

PAUL v DHALIWAL

23CV46672

PLAINTIFF COUNSEL'S MOTION TO WITHDRAW

Kevin Lipeles, on behalf of himself and Lipeles Law Group seeks to withdraw as attorneys of record for plaintiff, contending there has been a deterioration of the attorney-client relationship.

Counsel's declaration meets the statutory requirements.

Based on the foregoing, the Motion to Withdraw is **GRANTED**.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the submitted Order.

GRAHAM v CHANCE, et al

23CV46928

PLAINTIFF'S MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT

This matter involves a complaint for employment discrimination and harassment brought by Amber Graham ("Plaintiff") against Defendants Pure Aloha ("Aloha"), Steven J. Chance ("Chance") and Sarah M. Barry ("Barry") (collectively "Defendants.")

Now before the Court is Plaintiff's motion for leave to file a First Amended Complaint ("FAC.") The motion is opposed.

I. Factual and Procedural Background

On September 11, 2023 Plaintiff filed her complaint against Defendants alleging various employment discrimination and harassment arising out of a physical assault that she suffered while an employee of Aloha. Plaintiff alleges that she was wrongfully accused of using a derogatory term against an African-American co-worker and asked to leave work for the day. She alleges that when she attempted to retrieve her personal belongings, she was physically assaulted, resulting in significant injuries including a broken nose and a concussion. The next day, Plaintiff received a termination notice from Aloha signed by Barry citing the allegation of a racial slur and falsely stating that Plaintiff had refused to take place in an investigation.

Plaintiff's initial complaint alleged causes of action for harassment, discrimination, retaliation, wrongful termination, and intentional infliction of emotional distress.

Plaintiff now seeks to add a cause of action for false imprisonment based on new evidence obtained during discovery.

II. LEGAL STANDARD

Leave to amend is permitted under Code of Civil Procedure section 473, subdivision (a). California courts have a "policy of great liberality in allowing amendments at any stage

of the proceeding so as to dispose of cases upon their substantial merits where the authorization does not prejudice the substantial rights of others.’ “ (*Douglas v. Superior Court* (1989) 215 Cal.App.3d 155, 158 [citations omitted].) The “policy favoring amendment is so strong that it is a rare case in which denial of leave to amend can be justified.” (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428 [citation omitted].) Further, “ ‘leave to amend should be denied only where the facts are not in dispute, and the nature of the plaintiff’s claim is clear, but under substantive law, no liability exists and no amendment would change the result.” (*Id.* [citation omitted].)

A motion for leave to amend a pleading must also comply with the procedural requirements of California Rules of Court, Rule 3.1324, which requires a supporting declaration to set forth explicitly what allegations are to be added and where, and explicitly stating what new evidence was discovered warranting the amendment and why the amendment was not made earlier. The motion must also include (1) a copy of the proposed and numbered amendment, (2) specifications by reference to pages and lines the allegations that would be deleted and added, and (3) a declaration specifying the effect, necessity and propriety of the amendments, date of discovery and reasons for delay. (See Cal. Rules of Court, rule 3.1324, subds. (a), (b).) Plaintiff has substantially complied with this requirement.

III. Discussion

Plaintiff seeks leave to amend her complaint in order to add a new causes of action for false imprisonment. According to Plaintiff, on September 18, 2025, Defendants responded to Plaintiff’s discovery requests with video evidence showing the altercation that occurred when Plaintiff attempted to leave the defendants’ business premises. Plaintiff’s counsel avers that within a week of receiving the video evidence, he contacted Defendants’ counsel asking to stipulate to the filing of a FAC. (Declaration of Dante T. Pride (“Pride Decl.”) ¶ 5.)

Defendants oppose the motion on the grounds that the allegations of false imprisonment are not specific enough and are potentially prejudicial. Defendants’ arguments go to issues that may be raised on demurrer or by a motion to strike but not to opposing leave to amend. Aside from vague accusations that the allegations could prejudice Defendants’ rights in this or other proceedings, Defendants provide no evidence or argument that granting leave to amend will prejudice their substantial rights. No trial date has been set and it appears that discovery is ongoing thus the motion is not prejudicially late.

Accordingly, Plaintiff's motion for leave to file the FAC is **GRANTED**.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the submitted Order.

**THE PEOPLE OF THE STATE OF CALIFORNIA v HILAMEN, et
al**

25CV48067

PLAINTIFF’S MOTION FOR ORDER OF POSSESSION

The State of California (“State”) seeks to acquire by eminent domain a portion of real property owned by Rodney and Consuelo Hilaman as part of a project to install a roundabout to improve intersection control and safety at State Routes 26 and 49. (Declaration of Powell Yang (“Yang Decl.”), ¶ 4.)

