

TENTATIVE RULINGS

DEPARTMENT C20 Judge Erick Larsh

Law and Motion Calendar

Court Reporters: Official court reporters (i.e., court reporters employed by the Court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- [Civil Court Reporter Pooling](#); and
- For additional information, please see the court's website at [Court Reporter Interpreter Services](#) for additional information regarding the availability of court reporters.

Tentative rulings: The court endeavors to post tentative rulings on the court's website in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted. The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5220. Please do not call the department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under Cal. R. Ct. 3.1312.

Non-appearances: If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

APPEARANCES: Department C20 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference pursuant to CCP §367.75 and Orange County Local Rule (OCLR) 375. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at <https://www.occourts.org/media-relations/civil.html> prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at <https://www.occourts.org/media-relations/aci.html>. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") also available at

<https://www.occourts.org/media-relations/aci.html> will be strictly enforced. Parties preferring to appear in-person for law and motion hearings may do so pursuant to CCP §367.75 and OCLR 375.

PUBLIC ACCESS: The courtroom remains open for all evidentiary and non-evidentiary proceedings.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

TENTATIVE RULINGS

Date: April 17, 2025, 1:30 p.m.

#	Case Name	Tentative Ruling
3	Human Designs Prosthetic and Orthotic Laboratory, Inc. vs. Indago Inc. 2023-01311346	<p>The law firm of Ferguson Braswell Fraser Kubasta PC seeks an order relieving them as counsel of record for Defendants (1) Indago, Inc.; (2) Indago Tax Credits, Inc.; and (3) Randy Kuhler.LLC. This Motion to Be Relieved is GRANTED, effective upon the filing of the proof of service of the signed order upon the clients and notice of the OSC re: representation.</p> <p>An Order to Show Cause re: Legal representation of Indago, Inc., Indago Tax Credits, Inc., and Randy Kuhler, LLC., is set for May 16, 2025, at 9:00 a.m., Dept. C20. Indago, Inc., Indago Tax Credits, Inc., and Randy Kuhler, LLC are legal entities and cannot appear in this court without an attorney qualified to appear in California courts. (<i>Merco Constr. Engineers, Inc. v. Municipal Court</i> (1978) 21 C.3d 724, 730.)</p> <p>Moving counsel shall give notice.</p>
4	Holidale Inc. vs. Lyu 2023-01340761	<p>Plaintiff Holidale Inc., dba MONTH2MONTH's ("Plaintiff") Motions to Compel Responses to Special Interrogatories, Set One and Requests for Production of Documents, Set One are GRANTED. (See Code Civ. Proc., §§ 2030.290, 2031.300.)</p> <p>Defendant Haicheng Lyu ("Defendant") is ORDERED to provide verified responses without objections to Plaintiff's Special Interrogatories, within 20 days of notice.</p> <p>Defendant is ORDERED to provide verified responses without objections to Plaintiff's Request for Production of Documents, Set One and to produce all documents responsive to the requests, within 20 days of notice.</p> <p>Sanctions in the total amount of \$800 are GRANTED in favor of Plaintiff and against Defendant, payable within 30 days of notice.</p> <p>Plaintiff shall give notice.</p>

