

**Judge Mosbarger – Law & Motion – Wednesday, April 19, 2023 @ 9:00 AM
TENTATIVE RULINGS**

1-2. 16CV01960 BROWN, GARY LLOYD V. SYCAMORE RANCH ET AL

EVENTS: (1) Plaintiff's Motion to Strike and Tax Costs of Defendant Linda Irene Willadsen

(2) Plaintiff's Motion to Strike and Tax Costs of Defendant Sycamore Ranch

(1) In regard to Plaintiff's Motion to Strike and Tax Costs of Defendant Linda Irene Willadsen, the Motion is granted in part and denied in part.

The Court finds that Plaintiff has failed to establish bad faith by Defendant in relation to the filing of Defendant's Motion for Judgment on the Pleadings, Defendant's Motion to Compel an Independent Medical Examination, Defendant's Motion to Continue Trial, Defendant's Motion to Compel Further Responses to Requests for Production of Documents, Defendant's Motion to Compel Further Responses to Special Interrogatories, or Defendant's Motion for Judgment on the Pleadings, and therefore the Filing and Motion Fees for these Motions were reasonable and recoverable. The Motion to Strike the sum of \$360.00 is denied.

In regard to Deposition Costs, the Court finds that the costs of \$537.25 relating to the subpoena costs for the delivery service of responses to business records subpoenas from Ag-Land Investment Brokers, Bert Owens, Plumas District Hospital, and Enloe Medical Center are not unallowable photocopying costs as Plaintiff suggests. Rather, "[a] 'deposition' within the meaning of the Civil Discovery Act includes obtaining business records through a deposition subpoena." *Naser v. Lakeridge Athletic Club* (2014) 227 Cal.App.4th 571, 577-78. Thus, the Motion to Strike the sum of \$537.25 is denied. Likewise, the Court finds that the costs of \$3,615 relating to the videotaping of the depositions of Megan Brown, Bert Owens, Mike Evans, and Annette Stalker are reasonable costs associated with the recoverable deposition costs and therefore permitted under *Code of Civil Procedure* §1033.5(a)(3)(A). The Motion is denied as to these costs as well.

In regard to Service of Process, the Court finds that personal service of subpoenas on Bert Owens, Ag-Land Investment Brokers, Megan Brown, Merilee Vanderwaal, Evans Appraisal Service, Mike Evans, Plumas District Hospital, Enloe Medical Center, and Sam Mudd are appropriate given that the *Code of Civil Procedure* requires such service. Therefore, the request to tax these costs is denied. However, in relation to the sum of \$3,172.16, the Court finds that such costs, for personal service of documents on Plaintiff's counsel, were not reasonably necessary to the conduct of the litigation as required by *Code of Civil Procedure* §1033.5(c)(2), and the Motion is granted in this regard. Finally, the costs of \$341.67 for Postage (FedEx) are withdrawn by Defendant and therefore stricken. The total sum stricken from the Service of Process category of costs is \$3,513.83.

The Court finds that Sam Mudd, Bert Owens, and Mike Evans were designated experts and thus any Witness Fees paid to them are expressly disallowed under

Code of Civil Procedure §1033.5(b)(1). The Motion is granted in this regard and the Court strikes the sum of \$121.70.

The Court allows Court Reporter Fees in the amount of \$5,405.90, finding that such costs are expressly permitted under *Code of Civil Procedure* §§269, 1033.5(a)(11), and *Government Code* §68086. This amount does not take into consideration the untimely request of Defendant to include the miscalculations by Defendant in the Memorandum of Costs filed on March 2, 2023, which the Court deems untimely.

In regard to Models, Enlargements, and Photocopies of Exhibits, and specifically in regard to the exhibits, expenses that are “reasonably helpful to aid the trier of fact” are recoverable costs. *Code of Civil Procedure* §1033.5(a)(13). Plaintiff has satisfied his initial burden of establishing that these charges were excessive or not actually incurred and Defendant thereafter, by way of her Opposition, has satisfied her burden of substantiating the claims with counsel’s declaration and a copy of invoices/supporting documentation. Thus, the Motion is denied as to the sum of \$6,987.80. In regard to the “Trial Technician” costs of \$12,919.95, the Court finds these services were incurred by Defendant, reasonably necessary to the conduct of the litigation, the costs were reasonable in amount, and in the Court’s discretion pursuant to *Code of Civil Procedure* §1033.5(c)(2) the Motion is denied as to this sum.

The Court strikes the sum of \$10.50 in the category of Electronic Filing/Service as that cost was for an appellate court filing fee on March 17, 2022, and is not recoverable. The remainder of the Motion to strike the sum of \$182.65 in this regard is denied on the basis that Plaintiff has failed to establish bad faith in filing these Motions, which the Court finds were reasonable and recoverable.

