

## **Tentative Rulings –September 29, 2005**

**To request a hearing on any matter on this calendar, you must call the Court at (209) 223-6360 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.**

### **Serber v. Estate of Johnson: 04CV3608**

#### ***Plaintiff's Motion to Compel Nicholas Johnson to Appear at Deposition and Request for Sanctions***

Plaintiff's Motion to Compel Nicholas Johnson to appear at Deposition and for Sanctions is hereby continued, on the court's own motion, to October 13, 2005 at 3:15p.m. in Department 2. Plaintiff's Notice of Motion fails to comply with Amador County Local Rule 4.03. Plaintiff to file and serve an amended notice, in compliance with Rule 4.03, no later than October 6, 2005.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.

### **Serber v. Estate of Johnson: 04CV3608**

#### ***Plaintiff's Motion for Order of Production of California Motor Vehicle License Photographs***

Plaintiff's Motion for Order of Production of California Motor Vehicle License Photographs is hereby continued, on the court's own motion, to October 13, 2005 at 3:15p.m. in Department 2. Plaintiff's Notice of Motion fails to comply with Amador County Local Rule 4.03. Plaintiff to file and serve an amended notice, in compliance with Rule 4.03, no later than October 6, 2005.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.

### **Village Concepts, Inc. v. Philip Diorio, et al.: 03CV2634**

#### ***Plaintiff's Motion to Strike Defendant's Entire Memorandum of Costs***

Plaintiff's Motion to Strike Defendant's Entire Memorandum of Costs is hereby denied.

The service of the notice of entry of judgment typically starts the time running in which a party may file post-trial motions and/or appeals. (*Filipescu v. California Housing Financing Agency* (1995) 41 Cal.App.4th 738, 740.) A party has 15 days from the date of the service of the notice of entry of judgment to file a memorandum of costs. (Cal. Rules of Ct., Rule 870.)

The effect of an amended judgment on the time for appeal and other post-trial motions depends upon whether the amendment substantially changes the judgment or instead corrects a clerical error. (*CC-California Plaza Associates v. Pallar & Goldstein* (1996) 51 Cal.App.4th 1042, 1048-1049.) When it is a substantial modification of the judgment, the amended judgment supercedes the original judgment, as there can only be one final judgment in an action. (*Ibid.*) Therefore, the time for appeal is calculated based upon the amended judgment. (*Ibid.*) However, if the amendment corrects a

clerical error and does not involve the exercise of judicial discretion, the original judgment remains effective and appealable and the amended judgment will not operate as a new judgment. (*Ibid.*)

In this instance, the amended judgment deleted the portion of the original judgment dealing with Plaintiff's right to possession of personal property and determined that Defendant was the prevailing party. This is a substantial modification of the original judgment. Therefore, the amended judgment supercedes the original. The notice of entry of revised judgment was served on August 1, 2005. Defendant filed the memorandum of costs on August 4, 2005. Therefore, the memorandum of cost was timely.

For the foregoing reasons, the instant Motion is denied. Defendant to recover costs in the amount of \$781.30.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.

**Village Concepts, Inc. v. Philip Diorio, et al.: 03CV2634**

***Plaintiff's Motion to Set Aside Void Judgment and Substitute Proper Judgment***

Plaintiff's Motion to Set Aside Void Judgment and Substitute Proper Judgment is denied in part.

The parties agree that term "mobile home" should be changed to "manufactured home." Therefore, the Court grants Plaintiff's Motion only to the extent it requests correction of the foregoing clerical error.

However, the remainder of Plaintiff's arguments were raised and denied in his prior Motion to Set Aside Void Judgment. Plaintiff cannot relitigate these claims.

Plaintiff is hereby ordered to prepare an Amended Judgment in compliance with this order.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.