<p>5</p>	<p>Milot vs. General Motors LLC</p> <p>2023-01306942</p>	<p>Plaintiffs Christina D. Milot and Kyle D. Milot’s motion to compel the deposition of defendant Simpson I Chevrolet of Garden Grove’s Person Most Qualified is GRANTED. (Code Civ. Proc., §§ 2025.230 [authorizing deposition of person most qualified], 2025.420 [authorizing motion to compel deposition].)</p> <p>Defendant Simpson I Chevrolet of Garden Grove shall produce its person most qualified on all of the deposition topics set forth in plaintiffs’ First Amended Notice of Deposition (Wisniewski Decl., Ex. B). The deposition shall take place on April 18, 2025, at 10:00 AM, at the offices of the Nita Law Firm, 3055 Wilshire Boulevard, Suite 450 Los Angeles, CA 90010.</p> <p>The parties may agree in writing, on or before the scheduled date of the deposition, to conduct the deposition at a different date, time, and/or location, and/or to conduct the deposition by remote means rather than in person.</p> <p>Defendant Simpson I Chevrolet of Garden Grove did not file an opposition to this motion.</p> <p>The court finds that defendant has not acted with substantial justification and imposes monetary sanctions against defendant Simpson I Chevrolet of Garden Grove in the amount of \$1,000.00. (Code Civ. Proc., §§ 2023.020, 2023.450, subd. (g)(1); Cal. Rules of Ct., rule 3.1348(a).) Sanctions are payable to counsel for moving party within 30 days.</p> <p>Plaintiffs shall give notice.</p>
<p>6</p>	<p>Wilson vs. Oscar Health Plan of California</p> <p>2022-01298798</p>	<p>Defendant Oscar Health Plan of California’s motion to bifurcate liability and damages at trial is DENIED. Moving parties have not shown that bifurcation of liability and damages would promote judicial efficiency and economy or avoid prejudice. (Code Civ. Proc., §§ 598, 1048, subd. (b).)</p> <p>Defendant’s request to bifurcate trial regarding financial evidence in connection with punitive damages is GRANTED. (Civ. Code, § 3295, subd. (d).) The court orders that plaintiff shall not present evidence of the profits or financial condition of Defendant Oscar Health Plan of California, unless and until after the trier of fact returns a verdict for plaintiff awarding actual damages against defendant, and finds defendant guilty of malice, oppression or fraud. (Id.)</p> <p>Plaintiff shall give notice.</p>
<p>7</p>	<p>Sohn vs. Kwon</p> <p>2021-01208574</p>	<p>Motion for New Trial</p> <p>Plaintiff Young Sohn’s Motion for a New Trial is DENIED. Plaintiff has failed to meet his burden of establishing any of the grounds upon which a new trial may be granted. (See Code Civ. Proc. §657.)</p> <p>Plaintiff moves for a new trial on the grounds of irregularities in the proceedings (Code Civ. Proc. §657(1)); Accident or surprise (Code Civ. Proc. §657(3)); Newly discovered evidence that could not have been discovered and produced at trial with reasonable diligence (Code Civ. Proc. §657(4)); Insufficiency of the evidence/decision granting nonsuit motion is</p>

against the law (Code Civ. Proc. §657(6); and Error in law occurring at trial (Code Civ. Proc. §657(7).)

Each of the grounds presented in Plaintiff's motion will be addressed in the order set forth in the moving papers.

"An Error in Law by Applying Wrong Standard in Granting Nonsuit" (Code Civ. Proc. §657(7).

A motion for new trial cannot be granted on the basis of an error of law unless the moving party shows that the error was prejudicial. (Cal. Const. Art. VI, §13.) To be prejudicial, the error must have affected the outcome of the trial. (Bristow v. Ferguson (1981) 121 Cal.App.3d 823, 826.)

Here, Plaintiff asserts there was an error in law because the Court weighed evidence in assessing the motion for a nonsuit. However, Plaintiff fails to show that the ruling granting the nonsuit was based upon assessing the weight and credibility of Plaintiff's evidentiary showing.

It is "well settled that in a personal injury action causation must be proven within a reasonable medical probability based upon competent expert testimony. Mere possibility alone is insufficient to establish a prima facie case." (Jones v. Ortho Pharmaceutical Corp. (1985) 163 Cal.App.3d 396, 402-403.)

Here, the ruling granting the nonsuit was based upon the absence of necessary evidence for Plaintiff to establish a prima facie case for any of his causes of action. Namely, Plaintiff's expert, Dr. Grossman, unequivocally admitted that he could not offer an opinion to a reasonable degree of dental certainty that any particular treating dentist fell below the standard of care, nor could Dr. Grossman link any particular dentist's treatment to any of Plaintiff's claimed injuries.

Thus, there was no prejudicial error of law because the Court's ruling on Defendants' motions for nonsuit did not rely upon any assessment of the weight and credibility of Plaintiff's evidentiary showing.

"Granting Defendants' Motion for Nonsuit Was Inconsistent with the Court's Prior Ruling Denying Defendants' Motion for Summary Judgment" (Code Civ. Proc. § 657(1), (6), (7))

Plaintiff argues that the Court's ruling on the motions for nonsuit are erroneous because Plaintiff overcame a motion for summary judgment. However, the order denying the motion for summary judgment was far more reserved than Plaintiff suggests. The Court found there was a triable issue of fact because "Dr. Grossman's opinions are potentially admissible at trial if Plaintiff provides adequate foundation." (See ROA 603, p. 3.) The Court, however, limited Dr. Grossman from offering opinions not rendered at his deposition. (See ROA 770 [granting Defendant's Motion in Limine No. 2.] Dr. Grossman expressly disclaimed having any liability or causation opinions that pertained to any particular treating physician at his deposition. Thus, there is no inconsistency between the Court's ruling denying the motion for summary judgment and granting the motions for nonsuit.

