

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, May 22, 2024 3:00 p.m.
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa**

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

TO JOIN ZOOM ONLINE:

Department 19 Hearings

MeetingID: 160-421-7577

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PLEASE NOTE: The Court’s Official Court Reporters are “not available” within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1. 23CV01020, Looney v. Latteria

Motion to Compel Answers to Post Judgment Discovery; and for Award of Monetary Sanctions **GRANTED**. Sanctions of \$60 awarded to the moving party against Defendants.

Facts and History

Plaintiff complains that Defendants, operating The Latteria, dba Oppi’s, dba Oppi’z, at 1026 State St in Santa Barbara, California, entered into a written contract with Plaintiff’s assignor, Youngs Market Company (“Youngs”) to purchase alcoholic beverages but that although Youngs performed, Defendants breached the contract by failing to pay the amount owed. Plaintiff filed this action to collect the debt, allegedly \$2,346.41, plus costs, legal fees, and interest.

Defendants failed to appear so Plaintiff obtained their default on January 4, 2024 and obtained a default judgment against them on January 10, 2024, for the amount of \$3,048.17, including interest and costs.

Post-Judgment Discovery

Plaintiff served Defendants by mail with post-judgment discovery on January 23, 2024; the discovery included one set of production demands and one set of interrogatories; responses were due on February 29, 2024, within the standard 30 days; however, Defendants have not responded even though plaintiff made efforts to meet and confer.

Motion

Plaintiff moves the court to compel Defendants to respond to the post-judgment discovery. Plaintiff also seeks monetary sanctions of \$60 in costs.

There is no opposition.

Substantive Discussion

Judgment creditors may propound written post-judgment interrogatories and demands for production on judgment debtors. CCP §§708.020(a), 708.030. These may be enforced in the same manner as regular discovery. CCP §§708.020(c), 708.030(a). This applies any time that “a money judgment is enforceable.” CCP section 708.010. One limitation is that the judgment creditor may not serve this discovery on a judgment debtor if the latter has, within the preceding 120 days, responded to such discovery previously served under the provisions, or been examined. CCP §§708.020(b), 708.030(b).

Under CCP §§2030.290 and 2031.300, when no response has been made, the propounding party may move to compel responses. The moving party need simply demonstrate that the interrogatories were served, the time has expired, and no response has been made. There is no meet-and-confer requirement for a motion to compel response where none has been made. Nor is there a deadline other than the discovery cut-off, prohibiting the court from hearing a discovery motion within 15 days of trial, which logically would not apply to post-judgment discovery. CCP §§2024.010, 2024.020.

Plaintiff has met its burden. In addition to showing that Defendants have failed to respond to properly served discovery, it meets the requirements for post-judgment discovery in §§708.020(b), 708.030(b). The court GRANTS the motion.

Sanctions

According to CCP §§2030.290, 2031.300, 2023.010, and 2023.030, if a party has failed to respond to interrogatories and a production request, the court may impose sanctions of the reasonable costs. If the moving party asks for sanctions that appear reasonably related to the filing costs and the opponent does not refute the reasonableness, the sanctions should be granted. *Ghanooni v. Super Shuttle* (1993) 20 Cal.App.4th 256.

The sanctions which pro-per litigants may recover is limited to out-of-pocket costs such as paying for legal research, copies, transportation, and the like. *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1179.

Plaintiff requests sanctions for the actual out-of-pocket expense of the filing fee, \$60. This is reasonable and proper. The court awards Plaintiff \$60 as requested.

Conclusion

The court GRANTS the motion and awards Plaintiff \$60 in costs. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing counsel shall inform the preparing counsel of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

2. 24CV01757, J.G. Wentworth Originations, LLC v. E.

Petition for Approval for Transfer of Payment Rights GRANTED.

Facts

In its first amended petition (the “Petition”), Petitioner, J. G. Wentworth, LLC, seeks approval of a transfer to it from Sarah Ealey, aka “S.E.” (“Payee” or “Transferor”), of rights to a structured settlement payment, as set for in the petition and in a declaration of Payee. Petitioner has filed a declaration of Payee (the “Declaration”) and a notice that Payee signed the proposed order which Petitioner has submitted.

