

NOTICE:

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-7858 (Department 53) by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 3.04.

Judge McMaster discloses that attorneys appearing in cases on today's calendar may have donated to the Committee for Judicial Independence which was formed to oppose the attempted recall of Judge McMaster. A list of donors and amounts donated is under the custody of court executive officer Jody Patel and can be reviewed at room 611, sixth floor, courthouse, 720 Ninth Street.

**Department 53
Superior Court of California
800 Ninth Street, 3rd Floor
LOREN E. MCMASTER, Judge
T. West, Clerk
V. Carroll, Bailiff**

Wednesday, February 07, 2007, 2:00 PM

Item 1 **04AS02543 ROBERT E. GRIJALVA, ET AL VS. JAMES R. ENGLISH**

Nature of Proceeding: Motion For Entry of Judgment

Filed By: Cahalan, James T.

Plaintiffs' motion to have the stipulation for settlement entered as a judgment is denied.

It appears at this time that defendant has complied or is willing to comply with the terms of the stipulation. In particular, he has provided proof of insurance as the parties agreed in the stipulation which reads "Insurance coverage to be provided by defendant to plaintiff for damages arising out of the negligence of defendant or his agents in connection with the public utility easement and associated driveway and roadway connection." The exclusions in the policy apply to first party property damages not third party liability. Therefore defendant has provided proof of insurance and insurance coverage as he agreed.

The formal settlement agreement has not been signed. Although more detailed than the stipulation signed at the settlement conference, it accurately reflects that stipulation.

If the parties cannot agree on the insurance issue, they should return to settlement conference, and if possible to Judge Loncke, to resolve their differences.

This minute order is effective immediately and no formal order is required.

Item 2 **05AS04799 HAKMAT LABABEDY VS. JACK RAY BILLS**

Nature of Proceeding: Motion To Compel Production of Documents

Filed By: Haney, Steven H.

Plaintiff's Motion to Compel DMV to produce Defendant Jack Ray Bills' driving records for the last ten years, including but not limited to any medical clearances or authorizations is granted. Defendant states that he has no opposition to DMV obtaining the records.

DMV is ordered to produce the records to plaintiff on or before February 27, 2007.

Plaintiff owns a convenience store, a Circle 7 store on Stockton Boulevard. Plaintiff alleges that defendant, who is 86 years old and has testified to numerous health problems, intentionally backed up his car and rammed it through concrete barriers and into the front of his store two times, causing much damage to property as well as flying glass which miraculously did not injure plaintiff or his customers. Plaintiff alleges that the act was intentional and perhaps motivated by hatred since plaintiff is of Arab ethnicity. Defendant has contended that it was an accident. The records are relevant and ordered produced.

No sanctions are awarded since the defendant did not oppose the subpoenas and the DMV acted with substantial justification in not producing the records absent a court order.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 3 **06AS02687** **LOUIS O. LE FORT VS. OPTION ONE MORT. CORP.**

Nature of Proceeding: Motion To Withdraw Atty of Record

Filed By: Clark, Joshua B.

This matter is dropped from calendar.

Item 4 **06AS02759** **ANWYL, SCOFFIELD & STEPP, LLP VS REGINA L. BLACKHURST, ET AL**

Nature of Proceeding: Motion for Discharge

Filed By: Pazdernik, Michael K.

Defendant Blackhurst's Motion for Discharge of Liability is denied.

The complaint in this action alleges causes of action against Blackhurst for declaratory relief, quantum meruit and foreclosure of lien, and causes of action against Ungerman for declaratory relief, intentional interference with contractual relations, intentional and negligent interference with prospective economic advantage, misappropriation of trade secrets and breach of fiduciary duty.

Defendant Blackhurst retained plaintiff Anwyl, Scoffield & Stepp, LLP (AS&S) as counsel to represent her in the underlying employment litigation. AS&S had a contingency fee agreement with Blackhurst. Co-defendant Ungerman was initially employed at AS&S, but left during the pendency of that litigation.