"Defendants' Suppression of the Treating Dentist's Identity, Despite Their Legal Obligation to Disclose, Warrants a New Trial" (Code Civ. Proc, § 657 (3), (4))

Motions for a new trial on the basis of "accident or surprise" and "newly acquired evidence" both require a showing that these circumstances could not have been avoided if the moving party had exercised reasonable diligence.

"'Surprise' as a ground for a new trial denotes some condition or a situation in which a party to an action is unexpectedly placed to his detriment. The condition or situation must have been such that ordinary prudence on the part of the person claiming surprise could not have guarded against and prevented it. Such party must not have been negligent in the circumstances. " (Wade v. De Bernardi (1970) 4 Cal.App.3d 967, 971.)

To be entitled to a new trial on the basis of newly discovered evidence, "[t]he moving party must establish (1) the evidence is newly discovered; (2) he or she exercised reasonable diligence in discovering and producing it; and (3) it is material to the moving party's case." (Plancarte v. Guardsmark (2004) 118 Cal.App.4th 640, 646.)

Plaintiff argues that his belated discovery of the identity of one of his treating dentists warrants a new trial. Plaintiff argues that a new trial is warranted because this belated discovery constituted "accident or surprise" and is "newly discovered evidence". However, Plaintiff fails to show how the identity of the dentists who treated him could not have been timely discovered had Plaintiff used "ordinary prudence" or "reasonable diligence" in conducting his investigation in the facts of this case during the multiple years discovery was open for him. Plaintiff has failed to show that the identity of his treating dentists could not have been discovered had he exercised reasonable diligence. Accordingly, this is not a legitimate basis to grant Plaintiff a new trial.

An Irregularity in Proceedings via Defense Counsel's Misconduct Warrants a New Trial (CCP § 657(1))

Plaintiff accuses Defendant's counsel of making numerous statements that misled either Plaintiff or the Court to Plaintiff's detriment.

Even where counsel engages in repeated instances of unprofessional and dishonest behavior, is admonished by the court numerous times throughout the proceedings and attempts to violate in limine rulings with improper arguments and questions, a motion for new trial is not necessarily warranted. (See Bigler-Engler v. Breg, Inc. (2017) 7 Cal.App.5th 276, 293-295.) There must be a showing that the purported misconduct was prejudicial. (Id. at 296.)

Here, what Plaintiff characterizes as "misconduct" appears to, in fact, be instances of opposing counsel making arguments Plaintiff disagrees with. Plaintiff has failed to show how this alleged misconduct has prevented Plaintiff from having a fair trial. The Motions for Nonsuit were granted based upon the unequivocal admissions by Plaintiff's only expert that he could not offer competent expert opinion testimony on the cause of Plaintiff's claimed injuries.

		<p>Plaintiff’s argument that it was “misconduct” to fail to attach p. 38 of Dr. Grossman’s deposition to the motion for nonsuit is not persuasive. There were ample grounds to grant the motion based upon the testimony that was attached to the motion.</p> <p>Plaintiff’s arguments relating to the remaining causes of action is similarly unavailing, as the failure of Plaintiff to provide any competent evidence of causation undermines all of his causes of action, regardless of whether they had been previously dismissed via demurrer or not.</p> <p>Plaintiff’s accusation that Defense counsel engaged in misconduct by offering legal argument in support of Defendants’ position on the motions in limine also fails to move the needle. Plaintiff points to nothing that goes beyond ordinary advocacy. The only motion in limine that is even material in light of the motion for nonsuit is Defendants’ motion in limine No. 2. Plaintiff argues that the motion was granted based upon a false assertion regarding Dr. Grossman’s opinions, but the record plainly does not reflect that. Dr. Grossman was properly limited in offering opinions he had offered in his deposition.</p> <p>The record is devoid of instances of genuine attorney misconduct, but even if Plaintiff’s accusations are credited, Plaintiff has failed to connect any of this purported misconduct to the outcome at trial.</p> <p>Plaintiff’s Motion is DENIED.</p> <p>The clerk shall provide notice of this ruling.</p>
8	<p>Agranovich vs. Lynn</p> <p>2018-01033827</p>	<p>Plaintiffs/cross-defendants Felix Agranovich and Katherine Agranovich’s motions for attorney fees are granted as modified.</p> <p>There is no dispute that plaintiffs/cross-defendants prevailed on the complaint and cross-complaint.</p> <p>There is no dispute the CC&Rs for the subject premises contained an attorney fee provision.</p> <p>The court finds the contractual attorney fee provision broad enough to encompass the claims asserted in both the complaint and cross-complaint. As such, the court need not allocate the fees amongst the individual causes of action. However, even if the contractual language was <i>not</i> broad enough to cover all claims asserted, the court finds all claims are so intertwined as to make allocation unnecessary. See <u>Amtower v. Photon Dynamics, Inc. (2008) 158 CA4th 1582, 1604-1605</u>; <u>Thompson Pac. Const., Inc. v. City of Sunnyvale (2007) 155 CA4th 525, 555-556</u>.</p> <p>The court also finds that some hours claimed were duplicative in nature or excessive in nature. Therefore, the court has discounted the attorney fees as follows:</p> <p>Plaintiffs/cross-defendants shall recover \$1,589,381.00 on the complaint. Plaintiffs/cross-defendants shall recover \$652,905.75 on the cross-complaint.</p> <p>Plaintiffs/cross-defendants shall recover costs per the Memorandum of Costs.</p>

