TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, February 23, 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-256328, JPMorgan Chase Bank v Young

APPEARANCE REQUIRED.

2. MCV-259828, Looney v 3rd and Bourban, a California Corporation

This matter is on calendar for the motion of Plaintiff Gary E. Looney, dba Collectronics of California ("Plaintiff") for an order appointing a receiver to enforce the judgment entered on March 6, 2023, against defendant 3rd and Bourbon, Inc. ("Judgment Debtor") in the amount of $3,508.27 by appointing a receiver to seize the Judgment Debtor's liquor license, license number 591200. **The unopposed motion is GRANTED.** Landon McPherson is appointed receiver to seize and sell Judgment Debtor's liquor license. Mr. McPherson shall post an undertaking in the amount of $1,000.00 upon his appointment. Plaintiff is directed to submit a written order to the court consistent with this ruling.

3. SCV-270916, Baass v Sonoma Specialty Hospital, LLC

This matter is on calendar for the motion of Plaintiff Michelle Baass, Director of the California Department of Health Care Services ("DHCS" or "Plaintiff") for summary judgment of Plaintiff's

claim against Defendants Sonoma Specialty Hospital ("SSH"), American Advanced Management Group, and Gurpreet Singh (together "Defendants") on the grounds that they are liable to promptly repay any amounts owed pursuant to SSH's Medi-Cal Provider Agreement (MPA), including amounts owed in accordance with applicable federal and California statutes and regulations, and rules and policies of DHCS governing the California Public Hospital Redesign and Incentives in Medi-Cal (PRIME) Program. **The motion is GRANTED.**

In this action, DHCS challenges Defendants' receipt of federal PRIME Program funds for Demonstration Mid-Year 14 (January 2018 – December 2018). (Plaintiff's Undisputed Material Fact ["UMF"] 1.) Through its owner Gurpreet Singh, SSH executed a MediCal Provider Agreement (MPA) with DHCS on or about April 1, 2019. (UMF 2.) As a condition of participating in any part of Medi-Cal, SSH agreed to comply with all of the terms and conditions set forth in the MPA. (UMF 3.) PRIME incentive funds are solely disbursed to eligible Designated Public Hospital systems and the District/Municipal Public Hospitals. (UMF 4.) The non-federal share of payments under PRIME must be funded by intergovernmental transfers from government operated entities. (UMF 5.) SSH submitted a Change of Ownership Application (also referred to as CHOW) to convert the hospital facility from public to private ownership on or around May 28, 2019. (UMF 6.) SSH was notified that new ownership was approved on July 15, 2019, with an effective date of April 1, 2019. (UMF 7.) The CHOW indicated that the licensee would be SSH. (*Ibid*.) Defendant Gurpreet Singh signed a check from a limited liability company's account in the amount of $270,075.00 payable to DHCS on or about July 2, 2019 intending it to serve as the nonfederal share of a PRIME incentive payment. (UMF 8.) On or about August 21, 2019, SSH received $540,000.00 as a PRIME incentive payment. (UMF 9.) By letter dated January 15, 2020, DHCS notified SSH of DHCS' intent to recoup the federal PRIME payment. (UMF 10.)

Plaintiff argues that Defendants failed to comply with the terms and conditions of the MPA and violated the laws governing the PRIME program by making an IGT transfer from private funds. It cites IEE Ex. 4, STCs, ¶105(h).

The STCs, ¶105(h) provides: "PRIME Payments Are Not Direct Reimbursement for Expenditures or Payments for Services. Payments from the PRIME Pool are intended to support and reward participating entities for improvements in the delivery system that support the simultaneous pursuit of improving the experience of care, improving the health of populations, and reducing per capita costs of health care, and are unrestricted revenue once disbursed. The payments are not direct reimbursement for expenditures incurred by participating entities in implementing reforms. The payments are not reimbursement for health care services that are recognized under these Special Terms and Conditions or under the State plan. PRIME incentive payments should not be considered patient care revenue and should not be offset against the certified public expenditures incurred by government-operated health care systems and their affiliated government entity providers for health care services, disproportionate share hospital payments or administrative activities as defined under these Special Terms and Conditions and/or under the State plan. The payments do not offset payment amounts otherwise payable to and by MCPs for Medi-Cal beneficiaries, or supplant provider payments from MCPs.

"The non-federal share of payments under PRIME shall be funded by voluntary intergovernmental transfers made by the participating PRIME entities and/or applicable governmental agencies. The funding entity shall certify that the funds transferred qualify for federal financial participation pursuant to 42 C.F.R. part 433 subpart B, and are not derived from

impermissible sources such as recycled Medicaid payments, federal money excluded from use as State match, impermissible taxes, and non-bona fide provider-related donations. The State must have permissible sources for the non-federal share of PRIME expenditures, which may include permissible Intergovernmental Transfers (IGTs) from government operated entities and state funds. Sources of non-federal funding shall not include provider taxes or donations impermissible under section 1903(w), impermissible intergovernmental transfers from providers, or federal funds received from federal programs other than Medicaid (unless expressly authorized by federal statute to be used for claiming purposes, and the federal Medicaid funding is credited to the other federal funding source). For this purpose, federal funds do not include PRIME payments, patient care revenue received as payment for services rendered under programs such as the Designated State Health Programs, Medicare, or Medicaid." (IEE Ex. 4, STCs, ¶105(h).)

Plaintiff argues that the non-federal share of payments under PRIME must be funded by an IGT made by an eligible PRIME participant, citing Welf. & Inst. Code, § 14184.50, subd. (f). That section states: "The nonfederal share of payments under the PRIME program shall consist of voluntary intergovernmental transfers of funds provided by designated public hospitals or affiliated governmental agencies or entities, or district and municipal public hospitals or affiliated governmental agencies or entities, in accordance with this section."

The PRIME program is only available to eligible entities, which consist of Designated Public Hospital (DPH) systems and District/Municipal Public Hospitals (DMPHs). (Welf. & Inst. Code, § 14184.50, subd. (a)(1).) PRIME "[i]ncentive funds shall be disbursed solely to eligible DPH systems or DMPHs." (IEE, Ex. 3, STCs 77; STCs Attachment II, Section III; see also Welf. & Inst. Code, § 14184.50, subd. (a)(1).) The non-federal share of payments under PRIME must be funded by intergovernmental transfers made by the participating PRIME entities and/or applicable governmental agencies. (Welf. & Inst. Code, § 14184.50, subd. (f).) The funding entity is required to certify that the funds transferred qualify for federal financial participation pursuant to federal requirements and that they are not derived from impermissible sources. (42 C.F.R. part 433.51.) Permissible sources for funding of the non-federal share of IGTs include funds derived from government operated entities. (42 C.F.R. § 433.51; IEE Ex. 3, STCs, ¶105(h).)

Defendants argue that money it received was for reimbursement it applied for and received while SSH was still a DMPH. Therefore, they argue that even if the CHOW is backdated to April 1, 2019, Defendants' receipt of the incentive payment does not violate Welf. & Inst. Code, § 14184.50, subd. (f) and 42 C.F.R. part 433 subpart B's requirement that voluntary intergovernmental transfers be made by the participating PRIME entities and/or applicable governmental agencies. Defendants argue that SSH was entitled to those funds when it applied for them, and the funds were reimbursed for January 2018 – December 2018, which is before the backdated effective date of the change of ownership application.

DHCS is mandated under federal and state laws to recover payments if they are determined to be in violation of any Medi–Cal regulation where an overpayment or improper payment has occurred. (42 C.F.R. §§ 433.316, 433.320; Cal. Code Regs., tit. 22, § 51458.1, subd. (a)(13).) Pursuant to federal regulations, improper payments are defined as "any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments). (42 C.F.R. § 431.958.) Improper payments include unauthorized amounts paid by the Medi-Cal program whether paid as a result of inaccurate or improper cost reporting, improper

claim submission, unacceptable practices, fraud, abuse, or mistake. (Medicaid Program Integrity Manual Ch. 1.)

The parties do not disagree on the facts. Defendants made the IGT transfer on July 2, 2019. This was after Defendants submitted a CHOW on May 28, 2019, before the CHOW was approved on July 15, 2019, but after the April 1, 2019 effective date of the approval. Subsequent to the change of ownership, on January 15, 2020, SSH was notified that its participation in PRIME was terminated effective April 1, 2019. (Plaintiff's Exhibit 7.) Despite the technicality that Defendant's CHOW had not been approved by the time of the IGT, the legal effect of the change occurred on April 1, 2019. It was from April 1, 2019 that SSH went from a public hospital to a private hospital and lost its eligibility to participate in PRIME. As a private hospital, SSH was precluded from completing the IGT and this transaction must now be undone as Plaintiff is entitled to recoup the improper payment.

Plaintiff's motion is GRANTED.

Plaintiff's 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.

4. <u>SCV-273260, Sonoma Pacific Homebuilders, Inc v Osborne</u>

This matter is on calendar for the motion of Defendants and Cross-Complainants Lindsay Osborne and Jeffrey Reitz ("Cross-Complainants") for an order overruling the objections of Cross-Defendant Issac Aimaq and Sonoma Pacific Homebuilders, Inc. ("Cross-Defendants") and ordering Cross-Defendants to provide full and compete answers, without objections to Cross-Complainants' Amended Requests for Admissions, Amended Form Interrogatories, Amended Special Interrogatories, and Amended Request for Production. **The motion is CONTINUED to May 1, 2024, at 3:00 p.m., in Department 16, to allow Cross-Complainant to meet and confer with Cross-Defendants' new counsel or with cross-defendant Aimaq.**

This motion is brought pursuant to CCP sections 2030.300 (interrogatories), 2031.240 (production of documents), 2031.310 (production of documents) and 2033.290 (requests for admissions). Each of these statutes has meet and confer requirements. Cross-Complainants' attorney indicated he attempted to meet and confer with Cross-Defendants' attorney Smith Dollar PC; however, no such meet and confer efforts actually took place. In addition, Cross-Defendants' attorney's motion to be relieved as counsel was granted on January 22, 2023—after the motion was filed but prior to the hearing on this motion. Cross-Defendants do not currently have an attorney of record. Proof of service of this motion was served upon Cross-Defendants' prior counsel. It is not clear whether cross-defendant Aimaq intends to obtain a new attorney; however, cross-defendant Sonoma Pacific Homebuilders, Inc. must be represented by an attorney.

As it is not clear that Cross-Defendants themselves have obtained notice of this motion, and as the parties have not had an opportunity to meet and confer regarding Cross-Complainants' discovery, the court will continue this matter to allow Cross-Complainants' counsel to contact defendant Aimaq in order to meet and confer with him or Cross-Defendants' new counsel. The motion is CONTINUED to May 1, 2024, at 3:00 p.m., in Department 16.