Petitioner alleges that Payee is the recipient of the structured settlement payments pursuant to a 1999 settlement agreement (“the Settlement”) for damages in a medical-malpractice claim, under which Allstate Settlement Corporation, n/k/a Everlake Settlement Corporation is the obligor (“Obligor”) and Allstate Life Insurance Company n/k/a Everlake Life Insurance Company is the annuity issuer (“Issuer”). The Settlement provided for 1) 15 years of monthly payments from July 19, 1999 through June 19, 2014; 2) plus at least 13 years and nine months of monthly payments from July 19, 2014, starting at \$6,100 per month and increasing annually by 4% with compounding interest; 3) plus 9 lump-sum payments, on July 19 of specified years from 2013 through 2040, with the first four at \$25,000, the next three at \$50,000 from 2020 through 2030, one of \$75,000 in 2035, and one of \$100,000 in 2040. The Settlement payments were not intended to pay for future medical care or treatment related to the incident which led to the Settlement.

Of these payments, Payee has agreed to transfer 45 payments of \$1,500, from July 19, 2024 through March 19, 2028, increasing 4% every 12 periods. Payee will receive \$45,109.41 from the transaction.

According to the Petition and Declaration, Payee is 50 years old and single with one minor 11-year-old child, who does not live with her. She lives at 441 7th Street West, Sonoma, CA 95476 and is currently employed at about 40 hours per week, with an income of about \$600 a week. She currently receives about \$4,000 a month from the Settlement annuity. Payee must pay court-ordered child-support obligations of \$1,000 a month and she is current on those payments.

Payee has previously transferred portions of the Settlement payments to the same Petitioner, approved in prior actions SCV-273353 on July 21, 2023, and 23CV00407 on November 8, 2023. In the first action, she transferred 9 payments of \$400 from October 19, 2023, through June 19, 2024, 45 payments of \$416 increasing 4% every 12 months from July 19, 2024, through March 19, 2028, and one payment of \$15,000 due July 19, 2025. Payee received \$23,242.70 in that transaction. In the second action, Petitioner transferred monthly payments of \$250 each, increasing at 4% annually beginning July 19, 2024, and ending March 19, 2028; one payment of \$7,500 on July 19, 2025; and 1 payment of \$18,500 on July 19, 2030. Petitioner received \$16,333.60.

Payee used the money from the prior transactions to pay an attorney to assist her in a custody dispute and she wants the money from the current transaction in order to pay outstanding bills.

Court Approval of Transfers of Structured Settlement Payments

Part 2 of Division 2 of the Insurance Code covers Life and Disability Insurance. Article 2.3 within Chapter 1 of that Part covers Transfer of Structured Settlement Payment Rights. Section 10134(n) defines “transfer” as “any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made for consideration.” It defines “payee” as one who received tax-free payments under a structured settlement agreement and “transferee” as one receiving structured settlement payment rights in a transfer.

In 2009, the primary statutes governing such transfers and petitions to approve them, Ins. Code sections 10136 and 10139.5, were amended, with 10139.5 being significantly altered. Ins. Code section 10139.5, as amended in 2009 and effective January 1, 2010, governs petitions to approve transfers of rights to structured settlement payments. It states that the transfer is only effective if a court order approves the transfer in advance.

Service and Notice

The transferee must file and serve on all interested parties a notice of the proposed transfer and application at least 20 days before the hearing. Ins. Code Section 10139.5(c)(2). Section 10139.5 (c)(2) states “[n]ot less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under this article, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its authorization....”

The statute does not indicate *how* the documents must be served. However, section 10139.2 states that “[a]ny notice required by this article shall be deemed to have been given if addressed to the recipient's last known address and deposited, first class postage paid, in the United States mail not less than five calendar days prior to the date on which notice is required.”

Petitioner filed a proof of service demonstrating proper, timely service by regular first-class United States mail and overnight mail, in compliance with the requirements. Petitioner served the Transferor/Payee as well as the Issuer and Obligor by mail. Petitioner also served a courtesy copy by e-mail.

Required Findings

Ins. Code section 10139.5 states that the transfer is only effective if a court order approves the transfer in advance. According to subdivision (a), this must include express written findings that:

- 1) the transfer is in the best interest of the payee, considering welfare and dependents;
- 2) the transferee had advised the payee in writing to seek independent professional advice on the transfer (required in section 10136) and the payee either obtained or knowingly waived in writing the opportunity to receive such advice;
- 3) the transferee has complied with the notification required in subdivision (f)(2) and provided a disclosure form complying with section 10136 and the agreement complies with 10136 and 10138;
- 4) the transfer does not contravene any applicable statute or order, etc.;
- 5) the payee understands the terms;
- 6) the payee understands and does not wish to exercise rights to cancel.

