TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, April 23, 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.

CourtCall is not permitted for this calendar.

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

TO JOIN D17 ZOOM ONLINE:
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. 23CV01534, Johnson v. NOCAL AG INC.

Plaintiff Johnson's motion for leave to file the First Amended Complaint ("FAC") is **GRANTED**. Plaintiff shall file and serve the FAC within ten (10) days of service of the notice of entry of order on this motion.

FACTS & PROCEDURE

Plaintiff commenced this action against Defendants for violations of the Consumers Legal Remedies Act ("CLRA") as well as nine other causes of action regarding a 2020 Jeep Wrangler that Defendant NOCAL AG, INC. ("NOCAL") sold to Plaintiff. (Memorandum of Points and Authorities ["MPA"], 2:4-15.) NOCAL represented that it was in good condition and covered by Defendant FCA US LLC's warranty. (*Id.* at 2:4-6.) Plaintiff experienced transmission issues with the Jeep and took it in for warranty repairs, but the Jeep was ultimately not repaired. (MPA, 2:7-14.)

Plaintiff now seeks leave to amend the Complaint to add a claim for damages under the Consumer Legal Remedies Act under Civil Code section 1782(d) as well as three new causes of action against FCA for: (1) breach of express warranty under 15 U.S.C. section 2301 et seq.; (2) breach of warranty under California Commercial Code section 2715; and (3) breach of implied warranty of merchantability under

15 U.S.C. section 2301 et seq. (MPA, 1:21-23, 1:25-27.) Plaintiff also intends to drop the Song-Beverly Act claims in the Complaint in light of the California Supreme Court's recent ruling in *Rodriguez v. FCA US, LLC* (2024) 17 Cal.5th 189. (*Id*. at 23-24.)

Though Plaintiff attempted to obtain a stipulation from Defendants to amend the complaint, all Defendants did not agree to a stipulation. (MPA, 2:1-2.) Defendants FCA US LLC ("FCA") and NoCal AG, Inc. doing business as Cardinale Way Chrysler Dodge Jeep Ram ("NoCal") (collectively "Defendants") filed an opposition to the motion.

ANALYSIS

A. Legal Standard

Motions for leave to amend pleadings are within the discretion of the court, which may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading. (C.C.P. § 473.) Additionally, the court may allow the amendment of any pleading at any time before or after trial begins if it is in the furtherance of justice. (C.C.P. § 576.) C.C.P. section 473 and California Rules of Court, rule 3.1324 require that the moving party accompany the motion for leave to amend with a copy of the amended pleading to be filed if leave is granted. When the plaintiff is the moving party, proximity to the trial date is not a ground for denial absent a showing of prejudice to defendant. (See *Mesler v Bragg Mgt. Co.* (1985) 39 Cal.3d 290, 297.) Even if some prejudice is shown, leave to amend may be permitted upon conditions imposed by the Court, such as continuation of the trial date, reopening discovery, or ordering the party seeking amendment to pay opposing party's costs and fees incurred in preparing for trial. (C.C.P. §§ 473, 576; *Fuller v Vista Del Arroyo Hotel* (1941) 42 Cal.App.2d 400.)

B. Moving Papers

Plaintiff requests leave to file the proposed First Amended Complaint, attached as Exhibit 3 to the Compendium of Exhibits in support of this motion. Plaintiff seeks to add a prayer for damages under section 1782(d). (MPA, 3:10-13.) Plaintiff states that he complied with the CLRA notice requirement by sending a CLRA demand letter to all Defendants more than 30 days before seeking to add a prayer for damages on November 14, 2023. (*Id*. at 3:21-24.) Now, more than 30 days have passed since Plaintiff provided this notice, so Plaintiff is entitled as a matter of law to amend the Complaint to add a prayer for damages under the CLRA. (*Id*. at 3:25-26.) Plaintiff also argues that the three new causes of action should be allowed in the First Amended Complaint under the policy that California law liberally allows leave to amend complaints under C.C.P. section 473. (MPA, 4:3-22.) The new claims are related to the same set of facts alleged in the Complaint, so Defendants have been on notice of the factual allegations already, and furthermore, a trial date has not been set in this matter and no depositions have yet been taken, so the parties have time to conduct any discovery related to the new causes of action. (*Id*. at 4:23-28.) Finally, a change in law has necessitated Plaintiff's adding new causes of action because in *Rodriguez v. FCA US, LLC* (2024) 17 Cal.5th 189, the Court of Appeal held that used cars with unexpired manufacturer's new car warranties do not qualify as "new motor vehicles" under the Song-Beverly Act. (*Id*. at 4:28, 5:1-3.) Plaintiff is attempting to expeditiously amend the Complaint to drop claims which are no longer viable after the *Rodriguez* matter. (*Id*. at 5:4-8.)

