

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

COMPLEX Law and Motion Calendar

Judge: HONORABLE SUSAN GREENBERG
Department 3
400 County Center, Redwood City
Courtroom 2B

Thursday, July 25, 2024- AM

IF YOU INTEND TO APPEAR ON ANY CASE ON THIS CALENDAR YOU MUST DO THE FOLLOWING:

1. EMAIL Dept3@Sanmateocourt.org BEFORE 4:00 P.M. CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING, OR
 2. YOU MUST CALL (650) 261-5103 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.
- AND
3. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a) (1) .

Failure to do item 1, or both 2 and 3 will result in no oral presentation.

At this time, personal appearances are allowed but not required. Parties may appear by Zoom, advance authorization is not required for remote appearances

Zoom Video/Computer Audio Information COURTROOM 2B:

<https://sanmateocourt.zoomgov.com/>

Meeting ID: 161 828 3335

Password: 711017

Zoom Phone-Only Information Please note: You must join by dialing in from a telephone; credentials will not work from a tablet or PC

Dial in: +1 (669)-254-5252

(Meeting ID and passwords are the same as above)

TO ASSIST THE COURT REPORTER, the parties are ORDERED to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case	Title / Nature of Case
9:00	
LINE: 1	
21-CIV-02675	CHERYLE L. MCDOW-TILLMAN VS. JAMAL'S ENTERPRISES, INC.

CHERYLE MCDOW TILLMAN
AMAL SHAMIEH

GREGORY J. WOOD
MARK S. PERELMAN

MOTION FOR SUMMARY ADJUDICATION RE: STANDING BY DEFENDANT JAMAL'S ENTERPRISES, INC.

TENTATIVE RULING:

This motion is continued to September 11, 2024 at 10 am on the Court's own motion.

9:00

LINE: 3

21-CIV-02675 CHERYLE L. MCDOW-TILLMAN VS. JAMAL'S ENTERPRISES, INC.

CHERYLE MCDOW TILLMAN
AMAL SHAMIEH

GREGORY J. WOOD
MARK S. PERELMAN

MOTION TO SEAL PORTIONS OF DEFENDANTS CHARLES Y. SHAMIEH, ET.AL.'S MOTION
FOR SUMMARY ADJUDICATION RE: STANDING BY DEFENDANT JAMAL'S ENTERPRISES,
INC.

TENTATIVE RULING:

This motion is continued to September 11, 2024 at 10 am on the Court's own
motion.

9:00

LINE: 4

22-CIV-03291 CHAMARIE SPEARS VS. VITALANT, A CORPORATION

CHAMARIE SPEARS
VITALANT, A CORPORATION

KYLE R. NORDREHAUG
THOMAS M. MCINERNEY

MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND AWARD OF ATTORNEY'S FEES, COSTS AND SERVICE AWARDS BY PLAINTIFFS CHAMARIE SPEARS AND KATHLEEN LEONARD

TENTATIVE RULING:

Plaintiffs ChaMarie Spears and Kathleen Leonard's Unopposed Motion for Final Approval of Class Action Settlement is GRANTED.

Courts consider whether a proposed class settlement is "fair, adequate, and reasonable" in deciding whether to grant final approval for a class action settlement. *Wershba v. Apple Computer, Inc.* (2004) 91 Cal.App.4th 224, 244-245; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed settlement is "fair, adequate, and reasonable" when "the interests of the class are better served by the settlement than by further litigation." *Manual for Complex Litigation* (4th ed. 2008) § 21.61, 462. A presumption of fairness arises when: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of objectors is small. *Dunk, supra*, 48 Cal.App.4th at 1802.

Moreover, other factors can weigh on whether the settlement is approved: (1) strength of plaintiff's case versus the risk, expense, complexity, and estimated duration of further litigation; (2) amount offered in settlement; (3) extent of discovery completed and stage of proceedings when settlement was reached; (4) experience and viewpoint of counsel; (5) government participation; and (6) reaction of class members. *Wershba v. Apple Computer, Inc.* (2004) 91 Cal.App.4th 224, 244-245.

Over half of the settlement fund will be used to compensate affected class members, and the fees subtracted from the total settlement amount are fair, reasonable, and necessary. The settlement fund is also not unreasonable given the legal defenses that Defendant maintained throughout litigation and mediation, and continued litigation would not necessarily have resulted in a better outcome for the class. This Court has already preliminarily granted approval of the terms of the settlement agreement. The terms have not been changed and circumstances have not changed to make the terms unreasonable or unfair. As such, there still exists the presumption that the settlement agreement is fair and reasonable.

Moreover, there have been no objections and only thirteen (13) requests to opt-out, of which only one was from the California Class, which consists of 1,211 individuals. The remaining twelve opt-out notices came from the FCRA Class, which consist of 3,567 individuals. Declaration of Nicole Bench ("Bench Decl."), ¶¶ 11-12. As such, nearly the entire Class (99.7%) will participate in the Settlement and will be sent a settlement check. See Bench Decl., ¶¶ 15-16; Declaration of Norman Blumenthal, ¶ 4. Finally, the assertions made by class counsel are all supported by declarations and the necessary supporting documents.

If the tentative ruling is uncontested, it shall become the order of the Court. The Court will then sign and enter the Proposed Order lodged by counsel.

10:00

LINE: 5

23-CIV-00258 MIN HUO, ET.AL. VS. ZAIHONG TU, ET.AL.

MIN HUO
ZAIHONG TU

ZHENG LIU
PRO/PER

MOTION TO SET ASIDE DEFAULT BY DEFENDANT HUI "FRED" CHEN

TENTATIVE RULING:

The court GRANTS the unopposed motion of defendant Hui "Fred" Chen to set aside default. Defendant shall file and serve the proposed answer to complaint and proposed cross-complaint attached as Exhibits A and B, respectively, to the declaration of Andrew Watters within seven days after notice of entry of order.

A party may move for relief from a judgment taken against him or her "through his or her mistake, inadvertence, surprise, or excusable neglect." (Code of Civ. Proc., § 473(b).)

Judicial policy favors relief, and "doubts must be resolved in favor of relief." (Weil & Brown, Civ. Proc. Before Trial (June 2024 Update) § 5:281.4; citing *Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 134.) Only "very slight evidence will be required to justify a court in setting aside the default" in the absence of prejudice to the other side. (*Brochtrup v. INTEP* (1987) 190 Cal.App.3d 323, 329.)

"Evidence that the defendant was seriously *ill*, or *feeble*, or *unable to understand* that he was being served with process, is sufficient to justify discretionary relief under § 473(b). Such evidence shows 'excusable neglect' in allowing default to occur." (Weil & Brown, *supra*, at § 5:330 (emphasis original), citing *Kesselman v. Kesselman* (1963) 212 Cal.App.2d 196, 207-208.)

Here, Defendant claims that ignorance of the English language and an erratic process server made it so that he did not understand that he had been served. (Declaration of Hui "Fred" Chen, filed Feb. 22, 2024, ¶ 3(a)-(d).) Plaintiffs have not filed an opposition, and indeed even stated in a case management statement that they were attempting to resolve Defendant's default with him. (Plaintiffs' Case Management Statement, filed April 8, 2024.)

Accordingly, the motion is granted.

If the tentative ruling is not contested, it shall become the order of the Court. Thereafter, Defendant Valero Marketing and Supply Co. shall prepare a written order consistent with the Court's ruling for the Court's

signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.
