

TENTATIVE RULINGS

DEPT C28

Judge Thomas S. McConville

June 30, 2025 at 2:00 p.m.

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) 622-5228. 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 C28 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C28 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at <https://www.occourts.org/media-relations/civil.html> before the designated hearing time. 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" and "Guidelines for Remote Appearances" also are available at <https://www.occourts.org/media-relations/aci.html>. Those procedures and guidelines will be strictly enforced.

Public Access: The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this department by either coming to the department at the designated hearing time or contacting the courtroom clerk at (657) 622-5228 to obtain login information. For remote appearances by the media or public, please contact the courtroom clerk 24 hours in advance so as not to interrupt the hearings.

Arguments: The court will allow arguments on the pending motions up to 10 minutes per side, but those arguments must not repeat arguments previously made in each parties' applicable briefs.

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.

#	Case Name	Tentative
50.	Patel v. Whiting 2024-01443120	<p>Defendant Iris M. Whiting's motion to deem her 1st set of requests for admission admitted as against Plaintiff Kalpana Patel is CONTINUED to August 18, 2025 at 2:00 p.m. in Department C28.</p> <p>This motion is set for hearing today (6/30/25). Under Code of Civil Procedure (CCP) section 1005, subdivision (b), all moving papers shall be "served and filed at least 16 court days before the hearing." Sixteen court days before 6/30/25 is 6/5/25, but this motion was not filed until 6/9/2025, which is 4 days too late.</p> <p>Furthermore, the 16-court-day notice period is extended by 2 court days for service by email under CCP section 1010.6, subdivision (a)(3)(B). Thus, the moving papers must have been served by 6/3/2025 to be timely. Yet the proof of service filed by Defendant Whiting shows that the moving papers were not served until 6/6/2025, which is 3 days too late.</p> <p>Defendant Whiting is ORDERED to cure these defects by properly serving the moving papers on plaintiff with sufficient notice in time for the continued hearing date and to submit a proper proof of service at least 16 court days before the continued hearing date.</p> <p>The court also continues the hearing on defendant's demurrer from August 4, 2025 to August 18, 2025 at 2:00 p.m. to be heard concurrently with defendant's motion to strike. (CRC 3.1322(b)).</p> <p>The case management conference is also continued from August 4, 2025 to August 18, 2025 at 2:00 p.m.</p> <p>Moving defendant shall give notice.</p>
51.	Wells v. Irvine Apartments Community, LP 2023-01345666	<p>The motion by Daniel J. Lavi, The Tenants Law Firm, to withdraw as counsel for plaintiff Valerie Wells is GRANTED, effective upon filing proof of service of the corrected and signed order on the client. (Cal. Rules of Court, Rule 3.1362.)</p> <p>The proposed order shall be corrected to show the 8-18-25 continued Case Management Conference, and to delete the 10-20-25 hearing date on the motion to withdraw, before the court will sign. (ROA 56, ¶¶ 7(a), 7(b), 8.)</p>