Defendants do not oppose Plaintiff's dropping of the Song-Beverly Act claims in light of *Rodriguez* but oppose the adding of three additional causes of action against them. (Opposition, 2:4-10.) Defendants argue that Plaintiff had sufficient information to allege these additional warranty causes of action at the time of filing the original Complaint in November of 2023, but chose not to, which Defendants claim has a prejudicial effect on them because it materially alters Plaintiff's claims and Defendants' defense in this litigation. (*Id*. at 2:11-14.) Defendants also argue that waiting a year to add these causes of action is an unreasonable delay without justification. (*Id*. at 2:15-17.) Defendants also argue that the motion fails to comply with California Rules of Court Rule 3.1324 because it does not state page, paragraph, and line numbers of exactly what is requested to be added or deleted. (*Id*. at 5:3-7.)

C. Application

Overall, the Court is not persuaded that Defendants will be prejudiced by the filing of the proposed FAC. Discovery is still ongoing and trial has not been set, so there is still enough time for Defendant to evaluate Plaintiff's additional claims, which are based on the same set of facts alleged in the original Complaint. New case law has necessitated Plaintiff's dropping the Song-Beverly Act claims, which is Plaintiff's justification for bringing these new causes of actions instead against Defendants. Not allowing Plaintiff to file the FAC will bar Plaintiff from bringing the new causes of action in the future against Defendants. Thus, it will be in the furtherance of justice to allow leave to file the FAC so that the parties can resolve all of their claims in one matter efficiently.

CONCLUSION

Plaintiff's motion is **GRANTED**. Plaintiffs shall prepare and serve a proposed order consistent with this tentative ruling and in accordance with California Rules of Court, Rule 3.1312.

2. 24CV04836, County of Sonoma v. Grogan

APPEARANCES REQUIRED.

3-4. 24CV04966, Benson v. Dutil

Plaintiff Phillip Benson's two unopposed discovery motions against Defendant Pierce Dutil are **GRANTED**, as follows:

1. Plaintiff Benson's motion to compel discovery responses are **GRANTED** against Defendant Dutil regarding set one of Form Interrogatories, Special Interrogatories, and Requests for Production of Documents. Defendant shall provide complete, objection-free responses to these discovery requests and any responsive documents within 30 days of receipt of the notice of entry of this Court's order on these motions.

2. Plaintiff Benson's motion to deem set one of Requests for Admissions as admitted against Defendant Dutil is **GRANTED**.

3. Sanctions are awarded against Defendant Dutil for the reduced amount of **$5,524.84** for both unopposed motions combined.

PROCEDURAL HISTORY

On August 26, 2024, Plaintiff Benson brought this action alleging breach of contract and common counts against Defendant Dutil. (See Complaint, pp. 3-4.) Plaintiff filed a Proof of Service for the summons and complaint stating that Defendant received service by mail with acknowledgment of receipt of service to an address outside of California with return receipt requested. (See Proof of Service dated September 17, 2024.) The signed return receipt attached to the Proof of Service shows that service of the summons and complaint were received and signed for by Defendant on August 31, 2024. (*Ibid*.)

On December 2 and 3, 2024, Plaintiff propounded Set One of discovery requests on Defendant, which included Form Interrogatories, Special Interrogatories Requests for Admissions, and Request for Production of Documents. (Motion to Deem as Admitted ["MDA"], 2:2-6; Motion to Compel Discovery Responses ["MTC"], 1:24-28.) Plaintiff never responded to any of the discovery requests and never sought any extensions. (MDA, 2:6-9; MTC, 2:4-8.)