Blackhurst then retained Ungerman to conclude the litigation. The employment

litigation was settled by Ungerman for Blackhurst, in the amount of \$230,000. The settlement was structured to be funded by two checks: one for \$105,000 payable to Blackhurst, and the 2nd for \$125,000, to be set aside for undetermined fees to be claimed by AS&S and/or Ungerman.

AS&S asserts an attorneys' lien for costs of \$9,797.19 and contingency fees in the amount of 40% of the Code of Civil Procedure section 998 offer or the total settlement.

Defendant Blackhurst calculates the gross settlement at \$230,000, the costs deduced from the gross at \$9,797.19, the net settlement at the remainder of \$220,102.81. Forty percent contingency fee of \$220,102.81 is \$88,041.14 ("contingency fee"). The total of the contingency fee (\$88,041.14) and the costs (\$9,797.19) is the subject stake: \$97,938.32.

At all times since the settlement, Blackhurst has disclaimed any interest in the subject stake of \$97,938.32, and has been ready willing and able to transfer it to AS&S and/or Ungerman. Blackman has only requested that any amounts over the subject stake be transferred to her.

Now, defendant Blackhurst, moves pursuant to Code Civ Proc § 386.5, contending that the only relief sought against her is the payment of the \$97,938.32 alleged to be wrongfully withheld, that she is a mere stakeholder with no interest in the amount or the conflicting demands that have been made upon her for the amount by her former attorneys, all parties to the action.

Therefore, she has applied to the court for an order discharging her from liability and dismissing her from the complaint against her, only, upon her deposit with the clerk of the court the \$97,938.32 in dispute. Blackhurst further seeks an award of costs and reasonable attorneys' fees from AS&S, to be paid from the stake funds deposited, and determined by post-judgment proceedings.

Blackhurst signed a second contingency fee agreement with Ungerman, after the substitution of attorneys. The second fee agreement is identical to the first, except for the signatories. Both Blackhurst and Ungerman submit declarations that their agreement was always that Blackhurst was to keep 60% of any net recovery, and the 40% contingency fee would be *shared* by both AS&S and Ungerman. They declare that at no time was it contemplated, that 80% of the recovery would be paid to Blackhurst's attorneys.

Blackhurst characterizes the suit against her as AS&S's attempt to recover the entire 40% contingency fee, leaving nothing to be paid to Ungerman. The original contingency fee agreement, however, requires payment of 40% of the recovery to AS&S and Ungerman, thus the second fee agreement is asserted to be surplusage.

In opposition, AS&S asserts that it is entitled to sue Blackhurst for *quantum meruit*, that Ungerman has represented that she expected compensation in addition to the 40% contingency fee, and that Blackhurst and Ungerman had repeatedly represented that the \$125,000 payment was to cover Blackhurst's attorneys' fees payable to both AS&S and Ungerman. (Culhane Dec., Exhs. A, G, H.)

While the client has the right to discharge her attorney at any time, with or

without cause, the discharged attorney retains the right to recover for services rendered under a quantum meruit theory. To the extent that such discharge is followed by the retention of another attorney, the client will in any event be required, out of any recovery, to pay the former attorney for the reasonable value of his services. Such payment, in addition to the fee charged by the second attorney, should certainly operate as a self-limiting factor on the number of attorneys so discharged. Certain factors, such as a "courthouse steps" settlement, could result in a determination of reasonableness could justify a finding that the entire fee was the reasonable value of the attorney's services. *Fracasse v. Brent* (1972) 6 Cal. 3d 784, 791.

It is not apparent that from the evidence presented that the maximum attorneys' fees which Blackhurst could be required to pay is \$97,938.32. Thus, the Court denies the motion.

This minute order is effective immediately. No formal order nor further notice is required, the tentative ruling providing sufficient notice.

Item 5 **06AS02843** **DAVID E. RIEMER VS. MICHAEL L. SONGER, M.D., ET AL**

Nature of Proceeding: Motion for a Deemed Admission and Motion to Compel
Filed By: Riemer, David E.