		Moving party shall give notice.
52.	ACI Jet Orange County, LLC v. Daichendt 2024-01379682	<p>Cross-Defendant Olivier Leclercq's demurrer to the First Amended Cross-Complaint of Cross-Complainant Joesph Daichendt is CONTINUED to 7/14/25 at 2:00 p.m. in this department.</p> <p>Cross-Complainant filed an opposition to the demurrer on 6/16/25. (ROA No. 166.) There is no proof of service of the opposition upon Cross-Defendant. On 6/20/25, Cross-Defendant served a notice of non-opposition to the demurrer, indicating that no opposition had been filed to the demurrer. A subsequent declaration by Cross-Complainant offers an explanation for non-service.</p> <p>It appears through error or oversight that the opposition to the demurrer was not seen by Cross-Defendant's counsel. Cross-Defendant should be provided an opportunity to respond to the arguments raised in the opposition before the Court reaches the merits of the demurrer. Cross-Complainant shall serve the opposition papers on Cross-Defendant forthwith, and file a proof of service with the Court. Cross-Defendant shall have leave to file a reply brief by no later than 7/7/25.</p> <p>Cross-Defendant shall provide notice.</p>
53.	Safari v. Marks 2023-01300519	<p>Plaintiff Robert Safari's "Motion to Compel and Release of Withheld Communications and Privledged Case Files by Defendat" is DENIED.</p> <p>The legal basis for the requested relief is not entirely clear. The court construes the motion as one to compel further responses to a demand for inspection, copying, testing, or sampling, pursuant to Code Civ. Proc., § 2031.310. (<i>Sole Energy Co. v. Petrominerals Corp.</i> (2005) 128 Cal.App.4th 187, 193 [court has discretion to consider motion based on the relief sought].)</p> <p>First, there is no proof of service of the moving papers or Separate Statement. (Code Civ. Proc., §§ 1013a, 1013b [proof of service requirements]; Cal. Rules of Court, Rule 3.1300, subd. (c) ["Proof of service of the moving papers must be filed no later than five court days before the time appointed for the hearing"].)</p> <p>Second, the Separate Statement was untimely filed on June 13, 2025. (Cal. Rules of Court, Rule 3.1345, subd. (a)(3) [motion to "compel further responses to a</p>

		<p>demand for inspection of documents or tangible things” “<u>must</u> be <u>accompanied</u> by a separate statement;” emphasis added; Code Civ. Proc., § 1005, subd. (b) [motion requires at least 16 court days’ notice, plus additional time for service other than personal service].)</p> <p>Third, the motion is also denied on the merits. Moving party’s evidence only shows that documents were informally requested via email. (Safari Decl., ¶¶ 5, 8, and Exs. C and D thereto.) Merely requesting documents via email does not comply with the requirements of Code Civ. Proc., § 2031.030 [governing demands for inspection, copying, testing, or sampling]. There is no evidence that moving party served demands with the wording stated in moving party’s [untimely] Separate Statement, or that defendant / defense counsel responded with the wording stated therein.</p> <p>Further, even if moving party had in fact served a Code-compliant demand, moving party fails to provide evidence showing good cause. (Code Civ. Proc., § 2031.310, subd. (b)(1); <i>Calcor Space Facility, Inc. v. Superior Court</i> (1997) 53 Cal.App.4th 216, 223-224 [good cause requires evidentiary support].) Finally, and again assuming service of a Code-compliant demand, there is no evidence that moving party met and conferred as to the substance of the alleged responses. (Code Civ. Proc., § 2031.310, subd. b)(2).)