Plaintiff now moves to compel Defendant's complete, objection-free responses to Set One of Form Interrogatories, Special Interrogatories, and Requests for Production of Documents, and moves to deem as admitted Set One of Requests for Admissions served on Defendant. (MDA, 2:7-12; MTC, 2:8-11.) Plaintiff requests sanctions for both motions. (*Ibid*.) Defendant failed to oppose either motion, so Plaintiff did not file any reply briefs.

ANALYSIS

Legal Standard

1. *Time to Serve Discovery Requests*

A plaintiff may propound interrogatories, make requests for admission, demand inspection, without leave of court at any time that is 10 days after service of summons on, or appearance by, the party to whom the demand is directed, whichever occurs first. (C.C.P. §§ 2030.020(b), 2033.020(b), 2031.020(b).)

2. *Interrogatories*

A party who fails to serve a timely response to interrogatories absent evidence showing mistake, inadvertence, or excusable neglect, waives any right to object to the interrogatory, including objections based on privilege or work product, and the court shall impose monetary sanctions upon the party who unsuccessfully opposes a motion to compel initial responses. (C.C.P. § 2030.290.)

3. *Demand for Production of Documents*

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.)

4. Requests for Admission

A party who "fails to serve a timely response" to requests for admission waives any objection to those requests. (C.C.P. § 2033.280(a).) However, the court may relieve a party from this waiver if the court determines that: (1) the party has subsequently served a response that is in substantial compliance with C.C.P. sections 2033.210, 2033.220, and 2033.230; and (2) the party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect. (C.C.P. § 2033.280(a)(1)-(2); *Katayama v. Cont'l Inv. Grp.* (2024) 105 Cal. App. 5th 898, 906–07.)

After a lack of response, the requesting party can move for an order "that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted." (C.C.P. § 2033.280(b).)

5. Sanctions

The court may impose sanctions after notice to any affected party, person, or attorney, and after an opportunity for hearing, against anyone engaging in conduct that is a misuse of the discovery process. (C.C.P. § 2023.030.) Sanctions may include reasonable expenses, including attorney fees. (C.C.P. § 2023.030(a).) A request for sanctions under the discovery act shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. (C.C.P. § 2023.040.) The notice of motion for a request for sanctions shall be supported by a memorandum of points and authorities and accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought. (*Ibid*.)

<u>Plaintiff Benson's Discovery Motions</u>

Plaintiff Benson moves to compel Defendant Dutil's complete, objection-free responses to the outstanding discovery requests and to have Set One of Requests for Admission deemed as admitted against Defendant. Plaintiff also requests sanctions for each motion as follows:

1. For the Motion to Deem as Admitted:

    a. $2,249.10 in attorney's fees for 4.9 hours of work at a rate of $459.00/hour;
    b. $429.00 in paralegal fees for 2.2 hours of work at a rate of $195.00/hour;
    c. $74.80 for costs of filing;
    d. $2.02 for costs of service;
    e. $13.80 for anticipated costs of filing a reply brief;
    f. $0.73 for anticipated costs of serving the reply brief;
    g. $156.00 for anticipated paralegal fees for 0.8 hours on a reply and hearing; and
    h. $688.50 for anticipated attorney fees for 1.5 hours to review any opposition, prepare a reply, meet and confer with Defendant prior to the hearing, and attend the hearing.

(LaBarge Declaration in Support of Motion to Deem as Admitted, ¶¶ 6-10.)

2. For the Motion to Compel Discovery Responses:

    a. $2,478.60 in attorney fees for 5.4 hours at a rate of $459.00 per hour;
    b. $214.50 in paralegal fees for 1.1 hours at a rate of $195.00 per hour;
    c. $74.80 for costs of filing;
    d. $2.02 for costs of service;
    e. $13.80 for anticipated costs of filing a reply brief;
    f. $0.73 for anticipated costs of serving the reply brief;
    g. $156.00 for anticipated paralegal fees for 0.8 hours on a reply and hearing; and
    h. $688.50 for anticipated attorney fees for 1.5 hours to review any opposition, prepare a reply, meet and confer with Defendant prior to the hearing, and attend the hearing.