Required Information in the Petition

Section 10139.5(c)-(d) and (f)-(j) cover necessary information and procedures for the petition. According to (c), the petition must include:

- 1) the payee's name, address, and age;
- 2) the payee's marital status and name of spouse if married or separated;
- 3) names, ages, and residence of minor children or dependents;
- 4) amounts and sources of payee's monthly income and financial resources as well as those of a spouse if married;
- 5) whether payee is obligated under any support orders, plus details thereof; and
- 6) information of any prior transfers discussed in subdivision (b), addressed below in considering the fairness and propriety of the transfer.

Subdivision (d) merely adds that this information in (2)-(6) above is deemed to be included if provided at the hearing in oral or documentary evidence and properly made part of the record. Section 10139.5(f) requires that the transferee bring the application in the court of the county in which the payee resides. The transferee must file and serve on all interested parties a notice of

the proposed transfer and application at least 20 days before the hearing. Section 10139.5(f)(1). The notice must include:

- A) copies of the transferee's petition and application;
- B) the agreement;
- C) list of payee's dependents and their ages;
- D) the section 10136(b) disclosure;
- E) the annuity contract;
- F) the qualified assignment agreement;
- G) the underlying structured settlement agreement;
- H) if E, F, and G be unavailable, a showing as to why and that Petitioner made sufficient efforts to obtain them;
- I) proof of service;
- J) notification that any party may support, oppose, or respond to the application; and,
- K) notification of the time and place of hearing. Ibid.

The Information and Documents Included

Petitioner includes all of the information and documents required in 10139.5(c). Petitioner has also provided all of the documents required as set forth above. The only document missing is the Settlement itself, but in the affidavit of Payee, attached to the Petition, Payee describes the Settlement and states that she has been unable to find the actual Settlement agreement document and has no other record of it.

Section 10136: Notice and Agreement Requirements

Written Disclosure

According to section 10136, at least 10 days before the payee executes a transfer agreement, the transferee must provide the payee with a separate written disclosure statement with applicable information and in substantially the same form as set forth in the subdivision. This must state the following in 14-point type, in a bold box, identified as "important terms":

- 1) a required disclosure that the payee is selling a right to receive payments and should receive the disclosure at least 10 days before signing any contract.

- 2) the amount of the transferred future payments and amount received in return.
- 3) the discounted present value of the future payments and the rate used to calculate it.
- 4) the discount rate used to determine the purchase price.
- 5) that the purchase price is less than the present value of the future payments stated above because the discount is greater than the rate utilized by the IRS.
- 6) the interest rate payee would be paying if borrowing the amount and paid it back in installments now being sold.

It must also state

- 7) charges for expenses, itemized and added below, to figure the amount being paid.
- 8) that payee should get independent professional advice about whether the sale is good for payee.
- 9) payee should seek independent legal or financial advice regarding the transaction, transferee will pay the cost of that advice up to \$1,500, and the transferee's accountant, counsel, or actuary may not advise you in this transaction.
- 10) payee should get independent professional advice from an accountant or lawyer experienced in tax matters about any income tax.
- 11) court approval is needed, stated in 14-point boldface type, that payee will receive nothing prior to approval and approval may take more than 30 days.
- 12) the sale will mean that payee will no longer receive the future payments that are sold.
- 13) the payee may cancel the contract before court approval, again in 14-point boldface type, without any cost or obligation.
- 14) payee will get notice of the hearing date.
- 15) that needs no special form to conceal but must do so in writing, indicating the name and address to which payee should send a cancellation.
- 16) that payee should contact the local district attorney or the state Attorney General if feeling mistreated.

The disclosure statement, signed by Payee and included at Petition Ex. B, satisfies all of these requirements. The disclosure agreement is stamp-dated on each page March 3, 2024, and above the signature line states that Payee acknowledges receiving it at least 10 days prior to signing the

agreement. The signature on the final copy of the transfer agreement, provided as Exhibit A, is dated March 14, 2024, meeting the required 10-day gap between the two.