Parcel 17537-1 is located along State Route 49 up to and along the boundary of the intersection of State Routes 26 and 49. (Yang Decl. ¶3.) The subject larger parcel of .60 acres is adjacent to State Route 49, in the southwest quadrant of the intersection of State Routes 26 and 49. (Yang Decl. ¶ 5.) The larger parcel is irregularly shaped, generally level throughout and at grade with State Route 49 and is vacant. (*Ibid.*) Caltrans seeks a partial acquisition of 0.26 acre in fee for its Project as necessary for completion of its Project. (*Id.* ¶ 6.)

State now moves for an order for prejudgment possession of Parcel 17537-1. The motion is unopposed.

I. Legal Standard

Pursuant to Code Civil Procedure section 1255.410, subd.(a):

“At the time of filing the complaint or at any time after filing the complaint and prior to entry of judgment, the plaintiff may move the court for an order for possession under this article, demonstrating that the plaintiff is entitled to take the property by eminent domain and has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article.”

Where, as is the case here, the motion is unopposed, the Court shall make an order for possession where it finds: 1) the plaintiff is entitled to take the property by eminent

domain and 2) the plaintiff has deposited a sufficient amount under the law. (Code Civ. Proc. § 1255.410(d)(1).)

The determination of the Plaintiff's right to take the property by eminent domain is preliminary only and does not prejudice the defendant's right to demur to the complaint or contest to the taking. Likewise, the denial of an order of possession does not require the dismissal of the proceeding and does not prejudice the plaintiff's rights to fully litigate the matter. (Legislative Committee Comments to Code Civ. Proc., § 1255.410.)

III. Legal Analysis

A. State has the right to take the Property by Eminent Domain

A public entity may not commence an eminent domain proceeding until a resolution of necessity has been adopted. (Code Civ. Proc., § 1245.220.) A resolution of necessity adopted by the governing body of the public entity, pursuant to the eminent domain law, conclusively establishes that the described property is necessary for the construction of a necessary public project. (Code Civ. Proc., § 1245.250.)

On January 31, 2025, the State adopted Resolution of Necessity No. C-22533, declaring that Parcel 17537-1 is necessary for the Project. (Yang Decl., ¶ 10; Ex. 2.) This Resolution conclusively establishes the State's right to take the Subject Property by eminent domain for the Project.

B. State has made the requisite deposit

Pursuant to Code of Civil Procedure section 1255.010(a), the Plaintiff may deposit with the State Treasury the "probable amount of compensation, based on an appraisal, that will be awarded in the proceeding. The appraisal upon which the deposit is based shall be one that satisfies the requirements of subdivision (b)."

Subdivision (b) requires that, before making the deposit, the plaintiff must have a qualified expert : 1) appraise the property and 2) prepare a written statement or basis for that appraisal. The appraisal must contain sufficient detail and specific information regarding how the valuation was made and account for the Property's best uses.

On July 25, 2025, the State deposited \$81,615.00 with the Condemnation Deposits Fund of the State Treasury, for Parcel 17537-1. (Yang Decl., ¶ 11.) The deposit of \$81,615.00 represents the probable compensation to be awarded, based on an expert's appraisal. (Declaration of Jesus Corral ("Corral Decl."), ¶ 2; Ex. 1.) Plaintiff has provided an expert appraisal and declaration from Curtis Bechtold, who is a staff appraiser for the Department of Transportation. (Corral Decl., Ex. 1.) After review of the parcel at issue, Mr. Bechtold determined that the probable amount of just compensation that will be awarded in this proceeding in connection with the taking of Parcel No. 17537-1 is \$81,615.00. (*Ibid.*)

The State filed and served a notice of this deposit in compliance with Code of Civil Procedure section 1255.020.

Plaintiff has provided the declaration of Michelle Patton who is a California State Certified General Real Estate Appraiser and a Member of the Appraisal Institute. (Declaration of Michelle Patton ("Patton Decl.") ¶ 1.) Ms. Patton avers that she has investigated the Property for the purposes of "ascertaining its use, character,

adaptability, quality and location" and is familiar with other property in the area and the values of those properties. (*Id.* ¶ 2.) After review, Ms. Patton concluded that the Fair Market Value of the Property was \$14,000.00. (*Id.*, Ex. A "Appraisal Report".) The Appraisal Report is thorough and detailed and contains the information required by Code Civil Procedure section 1255.010(b).

IV. Conclusion

Based on all the foregoing reasons, State's motion or prejudgment possession is **GRANTED**.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the submitted Order.

TRINITY ALPS FARMS, INC. v BARRETT FARMS, LLC, et al

24CF14779

**PLAINTIFF'S MOTION TO DETERMINE APPEARANCE AND
FOR ENTRY OF DEFAULT/PLAINTIFF'S MOTION TO COMPEL**

This case involves a contract dispute involving an agreement to purchase two 40-ft freezer container units from Defendants by Plaintiff.

