

## **TENTATIVE RULINGS**

### **LAW & MOTION CALENDAR**

**Wednesday, January 30, 2025 3:00 p.m.**

**Courtroom 17 – Hon. Jane Gaskell  
3035 Cleveland Avenue, Santa Rosa**

**PLEASE NOTE:** In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

**CourtCall is not permitted for this calendar.**

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

#### **TO JOIN ZOOM ONLINE:**

##### **D17 – Law & Motion**

Meeting ID: 161 126 4123

Passcode: 062178

<https://sonomacourt-org.zoomgov.com/j/1611264123>

#### **TO JOIN ZOOM BY PHONE:**

By Phone (same meeting ID and password as listed for each calendar):

+1 669 254 5252

The following 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 as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by **4:00 p.m. the court day immediately preceding the day of the hearing.**

#### **1-2. 24CV01898, Kehoe v. Borcher**

Plaintiff Aurelian Bricker's motions to compel further responses from Defendants Kathleen and Steven Welch (together "Defendants" or "the Welches") to Requests for Production of Documents, Set One are **GRANTED**. The Welches shall serve further responses to the discovery within 20 days of receipt of the notice of entry of this Court's order on these motions.

For the two motions, the Court awards sanctions of **\$3,830.82 in fees** and **\$120.00 in filing costs** as requested.

#### **PROCEDURAL HISTORY**

Plaintiff commenced this action against Defendants regarding the parties' rights and obligations under a private roadway known as Maple Glen Road that serves eight real properties in Glen Ellen, all of

which are benefited and burdened by an easement that provides access over the roadway. (Memorandum of Points and Authorities in Support of Motions against Defendants [“MPA”], 4:15-20.) The easement was damaged during the Nuns Fire and the parties’ dispute over a PG&E Claim made relating to the damage. (*Id.* at 5:10-14.)

Plaintiff Bricker served all Defendants with identical copies of Set One of Requests for Production of Documents on June 13, 2024. (*Id.* at 5:21-23.) Defendants served identical responses to the discovery requests on August 15, 2024, containing standard objections and the statement that: “Responding Party will produce all non-privileged documents in its possession, custody, or control that are responsive to this request.” (*Id.* at 5:23-28.) On August 20, 2024, Defendants produced 84 pages containing multiple copies of the same Road Maintenance Agreement, the PG&E Claim submitted by Defendant Borcher, and a recorded description of the easement. (*Id.* at 6:1-5.) In the email accompanying the production, Defendants’ counsel specified that they were produced in response to Request for Production No. 1. (*Id.* at 6:6-7.) Plaintiff’s counsel met and conferred with Defendants’ counsel requesting documents responsive to Requests for Production Nos. 2-17, but Defendants counsel responded that the documents produced were intended as responsive documents to all of Plaintiff’s requests. (*Id.* at 6:8-13.) After further attempts to meet and confer, Defendants refused to produce anything further asserting that Plaintiffs had no right, title, or interest in Trust Funds received from PG&E Claim as a result of damage to the easement sustained from the Nuns Fire. (*Id.* at 6:13-21.) Plaintiff Bricker’s position is that whether Defendants are obligated to respond to discovery or not is not based on Defendants’ belief regarding what the result of this matter will be, but rather on whether the information sought is reasonably calculated to lead to the discovery of admissible evidence directly relevant to the parties’ claims in dispute. (*Id.* at 6:21-28, 7:1-3.)

Plaintiff Bricker moved to compel all Defendants’ further responses and production of responsive documents and also requests sanctions. Having already entered an order on Plaintiff’s other motions on January 15, 2025, the Court now considers the motions to compel against the Welches. All Defendants filed one single opposition stating that they were opposing the sanctions requested in the motions because otherwise the motions are moot because Defendants have since served all previously withheld documents Bates stamped as Defendants 85 through 1455. Plaintiff replied to Defendants’ opposition.