</p> <p>The court CONTINUES plaintiff’s motion for reconsideration from July 21, 2025 to July 28, 2025 at 2:00 p.m. in Department C28.</p> <p>The court VACATES plaintiff’s motion to strike defendant’s demurrer/motion to strike scheduled for September 25, 2025, as the demurrer/motion to strike were taken off calendar.</p> <p>Clerk shall give notice.</p>
54.	Wylie v. Chen 2023-01334287	Motion withdrawn. (ROA 137)
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57.	<p>Roe 1 v. Salem Lutheran Church of Orange, California</p> <p>2024-01429682</p>	<p>1. Demurrer</p> <p>Defendant Salem Lutheran Church of Orange California's demurrer to Plaintiffs' complaint is OVERRULED. (Code Civ. Proc. [CCP], § 430.10, subds. (e), (f); <i>Quelimane Co. v. Stewart Title Guaranty Co.</i> (1998) 19 Cal.4th 26, 38-39 [complaint survives demurrer if factual allegations of the complaint are adequate to state a cause of action under any legal theory]; <i>Thomas v. Regents of Univ. of Cal.</i> (2023) 97 Cal.App.5th 587, 611 [all properly pleaded material facts, and reasonable inferences, must be accepted as true, and complaint sufficient if it alleges sufficient ultimate facts to acquaint defendant with nature, source, and extent of cause of action and provide notice of issues sufficient to enable preparation of defense]; <i>Berryman v. Merit Property Management, Inc.</i> (2007) 152 Cal.App.4th 1544, 1556 ["Questions of fact . . . cannot be decided on demurrer."].)</p> <p>Moving party shall file and serve an answer, if any, within 14 days.</p> <p>As a threshold matter, the demurrer for uncertainty under CCP section 430.10, subdivision (f) is OVERRULED because the complaint is far from being so incomprehensible that Defendant cannot reasonably respond. (<i>A.J. Fistes Corp. v. GDL Best Contractors, Inc.</i> (2019) 38 Cal.App.5th 677, 695). In any case, Defendant's demurrer did not specify in what particulars the complaint was uncertain. (<i>Fenton v. Groveland Community Services Dist.</i> (1982) 135 Cal.App.3d 797, 809).</p> <p><u>2nd cause of action for negligent hiring, retention, and supervision of employee - OVERRULED.</u> Plaintiff has alleged sufficient facts to state this claim. (CACI 426 [elements]; <i>Doe v. Lawndale Elementary School Dist.</i> (2021) 72 Cal.App.5th 113, 119, 125-137 ["school administrators have a duty to protect students from sexual abuse by school employees, even if the school does not have actual knowledge of a particular employee's history of committing, or propensity to commit, such abuse"]; see also Compl. ¶¶ 31, 34-36, 45-47, 63.)</p> <p><u>3rd and 4th causes of action for sexual harassment and battery – OVERRULED.</u> Plaintiff has alleged sufficient facts to state these claims. (Civ. Code § 51.9 [elements for sexual harassment]; <i>Brown</i></p>
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v. Ransweiler (2009) 171 Cal.App.4th 516, 526-527 [elements for battery]; *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1110 [ratification is alternate theory to respondeat superior for holding corporate employer liable for employee's violation of Civil Code section 51.9 and or an intentional tort like battery]; see also Compl. ¶¶ 4, 24-31, 34-36, 45-47, 63.)