(LaBarge Declaration in Support of Motion to Compel, ¶¶ 6-10.)

Defendant Dutil has not opposed either motion.

Application

Plaintiff served Set One of discovery requests on Defendant after more than 20 days had passed since serving the summons and complaint on Defendant. Defendant failed to ever respond to the requests or to request any extensions. Defendant did not file any opposition to justify his lack of response. Therefore, the Court finds that both of Plaintiff's motions are warranted.

Sanctions are also warranted, but the Court will not grant any of the anticipated fees requested by Plaintiff as no opposition or reply was filed on either motion. For the Motion to Deem as Admitted, the Court will award sanctions of $2,754.92 against Defendant. For the Motion to Compel, the Court will award sanctions of $2,769.92 against Defendant. For both motions combined, the total sanctions awarded are $5,524.84.

CONCLUSION

Based on the foregoing, Plaintiff Benson's two unopposed discovery motions against Defendant Dutil are **GRANTED**. Defendant shall serve complete, verified, and objection-free responses to Set One of Form Interrogatories, Special Interrogatories, and Requests for Production within 30 days of receipt of notice of entry of this Court's order on these motions. Also, sanctions are awarded in the total amount of **$5,524.84** for both motions together.

Plaintiff shall submit written orders to the Court consistent with this tentative ruling regarding the two motions and in compliance with Rule of Court 3.1312(a) and (b).

5. 25CV01120, In Re: J.G. Wentworth Originations, LLC

APPEARANCES REQUIRED. Petitioner J.G. Wentworth Originations, LLC ("Petitioner") and Interested Party Berkshire Hathaway Life Insurance Company of Nebraska ("Berkshire") shall appear to present argument regarding the First Amended Petition for Approval for Transfer of Payment Rights, pursuant to California Insurance Code section 10134 et seq. (the "Transfer Act").

PROCEDURAL HISTORY

Petitioner alleges that in or about 2012 or 2013, Richard Joseph Jr. ("Payee" or "Transferor") became entitled to certain structured settlement payments resulting from a claim of damages on a personal injury claim. (First Amended Petition, ¶ 3.) Petitioner alleges that Payee agreed to sell his rights to these payments via the proposed Purchase Agreement attached as Exhibit A to the First Amended Complaint. (*Id*. at ¶ 7.)

Berkshire is an interested party who issued an insurance contract used to fund Payee's structured settlement payments as the "annuity issuer." (*Id*. at ¶ 5.) Berkshire filed a response to the First Amended Petition to argue that it is fatally flawed on procedural and substantive grounds, which deficiencies Petitioner cannot cure without a court order and refiling of the Petition. (Response, 2:8-13.)

ANALYSIS

Legal Standard

I. Transfers of Structured Settlement Payment Rights

California Insurance Code section 10137 et seq. provides that a transfer of structured settlement payment rights is void unless a court reviews and approves the transfer and first finds that the following conditions are satisfied:

(a) The transfer of the structured settlement payment rights is fair and reasonable and in the best interest of the payee, taking into account the welfare and support of his or her dependents; and

(b) The transfer complies with the requirements of this article, will not contravene other applicable law, and the court has reviewed and approved the transfer as provided in section 10139.5.

(Cal. Ins. Code § 10137(a)-(b).)

Section 10138 details the types of provisions that are prohibited from a transfer agreement regarding structured settlement payment rights, including but not limited to, the right to sue, indemnification, cost of defense, waiver of benefits or rights conferred with respect to garnishment of wages, confidentiality provisions, etc. (Cal. Ins. Code § 10138(a)(1)-(12).)

A petition for approval of a transfer of structured settlement payment rights must be made by the transferee and brought in the county in which the payee resides at the time the transfer agreement is signed by the payee, or, if the payee is not domiciled in California, in the county in which the payee resides or in the county where the structured settlement obligor or annuity issuer is domiciled. (Cal. Ins. Code § 10139.5(f)(1).)