## ANALYSIS

### Legal Standard

A party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. (C.C.P. §2031.210(a).) If a responding party is not able to comply with a particular request, or part thereof, that party “shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand.” (C.C.P. § 2031.230.) The statement shall also specify “whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party,” and shall also set forth “the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.” (*Ibid.*) Otherwise, if a responding

party is objecting to a demand only, then the responding party must identify the demanded document, tangible thing, land, or electronically stored information to which an objection is being made, set forth the grounds for objection, and if privileged, provide a privilege log for the demanded items that are privileged. (C.C.P. § 2031.240.)

Per section 2031.320(b), “the court shall impose a monetary sanction...against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.”

#### Plaintiff Bricker’s Motions to Compel

Plaintiff Bricker moves to compel further responses and production to the discovery requests arguing that the Welchs’ responses are evasive and incomplete with meritless objections. (MPA, 8:4-19.) Plaintiff argues that the information sought by the discovery requests is both relevant and discoverable because it is directly related to the parties’ claims. (*Id.* at 8:21-27, 9:1-19.) As to the Welchs’ arguments about assignment, Plaintiff argues that they are unavailing because Defendants’ premature conclusion as to Plaintiff’s claims do not prevent Plaintiff from seeking relevant information through discovery and Plaintiff contends that the Road Maintenance Agreement did not assign or transfer Plaintiffs’ predecessor-in-interest’s personal property. (*Id.* at 12:4-28, 13:1-24, 14:1-15.)

Plaintiff Bricker requested sanctions in the amount \$1,975.00 for all of the motions to compel plus the filing costs of each motion. The requested sanctions for all of Plaintiffs’ motions are broken down into 13.5 hours of work at a rate of \$475.00 done by Counsel Giannini, 4 hours of meet and confer efforts by Counsel Coryell, a partner at the firm, at a rate of \$635.00, and an anticipated 4 hours for Counsel Coryell’s review of Defendants’ opposition, preparation of a reply brief, and preparation for the hearings on the motions.

#### Defendants’ Opposition to Sanctions

Defendants only oppose the sanctions requested. They argue that the motions are otherwise moot because, after a re-evaluation of Defendants’ position regarding Plaintiffs’ documents requests, Defendants produced all previously withheld financial documents. Defendants did not justify their actions with legal authority, but argue that they do not believe there is any basis on which they should be ordered to provide further responses and that sanctions be denied.

#### Reply to Opposition

Plaintiff requests the Court to reject Defendants argument because the opposition was untimely and was not based on any facts or legal authority. Plaintiff also notes that no amended, code-compliant responses have ever been provided, so the motions to compel are not moot.

## Application

The Court finds here, as it did with Defendants' opposition to Plaintiff's other discovery motions heard on January 15, 2025, that the Welches' opposition is unsupported by any authority that justifies their failure to timely produce documents that were relevant and responsive to Plaintiff's requests. Their position regarding the validity of Plaintiff's claims neither precludes Plaintiff from seeking discovery regarding those claims nor absolves Defendants of their obligation to respond to those discovery requests and produce any relevant, non-privileged information sought. Though all Defendants claimed financial privacy as a reason for withholding the documents, Defendants ultimately provided all of the documents after Plaintiff had filed the motions to compel. By doing so, Defendants conceded their claimed privilege.

As the Welches have not made any persuasive argument supported by legal authority to justify the delay in producing responsive documents to Plaintiff and the lack of any amended responses, the Court will grant Plaintiff's motions and award sanctions and fees. The Court already considered and awarded partial sanctions for the four motions heard on January 15, 2024. The Court now awards sanctions for the motions against the Welches. Filing costs are awarded in the amount of \$120.00 for two motions. Counsel Giannini requested \$6,412.50 for 13.5 hours of work at a rate of \$475.00 on six motions, so proportionally, the Court previously awarded \$1,068.75 per motion. Counsel Coryell's requested \$5,080.00 for 8 hours of work at a rate of \$635.00 as partner at the firm for the six motions, so proportionally, the Court awarded \$846.66 per motion. For the two motions to compel filed against the Welches, the Court awards In total, the Court awards \$3,830.82 in attorney's fees.

