

**SUPERIOR COURT OF CALIFORNIA,**

COUNTY OF SAN DIEGO

SOUTH BUILDING

TENTATIVE RULINGS - July 14, 2011

EVENT DATE: 07/15/2011

EVENT TIME: 01:30:00 PM

DEPT.: N-30

JUDICIAL OFFICER: Thomas P. Nugent

CASE NO.: 37-2010-00061530-CU-DF-NC

CASE TITLE: KELMAN VS. KRAMER

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Defamation

EVENT TYPE: Discovery Hearing

CAUSAL DOCUMENT/DATE FILED:

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Defendant's motion for "production of documents" is denied. The motion seeks to compel further responses to a request for production of documents and was required to be filed and served within 45 days after the service by Plaintiff of his responses to the request for production of documents. CCP § 2031.310(c). This time period is jurisdictional. Sexton v. Superior Court (1997) 58 Cal.App.4th 1403, 1410. CCP § 473 relief is not available.

Even assuming the motion was timely served, and the court finds that it was not, the discovery is not reasonably calculated to lead to the discovery of admissible evidence in this case. To the extent that Defendant seeks to examine what version of the judgment was sent to Plaintiff by the court, this is irrelevant since the judgment of public record is the judgment that was entered on 9/24/08 and such judgment can be located in case no. GIN044539 as a public record. As for Defendant's reference to a 12/18/08 judgment, there is no such judgment and rather, on 12/18/08, it appears from the court file that the clerk properly added to the original judgment the costs awarded to Plaintiff and initialed on the original judgment the date on which this was done. Pursuant to CRC § 3.1700(b)(4), after the time has passed for a motion to strike or tax costs or for determination of that motion, the clerk must immediately enter the costs on the judgment. Alternatively, costs are added to and become part of the judgment upon the filing of an order allowing the costs. CCP § 685.090.

The reference to an amended judgment in Judge Pressman's order of 1/7/09 appears to be a reference to the fact that the original judgment was amended on 12/18/08 by the ministerial insertion of costs into the judgment by the court clerk pursuant to CRC § 4/1700(b)(4).

As for the alleged failure of the original judgment to include any reference to costs awarded to Defendant by Judge Dato on 4/3/09, there was no place on the original judgment for such costs to be added by the clerk. Defendant could have, and apparently failed to submit an amended judgment that included such an award of costs. It was neither Plaintiff nor the court's obligation to draft and enter such an amended judgment. Any redress as to such costs must be raised in GIN044539. The remaining requests have no relevance to this action in that the appeal of the judgment in GIN044539 is final.

The court shall impose a monetary sanction against any party who unsuccessfully makes a motion to compel a further response to a demand unless it finds that the one subject to the sanction acted with substantial justification or other circumstances render the imposition of the sanction unjust. CCP § 2031.310(h). The court declines to impose sanctions against Defendant at this time. However, any further unmeritorious or frivolous motion shall result in the imposition of sanctions.