In regard to the “Other Costs”, the Court finds that the “Westlaw/Thompson Reuters – Legal research fees” for a total of \$763, are not recoverable as costs because they are expressly prohibited by *Code of Civil Procedure* §1033.5(b)(2), and the Motion is granted in this regard. In addition, the Court strikes the sum of \$14.14 which Defendant indicates was erroneously included in Defendant’s calculation of hotel costs. In regard to the remaining sum of \$3,641.59, which relate to travel and hotel costs of counsel, the Court finds that these costs fall under the Court’s discretionary authority. *Code of Civil Procedure* §1033.5(a)(16) provides that “[a]ny other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal” is allowable as costs. Further, *Code of Civil Procedure* §1033.5(c)(4) provides that, “[i]tems not mentioned in this section and items assessed upon application may be allowed or denied in the court’s discretion.” As such, the Court in its discretion finds that in regard to the travel expenses of \$3,641.59, Defendant has demonstrated that these were reasonably necessary to the conduct of the litigation, and the Motion is denied in regard to these “Other Costs.” Thus, the total sum stricken from this category is \$777.14.

Finally, in regard to Defendant's request for attorney's fees of \$17,635 in relation to the preparation of the instant Opposition, counsel has provided no authority on which the Court could grant such relief and the request for attorney's fees is denied.

The Court strikes costs in the amount of \$4,423.17 and Defendant is awarded costs in the amount of \$58,407.77. Defendant shall prepare a form of order consistent with this ruling within two weeks.

(2) In regard to Plaintiff's Motion to Strike and Tax Costs of Defendant Sycamore Ranch, the Motion is granted in part and denied in part.

In regard to Filing and Motion Fees, Plaintiff argues that no Motion for Summary Judgment was filed against Sycamore Ranch and therefore there was no required filing fee for Defendant under the label of Motion for Summary Judgment. This is incorrect as Defendant Sycamore Ranch filed a Motion for Summary Judgment on February 28, 2020. However, the Court notes that the filing fee for such a motion is \$500 and therefore the Court strikes the additional claimed fee in the amount of \$17.35. Likewise, in regard to the Motion to Continue Trial, the filing fee for such a motion is \$60 and therefore the Court strikes the additional claimed fee in the amount of \$88.50. The total sum stricken from the Filing and Motion Fees category is \$105.85.

The Court finds that the Court-Ordered Transcript Fees of \$2,859.58 are specifically identified in Code of Civil Procedure §1033.5(b)(5) as non-recoverable in this case as the Court did not order the transcripts of any proceedings. The Court strikes the sum of \$2,859.58.

Finally, in regard to Fees for Electronic Filing or Service, Plaintiff has satisfied his burden of overcoming the prima facie evidence of a verified memorandum of costs by establishing that the costs were excessive or not actually incurred. Defendant, having failed to file an Opposition to the instant Motion has failed to satisfy its burden to then present evidence and argument substantiating the claim with detailed declarations or affidavits and supporting documentation. See *Fennessy v DeLeuw-Cather Corp.* (1990) 218 Cal.App.3d 1192; *Rappenecker v Sea-Land Servs.* (1979) 93 Cal.App.3d 256. Thus, the Court strikes the sum of \$838.11.

The Court strikes costs in the amount of \$3,803.54 and Defendant is awarded costs in the amount of \$1,201.02. Defendant shall prepare a form of order consistent with this ruling within two weeks.

3. 23CV00588 IN RE: MORRIS, NICOLE

EVENT: Petition for Change of Name

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

4. 23CV00699 HINOJOSA, ISAIAH V. STATE OF CALIFORNIA ET AL

EVENT: Petition for Relief to Pursue a Late Government Claim

Petitioner's Request for Judicial Notice is granted. While *Government Code* §946.6 allows a claimant to petition a court, upon the denial of an application to submit a late claim, for relief from *Government Code* §945.4 (statute prohibiting a claim against a government entity unless a timely claim has been submitted), a Petition under *Government Code* §946.6 must establish that the application was made pursuant to *Government Code* §911.4, which Petitioner has failed to do. In support of the Petition, Petitioner relies on *Government Code* §911.4(c), which provides that "the time during which the person who sustained the alleged injury, damage, or loss as a minor shall be counted, but the time during which he or she is mentally incapacitated and does not have a guardian or conservator of his or her person shall not be counted." *Government Code* §911.4(c)(1) [emphasis added]. Here, based upon the Police Report [attached as Exhibit 1 to Exhibit A to the Declaration of Vahan Mikayelyan], Petitioner's date of birth is October 31, 2002. Thus, at the time of the accident, Petitioner was 20 years old and the extension provided under *Government Code* §911.4(c) does not apply in this instance, and any application to submit a late claim was to be made on or before June 11, 2022. Here, the applications to submit a late claim were made to the government entities on January 3, 2023 and are untimely. No other authority is provided by the Petitioner that would allow the Court to grant the requested relief and the Petition is denied.