is GRANTED. Plaintiff has met its burden by providing admissible evidence on every element of each cause of action demonstrating no triable issue of fact exists. The motion is unopposed.

10. 24CV03215 Erwin, Dana v. Estate of Terri L Brooks

EVENT: Motion to Vacate Judgment

The Court is in receipt of the amended motion filed on April 30, 2025. The hearing is continued to June 11, 2025 at 9:00am. The Court will permit Plaintiff an opportunity to file a further opposition. The further opposition is due per CCP § 1005. Any reply filed by Defendant is also due per CCP § 1005.

11. 24CV04071 Jenkins, Nicholas et al v. Chico Helathcare & Wellness Centre, LP

EVENT: Plaintiff's Motion for Leave to Amend Complaint

Plaintiff's Motion for Leave to Amend Complaint is GRANTED. Plaintiff shall separately file the First Amended Complaint within 10 days. The Court will sign the proposed order with this modification.

12. 24CV04442 In re: Johnson, Steven Kit

EVENT: Change of name (adult) (Continued from 3/5/25 and 4/2/25)

There is no proof of publication on file. The Court will hear from Petitioner.

13. 25CV00745 In re: Sanger, Rahmattullah John

EVENT: Change of name (adult)

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

14. 25CV00882 In re: Lovehewitt, Cameron

EVENT: Change of name (adult)

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

15. 25CV00885 In re: Sanchez, Guadalupe

EVENT: Change of name (minor)

The Court will hear from Petitioners. Although the Petition indicates it is being brought by both parents, the Petition is only signed by one parent. The other parent must appear at the hearing. The Court is now in receipt of the proof of publication.

16. 25CV00952 In re: Her, Tey

EVENT: Change of name (adult and minor)

The Court is in receipt of the proof of publication and will sign the decree provided.

17. **25CV00953 In re: Salaverria, Maria Gina**

EVENT: Change of name (adult)

The Court will conduct a hearing. The Court is in receipt of the proof of publication and is awaiting the results of the background check.