

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, February 16, 2024, 3:00 p.m.
Courtroom 16 –Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa**

**TO JOIN “ZOOM” ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359**

<https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09>

**TO JOIN “ZOOM” BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)**

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 the Court by telephone at **(707) 521-6729**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing. Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. MCV-256963, Shelton v Long

This matter comes on calendar for the motion of Defendant Chris Long (“Long”) for an order vacating the default judgment entered in this case on January 24, 2024, on the grounds that the judgment is void due to irregularities in the proceedings, specifically the lack of a court order for Defendants Chris Long and Britteny Deas (“Defendants”) to answer and lack of proper notice of the entry of order. **The motion is DENIED.**

This action was filed by Plaintiff Jim Shelton (“Plaintiff”) on October 14, 2021, alleging unlawful detainer of property located at 935 C McConnell Avenue in Santa Rosa. On March 22, 2022, Long filed a demurrer to the complaint. The hearing on the demurrer was continued from April 5, 2022, to April 12, 2022, to allow Plaintiff’s then-counsel to obtain a copy of the demurrer. However, on April 7, 2022, Plaintiff filed a first amended complaint making the demurrer moot. An amended summons was issued the same day. Trial was set for April 19, 2022.

On April 15, 2022, Defendants filed motions to quash the amended service of summons, which were thereafter heard on April 21, 2022, and April 29, 2022. On the latter date, Defendants’ motions to quash were denied and Defendants were ordered to file an answer within five days of April 29, 2023. The order on the motion was entered on April 29, 2022 and mailed to all parties the same day.

Thereafter, the proceedings were stayed when Defendants filed a writ of mandate on May 9, 2022. The proceedings were reinstated on October 3, 2022.

On November 17, 2022, this court mailed all parties notice of the reassignment of this case and notice that the matter was on calendar for further proceedings on December 15, 2022. On that date, Defendants' motions to quash were again denied.

By this court's order dated August 10, 2023, Defendants' motions to quash were again set for hearing. The motions were heard on August 30, 2023, and were again denied.

On September 5, 2023, Defendants filed a demurrer to the first amended complaint, which was overruled on October 18, 2023. The order was mailed to Defendants on November 16, 2023. As Defendants had not filed answers to the first amended complaint, on November 28, 2023, Plaintiff filed a request for entry of Defendants' defaults. The defaults were entered. A default judgment for restitution of the subject premises was entered on December 8, 2023. This motion was filed on December 20, 2023.

Long complains that the order overruling Defendants' demurrer did not order the Defendants to file an answer and that they were not served with the order. As to the latter issue, based upon the record in this case, this court mailed notice of the ruling on the demurrer to the Defendants on November 16, 2023.

Regarding the issue of filing an answer subsequent to the ruling on the demurrer, this court is not required to instruct the Defendants on how to comply with legal requirements. California Rules of Court, Rule 3.1320(g) provides: "Following a ruling on a demurrer, unless otherwise ordered, leave to answer or amend within 10 days is deemed granted, except for actions in forcible entry, forcible detainer, or unlawful detainer in which case 5 calendar days is deemed granted."

Pursuant to the Rules of Court, Defendants had 5 calendar days to file their answer after the ruling on the demurrer. As Long did not file an answer, his default and the subsequent default judgment were properly entered against him. Accordingly, the motion is DENIED.

2. SCV-270023, KS Mattson Partners LP v Benedetti Farms Inc

This matter is on calendar for the motion of Plaintiff KS Mattson Partners, LP ("Plaintiff") for summary adjudication on its first cause of action for trespass to land, second cause of action for trespass to chattels, and third cause of action for conversion against Defendants Arthur Benedetti and Aaron Benedetti ("Defendants") on the grounds that there are no disputed issues of material fact concerning these causes of action. **The motion is DENIED.**

1. Complaint

Plaintiff's complaint alleges it is the owner of real property located at 23250 Maffei Road in Sonoma ("the Property"). On February 1, 2021, Plaintiff entered into a Commercial Property Purchase Agreement with Edward Benedetti to purchase the Property along with turkey rendering equipment ("the Equipment") from Benedetti Farms, Inc. Escrow closed on March 31, 2021. On

May 7, 2021, Arthur Benedetti and Aaron Benedetti entered onto the Property without Plaintiff's consent and took the Equipment.

