

TENTATIVE RULINGS

FOR: June 8, 2018

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Victoria Wood, Dept. C (Historic Courthouse) at 2:00 p.m.

Estate of Erma M. Santos

18PR000038

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY
AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT
ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: The Petition is GRANTED.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. C (Historic Courthouse) at 2:00 p.m.

Mauro Gumpal v. Queen of the Valley Medical Center, et al.

17CV001391

DEFENDANT QUEEN OF THE VALLEY MEDICAL CENTER'S DEMURRER TO
PLAINTIFF'S COMPLAINT AND MOTION TO STRIKE

TENTATIVE RULING: Hearing on the Demurrer and Motion to Strike is continued to June 28, 2018 at 2:00 p.m. in Dept. C. Defendant is to file a reply to Plaintiff's late-filed opposition by June 21, 2018. The Case Management Conference is continued to June 28, 2018 at 2:00 p.m. in Dept. C.

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. C (Historic Courthouse) at 2:00 p.m.

To be Heard Following Judge Wood’s 2:00 p.m. calendar in Dept. C

Stop Syar Expansion, et al. v. Syar Industries, Inc.

16CV001015

PLAINTIFF’S MOTION TO ENFORCE THE COURT’S APRIL 18, 2018 MINUTE ORDER AND FOR SANCTIONS

TENTATIVE RULING:

On December 17, 2017, the Court, inter alia, deemed as moot plaintiff Stop Syar Expansion’s (“SSE”) motion to compel further responses and documents responsive to request for production of documents numbers 1-35 because defendant Syar Industries, Inc. (“Syar”) produced additional documents on November 7 and 22, 2017. On April 18, 2018, the parties appeared before the Court on SSE’s ex parte application for a case management conference. Following the hearing, in its April 18, 2018 Minute Order, the Court ordered Syar to identify any documents not produced in response to request numbers 1-35 by May 4, 2018. The Court ordered the parties to meet-and-confer “thereafter” regarding what was to be produced. SSE asserts Syar has failed to identify or produce all documents responsive to request numbers 1-35 or verify that no responsive documents exist.

SSE’s motion to enforce the April 18, 2018 Minute Order pursuant to Code of Civil Procedure section 203.010, subdivision (g), is DENIED. This code section lists a number of misuses of the discovery process, including disobeying a court order to provide discovery. It does not, however, provide an independent statutory basis to bring a motion.

Even though the motion is denied, the Court offers clarifying comments regarding the April 18, 2018 Minute Order. SSE’s position, based on the language in the minute order, is that there is no need to meet-and-confer until Syar produces the list of documents. (Dhillon Decl., Ex. I [ex parte hearing] at p. 10:6-9). This is a fair interpretation, which the Court did not intend. The Court intended for there to be a balance between identifying the materials to produce and meeting-and-conferring to resolve any disputes about the scope, burden, relevance, etc. of each request. This balance is necessary since Syar’s underlying objections to the requests remain in light of the December 17, 2017 ruling deeming the motion moot as to the document requests. Indeed, SSE did not move to compel further responses or documents following that order and Syar’s subsequent document production, but instead elected to proceed in a different direction. With this clarification in mind, it appears from the exhibits that Syar has attempted to work cooperatively to provide SSE with the documents responsive to request numbers 1-35, and has produced materials following the filing of this motion. (*Id.*, ¶ 20.) The parties are ordered to continue their efforts to resolve the discovery dispute as it pertains to request numbers 1-35.¹

¹ Although only a draft (which SSE claims should not have been attached), Syar submitted an exhibit demonstrating the parties may be close to resolving the issues surrounding the production of documents. (*Id.*, Ex. J.)

SSE's motion to sanction Syar pursuant to Code of Civil Procedure section 2023.030, subdivision (c), by prohibiting it from introducing evidence in its possession that was responsive to request numbers 1-35 but not produced is DENIED. This section provides the Court may impose an evidentiary sanction if a party misuses the discovery process. Section 2023.030, however, makes clear the Court's authority to impose sanctions must be authorized by another provision of the Discovery Act. (Code Civ. Proc., § 2023.030.) SSE raises no other authority in its notice of motion, and even if it did, an evidence sanction is not appropriate under the circumstances. SSE's request for terminating sanctions contained for the first time in its memorandum of points and authorities is procedurally improper.

SSE's motion under Code of Civil Procedure section 2031.220 to order Syar to transmit to SSE an unqualified statement affirming that all documents responsive to request numbers 1-35 have been produced or no responsive documents remain in Syar's possession or control, except for those portions of documents for which attorney-client privilege or work product production is asserted is GRANTED because Syar represents its document production will be complete within 21-days of the filing of its May 25, 2018 opposition and it will verify document production is complete at that time. Syar shall serve its verification by June 15, 2018.

SSE's request for monetary sanctions for bringing its motion is DENIED. SSE cites to Code of Civil Procedure section 2023.030, subdivision (a), as authority for its request for monetary sanctions against "defendant." This section provides the Court may impose monetary sanctions if a party misuses the discovery process. As noted, section 2023.030, however, makes clear the Court's authority to impose sanctions must be authorized by another provision of the Discovery Act. (*Id.*, § 2023.030.) SSE raises no other authority in its notice of motion. Even if the section authorized the imposition of monetary sanctions, the Court cannot reach the conclusion that Syar misused the discovery process. SSE's reference to Code of Civil Procedure section 2031.320, subdivision (b), in its memorandum of points and authorities is improper. The code provision authorizing sanctions must be raised in the notice of motion. Moreover, SSE does not explain why section 2031.320 applies to the situation at bar. SSE did not move to compel compliance.

Syar's request for monetary sanctions for opposing the motion is DENIED.