

TENTATIVE RULINGS for CIVIL LAW and MOTION
June 26, 2014

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Two: (530) 406-6843

TENTATIVE RULING

Case: Johnson v. Schwent
Case No. CV CV 13-1034
Hearing Date: June 26, 2014 Department Two 9:00 a.m.

Plaintiff Bettie Jo Johnson's motion to compel responses to discovery and award sanctions is **DROPPED FROM CALENDAR** for failure to file a proof of service indicating service of the moving papers on defendant. Proof of service of the moving papers must be filed no later than five court days before the date of the hearing. (Code Civ. Proc., §§ 1013, 1013a; Cal. Rules of Court, rule 3.1300(c).)

TENTATIVE RULING

Case: Main v. Valley Slurry Seal Company
Case No. CV CV 11-968
Hearing Date: June 26, 2014 Department Two 9:00 a.m.

The Court rules upon plaintiff Kosol Main's motion for attorneys' fees against defendants Valley Slurry Seal Co., VSS Emultech, and Eric Rasmussen as follows:

Defendants' request for judicial notice of Exhibit A to the Declaration of Kevin Cleveland is **GRANTED**. The Court takes judicial notice of the existence of the document, but does not take notice of the facts contained therein. (*Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1145.)

Defendants' request for judicial notice of Exhibits A and B, attached to the defendants' request for judicial notice, is **DENIED**. (Evid. Code, § 452, subd. (d).) The attached exhibits are not copies of court filed documents.

Defendants' evidentiary objections to the declarations of Adam Reisner, Kosol Main, Alisa Khouadian, Hector Guzman, Arthur Sezgin, Jon Ramone, Nicolas Orihuela, Allan Sigel, Douglas Hayes, and Joseph Lovretovich are **OVERRULED**.

The Court rules on defendants' evidentiary objections the declaration of Tessa King as follows:

1. Evidentiary objection nos. 1-11, 13, and 16-17 are **OVERRULED**.
2. Evidentiary objection nos. 12 and 15 are **SUSTAINED**.
3. Evidentiary objection no. 14 is **SUSTAINED IN PART**, as to "and these rates are most likely comparable to practicing attorneys in Yolo and/or Sacramento Counties."

The Court need not reach the evidentiary objections made by plaintiff as they do not affect the outcome of this motion.

Plaintiff's motion for attorneys' fees is **GRANTED IN PART**, in the amount of \$659,131.37. The Court disallows fees in the amount of \$10,920.00 for hours incurred on a pending appeal. The Court also disallows fees in the amount of \$4,400.00 for the time counsel estimated it would incur in reviewing an opposition, preparing and filing reply papers, and preparing for and attending oral argument. The Court finds that the remainder of the hours incurred were reasonable and necessary, for a total of \$495,587.50 in attorneys' fees. Further, the Court finds that plaintiff's counsel is entitled to a multiplier of 1.33 for accepting plaintiff's case on a purely contingent basis. (*Horsford v. Board of Trustees of Calif. State Univ.* (2005) 132 Cal.App.4th 359, 398-399; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133; *Serrano v. Priest* (1977) 20 Cal.3d 25; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 157.)

The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 11.4(b). Counsel for moving party is ordered to notify the opposing party or parties immediately of the tentative ruling system and to be available at the hearing, in person or by telephone, in the event the opposing party or parties appear without following the procedures set forth in Local Rule 11.4(a).

The Court rules upon defendant Roger Liston's motion for attorneys' fees against plaintiff as follows:

The Court rules on defendant's evidentiary objections the declaration of Tessa King as follows:

1. Evidentiary objection nos. 1-2, 4-6, 8-11, and 13 are **OVERRULED**.
2. Evidentiary objection nos. 3, 7, and 12 are **SUSTAINED**.

The Court rules on defendant's evidentiary objections the declaration of Kosol Main as follows:

1. Evidentiary objection nos. 2 and 4-6 are **OVERRULED**.
2. Evidentiary objection nos. 1, 3, and 7 are **SUSTAINED**.

The Court rules on defendant's evidentiary objections the declaration of Michael Skurka as follows:

1. Evidentiary objection nos. 8-9, 11-12, 16, 20, 22-23, 25, 27, and 29-30 are **OVERRULED**.
2. Evidentiary objection nos. 1, 7, 14-15, 19, 21, 26, and 28 are **SUSTAINED**.