2. First Cause of Action – Trespass to Land

This cause of action alleges that on May 7, 2021, Defendants entered onto Plaintiff's Property without Plaintiff's consent or knowledge.

The elements of trespass are: (1) the plaintiff's ownership or control of the property; (2) the defendant's intentional, reckless, or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5) the defendant's conduct was a substantial factor in causing the harm. (*Ralphs Grocery Co. v. Victory Consultants, Inc.* (2017) 17 Cal.App.5th 245, 261–262.)

A purchase agreement for the Property is dated February 1, 2021, between Plaintiff and Edward Benedetti. (Plaintiff's Exhibit 1.) On April 23, 2021, escrow closed on the transaction and the Property was granted from Edward Benedetti, as Trustee of the Walker [*sic*] Benedetti Trust to Plaintiff. (*Id.*, Exhibits 2, 6.) Edward Benedetti signed as co-trustee. (*Ibid.*)

In opposition, Defendants provide evidence that the Property was still subject to a lease. A lease agreement provided by Defendants shows the Property was subject to a lease for a term of 20 years that terminated on December 31, 2025. (Opposition, Exhibit 1.) Pursuant to the commercial lease, Benedetti Farms dba Willie Bird Turkeys leased the Property to Walter and Aloha Benedetti. (*Ibid.*) However, in an amendment to that lease, the lessee was changed to Benedetti Farms, Inc. dba Willie Bird Turkeys and the lessor was changed to Walter and Aloha Benedetti. (*Ibid.*)

Defendants also argue that Edward Benedetti, the purported trustee who sold the Property, had previously been found incompetent, which they state was a publicly known fact. In support, they provide the criminal docket for Edward Benedetti listing an offense date of June 29, 2006 involving a DUI. In courtroom minutes dated November 29, 2007, the defendant, Edward Benedetti, was listed as being in Sutter hospital. The minutes state: "Submitted on Dr. Apostle's report by both counsel Defendant found Mentally Incompetent." (Opposition, Exhibit A-1.) The surrounding circumstances of this finding are not provided. It is not clear that the court meant Edward Benedetti was mentally incompetent for all purposes.

However, Defendants also provide a letter dated March 11, 2021, from Sonoma Valley Community Health Center signed by Crystal Ward, FNP-C, which states that Edward E. Benedetti is a patient under Ms. Ward's medical care and had recently been diagnosed with Parkinson's Disease and dementia with Lewy bodies. (*Id.*, Exhibit B.) The letter states that the latter is an aggressive and progressive form of dementia, and it has already limited Edward's ability to cognitively reason and impairs his executive functioning. (*Ibid.*) Therefore, Ms. Ward attested that it was not appropriate to have Edward participate in a deposition. (*Ibid.*)

Defendants further provide a document purporting to be signed by Walter Benedetti on January 20, 2005, wherein Walter Benedetti states that he is removing Edward Benedetti as trustee for the Property. (*Id.*, Exhibit B-2.)

Defendants argue that Plaintiff has failed to submit evidence that Riley Benedetti or Edward Benedetti were officers or directors of Benedetti Farms, Inc. or had any other authority to enter into contracts regarding the Property or to transfer title to the Property.

Defendants have not established that these facts void the transfer of the Property. However, in construing the facts in favor of the Defendants, it is not clear that Edward Benedetti had the authority to sell the Property and terminate the commercial lease agreement between Walter and Aloha Benedetti and Benedetti Farms, Inc. Arthur Benedetti states that he and Aaron Benedetti are 33% owners of Benedetti Farms, Inc. (Arthur Benedetti declaration, ¶2.)

A triable issue of fact remains regarding whether Arthur Benedetti and Aaron Benedetti trespassed onto the Property on May 7, 2021.

3. Third Cause of Action – Conversion

This cause of action alleges that on May 7, 2021, Defendants interfered with Plaintiff's property interest in the Equipment by taking it without Plaintiff's knowledge or consent and that they have refused to return it.

Conversion consists of: (1) plaintiff's ownership or right to possession of personal property, (2) defendant's disposition of property in a manner inconsistent with plaintiff's property rights, and (3) resulting damages. (*Voris v. Lampert* (2019) 7 Cal.5th 1141, 1150.)

This cause of action requires finding that on April 23, 2021, Plaintiff obtained the right to possession and ownership of the Equipment to the exclusion of Defendants. Plaintiff points to the Property's purchase agreement and grant deed, the Equipment Bill of Sale, deposition testimony from Riley Benedetti, the deposition of Stewart Title, and defendant Arthur's responses to requests for admission, response number 24. (Plaintiff's Material Facts, 1.)

The purchase agreement for the Property lists items included in the sale of the Property, which includes: "A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in paragraph 18A." (Plaintiff's Exhibit 1, ¶8(3).)

Also attached as Exhibit 1, directly after the purchase agreement, is the Equipment Bill of Sale. The Equipment Bill of Sale describes the Equipment as "All equipment left on the property on the date of sale, which is included in the purchase price." (Exhibit 1.) The Equipment Bill of Sale lists \$0 as the purchase price. (*Ibid.*)

The purchase agreement is dated February 1, 2021. (*Ibid.*) The grant deed for the Property is dated March 26, 2021. (Plaintiff's Exhibit 2.) The Equipment Bill of Sale is dated June 9, 2021. (*Ibid.*) A list of equipment included in Exhibit 3 is dated Wednesday, Dec. 9. (*Id.*, Exhibit 3.) Edward Benedetti signed the purchase agreement. (*Ibid.*) Riley Benedetti signed the Equipment Bill of Sale. (*Ibid.*) In his deposition testimony and after reading paragraph 8(3) of the Property's purchase agreement, Riley Benedetti stated that it was his understanding that the Equipment was meant to be transferred with the Property. (*Id.*, Exhibit 5.) Plaintiff explains that the discrepancy in the dates was because the Equipment came with the purchase of the Property and the Equipment Bill of Sale was only signed after Arthur Benedetti and Aaron Benedetti removed the Equipment from the Property.

Plaintiff also points to Request for Admissions, No. 5, which requests that defendant Arthur Benedetti admit that Plaintiff did not consent to his taking of the items. (*Id.*, Exhibit 11.) Arthur Benedetti did not admit or deny the RFA; he stated, “There was no communication between responding party and plaintiff.” (*Ibid.*) It is Arthur Benedetti’s position that neither Edward Benedetti nor Riley Benedetti had authority to sell the Equipment, that Plaintiff was not entitled to possession of the Property until after the commercial lease agreement with Willie Bird Turkeys expired, that Benedetti Farms, Inc. owned the Equipment, and that it was not included in the sale of the Property. (See Arthur Benedetti declaration.)

Plaintiff has failed to meet its burden on this issue. The evidence conclusively establishes that the Equipment was left on the Property on the date of the sale of the Property. However, because Plaintiff has not explained the relationships of Edward Benedetti, Riley Benedetti, Arthur Benedetti, Aaron Benedetti, Walter and Aloha Benedetti, and Benedetti Farms, Inc., it is not clear who was authorized to sell the Equipment or to agree that the Equipment was included in the purchase price of the Property.

4. Second Cause of Action – Trespass to Chattel

This cause of action alleges that on May 7, 2021, Defendants interfered with Plaintiff’s property interest in the Equipment by taking it without Plaintiff’s knowledge or consent for the purpose of depriving Plaintiff of its use.

Trespass to chattel occurs when “an intentional interference with the possession of personal property has proximately caused injury.” (*Thrifty-Tel, Inc. v. Bezenek* (1996) 46 Cal.App.4th 1559, 1566–1567.) As Plaintiff failed to meet its burden to establish its proper ownership of the Equipment, it has also failed to meet its burden on this cause of action.

5. Conclusion and Order

The motion is DENIED. Defendants’ counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

3. **SCV-271089, Garcia v Ortega**

Plaintiff Elizabeth Garcia (“Plaintiff”) moves for an order granting preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement (“Settlement”) reached between Plaintiff and Defendants Lola’s Market, Inc. and David Ortega (“Defendants”); approving the proposed Notice of Class Action Settlement; provisionally certifying the proposed class for settlement purposes; appointing Plaintiff as the class representative; appointing Matern Law Group, PC as Class Counsel; appointing Phoenix Class Action Administration Solutions as the settlement administrator; directing Defendants to furnish certain information about proposed class members; and scheduling the final approval hearing. **The hearing is CONTINUED to May 8, 2024, at 3:00 p.m., in Department 16, to allow Plaintiff to address the issues raised below.**

“A trial court must approve a class action settlement agreement and may do so only after determining it is fair, adequate, and reasonable. (*Dunk, supra*, 48 Cal.App.4th at pp. 1800–1801, 56 Cal.Rptr.2d 483.) It is vested with a broad discretion in making this determination. (*Id* at p. 1801, 56

Cal.Rptr.2d 483.) In exercising its discretion, that court should consider relevant factors, which may include, but are not limited to the strength of the plaintiffs' case, the risk, expense, complexity and duration of further litigation as a class action, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of class members to the proposed settlement. At the same time, the trial court should give “[d]ue regard ... to what is otherwise a private consensual agreement between the parties.” (*Ibid.*) Such regard limits its inquiry “... ‘to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’ ” (*Ibid.*, citing *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir.1982) 688 F.2d 615, 625 (*Officers for Justice*).) The trial court operates under a presumption of fairness when the settlement is the result of arm's-length negotiation, investigation and discovery that are sufficient to permit counsel and the court to act intelligently, counsel are experienced in similar litigation, and the percentage of objectors is small. (*Dunk, supra*, at p. 1802, 56 Cal.Rptr.2d 483.) Ultimately, the court's determination is simply “ ‘an amalgam of delicate balancing, gross approximations and rough justice.’ ” (*Dunk, supra*, at p. 1801, 56 Cal.Rptr.2d 483, citing *Officers for Justice, supra*, 688 F.2d at p. 625.)” (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.)

1. Presumption of Fairness

Plaintiff first argues that the Settlement is entitled to a presumption of fairness. Negotiation of the Settlement was the result of arm's length negotiations as it began on December 13, 2022 with a day of mediation with Lisa Klerman, esq., who Plaintiff's counsel (“MLG”) states is an “experienced wage and hour mediator.” (Boxer decl., ¶10.) MLG states that the negotiation was adversarial as they were ultimately prepared to litigate. (*Ibid.*) The parties did not reach a settlement at the mediation so, over the next few months, the parties continued to engage in talks with Ms. Klerman. (*Id.*, ¶12.) The parties reached an agreement on March 15, 2023. (*Ibid.*) The Settlement terms were finalized over several more months. (*Id.*, ¶13.) The parties signed the Settlement on August 21, 2023. (*Ibid.*)

Plaintiff's counsel (“MLG”) states that sufficient investigation and discovery was conducted to allow MLG to act intelligently. The parties agreed to mediate before engaging in formal discovery. (*Id.*, ¶8.) But, in advance of mediation, Defendants provided payroll and punch data for a randomized 25% sample of putative class members from June 28, 2018 through December 13, 2022, as well as relevant policies and procedures. (*Ibid.*) This information was provided to an expert for analysis, who reviewed the data and prepared a detailed damages model for the mediation. (*Ibid.*) MLG also states that it “conducted significant independent investigation and legal research regarding Plaintiff's claims and Defendant's anticipated defenses thereto.” (*Ibid.*)

MLG has extensive experience in class action settlements. (*Id.*, at 44-61.)

MLG has provided 17 paragraphs on their experience yet only one paragraph on the amount of investigation and discovery conducted in this case. MLG has not provided the analysis provided by Berger Consulting Group, LLC, nor explained how this information sufficiently informed MLG to allow it to act intelligently when deciding to settle. At this time, there is insufficient evidence to apply the presumption of fairness.

2. Fair and reasonable

The proposed net settlement amount is \$685,000. Of this amount, the Settlement proposes to award \$228,333.33 in attorney fees. MLG argues that this is reasonable as it is within the range of what courts normally award attorneys in class action lawsuits. MLG also states that the percentage method may be used in common fund cases with or without a lodestar cross-check.

In awarding a fee from the fund or from the other benefited parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 489.) Here, it appears that the bulk of the work performed to prepare for mediation was the data given to and analyzed by Plaintiff's expert Berger Consulting Group, LLC ("Berger"). For the services and analysis, Berger charged \$2,750. (*Id.*, Exhibit 3.) In addition, Ms. Klerman charged \$10,000 for mediation fees for the December 13, 2022 hearing. (*Ibid.*) MLG's cost invoice also includes \$8.87 for Thomson Reuters-West, presumably for legal research. (*Ibid.*) MLG has not met its burden to establish that, despite spending less than \$9 on legal research for this case, and spending less than \$13,000 on analysis and mediation, granting MLG over a quarter-million dollars in legal fees is reasonable.

MLG notes that it was willing to litigate this matter but that MLG and Plaintiff chose to settle due to the risks associated with litigation. Attorney Matthew J. Matern is listed as the top trial and pre-trial attorney in MLG. (See Boxer decl., ¶¶38-.) He has been an active member of the bar since 1992. (*Id.*, ¶38.) Over the course of his career, Matern has been involved in hundreds of class action settlements. (*Id.*, ¶40.) He has brought approximately twenty-five cases to trial. (*Id.*, ¶41.)

Attorney Boxer has been an active member of the bar since 2003 and has been involved in employment litigation for 12 years. (*Id.*, ¶45.) Attorney Boxer states he has reached dozens of six and seven-figure settlements. (*Ibid.*) He has participated in two class action trials. (*Id.*, at ¶47.)

Attorney Clare Moran was admitted to the bar in 2021. (*Id.*, ¶52.)

MLG's tendency to settle its cases gives this court pause. MLG has not articulated the specific reasons why the settlement amount sufficiently addresses the grievances—particularly since the allegations are that the class members already earned the amounts due. In addition, this is particularly important as MLG intends to give up all class member's rights to PAGA penalties even if they opt out of the settlement.

MLG calculated Defendants' maximum potential liability using "information and data" provided by Defendants. Defendants' maximum liability was calculated to be approximately \$127,400,104.00. (*Id.*, ¶17.) MLG states that penalties associated with Labor Code 1174 violations were not considered but were included in separate calculations regarding Defendants' potential exposure for civil PAGA penalties. (*Ibid.*) PAGA penalties could amount to an additional \$6,298,560.00. (*Id.*, ¶18.) This amount did not include duplicative penalties that MLG anticipated would be recovered as part of the class claims. (*Ibid.*)

MLG breaks down recovery amounts for meal period violations (\$1,413,251.78); rest period violations (\$3,768,671.42); Failure to reimburse (\$1,112,725.00); Wage statement penalties (\$114,632,500.00); and, as stated above, PAGA penalties (\$6,298,560.000). (*Id.*, ¶19.) The settlement amount does not appear to cover all the allegations in the complaint. For example, the complaint also alleges failure to pay overtime wages, failure to pay minimum wages, failure to

maintain required records, and failure to indemnify employees for necessary expenditures. Are all allegations in Plaintiff's first amended complaint covered by the Settlement?

In order to calculate meal period violations, MLG used the Berger analysis. (*Id.*, ¶19a.) MLG states that approximately 30.3% of the recorded shifts reflected at least one unique meal period violation. (*Ibid.*)

MLG has not provided how much actual data was collected from Defendants. MLG states that it obtained a 25% random sample but has not explained what specifically is meant by that. Is this 25% of all punch cards, one sample punch card from 25% of employees, or something else?

The total number of employees listed in MLG's PAGA penalty calculation is 216 employees. However, MLG estimates that there are a total of 788 class members. Are the 216 employees the 25% sample? Thus, are the PAGA penalties four-times greater?

The bulk of Plaintiff's motion consists of generalized statements and conclusions that can be made in any wage and hour litigation. MLG has not provided specific reasons why this particular litigation presents challenges beyond the general uncertainty, risk, and cost of litigation. For example, MLG argues that in order to prove liability and damages, MLG would be required to request and analyze thousands of pages of documents, which would have to be analyzed with the assistance of an expert in order to establish violations and damages. However, MLG states that it obtained analysis of a 25% sample for \$2,750. Is it MLG's position that an additional \$8,250 is not warranted even if it could potentially recover over one-hundred-million dollars for class members?

MLG has not specified the number of putative class members who were subject to the various types of violations and the likely recovery putative members would receive. It appears that MLG proposes to distribute approximately \$382,000 to 788 class members. If split evenly, this would be approximately \$485 per class member. This, despite the fact that the total maximum awarded through litigation could amount to \$133,698,664.00, which would give each class member an average of \$169,668.00—or more depending on the amount of PAGA penalties. MLG has not adequately explained how general uncertainties, risks, and costs of litigation warrant settling for such a substantial reduction.

Also, MLG has not provided sufficient information to establish that \$7,500 is a reasonable service award in this case. MLG cited authority that an incentive award to a class representative must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit. However, MLG only provides generalized statements that Plaintiff helped class counsel, provided information and documents, made herself available, and kept herself updated on the action. (See Boxer decl., ¶¶28-31.) This does not give this court any idea regarding whether she spent 2 hours or 200 hours assisting counsel.

3. Conclusion and Order

In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. Plaintiff's motion is insufficient to satisfy this court that the settlement is within the ballpark of what is reasonable. Accordingly, the matter is **CONTINUED to May 8, 2024, at 3:00 p.m., in Department 16**. MLG is directed to file supplemental information providing at least the following: MLG's invoices and a lodestar calculation; the data provided by Defendants and the specific legal research which allowed MLG to

make an intelligent decision; the analysis done by Berger; which of Defendants' employees were interviewed and what information was obtained by each employee MLG interviewed; the number of employees used to calculate potential damages; the defenses Defendant raised which caused MLG to hesitate to litigate this matter, besides Defendants' general argument that individual issues predominate; the perceived strength of Plaintiff's and putative class members' causes of action; evidence presented by Defendant to support its claims that it did not violate any provisions of the labor code or they were not willful violations; the relevant policies and procedures provided by Defendants prior to mediation and how those affected MLG's analysis; whether MLG's liability calculations for mediation have since changed based upon new information or discovery; and any additional information specific to Plaintiff, the proposed class, or this action which makes the proposed Settlement within the ballpark of a reasonable settlement.

4-5. SCV-272180, S v Doe 4, an individual

1. Motion to Compel Further

Defendant The Evangelical Lutheran Church in America (the "ELCA") moves to compel Plaintiff V.S. ("Plaintiff") to provide further responses to the ELCA's special interrogatories, numbers 14, 55, and 56. **The motion is DENIED. Pursuant to CCP section 2030.300(d), sanctions are awarded against ELCA in Plaintiff's favor in the amount of \$1,500.**

These interrogatories seek evidence of other sexual abuse that Plaintiff may have been subjected to. Plaintiff objected to these requests based upon CCP section 2017.220. CCP section 2017.220(a) provides: "In any civil action alleging conduct that constitutes sexual harassment, sexual assault, or sexual battery, any party seeking discovery concerning the plaintiff's sexual conduct with individuals other than the alleged perpetrator shall establish specific facts showing that there is good cause for that discovery, and that the matter sought to be discovered is relevant to the subject matter of the action and reasonably calculated to lead to the discovery of admissible evidence. This showing shall be made by a noticed motion, accompanied by a meet and confer declaration under Section 2016.040, and shall not be made or considered by the court at an ex parte hearing."

ELCA seeks to undermine Plaintiff's claim for damages resulting from the subject perpetrator's conduct by potentially finding other instances of sexual abuse committed against the Plaintiff and arguing that it was this other abuse that caused at least some, if not all, of Plaintiff's damages.

ELCA cites two cases relevant to support its position that it is entitled to discover information related to any other instances of sexual abuse: *Gillespie v. San Dieguito Union High Sch. District*, 2023 Cal. Super. LEXIS 29796 and *Doe v. L.A. Unified Sch. Dist.*, 2021 Cal. Super. LEXIS 44081. These appear to be superior court cases without any precedential value. In addition, case citations must be from the Official Reports. (Cal. Rules of Court, Rule 3.1113(c).)

The other cases cited by ELCA do not pertain to section 2017.220. For example, in *John B. v. Superior Court* (2006) 38 Cal.4th 1177, wife sued husband for intentional or negligent infection of HIV. Husband argued that it was wife who infected him with HIV. In that case, the wife's

request to discover Husband's medical records and prior sexual conduct was necessary to determine who was the responsible party, which overrode privacy rights. This example is far from the instant scenario.

In reply, ELCA argues that Plaintiff's responses to discovery indicate that she was being treated for prior sexual abuse as well as the abuse alleged in this case. The cited discovery does not indicate to this court that any prior sexual abuse occurred. Regardless, the mere fact that a plaintiff has initiated an action seeking damages for mental and emotional distress arising out of conduct of a sexual nature does not ipso facto provide "good cause" for discovery of other sexual conduct. (*Barrenda L. v. Superior Court* (1998) 65 Cal.App.4th 794, 801.) ELCA has not provided any authority that supports finding good cause exists to allow it to discover other instances in which the Plaintiff may have been sexually abused. Therefore, the motion is DENIED.

This motion was brought pursuant to CCP section 2030.300. Subsection (d) provides: "The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, 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."

Here, ELCA has failed to cite any case that supports its request. Moreover, it cited authority establishing that merely requesting damages in a sexual abuse case does not allow the defendant to pry into other potential instances of abuse. Therefore, sanctions are awarded against ELCA in Plaintiff's favor in the amount of \$1,500.

2. Motion to Compel Compliance

Defendant The Evangelical Lutheran Church in America (the "ELCA") moves to compel Plaintiff V.S. ("Plaintiff") to comply with the court's order and request for sanctions in the amount of \$1,394. **The motion is DENIED.**

This motion relates to ELCA's motion to strike that was filed on August 14, 2023, and heard on October 25, 2023. Pursuant to that motion, ELCA moved for an order granting terminating sanctions by striking Plaintiff's claims for general damages/non-economic damages in her complaint or, in the alternative, forcing Plaintiff to execute an authorization for the release of her medical, mental health, substance abuse, and billing records maintained by Codac Health, Recovery, and Wellness. Or, as another alternative, ELCA requested an order compelling Codac to produce all responsive documents. That motion was denied. However, this court ordered the parties to "meet and confer to appropriately narrow the scope of the records sought and, if necessary, consider an appropriate protective order."