This matter is dropped from calendar.

Item 6 **06AS03099** **BARBARA NEWTON ET AL VS. ARDEN REHABILITATION & HEALTH ET AL**

Nature of Proceeding: Motion To Compel Discovery
Filed By: Dudensing, Edward P.

This matter is dropped from calendar.

Item 7 **06AM03481** **GREAT SENECA FINANCIAL CORPORATION VS. PERRI GARCIA**

Nature of Proceeding: Motion to Set Aside and Vacate Dismissal
Filed By: Boulanger, Michael R.

This matter is dropped from calendar.

Item 8 **06AM04511** **PLACER CREDITORS BUREAU VS. WILLIAM A. SOLOMON, JR.**

Nature of Proceeding: Motion For Judgment On Pleading
Filed By: Warren R. Lee

Plaintiff's Motion for Judgment on the Pleadings is denied. Defendant's Answer does set forth that he made the payments to the plaintiff and that not all of those payments were credited to Folsom Lake Ford. Therefore, on the face of his answer he

disputes the amount owed so he has established a defense. The Answer raised the issue as to whether the the amounts paid were properly credited to defendant's account, thereby precluding the Court from granting the motion.

This minute order is effective immediately. No formal order nor further notice is required, the tentative ruling providing sufficient notice.

Item 9 **06AM09611 CITIFINANCIAL AUTO VS. MELISSA CAMARENA**

Nature of Proceeding: Writ of Possession Hearing

Filed By: Winn, Brian N.

This matter is dropped from calendar.

Item 10 **06CS00799 THE PEOPLE OF THE ST OF CA VS. \$7000.00 (HEMANT SINGH)**

Nature of Proceeding: Motion To Strike

Filed By: Leonard, Stephanie

Motion to Strike Claim opposing forfeiture is unopposed and is granted. The claim is ordered stricken.

Real party in interest Hemant Singh has willfully failed to obey his discovery obligations and the court order requiring him to provide responses on or before November 30, 2006. Petitioner is not able to determine whether the money seized was legitimate or illegitimate income without this information.

The minute order is effective immediately. No formal order is required, however petitioner shall send a copy of this minute order to defendant and may request a default and default prove up hearing to obtain a judgment on the petition.

Item 11 **06CS01783 IN RE: SHARON MARIE CLIFFORD**

Nature of Proceeding: Petition For Change Of Name

Filed By: Clifford, Sharon Marie

Petition for Name Change is granted.

Item 12 **07CS00017 DEPARTMENT OF FAIR EMPL & HOUSING VS. DAVID L. LLEWELLYN JR.**

Nature of Proceeding: Petition To Compel Compliance with Investigation Discovery

Filed By: Fisher, Gregory J.

This matter is dropped from calendar.

Item 13 **05ED08455 STATE OF CALIFORNIA, ET AL VS. DONNA L. DOBBINS**

Nature of Proceeding: Claim of Exemption

Filed By: Abaya, P.

Claim of exemption is denied to the extent judgment creditor is entitled to \$40 per pay period up to \$80 per month. Any amounts being retained in excess thereof are to be returned to the judgment debtor.

There is no exemption for the necessities of life if the underlying judgment is for the necessities of life. CCP 706.051(c)(1). Judgment creditor has agreed to accept less than the maximum garnishable amount.

Item 14 **05ED13163 STATE OF CALIFORNIA, ET AL VS. COREY B. STEELE**

Nature of Proceeding: Claim of Exemption

Filed By: Vives-Almodovar, A.

Claim of exemption is denied to the extent judgment creditor is entitled to \$50 per pay period, up to \$100 per month. Any amounts being withheld in excess thereof are to be returned to the judgment debtor.

There is no exemption for the necessities of life if the underlying judgment is for the necessities of life. CCP 706.051(c)(1). Judgment creditor has agreed to accept less than the maximum garnishable amount.