II. Factors Considered for Approval of Transfer of Structured Settlement Payment Rights

Furthermore, section 10139.5(a) requires that a court order approving of a transfer of structured settlement payment rights be based on "express written findings by the court." These must show that:

(1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;

(2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received that advice or knowingly waived, in writing, the opportunity to receive the advice;

(3) The transferee has complied with the notification requirements pursuant to paragraph (2) of subdivision (f), the transferee has provided the payee with a disclosure form that complies with section 10136, and the transfer agreement complies with sections 10136 and 10138;

(4) The transfer does not contravene any applicable statute or the order of any court or other government authority;

(5) The payee understands the terms of the transfer agreement, including the terms set forth in the disclosure statement required by section 10136; and

(6) The payee understands and does not wish to exercise the payee's right to cancel the transfer agreement.

To determine approval, the Court must also consider the totality of the circumstances including whether it is fair, reasonable, and in the payee's best interests, as described under Insurance Code section 10139.5(b)(1)-(15). The petition for approval must include the following:

(1) The payee's name, address, and age;

(2) The payee's marital status, and, if married or separated, the name of the payee's spouse;

(3) The names, ages, and place or places of residence of the payee's minor children or other dependents, if any;

(4) The amounts and sources of the payee's monthly income and financial resources and, if presently married, the amounts and sources of the monthly income and financial resources of the payee's spouse;

(5) Whether the payee is currently obligated under any child support or spousal support order, and, if so, the names, addresses, and telephone numbers of any individual, entity, or agency that is receiving child or spousal support from the payee under that order or that has jurisdiction over the order or the payments in question; and

(6) Information regarding previous transfers or attempted transfers, as described in paragraph (10), (11), or (12), of subdivision (b), in the manner described in subdivision (c), number (6).

(Cal. Ins. Code. §§ 10139.5(c)(1)-(6).

III. Notice Requirements for Transfer of Structured Settlement

At least 20 days before the scheduled hearing on the petition, the transferee has to file and serve on all interested parties a notice of the proposed transfer and the petition for its authorization and the notice must include all items listed under Insurance Code section 10139.5(f)(2)(A)-(L).

Petition for Approval of Transfer

Per the Purchase Agreement, under the structured settlement plan the payments to the Payee were being paid out from an annuity policy. (First Amended Complaint at Exhibit A, Exhibit C.) BHG Structured Settlements, Inc. is the "structured settlement obligor" responsible for making the settlement payments. (*Id*. at ¶ 6.) Instead of waiting for the settlement payments to be made on future dates to Payee, Payee agrees under the proposed Purchase Agreement to sell all or some of those settlement payments to Petitioner now in exchange for a lump sum. (*Id*. at Exhibit A.) The proposed Purchase Agreement was signed by Payee on March 10, 2025, and by Petitioner's Vice President, Michael Rodden. (*Ibid*.)

Per the Petition, in order to effectuate the transfer of the payments as set forth in the Purchase Agreement, Petitioner has to first obtain court approval of the transfer pursuant to California Insurance Code section 10134 et seq. (*Id.* at ¶ 8.) For this reason, Petitioner seeks the Court's approval of the transfer of Payee's structured settlement payments to Petitioner, including, but not limited to: (1) $20,000.00 on July 13, 2025; (2) $10,000.00 on August 22, 2028; and (3) $10,000.00 on August 22, 2029. (*Id*. at ¶ 4, Exhibit A, section 2, subsection B.)

Petitioner filed and served the required Notice of Hearing with the Petition, its supporting documents, and the items required under Insurance Code section 10139.5(f)(2). (See Notice of Hearing, dated February 11, 2025.)

In support of the Petition, Petitioner attached Declaration of Payee stating that he is the Payee/Transferor under the proposed Purchase Agreement and that he is 38 years old, single, and has three children, one of whom is a minor aged 13. (Payee Declaration, ¶¶ 1, 8.) Payee attests that he is not married, is self-employed, is experiencing financial hardship without any help from his children's mother to take care of his payment obligations and provide for his children, that he does not receive any monthly payments from his annuity or social security, and that he has no court-ordered child support obligations. (*Id*. at ¶¶ 8, 11.) Payee also declares that he did not complete any previous transaction regarding the structured settlement payments or attempt any previous transactions involving the payments. (*Id*. at ¶¶ 9-10.)

