

Monday, November 22, 2021

TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. 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 WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.

21-CVC-12114 JERGER, DANIEL VS. SHAWN KARAI DBA NEW YORK FAMILY FITNESS

CIVIL MISCELLANEOUS MOTION - PLAINTIFF

TENTATIVE RULING:

On the court's own motion Plaintiff's Motion to Compel Production of Documents is continued to December 6, 2021 at 8:30 a.m. in Department 1.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

21-CVC-12191 CAMBRA, YANI VS. TREHEARNE, KATHLEEN

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:

Plaintiff YANI CAMBRA's unopposed Motion for Attorneys' Fees is GRANTED.

In unlawful detainer cases, attorneys' fees are recoverable only if an agreement between the parties provides for their recovery or if the parties are entitled to attorneys' fees by statute. (CCP §1021; Selma Auto Mall II v Appellate Dep't (1996) 44 Cal.4th 1672, 1684. See Civil Code §1717 (general statute governing contractual attorneys' fees in actions on contracts).)

Plaintiff's requests attorneys' fees in the amount of \$2,500, pursuant to Civil Code § 1717:

(a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

(b) (1) The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2), the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section.

The basis for the amount of the fee request derives from the parties' joint written rental agreement, which states "In any action or proceeding arising out of said agreement, the prevailing party between landlord and tenant shall be entitled to reasonable attorney fees and costs, collectively not to exceed \$2,500." (Complaint Exh. 1, Section 36.)

On July 30, 2021, the court granted Plaintiff's motion for summary judgment, effectively establishing Plaintiff as the prevailing party as required under Civil Code § 1717(b)(1).

Plaintiff is to submit an order conforming to this ruling for the court's signature.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

**CIVIL MISCELLANEOUS MOTION - DEFENDANTS**

## TENTATIVE RULING:

Respondent's Motion for Reconsideration is continued to January 4, 2022 at 8:30 a.m. in Department 1.

Respondent's motion fails to comply with local rule of court 4.03(d):

"All noticed motions and demurrers in civil matters shall include the following information in the notice:

'Pursuant to Local Rule 4.03, the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. To receive the tentative ruling, call (209) 257-2603 or visit the Court's website, [www.amadorcourt.org](http://www.amadorcourt.org). If you intend to appear and contest the tentative ruling, you must notify the court and opposing counsel of such intent by telephone no later than 4:00 p.m. on the court day preceding the hearing. If you do not provide proper notice to the court and the opposing party no hearing will be held.'

Respondent is ordered file an amended notice of motion or submit a written stipulation. The amended notice must comply with the service and notice requirements in CCP §§ 1005 & 1010, et seq.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.