The Agreement

Section 10136 also requires that the agreement be written in at least 12-point type, complete, without blanks, and conspicuously set forth:

- 1) that the agreement is not effective until the date of a final court order approving and that payment to the payee will be delayed to allow for court review;
- 2) the amounts and dates of the payments;
- 3) the aggregate amount of transferred payments;
- 4) the aggregate amount of expenses to be deducted from the purchase price and an itemization;
- 5) the amount payable to payee;
- 6) the discounted present value of all payments to be transferred;
- 7) the federal rate used to determine present value;
- 8) the effective equivalent interest rate;
- 9) the quotient from dividing net payment by discounted present value;
- 10) statement that payee should obtain independent professional advice on tax consequences and that transferee may not refer payee;
- 11) that the approving court retains jurisdiction over it;
- 12) a statement that the payee should report unfair or similar circumstances to the local district attorney or attorney general; and
- 13) a statement that the payee may cancel, set forth in 14-point type in a box immediately above the payee's signature space.

The Agreement satisfies these requirements. It includes all of the above required information and sets it forth in the required manner.

Other Requirements

The transferee must pay all court costs and the court retains continuing jurisdiction. Section 10139.5(g), (i).

Subdivision (h) reiterates the requirement, from section 10136, that the transferee must inform the payee of the right to seek independent legal and financial advice and that the transferee will pay the expenses up to \$1,500.

The Agreement satisfies these requirements as well.

Fairness, Reasonableness, and Transferor's/Payee's Best Interests

Subdivision (b) states that the court, in determining whether the transfer should be approved, is fair, reasonable, and in the payee's interest, should take into account the welfare and support of the payee's dependents and the totality of the circumstances, including:

- 1) The payee's reasonable preference to complete the proposed transaction, considering payee's age, capacity, legal knowledge, and apparent maturity.
- 2) The stated purpose.
- 3) The payee's financial situation.
- 4) The terms, including whether payee is transferring monthly or lump sum payments and all or part of the future payments.
- 5) Whether the future periodic payments of the settlement were intended to pay for the future medical care and treatment of the payee relating to injuries sustained in the incident and whether the payee still needs those payments to pay for that future care.
- 6) Whether the future periodic payments of the settlement were intended to provide for the necessary living expenses of the payee and whether the payee still needs them to pay for the expenses.
- 7) Whether the payee is, at the time of the proposed transfer, likely to require future medical care and treatment for the injuries that the payee sustained in connection with the incident that was the subject of the settlement and whether the payee lacks sufficient other resources, including insurance.
- 8) Whether the payee has other means of income or support sufficient to meet future financial obligations for maintenance and support of the payee's dependents, including any child support obligations. The payee shall disclose to the transferee and the court his or her court-ordered child obligations.
- 9) Whether the financial terms of the transaction are fair and reasonable.
- 10) Whether the payee completed previous transactions involving the payee's structured settlement payments, the timing and size, and whether the payee was satisfied.

11) Whether the transferee attempted previous transactions involving the payee's structured settlement payments that were denied, dismissed, or withdrawn prior to a decision on the merits, within the past five years.

12) Whether, to the best of the transferee's knowledge after making inquiry, the payee has attempted structured settlement payment transfer transactions with another person or entity that were denied, or which were dismissed or withdrawn prior to a decision on the merits, within the past five years.

13) Whether the payee, family, or dependents, face a hardship situation.

14) Whether the payee received independent advice. *The court may deny or defer ruling if the court believes that the payee does not fully understand the proposed transaction and should obtain independent advice.*

15) Any other factors or facts that the any interested party calls to the court's attention.

Petitioner, in the petition and Payee's own declaration, shows that Payee has a monthly income of \$600 plus \$4,000 from the Settlement, one minor child, and a child- support obligation of \$1,000 per month. She wishes to obtain the money in order to pay outstanding bills.

The transaction reasonably appears to be in the Payee's best interests, the explanation for the need and explained purpose of obtaining the money are both reasonable on their face. No prior transactions were denied and the Settlement payments were not intended to pay for medical care or treatment and such medical care does not appear to be an issue here. Moreover, the court notes that despite this transaction and the two prior transactions, Payee is not transferring all of the payments due under the Settlement and will still be receiving a portion of the payments as ongoing income. The court finds that the transaction meets this requirement.

Conclusion

The court **GRANTS** the petition. The court will issue an order using the proposed order which Petitioner has submitted. The court notes that Payee herself has already signed the order in agreement.

3. MCV-262637, Loya-Lopez v. Aguilar

Motion is CONTINUED to July 3, 2024, at 3:00pm in Dept. 19. The attorney has not filed proof of service showing service on the client and the attorney has failed to state why he has brought this motion instead of filing a substitution, which he must do. The attorney must cure both of these defects in a timely manner pursuant to statute prior to the new hearing date.

****This is the end of the Tentative Rulings.****