

Judge Mosbarger – Law & Motion – Wednesday, November 8, 2023 @ 9:00 AM
TENTATIVE RULINGS

1. 16CV00411 JOINER, MATT G V. NEHER, TIMOTHY L ET AL

EVENT: Status Hearing

This matter is on for resetting of the hearing on the Plaintiff's Motion for Summary Judgment. The Court intends to set the hearing on Plaintiff's Summary Judgment Motion for a date certain approximately 80 days from the November 8, 2023 hearing. The Court is inclined to set the hearing for January 31, 2024 at 9:00 a.m. Both parties are ordered to be personally present at the hearing on November 8, 2023 at 9:00 a.m. and out of an abundance of caution, the Court suggests that Plaintiff's counsel be prepared to personally serve Defendant with the Motion at the hearing.

2. 20CV01493 SHIPPEN, KALEN ET AL V. FAIRHURST, THOMAS J ET AL

EVENT: Defendants Dan Palmer Brokering, Inc. and Dan Palmer Trucking, Inc.'s Motion for Summary Judgment

Defendants Dan Palmer Brokering, Inc. and Dan Palmer Trucking, Inc. ("Defendants" herein) Request for Judicial Notice is granted. Likewise, Plaintiffs Kalen Shippen and Madeleine Shippen's ("Shippen Plaintiffs" herein) Request for Judicial Notice is granted. The Shippen Plaintiffs' objections to evidence are sustained as to No. 4 (legal conclusion) and overruled as to the remainder. Plaintiffs Kristopher Blee, Ellen Blee, and Olivia Blee's ("Blee Plaintiffs" herein) objections to evidence are sustained as to Nos. 9 (legal conclusion) and 10 (legal conclusion), and overruled as to the remainder. Defendants' objections to evidence are sustained as to the Declaration of Timothy Huegel for failure to comply with *Code of Civil Procedure* §2015.5, and overruled as to the remainder. The Court finds that a triable issue of material fact exists as to whether or not Thomas Fairhurst was within the scope of his employment at the time of the accident. [UMF Nos. 28-34, 64, 66-70, 72-81; Shippen Plaintiffs' AMF Nos. 98, 99, 102, 106; and Blee Plaintiffs' PAUMF Nos. 48-59]. As to causation, the Court finds a triable issue of material fact exists as to whether triable issue as to whether Thomas Fairhurst's fatigue could have been caused by his work hours on the Camp Fire Job rather than his "off duty" activities. [UMF Nos. 83-91; Blee Plaintiffs' PAUMF No. 60]. Defendants' Motion for Summary Judgment is denied.

3. 21CV00759 SIMS, SHARON ET AL V. SINGH, JOBANIT ET AL

EVENT: Defendant Coyote Logistics, LLC's Motion for Determination of Good Faith Settlement

The Court finds that the settlement between Defendant Coyote Logistics, LLC, and Plaintiffs (1) Sharon Sims, as the surviving parent of David Sims, deceased, through her successor in interest Melissa Gillenwaters-Reddish, (Butte Co. Case No. 21CV00759); and (2) Ariel De Jesus Ortiz, Cassandra Ortiz and Christian Ortiz, as surviving adult

children of Lupe Ortiz, deceased (Butte Co. Case No. 22CV01478), was made in good faith pursuant to *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488. Defendant Coyote Logistics, LLC's Motion for Good Faith Settlement is granted and the Court will sign the form of order submitted by counsel. In light of the above ruling, the Court vacates the hearing on Defendant Coyote Logistics, LLC's Motion for Summary Judgment set for December 13, 2023 at 9:00 a.m.

4. 21CV00994 TARMAN, THOMAS A V. PARKER, ROBERT F

EVENT: Motion for Order Directing Thomas A. Tarman to Produce Documents Promised in Thomas A. Tarman's Response to Document Demands and for Sanctions

The Court will hear from counsel. In reviewing the opposing papers, it is unclear to the Court which document Plaintiff contends is the purported "2012 survey map." If it is the document "Revised on 08-18-11" the Court tends to agree with Defendant that the document appears to be an assessor's map, not a survey map. However, unless there is in fact a 2012 survey map that has not been produced, the matter is moot. The Court is not aware of any authority supporting a motion to compel further responses on the basis that the substantive response may be inaccurate or misleading. All requests for sanctions are denied.

5-7. 21CV02456 HAYES, DANIEL ET AL V. GONZALES PARK, LLC ET AL

EVENTS: (1) Approval of Class Action Settlement

*(2) Case Management Conference *Special Set*

(3) Plaintiffs' Motion for Preliminary Approval of Class Action Settlement

The Proof of Service shows that the Motion was served electronically on October 19, 2023, 14 Court days prior to the noticed hearing date. Pursuant to *Code of Civil Procedure* §1005(b) and 1010.6(a)(3)(B), 4 additional Court days' notice is required. Notice is therefore insufficient and the Motion is continued to November 15, 2023 at 9:00 a.m. to allow for sufficient notice. The Court notes that it is inclined to grant the Motion after sufficient notice. The Case Management Conference on November 8, 2023 is vacated.

8-9. 22CV00321 AQUALLIANCE ET AL V. VINA GROUNDWATER SUSTAINABILITY AGENCY ET AL

EVENTS: (1) Hearing Regarding Necessary of Preparing Administrative Record

*(2) Case Management Conference *Special Set*

An action challenging a quasi-legislative activity by a public agency is normally "limited to an examination of the record before the authorized decision makers to test for sufficiency

with legal requirements.” *Poway Royal Mobilehome Owners Assn. v. City of Poway* (2007) 149 Cal.App.4th 1460, 1479. Here, Defendants’ adoption of the Groundwater Sustainability Plan for the Vina Subbasin appears to the Court to be a quasi-legislative activity. See *Water Code* §10728.4. Moreover, the allegations in Plaintiffs’ Complaint, and request for relief to declare that adoption invalid, further supports such a finding. See Complaint at Pgs. 2-3, ¶7 and Pg. 8, ¶1. Thus, the Court’s review of the evidence in this case is limited to a review of the administrative record. The Court will conduct a Case Management Conference and counsel are ordered to appear either in person or by Court Call on November 8, 2023 at 9:00 a.m. However, this is not an invitation to present oral argument in regard to the hearing regarding the necessity of preparing an administrative record/scope of evidence. 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).

10. 22CV02703 CARDINET, JULIE V. GUTIERREZ MALDONADO, ABEL ET AL

EVENT: Plaintiff’s Motion for Trial Preference

Court finds that the Plaintiff has failed to carry her burden under *Code of Civil Procedure* §36(a) for trial preference there being no showing that the health of Plaintiff is such that a preference is necessary to prevent prejudicing the party’s interest in the litigation, nor how the interests of justice would be served in the granting of such request. The Motion is DENIED. The Court will utilize the form of order submitted by the Plaintiff.