

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 3

4 No. C 08-1739 CW

5 COMMONWEALTH ANNUITY

6 Plaintiff,

7 v.

8 DALESSIO,

9 Defendants.  
 10 \_\_\_\_\_/

**FILED**

SEP 23 2008

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND

ORDER PROVIDING  
 NOTICE TO PRO SE  
**DEFENDANT** OF  
 REQUIREMENTS FOR  
 OPPOSING MOTION  
 FOR SUMMARY  
 JUDGMENT

11  
 12 Plaintiffs have informed the Court of their intention to file  
 13 a summary judgment motion in this case. If Plaintiffs choose to  
 14 file the motion, they must do so by serving Defendant with a notice  
 15 of the motion and a copy of the motion, indicating the time of the  
 16 scheduled hearing on the motion. They must do so at least 35 days  
 17 before the date of the hearing. Defendant's opposition, including  
 18 any supporting documents, must be filed by 21 days before the date  
 19 of the hearing. Plaintiff's reply to Defendant's opposition,  
 20 should they choose to file one, is due 14 days before the hearing.

21 Rule 56 of Federal Rule of Civil Procedure governs summary  
 22 judgment motions. A summary judgment motion is a request for an  
 23 order of judgment, without a trial, in favor of the party bringing  
 24 the motion, Plaintiffs here. In such a motion, the party moving  
 25 for summary judgment presents the facts that are not disputed and  
 26 argues that these facts entitle it to judgment as a matter of law.  
 27 In other words, Plaintiffs will be arguing that there does not need  
 28 to be a trial in the case against it because undisputed facts show

1 that they are entitled to a judgment in their favor.

2 The relevant parts of Rule 56 are as follows:

3 (c) Motion and Proceedings Thereon. . . . the  
4 judgment sought shall be rendered forthwith if the  
5 pleadings, depositions, answers to interrogatories, and  
6 admissions on file, together with the affidavits, if any,  
7 show that there is no genuine issue as to any material  
8 fact and that the moving party is entitled to a judgment  
9 as a matter of law. A summary judgment, interlocutory in  
10 character, may be rendered on the issue of liability alone  
11 although there is a genuine issue as to the amount of  
12 damages.

13 . . . . .

14 (e) Form of Affidavits; Further Testimony; Defense  
15 Required. Supporting and opposing affidavits shall be  
16 made on personal knowledge, shall set forth such facts as  
17 would be admissible in evidence, and shall show  
18 affirmatively that the affiant is competent to testify to  
19 the matters stated therein. Sworn or certified copies of  
20 all papers or parts thereof referred to in an affidavit  
21 shall be attached thereto or served therewith. The court  
22 may permit affidavits to be supplemented or opposed by  
23 depositions, answers to interrogatories, or further  
24 affidavits. When a motion for summary judgment is made  
25 and supported as provided in this rule, an adverse party  
26 may not rest upon the mere allegations or denials of the  
27 adverse party's pleading, but the adverse party's  
28 response, by affidavits or as otherwise provided in this  
rule, must set forth specific facts showing that there is  
a genuine issue for trial. If the adverse party does not  
so respond, summary judgment, if appropriate, shall be  
entered against the adverse party.

29 . . . . .

30 (g) Affidavits Made in Bad Faith. Should it appear  
31 to the satisfaction of the court at any time that any of  
32 the affidavits presented pursuant to this rule are  
33 presented in bad faith or solely for the purpose of delay,  
34 the court shall forthwith order the party employing them  
35 to pay to the other party the amount of the reasonable  
36 expenses which the filing of the affidavits caused the  
37 other party to incur, including reasonable attorney's  
38 fees, and any offending party or attorney may be adjudged  
guilty of contempt.

39 Rule 56 (emphasis added).

40 Although the actual text of Rule 56, cited above, controls in

1 any dispute as to its interpretation, the Court provides the  
2 following brief explanation of Defendant's rights and obligations  
3 under the Rule: If Defendant does not file an opposition  
4 supported by evidence, the Court may enter summary judgment in  
5 favor of Plaintiffs. If Defendant does not contradict the  
6 Plaintiffs' evidence with evidence of his or her own, the Court  
7 might take Plaintiffs' evidence as true and enter judgment against  
8 Defendant. Under Federal Rule of Civil Procedure 56(e), the  
9 following types of evidence may be submitted:

- 10 1. Statements made in the complaint if the complaint (a)  
11 was signed under penalty of perjury and (b) shows  
12 personal knowledge (i.e., "first-hand" or "non-hearsay"  
13 knowledge) of the matters stated;
- 14 2. Affidavits or declarations. Any person signing  
15 an affidavit or declaration must have personal knowledge  
16 of the facts stated. At the end of a declaration or  
17 affidavit, the document must state, "I declare under  
18 penalty of perjury that the foregoing is true and  
19 correct," and be signed by the individual who has the  
20 required personal knowledge. Any declarations or  
21 affidavits that are unsigned will not be considered.
- 22 3. Copies of documents so long as they are submitted with  
23 proof that the records are what they purport to be.  
24 Specifically, Defendant must declare under penalty of  
25 perjury that the documents are true and correct copies  
26 of the documents, and must specify how the documents  
27 were obtained; and
- 28 4. Transcripts of depositions, answers to interrogatories,  
or admissions obtained in this proceeding.

1 To defeat a summary judgment motion, Defendant must present  
2 evidence that, when viewed together with Plaintiffs' evidence,  
3 convinces the Court that his or her claims should go to trial.

4 If Defendant has a good reason why facts are not available to  
5 him or her at the time required to oppose the summary judgment  
6 motion, the Court may consider a request to postpone ruling on the  
7 motion. To support such a request, Defendant must provide the  
8 Court and opposing counsel with an affidavit or declaration  
9 (signed under penalty of perjury) setting forth the reasons the  
10 facts are unavailable and indicating how those facts would support  
11 his or her claims.

12 Defendant is reminded that if he or she does not file and  
13 serve a written opposition with supporting documents or a request  
14 to postpone with a supporting affidavit or declaration, the Court  
15 may deem this failure to act to be consent to the granting of  
16 Plaintiffs' summary judgment motion.

17 This notice shall constitute the only such notice from the  
18 Court concerning the Plaintiffs' summary judgment motion. The  
19 Court will not provide any further information regarding the  
20 interpretation of Federal Rule of Civil Procedure 56 and will not  
21 answer unsolicited questions about the applicable rules of  
22 procedure.

23 Dated:

SEP 23 2009



CLAUDIA WILKEN  
United States District Judge

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25 g:\cwall\legalstd\pro-sesj.adv  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

COMMONWEALTH ANNUITY AND LIFE  
INSURANCE COMPANY et al,

Plaintiff,

v.

DALESSIO et al,

Defendant.

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Case Number: CV08-01739 CW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 26, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Dalessio Family 2003 Trust  
John Dalessio  
Rita Dalessio  
16 Via Las Encinas  
Carmel Valley, CA 93924

Dated: September 26, 2008

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk