

TENTATIVE RULINGS for LAW and MOTION

August 13, 2019

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 on Yolo Court's 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 Eight (530) 406-6927
Telephone number for the clerk in Department Twelve (530) 406-6888

TENTATIVE RULING

Case: **Cloud v. City of Davis**
Case No. CV CV 17-2151
Hearing Date: **August 13, 2019** **Department Twelve** **9:00 a.m.**

The Court does not consider the untimely reply filed on August 7, 2019 by plaintiff Jan Cloud. Plaintiff's reply was due at least five court days before the hearing, or by August 6, 2019. (Code Civ. Proc., § 1005, subd. (b).)

Plaintiff Jan Cloud's motion to tax costs is **GRANTED IN PART**, as follows:

1. The motion to tax filing and motion fees is **GRANTED**. Messenger fees are a discretionary cost, and defendant has not shown that such costs are reasonable and necessary to the conduct of the litigation. (Code Civ. Proc., § 1033.5, subd. (c)(4); *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 132.)
2. The motion to tax deposition costs is **DENIED**. This is an allowable cost, and plaintiff fails to demonstrate that the costs incurred were not reasonable and necessary to the conduct of the litigation. (Code Civ. Proc., § 1033.5, subd. (a)(3).)
3. The motion to tax service of process is **DENIED**. This is an allowable cost, and plaintiff fails to demonstrate that the costs incurred were not reasonable and necessary to the conduct of the litigation. (Code Civ. Proc., § 1033.5, subd. (a)(4).)
4. The motion to tax expert fees is **DENIED**. Plaintiff fails to establish that the 998 offer was not reasonable and made in good faith. (*Elrod v. Oregon Cummins Diesel, Inc.* (1987) 195 Cal.App.3d 692, 698-699; Civ. Code Proc., § 998, subd. (c).) Plaintiff also fails to demonstrate that the costs incurred were not reasonable and necessary to the conduct of the litigation.
5. The motion to tax subpoenaed records and court call costs is **GRANTED**. These are discretionary costs, and defendant has failed to show that the costs incurred were reasonable and necessary to the conduct of the litigation. (Code Civ. Proc., § 1033.5, subd. (c).)

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, or the moving party if unrepresented by counsel, is ordered to notify the opposing party or parties immediately of the tentative ruling system.

If no hearing is requested, and no party appears at the hearing, 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: Hernandez v. Clark Pacific Corp.

Case No. CV CV 19-644

Hearing Date: August 13, 2019 Department Eight 9:00 a.m.

Defendant Clark Pacific's petition to compel arbitration is **DENIED**. (Code Civ. Proc., § 1281.2.) Defendant fails to show that plaintiff clearly and unmistakably waived his right to sue in a judicial forum. (*Martinez v. J. Fletcher Creamer & Son* No. CV 10-0968 PSG (FMOx) 2010 WL 3359372 (C.D. Cal. Aug. 13, 2010); *Wawock v. CSI Elec. Contractors, Inc.* (9th Cir. 2016) 649 F. App'x 556; *Vasserman v. Henry Mayo Newhall Mem 'I Hasp.* (C.D. Cal. 2014); *Vasquez v. Superior Court* (2000) 80 Cal. App. 4th 430.)

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.