Now before the Court are two motions filed by Plaintiff: 1) Motion to Determine Appearance and For Entry of Default and 2) Motion to Compel.

The Motions do not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3.3.7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court [emphasis in original.]

Failure to include this language In the notice may be a basis for the Court to deny the motion.

Plaintiff was previously admonished about the need to comply with this local rule. (Ruling 5/9/25.) Plaintiff is now warned that future failures to comply with rules of court and procedure may result in the denial of motions with prejudice, and possible sanctions.

Plaintiff also filed a single motion to compel when in reality the motion is three separate motions to compel different types of discovery. A party moving to compel discovery must file a separate motion for each type of discovery sought. (*Dunbar v. Mir Fashion, LLC* (2025) 2025 Cal.Super. LEXIS 4391.)

Finally, the motions do not comply with Code Civil Procedure section 1005(a) because the notices of motion were not served at least sixteen (16) calendar days ahead of the hearing date.

The motions are **DENIED**, Without Prejudice.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

10:00 a.m. Calendar

MATTER OF THE LORA J. OSTROM TRUST

25PR8868

**PETITIONER'S MOTION FOR ATTORNEY'S FEES AND
COSTS/TRUSTEE'S MOTION TO STRIKE OR IN THE
ALTERNATIVE TAX COSTS**

This is a probate matter brought by the Wendy Peeples aka Wendy J. Ostrom ("Petitioner") for Instructions for Trustee Distribution and For Accounting and Compelling the Redress of Breach of Trust against the Successor Trustee Dawn J. Ostrom ("Trustee").

Now before the Court is a motion for attorney's fees and costs brought by Petitioner. Simultaneously, there is a motion to strike or tax costs brought by Trustee.

Both motions are opposed.

The petition that initiated this action was filed on March 17, 2025. On June 6, 2025, the Court held the hearing on the petition. Trustee was present but her counsel was not. During the hearing, the Court noted that Ostrom did not know where her attorney was and further that her counsel, Ms. Shafer, had a history of missed appearances. The Court further noted that Ms. Shafer had failed to file any written objections. Thereafter, the Court entered an Order granting the petition, removing Trustee from her fiduciary duties, and charging costs and fees to Trustee. Attorney Shafer was served with the Order by mail and e-mail on June 13, 2025. New counsel has subsequently substituted as attorney of record for Trustee.)

On August 29, 2025, the Court denied Objector's motion for relief from default and motion for a new trial. (These rulings are on appeal.)

The June 13, 2025, Order provided that Objector was to: 1) pay the Attorney's Fees and Costs incurred by Petitioner as a result of having to prepare and file this Petition, and 2) to be surcharged in a sum equal to the Attorney's Fees and Costs incurred by Petitioner.

Petitioner now moves for \$17,362.00 in attorney's fees and \$954.02 in costs. In addition to opposing the motion, Objector also moves to tax certain costs and fees.

I. Legal Standard

Generally, the “prevailing party” is entitled as a matter of right to recover costs for suit in any action or proceeding. (CCP § 1032(b).) The losing party may dispute any or all of the items in the prevailing party’s memorandum of costs by a motion to strike or tax costs. (CRC, Rule 3.1700(b).) A motion to strike challenges the entire costs bill whereas a motion to tax challenges particular items or amounts. Verification of the memorandum of costs by the prevailing party’s attorney establishes a prima facie showing that the claimed costs are proper. (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1267.) To overcome that prima facie showing, the objecting party must introduce evidence to support its claim that the claimed costs were not reasonably necessary to carry out the litigation. (*Rappenecker v. Sea-Land Service, Inc.* (1979) 93 Cal.App.3d 256, 266.)

In situations other than those specifically addressed by section 1032, the trial court has discretion to determine whether there is a prevailing party and to allow costs or not. (Code Civ. Proc., § 1032(a)(4).)

II. Legal Analysis

Code of Civil Procedure section 1032(a)(4) defines a prevailing party as:

[T]he party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against the defendant.

Petitioner is the prevailing party because she has obtained relief pursuant to the Petition. Having determined that Petitioner is the “prevailing party” for purposes of the request for costs, the Court now must consider Trustee’s alternative motion to reduce certain costs and fees.

The probate court has broad equitable powers over the trusts within its jurisdiction. (*Hollaway v. Edwards* (1998) 68 Cal.App.4th 94, 99.)