3. Evidentiary objection no. 2 is **SUSTAINED IN PART**, as to “[o]n a continuous basis, Eric would make snide comments regarding Kosol’s race” and “Eric would make this and other similar comments to Kosol purposefully to harass and demean him.”
4. Evidentiary objection no. 3 is **SUSTAINED IN PART**, as to “referring to his eye/race.”
5. Evidentiary objection no. 4 is **SUSTAINED IN PART**, as to “again, making fun of Kosol because of his eyes/race.”
6. Evidentiary objection no. 5 is **SUSTAINED IN PART**, as to “based upon his race on a continuous basis.”
7. Evidentiary objection no. 6 is **SUSTAINED IN PART**, as to “and other racist comments.”
8. Evidentiary objection no. 10 is **SUSTAINED IN PART**, as to “and would be afraid to rest due to Eric and Roger’s harassment.”
9. Evidentiary objection no. 13 is **SUSTAINED IN PART**, as to “due to the time he was taking off for medical reasons.”
10. Evidentiary objection no. 17 is **SUSTAINED IN PART**, as to “Eric and Roger also never gave Kosol the chance to excel. For example, Kosol was not given the opportunity to go to classes or receive training.”
11. Evidentiary objection no. 18 is **SUSTAINED IN PART**, as to “even though Kosol would be working very quickly as Eric and Roger would not give him enough work or complete assignments.”
12. Evidentiary objection no. 24 is **SUSTAINED IN PART**, as to “I told the attorney that I heard Eric make racist comments, such that Eric was calling Kosol ‘slanty eyes,’ ‘sideways,’ and other racially motivated comments.”

Defendant’s motion for attorneys’ fees is **DENIED**. Defendant fails to establish that the causes of action brought against defendant were unreasonable, frivolous, meritless, and/or vexatious. (*Christianburg Garment Co. v. EEOC* (1978) 434 U.S. 412, 421-422.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.

TENTATIVE RULING

Case: **PGP International, Inc. v. Covarrubias**
Case No. CV CV 14-883

Hearing Date: **June 26, 2014** **Department Two** **9:00 a.m.**

This matter is **DROPPED FROM CALENDAR** as moot. The stipulated order for preliminary injunction and preservation was entered by the Court on June 25, 2014.

TENTATIVE RULING

Case: Sacramento Floormasters, Inc. v. Sac Profloors, Inc.
Case No. CV CV 13-2165
Hearing Date: June 26, 2014 Department Two 9:00 a.m.

Defendant and cross-complainant Enrique Curbelo’s request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Plaintiffs Sacramento Floormasters, Inc. and DT Floormasters, Inc.’s application to seal the declaration of Daniel Foreman is **GRANTED**. (Cal. Rules of Court, rule 2.550 et seq.)

The Court will consider defendant’s late-served reply papers. Defendant is cautioned that if he fails to timely serve papers in the future and plaintiffs object, his papers will be disregarded. The motion for a preliminary injunction is **DENIED**. Defendant has styled his motion as one for a preliminary injunction. Such an injunction requires that he demonstrate irreparable injury. (Code Civ. Proc., § 526, subd. (a)(2).) The injury must be imminent and defendant must establish that he will be significantly hurt in a way that cannot be later repaired if the relief requested is not granted. (*People ex. Rel Gow v. Mitchell Brothers’ Santa Ana Theater* (1981) 118 Cal.App.3d 863.) He fails to demonstrate that such harm cannot be compensated in money damages. Monetary sanctions against defendant are **DENIED**. Section 128.5 does not apply to the instant case. (Code Civ. Proc., § 128.5, subd. (b)(1).)

The notice of motion does not provide notice of this Court’s tentative ruling system as required by Local Rule 11.4(b). Counsel for moving party is ordered to notify the opposing party or parties immediately of the tentative ruling system and to be available at the hearing, in person or by telephone, in the event the opposing party or parties appear without following the procedures set forth in Local Rule 11.4(a).

TENTATIVE RULING

Case: Wilson v. Discount Gold Brokers, Inc.
Case No. CV CV 13-1799
Hearing Date: June 26, 2014 Department Two 9:00 a.m.

Attorney Terry L. Gilbeau’s motion to be relieved as counsel is **DROPPED FROM CALENDAR**. The moving party has failed to afford proper notice of the motion. (Code Civ. Proc., § 1005, subd. (b).)