		<p>Cross-defendants' request for judicial notice is granted.</p> <p>Cross-complainants' request for judicial notice is granted.</p> <p>Defendants objection to the Request for Judicial Notice is overruled.</p> <p>Moving Party to give notice.</p>
<p>9</p>	<p>Domingo Villas Inc vs. Tarnutzer</p> <p>2011-00484245</p>	<p>Plaintiffs Domingo Villas, Inc., and David T. Chamberlain's motion to tax costs is GRANTED in part and DENIED in part. (Cal. Rules of Court, Rule 3.1700, subd. (d) [authorizing motion].)</p> <p>The motion is GRANTED in part as to Item No. 1, in the amount of \$150.00 for "App for Ext of Time to File Resp. Opening Brief." (ROA 2216, p. 8, item no. "rrrr.") Appellate costs, including appellate filing fees, are separately recoverable, and should have been sought in connection with a Memorandum of Costs on Appeal. (Cal. Rules of Court, Rule 8.274, subds. (a), (d)(1)(A).)</p> <p>The motion is DENIED as to the remainder of Item No. 1. Moving parties fail to provide any evidence, as opposed to argument, showing the other challenged costs were unreasonable, unnecessary, or improper. (<i>Jones v. Dumrichob</i> (1998) 63 Cal.App.4th 1258, 1266 ["If items on their face appear to be proper charges, the verified memorandum of costs is prima facie evidence of their propriety, and the burden is on the party seeking to tax costs to show they were not reasonable or necessary," through appropriate evidence]; see also <i>Gilman v. Dalby</i> (2021) 61 Cal.App.5th 923, 940 ["statements in motions are not evidence"], <i>In re Marriage of Duris & Urbany</i> (2011) 193 Cal.App.4th 510, 515 ["The allegations of a brief are not evidence and a brief is not a sworn document"].)</p> <p>The motion is GRANTED as to the Item No. 16 in the amount of \$62,340.30. None of the costs listed in Item No. 16 are allowable costs under Code Civ. Proc., § 1033.5(a), and do not appear proper on their face. Defendants have not provided sufficient evidence showing why these costs should be allowed in the court's discretion, that they are reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation, or that they are reasonable in amount. (Code Civ. Proc., § 1033.5, subds. (c)(2)-(c)(4); see also <i>Gorman v. Tassajara Development Corp.</i> (2009) 178 Cal.App.4th 44, 71 ["Where costs are not expressly allowed by the statute, the burden is on the party claiming the costs to show that the charges were reasonable and necessary"].)</p> <p>The remainder of the motion is DENIED. The remaining challenged costs appear proper on their face, and moving parties fail to provide any evidence showing the other challenged costs were unreasonable, unnecessary, or improper. (<i>Jones v. Dumrichob, supra</i> at 1266 [moving party's burden where challenged items appear proper on their face]; <i>Gilman v. Dalby, supra</i> at 940 [arguments in briefs are not evidence]; accord, <i>In re Marriage of Duris & Urbany, supra</i> at 515.)</p> <p>Defendants' request for judicial notice is GRANTED. (Evid. Code, § 452, subd. (d) [court records].)</p> <p>Defendants shall give notice.</p>

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