A. Timeliness of the Motion

Trustee first argues that the motion for fees and costs should be denied because it is untimely pursuant to California Rules of Court, rule 3.1700(a).¹ Pursuant to this Rule of Court, a prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first. Objector argues that the Petitioner should therefore have filed her motion on or before July 10, 2025, (fifteen days after notice of June 13, 2025 Order). Alternatively, Objector argues that the motion should have been filed on or before October 8, 2025, (fifteen days after entry of order denying Objector's motions for new trial/relief from default).

Code of Civil Procedure section 664.5(c), defines "judgment" to include "any judgment, decree, or signed order from which an appeal lies." (Code Civ. Proc., § 664.5(c).) The Court entered two separate orders from which Objector has appealed: the June 13, 2025 Order essentially entering default and the September 18, 2025 Order denying Objectors motion for post-judgment relief.

The Court exercises its discretion to extend the time for filing a motion for costs by thirty days. (CRC 3.1700(b)(3).) The Court concludes that the Petitioner therefore timely filed the motion after the September 18, 2025, Order.

Plaintiff's Costs

Plaintiff seeks the following costs:

• Filing Fees and CMCs	\$575.03
• Electronic filing or service	\$175.00
• Other	<u>\$221.58</u>
Total:	\$954.02

¹ The filing of a notice of appeal does not stay any proceedings to determine the matter of costs and does not prevent the trial court from determining a proper award of attorney fees claimed as costs. (*Korchemny v. Piterman* (2021) 68 Cal.App.5th 1032, 1052.)

Objector objects that these fees are unsubstantiated. “If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they were not reasonable or necessary.” (*Ladas v. California State Auto Assn.* (1993) 19 Cal.App.4th 761, 774.) Objector has not demonstrated how basic filing fees and allowable costs were unreasonable or unnecessary.

Accordingly, Plaintiff is entitled to collect the entire \$954.02 in costs.

Attorney’s Fees

Petitioner seeks attorney’s fees pursuant the June 13, 2025, Order in which the Court granted the reasonable attorney’s fees incurred “as a result of having to prepare and file this Petition.”

A Court generally awards attorney’s fees pursuant to the lodestar method. Under this approach, a base amount is calculated from a compilation of time reasonably spent and reasonable hourly compensation of each attorney and may be adjusted in light of various factors. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 394-395.) The attorney’s fees must be reasonable and the court has broad discretion to determine the amount of a reasonable fee. (*Syers Properties III, Inc. v. Rankin*, (2014), 226 Cal.App.4th 691, 703.)

Petitioner requests \$17,362.00 in attorney’s and administrative fees for 39.3 hours of work. Petitioner asserts she is entitled to fees for the following:

- 3.2 Hours - Case intake, investigation, client communications, pre-petition demands
- 6.6 Hours -- Petition drafting, filing, service
- 1.5 Hours – June 6, 2025, hearing
- 8.1 Hours – Responses to Objector’s post-judgment motions
- 10.2 Hours – Appeal and enforcement of judgment
- 0.8 Hours – “administrative work”
- 4.5 Hours – fees motion
- 5.2 Hours – Anticipated reply ISO motion

Trustee objects that many of the hours billed go outside the Court’s order regarding fees because these hours are unrelated to the subject petition itself. Specifically, Trustee takes issue with all pre-petition consultation, the amount of time spent at the June 6th hearing, the time spent replying to the Trustee’s motions, and all appellate work. Trustee

argues that the appropriate amount of compensable hours is 11.3 hours. Trustee does not take issue with the hourly rate.

The Court concludes that the pre-petition work was necessarily related to “preparing and filing” the Petition. The time spent at the June 6, 2025, hearing was also reasonable and related to “preparing and filing” the Petition. However, the hours billed in opposing Trustee’s post-judgment motions and any appellate work are not reasonably related to “preparing and filing” the Petition. Neither does the Court find the 0.8 hours in “administrative time” compensable because it is unclear what this work encompassed. The Court also finds the Petitioner’s hourly rate of \$440 is not in keeping with rates in for similar work in this jurisdiction and reduces the hourly rate to \$300, the usual and customary hourly rate in this market.

Accordingly, the Court awards attorney’s fees in the amount of \$3,390.00 (\$300 x 11.3 hours.)

The Court also orders that Trustee be surcharged in an amount equal to the allowed attorney’s fees and costs.

III. Conclusion

The Court **GRANTS** the motion for attorney’s fees and costs **in part**. The Court **GRANTS** the motion to tax **in part**.

The Court **GRANTS** Plaintiff’s request for **costs** in the amount of **\$954.02** and **attorney’s fees** in the amount of **\$3,390.00 (Total: \$4,344.02)**. The Court further awards a surcharge in an equal amount if the award is paid from Trust funds. **Petitioner is therefore awarded a total of \$8,688.04 IF the award is paid from Trust funds.**

The clerk shall provide notice of this ruling to the parties forthwith. Petitioner to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.