Subsequent to the hearing on ELCA's motion to strike, on October 30, 2023, Plaintiff's counsel's office provided a proposed order on the motion to strike. (Contreras decl., Exhibit G.) The same day, ELCA's counsel, Zachary Rutman, responded to the email stating it was his understanding that this court ordered Plaintiff to produce these records subject to redactions. (*Ibid.*) He requested the records be produced. (*Ibid.*) Mr. Rutman emailed again on November 1, 2023. (*Ibid.*) He stated that this email would be his last attempt to meet and confer before he renewed his motion. (*Ibid.*) That day, Plaintiff's counsel responded indicating that ELCA's motion to strike had been denied. (*Ibid.*) Mr. Rutman responded that he disagreed with Plaintiff's counsel's position and

indicated that this court had encouraged ELCA to bring a motion with a request for sanctions if Plaintiff continued to play discovery games. (*Ibid.*)

ELCA's counsel appears to have completely misunderstood both the outcome and tone of this court's ruling on ELCA's motion to strike. This court only ordered the parties to meet and confer to attempt to have counsel work out their own discovery dispute. It was clear to this court that ELCA's discovery request was overly broad as it intruded into Plaintiff's privacy without even showing that the requested records were relevant to this action. This court did not order records produced.

ELCA's motion is DENIED. As Plaintiff has not filed opposition to this motion, ELCA's counsel is directed to submit a written order to the court consistent with this ruling.

6-7. SCV-272824, Smashmallow LLC v Orangeworks Groep B.V.

This matter is on calendar for the motions of defendants VADO Beheer B.V. ("VADO") and Orangeworks Groep B.V. ("Orangeworks") for an order quashing service of the summons and dismissing the complaint against them or, in the alternative, for an order dismissing this action based on the doctrine of *forum non conveniens*. These motions were continued from October 4, 2023, to allow plaintiff Smashmallow LLC to conduct discovery regarding the issue of this court's jurisdiction over VADO and Orangeworks. As Smashmallow is still working towards obtaining discovery on this issue, these motions are **CONTINUED to June 12, 2024, at 3:00 p.m., in Department 16.**

8. SCV-273613, Petition of Macy-June Laumann

This matter is on calendar for the motion of Petitioner Macy-June Laumann ("Petitioner") for an order vacating the dismissal entered in this case and setting a hearing date on the Petition for Change of Name. Alternatively, Petitioner requests the court sign the previously filed proposed Decree for Change of Name. **The motion is GRANTED.**

On March 30, 2023, Petitioner filed a Petition for Change of Name to change the name of minor child, Isabel Alexis Meyers, to Isabel Alexis Brooks. Petitioner stated that she is the mother of Isabel and that she would like to change Isabel's name to match Petitioner's name. The hearing was set for September 8, 2023. The Proof of Service of Process that had been filed in this case on August 7, 2023, indicated that only the Order to Show Cause had been served on Isabel's father, Brandon Meyers. Therefore, after taking the matter under submission, this court issued an order on November 1, 2023, denying the motion on the grounds that there was no proof of service on the other parent as to the petition. This motion was filed on December 12, 2023.

Petitioner's motion is brought pursuant to CCP section 473(b) and (d). Petitioner first argues that her process server inadvertently failed to completely fill out the proof of service form. Petitioner states that her process server did in fact serve all of the Name Change Petition documents on Mr. Meyers. She has supplied an amended proof of service signed by the original process server,

Jay Ottolini. The amended proof of service indicates that Mr. Meyers was served with NC-100, the Petition for Change of Name; NC-110 giving information about the name and person whose name is sought to be changed; NC-120, the Order to Show Cause; and NC-130, the proposed Decree Changing Name.

CCP section 473(b) provides in relevant part: “The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.”

Here, failing to fully fill out the proof of service form was Petitioner’s process server’s mistake. In addition, Petitioner’s failure to make sure that all documents were fully and correctly filled out is Petitioner’s excusable neglect. Accordingly, pursuant to CCP section 473(b), the motion is GRANTED. The court will sign the Decree Changing Name.

As this motion was granted pursuant to CCP section 473(b), the court will not address CCP section 473(d).

9. SCV-273678, Niqara, an individual v Estate of Robert Lyon, Jr., Deceased

The motion of law firm Carpenter & Zuckerman to be relieved as counsel for Plaintiff Setaita Niqara is **GRANTED**. The court will sign the proposed order.