5th cause of action for intentional infliction of emotional distress – OVERRULED. Plaintiff has alleged sufficient facts to state these claims. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050 [elements]; *Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 534 ["if reasonable persons may differ, it is for the jury to determine whether the conduct was, in fact, outrageous"]; see also Compl. ¶¶ 24-31, 71.)

(2) Motion to Strike

Defendant Salem Lutheran Church of Orange California's motion to strike portions of Plaintiffs' complaint is **CONTINUED** to July 14, 2025 at 2:00 p.m. in Department C28.

As moving party acknowledges, moving party raised the issue of applicability of Code of Civil Procedure (CCP) section 425.14 for the first time in its reply brief. (Reply at p. 2.) "Points raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument." (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1538, internal quotes omitted, quoting *American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453.)

Accordingly, Plaintiffs may file a supplemental brief of no more than 5 pages in length to address CCP section 425.14. Plaintiffs' supplemental brief, if any, must be filed and served at least 5 court days before the continued hearing date.

The case management conference is continued to September 8, 2025 at 9:00 a.m. in Department C28. If, at that time, plaintiff still has not complied with the court's minute order of June 2, 2025 regarding service of defendant Manal Abraham, that defendant will be dismissed without prejudice.

Moving party shall give notice of all of the above.

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59.	<p>Carr v. City of Dana Point</p> <p>2018-00970749</p>	<p>Defendant County of Orange's motion to tax the claimed costs of plaintiff Mitchell Carr is GRANTED in part as follows:</p> <p><i>In General</i></p> <p>A prevailing party may recover certain costs. Ca. Civ. Pro. Section 1032, 1033.5. That party must timely file a memorandum of costs. C.R.C. Rule 3.1700. A party against whom costs are sought may move to strike (or tax) certain costs it believes are not recoverable. C.R.C. Rule 3.1700. The court then uses its discretion to assess the amount of costs to be awarded.</p> <p><u>Expert witness fees</u></p> <p>Expert witness fees are generally not recoverable unless the expert is ordered by the court. <i>Kahn v. The Dewey Group</i> (2015) 240 Cal.App.4th 227. However, there is an exception when an offer to compromise under California Code of Civil Procedure Section 998 is rejected, and the party making the offer obtains a better result at trial. Ca. Civ. Pro. Section 998(d). However there are no facts to support the application of that exception here. According to plaintiff's filing, plaintiff made a § 998 demand for \$2 million prior to trial. Defendant rejected that offer. At trial, plaintiff obtained judgment for \$604, 080.00 against this Moving Party defendant. As such, plaintiff is not entitled to recover post-offer expert witness fees.</p> <p><u>Costs related to deposition cancellation fees</u></p> <p>Defendant's motion argues that plaintiff should not be allowed to recover costs for a cancelled deposition. In <i>Garcia v. Tempur-Pedic North America, LLC</i> (2024) 98 Cal.App.5th 819, the court held that a late cancellation fee paid to a court reporter upon cancellation of a scheduled deposition may be recovered by a prevailing party as an expense related to taking a deposition that was reasonably necessary to the litigation. The court reasoned that such fees are akin to other deposition-related costs that are recoverable under Cal. Civ. Proc. Code § 1033.5. Defendant's motion to strike is denied on this claim.</p> <p><u>Costs related to deposition of witnesses who did not testify at trial</u></p>

Defendant also argues that plaintiff conducted too many depositions. Under this argument, plaintiff should not be able to recover costs, unless the deponent testified at trial. Defendant's argument is not persuasive. The prevailing party is entitled to recover costs for depositions even if the deponent did not testify at trial. The key consideration is whether the deposition costs were "reasonably necessary to the conduct of the litigation" See *Garcia v. Tempur-Pedic North America, LLC*, supra. Despite defendant's protestations regarding witnesses relating back to events that occurred decades ago, that issue in fact came up at trial. Defendant has not satisfied the court that these deposition costs are not recoverable to plaintiff—with certain exceptions for expert witnesses discussed below.

Expert fees in connection with deposition

Defendant's motion is granted as it relates to costs for expert depositions. In *Posey v. State of California* (1986) 180 Cal.App.3d 836, the court found that the statute allowing prevailing parties to recover reasonable costs of taking and transcribing depositions does not specifically include fees charged by expert witnesses for taking depositions.

Parking fees

Plaintiff seeks costs related to the parking fees incurred at trial. Defendant's motion is granted as to those costs. Parking fees for trial are generally not recoverable by a prevailing plaintiff as costs. Under Ca. Civ. Pro. Section 1033.5(b), certain items are explicitly not allowable as costs unless expressly authorized by law, including postage, telephone, and photocopying charges, except for exhibits. Routine expenses for local travel, including parking fees, cab fares, and mileage fees incurred by attorneys, paralegals, or other law firm employees, are not considered reasonably necessary to the conduct of litigation and thus cannot be allowed as reimbursable costs. *Ladas v. California State Auto. Assn* (1993) 19 Cal.App.4th 761.

Service of process – investigative services

Defendant contends the charges credited for investigative services on some cases where a witness couldn't be located should be disallowed.

In opposition, plaintiff correctly argues that the court has discretion to award the costs under Ca. Civ. Pro. Section 1033(a)(16) which permits costs for any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial. Plaintiff further argues that the two witnesses' (Edward Glass and Diane Ballard) location and testimony were essential to his preparation for trial. The exercises its discretion to allow these costs under 1033(a)(16).

Safe Ride Transport under Deposition Fees

Moving Party contends the two entries for \$195.00 on 5-27-21 are unexplained and perhaps duplicative. Plaintiff does not specifically explain the entries in opposition. While travel expenses to and from depositions may be recoverable, they need to be necessary to the litigation and in a reasonable amount. *Thon v. Thompson* (1994) 29 Cal.App.4th 1546, 1548. The court cannot make that determination based on the record before it. Defendant's motion is granted as to these costs.

Service of process costs

Moving Party contends attachment 5, plaintiff's claim of \$32,215.55 for service of process is overstated by \$13,420.49 as many of the entries do not state what type of document was served and some of the entities served with trial subpoenas never testified at trial. However, ordinary witness fees are recoverable under Ca. Civ. Pro. Section 1033.5 if they are reasonably necessary to the conduct of the litigation. The statute does not require the witness to testify for the fees to be recoverable, only that the witness was legally required to attend. As such, the motion is denied as to these costs.

