

**Judge Mosbarger – Law & Motion – Wednesday, March 27, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1. 21CV00365 EDWARDS, TYLER J ET AL V. PRUIS, BRANNON ET AL

EVENT: Cross-Defendant’s Motion to Quash Subpoenas, or in the Alternative Modify Subpoenas

The Court declines to deny the Motion based upon counsel’s failure to timely file the required Separate Statement pursuant to California Rules of Court Rule 3.1345; however, does advise counsel that further violations of this Rule will not be tolerated. The Court has considered the merits of the motion in full and Cross-Defendants’ Motion to Quash Subpoena is DENIED, as is the request for sanctions. Counsel for the Cross-Complainants shall submit a form of order within two weeks.

2. 21CV01364 RICHIE, ROBIN V. OROVILLE UNION HIGH SCHOOL DISTRICT ET AL

EVENT: Plaintiff’s Motion to Exclude Deposition Testimony of Denise Jones and Exclude Denise Jones as a Witness at Trial

The Court finds that Denise Jones properly exercised her Fifth Amendment privilege during her deposition on March 16, 2024 and Plaintiff’s Motion to Exclude Deposition Testimony of Denise Jones and Exclude Denise Jones as a Witness at Trial is denied. Counsel for the Defendant shall submit a form of order within two weeks. The Court would entertain a motion in limine at the time of trial to exclude Ms. Jones’ deposition testimony if Mr. Jones does not testify at trial.

3-4. 22CV00267 DONKOV, GEORGI ET AL V. CALIFORNIA FAIR PLAN ASSOCIATION

EVENTS: (1) Defendant’s Motion for Summary Judgment, or in the Alternative, Summary Adjudication

(2) Plaintiff’s Motion for Summary Adjudication of Issues

Defendant’s Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Defendant’s Request for Judicial Notice is granted. Defendant’s Evidentiary Objections are overruled. The Court finds a triable issue of material fact as to whether there was a reasonable excuse for the alleged failure to submit to an Examination Under Oath (“EUO”) given the ongoing communications between counsel regarding the scope of the EUO and the Motion for Summary Adjudication is denied as to the First and Second Causes of Action in Plaintiffs’ First Amended Complaint, and the Second Cause of Action in Defendant’s Cross-Complaint. [UMF Nos. 8-9, 17-18, and 37-38, and the evidence submitted therewith.] In regard to punitive damages, the Court finds that there is no triable issue of material fact as to whether Defendant is guilty of oppression, fraud, or malice to warrant punitive damages under Civil Code §3294 [UMF Nos. 19-29 and the evidence submitted therewith.] The Motion for Summary Adjudication as to the claim for

punitive damages is granted. Counsel for the Defendant shall submit a revised form of order consistent with this ruling within two weeks.

Plaintiff's Motion for Summary Adjudication of Issues

Defendant's Request for Judicial Notice is granted. Defendant's and Plaintiffs' respective Evidentiary Objections are overruled. The Court finds a triable issue of material fact as to the condition precedent regarding and Examination Under Oath ("EUO"), and whether there was a reasonable excuse for the alleged failure to submit to an EUO given the ongoing communications between counsel regarding the scope and the Motion for Summary Adjudication of Issues is denied as to the First Causes of Action in Plaintiffs' First Amended Complaint. [UMF No. 7; AUMF Nos. 20-22, and the evidence submitted therewith.] Further, the Court finds a triable issue of material fact exists as to whether there was marijuana cultivation occurring on the property at the time of the application for insurance. [UMF No. 6]. The Motion for Summary Adjudication of Issues is denied. Counsel for the Defendant shall submit a form of order consistent with this ruling within two weeks.

5. 23CV01202 COSINA, ORIANA V. ZACARIAS, CATALINA

EVENT: Motion to Vacate Sister State Judgment

As an initial matter, the request by Defendant for a continuance and long cause evidentiary hearing to allow the US Postmaster to testify is denied, there being no authority that requires or permits such a hearing.

A judgment debtor has 30 days following service of the notice of entry of judgment to move to vacate the judgment. *Code of Civil Procedure* §1710.40(b). Here, the notice of entry of judgment was served by personal service on June 22, 2023, thus the deadline to move to vacate the judgment was July 24, 2023. The Court does recognize that there was a motion to amend the sister-state judgment to change the name of the Defendant in January 2024. The amended judgment was electronically served on defense counsel on January 29, 2024, thus the deadline to move to vacate the judgment (if the clock restarted) was February 28, 2024. Here however, the instant motion was filed and served on March 4, 2024. The Court is not persuaded by Defendant's argument that the amended judgment had to be personally served on the Plaintiff pursuant to *Code of Civil Procedure* §415.40, before the 30-day deadline began to run, the Court likening this situation to a Doe Amendment and finding that the Defendant (Catalina Zacarias) is the same individual as identified in the amended judgment (Catalina Nunez). This is further confirmed by the absence of any evidence to support a finding that the true and correct legal name of the Plaintiff is anything other than Catalina Zacarias (see e.g., the Revised Declaration of Catalina Zacarias filed on March 19, 2024 in this action). The Court therefore obtained personal jurisdiction over the Defendant upon service of the original judgment entered on June 22, 2023 following personal service. Therefore, the motion is untimely under *Code of Civil Procedure* §1710.40.

Continuing on the issue of timeliness of the instant motion, the Court finds in regard to the application of *Code of Civil Procedure* §473, as it relates to the original sister-state judgment, more than six months has elapsed with no sufficient showing of extrinsic fraud or mistake, and such relief is therefore not permitted. Further, the Court finds that the amended sister-state judgment does not restart the clock in terms of the six-month deadline under *Code of Civil Procedure* §473 because updating the judgment to reflect the current legal name of Defendant is not a substantive change and does “not enlarge the rights or burdens of either party.” See, *Haug v. Superior Court* (1934) 2 Cal.App.2d 547, 550.

The motion is untimely and is denied on that basis.

However, even if the Court were to find the motion timely, the motion lacks merit.

The Court overrules the evidentiary objections of Plaintiff relating to compliance with *Code of Civil Procedure* §2015.5 as to the Declarations of Norma Alcalá, Catalina Zacarias, and Linda Sutherland/Southerland finding the Revised Declarations to be in substantial compliance with the statutory requirements. The remainder of Plaintiff’s evidentiary objections are sustained.

The Court finds Defendant to lack credibility and finds that she has failed to demonstrate any cognizable defense to the Washington judgment. The motion is denied.

Counsel for the Plaintiff shall submit a form of order consistent with this ruling within two weeks.

6. 23CV02484 IN RE: RED LEAF, WAPOSTA CIKALA

EVENT: Petition for Change of Name

If proper proof of publication is submitted at or before the hearing, the Petition will be granted.

7. 24CV00050 IN RE: SMITH, MICHAEL

EVENT: Petition for Change of Name

The Court still has not received proper proof of publication, nor an amended Petition signed by the Petitioner with his current legal name. If there is no appearance by the Petitioner, the Petition will be denied without prejudice.

8. 24MH00066 PETITION OF: TANNER, MICHAEL LEE

EVENT: Request for Relief from Firearms Prohibition

The Court will conduct an evidentiary hearing. The matter will be called in a closed courtroom pursuant to *Welfare & Institutions Code* §8103(f)(5).