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## CONCLUSION

Based on the foregoing, Plaintiff's motions are **GRANTED**. For these two motions, the Court awards sanctions of **\$3,830.82 in fees and \$120.00 in filing costs** as requested. The Welches shall serve further responses to each discovery request within 20 days of receipt of the notice of entry of this Court's order on these motions. Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

## **3. SCV-269230, Fidelity National Title Company v. Darling**

Department 17 has recused itself and the matter has now been reassigned to Department 19 (Hon. Oscar A. Pardo) for all purposes. A notice of reassignment for all purposes will be sent to the parties. Cross-Defendant Darling's Motion for Judgment on the Pleadings will be continued to February 5, 2025, at 3:00 pm in Department 19. A tentative ruling will be posted online by 2:00 pm, on February 4, 2025, in Department 19's law and motion calendar.

## **4. SCV-273032, Scholten v. Lokka**

Cross-Defendant Tristan Wilkes ("Wilkes") unopposed motion for summary adjudication against Cross-Complainants Deborah and Kirk Lokka's ("the Lokkas") Cross-Complaint with respect to

indemnity for Plaintiffs' requested recovery for filial loss of consortium is **GRANTED** per Code of Civil Procedure ("C.C.P.") section 437c.

### **BACKGROUND & PROCEDURE**

Plaintiffs Lynn and Vincent Scholten filed their Complaint against the Lokkas for motor vehicle and general negligence alleging that their daughter was significantly injured during a car accident involving the Lokkas' vehicle and incurred damages exceeding \$100,000.00 because the Lokkas allowed their vehicle to be used in a negligent manner. (Memorandum of Points and Authorities ["MPA"], 1:27, 2:1-5.) The Plaintiffs have included "loss of enjoyment of life and companionship of [their] daughter due to her significant injuries as a result of the defendants' negligence in the recovery they are seeking. . (MPA, 2:5-9.)

The Lokkas filed a Cross-Complaint for total equitable and comparative indemnity and contribution against Wilkes. (MPA, 2:10-14.) Arguing that California Law does not recognize a filial loss of consortium action, Wilkes moves for summary adjudication with respect to indemnity for the claim for filial loss of consortium. (MPA, 4:23-24, 5:1-2.)

The moving papers and notice of hearing were timely served via the Lokkas' counsel on December 9, 2024. Regardless, no opposition was filed by the Lokkas.

### **REQUEST FOR JUDICIAL NOTICE**

Judicial notice of official acts and court records is statutorily appropriate. (Evid. Code §§ 452(c)-(d).) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) Courts may take notice of public records, but not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Wilkes' requests for judicial notice of Plaintiff's Complaint and the Lokkas' Cross-Complaint are **GRANTED**.

### **ANALYSIS**

Per Code of Civil Procedure ("C.C.P.") section 437c(a), any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. Summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (C.C.P. § 437c(c).) Similarly, a party may move for summary adjudication as to one or more causes of action within an action if that party contends that the cause of action has no merit or that there is no affirmative defense against it, or that defendants owed or did not owe a duty to the plaintiff. (C.C.P. § 437c(f).)

Wilkes argues in the motion that the Lokkas cannot claim indemnity for a theory of recovery not recognized under California law because there can be no indemnity where there is no liability. (MPA, 4:4-12.) Wilkes moves for summary adjudication for indemnity with respect to the filial loss of consortium claim because, as held in *Foy v. Greenblott* (1983) 141 Cal.App.3d 1, “losses of parental or filial consortium are not actionable... the inadequacy of monetary damages to make whole the loss suffered, considered in light of the social cost of paying such awards, constitutes a strong reason for refusing to recognize the claim.”

There was no opposition filed against the motion, so there was also no reply brief filed for the Court to consider.

As filial loss of consortium is not an actionable claim recognized in California, there can be no liability for which another party may claim indemnification. The Court will grant the unopposed motion for summary adjudication for indemnity with respect to the filial loss of consortium claim.

### **CONCLUSION**

Based on the foregoing, Wilkes’ unopposed motion for summary adjudication is **GRANTED**. Wilkes shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).