Payment of witness fees and then refunding them

Defendant contends there are several instances of refunds of witness fees, however both the witness fees and refund amounts were added together for the three entries attributed to the Orange County Fire Authority on the memorandum of costs. Defendant is correct. Therefore, the motion is granted in the total amount of \$3,300.00 for witness fees.

Trial transcripts

	<p>Defendant argues that the transcripts claimed (\$2,216.98) were not court ordered and should be stricken. Costs for trial transcripts not ordered by the court are generally not recoverable as costs, except under specific statutory provisions like the Song-Beverly Consumer Warranty Act, which allows for the recovery of reasonable costs incurred in connection with the prosecution of an action. <i>See Warren v. Kia Motors America, Inc.</i> (2018) 30 Cal.App.5th 24. As such, the motion is granted as to those entries.</p> <p><u>Attachment 12 (should have been in Attachment 14) – non electronic filing fee</u></p> <p>Moving Party contends one of the entries on attachment 12 is not for an electronic filing fee, but instead is a charge for \$94.00 for a court reporter. That is correct. Page 62 of the opposition shows an entry of \$94.00 for Jay M. Bullard for “Court Call.” As such, the motion is granted as to that entry.</p> <p><u>Late Filed Corrected Attachment 12</u></p> <p>Defendant challenges the costs claimed by plaintiff on line 12 “Models, enlargements, and photocopies of exhibits.” In plaintiff’s two separate costs memoranda (one submitted October 31, 2024 and the other submitted November 1, 2024), plaintiff claims \$28,074.45 for these costs. As defendant correctly argues, although plaintiff claimed to have submitted evidence for these costs at Attachment 11 (see declaration attached to the memorandum of costs), there is no evidence at Attachment 11 related to plaintiff’s claim for these costs. Plaintiff explains in his opposition that the costs for models and exhibits was at Attachment 8 of the memorandum of costs, under the category of witness fees. And plaintiff filed a corrected Attachment 12 (explaining these costs) in plaintiff’s opposition. Defendant in reply argues that plaintiff’s correction of these items of cost is too late to fall within a court order regarding costs.</p> <p>On a motion to strike or tax costs, if the 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. <i>Ladas v. California State Auto. Ass’n.</i> (1993) 19 Cal.App.4th 761, 774–776 [mere</p>
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	<p>statements in points and authorities and declaration of counsel insufficient to rebut prima facie showing].</p> <p>On the other hand, items that are properly objected to are put in issue, and the burden of proof is on the party claiming them as costs. <i>Id.</i></p> <p>Here, plaintiff in opposition sufficiently addressed the challenged costs. Defendant offers no challenge to the costs, other than timeliness. Defendant's argument is not persuasive.</p> <p>Based on the foregoing, the court orders as follows on defendant's motion to tax costs:</p> <p>Attachment 1: Filing and motion fees - \$1,326.60 – Denied.</p> <p>Attachment 2: Jury fees - \$38.00 Grant</p> <p>Attachment 4: Deposition costs –</p> <ul style="list-style-type: none"> • \$41,811.12 – unreasonable and unnecessary Denied. • \$8,885.00 – expert witness fees disguised as deposition costs Grant. • \$915.00 – Cancellation costs Denied. • \$391.00 – transport services Grant <p>Attachment 5: Service of process - \$13,420.49 Denied.</p> <p>Attachment 8: Witness fees</p> <ul style="list-style-type: none"> • \$7,710.00 – disguised as ordinary witness fees Grant. • \$3,300.00 paying witness fees and refunding them Grant. • \$28,074.45 costs not reflected in attachment 8 Grant. <p>Attachment 11: Court reporter fees-- \$2,216.98 – non-court ordered transcripts Grant.</p> <p>Attachment 12: Models, enlargements and photocopies.</p>
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