

Tentative Rulings and Resolution Review Hearings

November 1, 2024

Butte Exchange (To be heard in Department 63)

This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court’s website (www.shasta.courts.ca.gov) and are available by clicking on the “Tentative Rulings” link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

Per Local Rule 5.13, telephonic appearances through CourtCall (888-882-6878; courtcalls.com) are generally permitted on the Law & Motion and Resolution Review calendars and can be made without leave of Court.

BURGESS VS. ROWE

Case Number: 22CV-0200531

This matter is on calendar for review regarding trial re-setting. Plaintiff filed a declaration on October 22, 2024. It is unclear from the declaration whether this matter has settled or should be set for trial. The Court notes that the Complaint in this matter was filed on September 1, 2022 and finds the matter to be exempt from plan designation. The Court further notes that while Defendant has posted jury fees, Plaintiff has not. Plaintiff is granted ten days leave to post jury fees. A failure to post jury fees in that time will be deemed a waiver of the right to a jury. The parties are ordered to meet and confer prior to the hearing regarding whether this matter should be set for trial. **An appearance is necessary on today’s calendar.**

CREDITORS ADJUSTMENT BUREAU, INC., VS. CASTRO

Case Number: 23CVG-00362

Tentative Ruling on Motion for Terminating Sanctions: Plaintiff Creditors Adjustment Bureau, Inc. moves for terminating sanctions against Defendant Vincent Paul Castro. Plaintiff also requests monetary sanctions in the amount of \$1,573.75. Defendant filed an Opposition on October 29, 2024, which was six court days late for a November 1, 2024 hearing. CCP § 1005(b). The Opposition did not include a proof of service. Despite the untimeliness and lack of service on Plaintiff, the Court has considered the Opposition as this is a dispositive motion and the Court intends to afford Defendant every opportunity to present his defense to the motion.

Terminating Sanctions. Pursuant to CCP § 2023.030(b-d), the Court may impose issue, evidentiary, or terminating sanctions against a party that engages in the misuse of the discovery process. Misuse of the discovery process includes failing to respond to or submit to an authorized method of discovery and disobeying a court order to provide discovery. CCP § 2023.010(d) and (g). Terminating sanctions are a “drastic penalty and should be used sparingly.” *Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal. App. 4th 566, 604. A terminating sanction should not generally be imposed by the court until less severe sanctions have been attempted and were unsuccessful. *Id.*

Plaintiff propounded Special Interrogatories, Set One and Request for Production, Set One on July 18, 2023. When no response was received, Plaintiff moved for an order compelling responses and for monetary sanctions. On April 5, 2024, the Court granted Plaintiff’s motions to compel discovery responses. Defendant was ordered to provide responses to Special Interrogatories, Set One and Production of Documents, Set One no later than May 3, 2024. Monetary sanctions were imposed in the amount of \$1,920. On May 10, 2024, Plaintiff filed a Motion for Terminating Sanctions that was noticed for June 7, 2024. On June 7, 2024, the Court continued the Motion

for Terminating Sanctions to August 2, 2024 to give Defendant more time to provide responses. On August 2, 2024, the Court denied the motion without prejudice and gave Plaintiff thirty days from the Notice of Ruling to submit his responses. Notice of Ruling was filed on August 12, 2024. On September 6, 2024, the Court granted Plaintiff's Motion to Deem Requests for Admission Admitted. The Requests for Admission has been served on Defendant on June 10, 2024. Plaintiff filed the Motion for Terminating Sanctions on October 4, 2024. Defendant was served by mail on October 3, 2024. It is now November 1, 2024. Based on what is before the Court, it appears that Defendant still has not responded to discovery.

Defendant's failure to respond to discovery despite there being a Court Order requiring Defendant to do so constitutes a misuse of the discovery process. CCP § 2023.010(d) and (g). With that finding, the Court turns to whether terminating sanctions are appropriate in this case. This is not a matter where Defendant filed an Answer then abandoned the case entirely. Defendant has personally appeared at all hearings in this matter that required an appearance. Despite participating in the case, Defendant has blatantly refused to respond to discovery. Defendant was served with Special Interrogatories and Request for Production fifteen months ago and Requests for Admission nearly five months ago. The Court has now granted three motions related to discovery. Monetary sanctions have been imposed, which have not been paid. The Court continued the previous Motion for Terminating Sanctions for Defendant to respond then denied the motion without prejudice, again giving Defendant more time to respond. Requests for Admission have been deemed admitted. Evidentiary and issue sanctions are generally an intermediary step prior to imposing terminating sanctions, however, it does not appear that imposing such sanctions would remedy the harm caused by Defendant's refusal to comply with any of his discovery obligations. Imposing evidentiary or issues sanctions would likely not result in Defendant's compliance with his discovery obligations. Despite Defendant's belated request that he be re-served with the interrogatories, Defendant has made it clear through his actions in this case that Defendant will not respond to discovery regardless of the sanctions imposed by this Court. Terminating sanctions are warranted for Defendant's continued misuse of the discovery process.

Monetary Sanctions. Plaintiff also seeks monetary sanctions in the amount of \$1,537.75. This request is based on three hours of attorney time at \$500 per hour plus a \$60 court filing fee and \$13.75 for e-filing. The Shasta County Superior Court does not have e-filing. The Court found \$300 to be reasonable hourly rate in previous motions on this matter. Sanctions are imposed against Defendant in the amount of \$960.

The Motion for Terminating Sanctions is **GRANTED**. The Answer filed by Defendant on June 16, 2023 is ordered **STRICKEN**. Plaintiff may request entry of default. Monetary sanctions are imposed in the amount of \$960. Plaintiff submitted a proposed order that will be modified to reflect the Court's ruling. The matter will be on calendar on **Friday, January 3, 2025 at 1:30 p.m. in Department 63** for review regarding status of default and default judgment. Should judgment be entered prior January 3, 2025, the review hearing will be vacated.

JOHNSON, ET AL VS. PARENT, ET AL.

Case Number: CVCV21-0197618

Tentative Ruling on Order to Show Cause Re: Sanctions: An Order to Show Cause Re: Sanctions ("OSC") issued on October 14, 2024, to Defendants and Counsel. No responses to the OSC have been filed. However, the Court notes that the terms of the OSC are unclear due to a clerical error. Therefore, today's hearing will be continued, and a new Order to Show Cause will issue. The Court intends to issue an Order to Show Cause why terminating sanctions should not be imposed and the Answer stricken, for violation of the May 24, 2022 Order compelling this matter to arbitration pursuant to the stipulation of the parties, and for failure to appear at the September 6, 2024 hearing. The clerk is directed to prepare a new Order to Show Cause Re: Terminating Sanctions and Striking of the Answer. The matter is continued to **Friday, January 3, 2025, at 1:30 p.m. in Department 63** for further proceedings on the Order to Show Cause.

JOHNSON, ET AL VS. PARENT, ET AL.

Case Number: CVCV21-0197618

This matter is also on calendar for review regarding status of arbitration. No status report has been filed. The Court ordered this matter to arbitration on February 5, 2024. **An appearance is necessary on today's calendar to discuss the status of arbitration.**

PEOPLE VS. \$52, 557.00 US CURRENCY

Case Number: CVPT20-0195064

This asset forfeiture matter is on calendar for review regarding status and trial setting. Claimants Heather Legault-Williams and Will Williams filed their Claim Opposing Forfeiture on May 28, 2020. Petitioner filed its Petition for Forfeiture on June 11, 2020. On September 14, 2020, the Court granted a request to stay this matter based on the pending criminal investigation. **The parties are ordered to appear to provide the Court with a status of the criminal investigation.**

S&J DEVELOPMENT INC, ET AL. VS. BORGWAT, ET AL.

Case Number: 24CV-0204336

This matter is on calendar for a Settlement Conference. The Court notes that the matter is not at issue. While several Proofs of Service of Summons have been filed, no responsive pleadings have been filed and Plaintiff has not requested entry of default. The matter is continued to **Friday, January 3, 2025 at 1:30 p.m. in Department 63** for review regarding status of responsive pleadings or default. Plaintiffs are ordered to get the matter at issue prior to the hearing or file a Status Report at least five court days in advance providing good cause for why the matter is not at issue. **No appearance is necessary on today's calendar.**