Berkshire's Response

Berkshire's position is that Petitioner needs to correct, amend, and/or re-file its Petition to comply with the requirements of the Transfer Act.

Underlying Settlement

Berkshire takes issue with the Payee's Declaration, which states that the settlement agreement was confidential for his personal injury claim in 2013. (Response, 3:1-3.) Berkshire then claims that the Settlement Agreement provided a large cash payment to Payee at the time of settlement, but that it does not state the amount Payee received. (*Id*. at 3:3-6.)

BHLN Contract

Berkshire claims that BHLN paid out all amounts due under its Contract to date, totaling

$140,000.00 thus far to Payee. (Response, 3:8-11, 4:1-8.)

Proposed Transfer and Impact on Payee

Berkshire calculates the Annual Discount Rate to be 29.803% as opposed to the 24.88% stated by Petitioner. (Response, 4:10-20.)

Defective Pleading

Berkshire also questions the use of the original Petition, which is no longer operative as Petitioner already filed the First Amended Complaint. (Response, pp. 4-6.)

Statutory Best Interests Factors

Berkshire states that under the Transfer Act, Petitioner has the burden of demonstrating that the terms of its proposed transfer are "fair and reasonable." (Response, 6:8-11.) The Response does not address the sufficiency of the sections of the First Amended Complaint dedicated to explaining why the transfer is fair and reasonable and in the best interest of the Payee. (See generally, First Amended Complaint, pp. 4-9.)

Structured Settlements Should be Preserved

Berkshire impresses that once a transfer of structured settlement payments is approved, the process cannot be undone and the protections and tax-free benefits are lost forever, so the function of the structured settlement payments to provide for the long-term needs of the settling parties will also be lost. (Response, pp. 7-8.) In the footnotes, Berkshire notes that one of the considerations is financial hardship of the Payee and his family or dependents, which was the main reason Payee provided in his declaration for needing the transfer approved. (*Id*. at 7:16-22.)

Independent Professional Advice

Petitioner is required to pay the first $1,500.00 of the transfer towards the cost of independent professional advice in order to help Payee evaluate the transaction, but Payee waived this right. Berkshire's position is that BHLN's structured settlement payments are more economically favorable for Payee than the transfer proposed by Petitioner. (Response, 8:7-18, 9:1-2.)

BIFCO Hardship Exchange Program Option

Finally, Berkshire states that the BIFCO Hardship Exchange Program was implemented to help annuity payees that faced an unanticipated change in circumstances since entering into their structured settlement. This program is available to Payee as an alternative to Petitioner's proposed transfer and offers alternatives that would provide Payee with a greater payout than outlined in the Purchase Agreement. (Response, 9:4-28, 10:1-13.)

CONCLUSION

The Court has reviewed the proposed transfer and Berkshire's response. The parties are ordered to appear to present argument regarding the issues raised in Berkshire's Response, specifically: (1) whether

Payee's current financial hardship is sufficient as an overriding factor for the Court to consider in potentially approving the proposed transfer; and (2) whether the BIFCO program proposed by Berkshire would be a better alternative for Payee and in Payee's best interest.

6. SCV-269497, Wilcox v. Culbertson, M.D.

Plaintiff Lydia Wilcox's motion to set aside the Court's Order and Notice of Entry of Dismissal entered July 26, 2024, is **GRANTED** per Code of Civil Procedure ("C.C.P.") section 473(d).

PROCEDURAL HISTORY

Plaintiff commenced this action against Defendants Culbertson and Santa Rosa Memorial Hospital alleging medical negligence regarding a jaw surgery, in which she claims Defendants failed to exercise the appropriate standard of care and therefore caused her to undergo multiple corrective surgeries.

Defendant Santa Rosa Memorial Hospital was dismissed without prejudice on March 15, 2023. Defendant Culbertson successfully brought an unopposed motion for summary judgment, which the Court granted on June 18, 2024. Per Defendant Culbertson's notice of hearing and proof of service for the motion for summary judgment, he properly and timely served Plaintiff at both her address at 2500 Road "L", Redwood Valley, California 94570, and at her personal email address at ms.lmw707@gmail.com. This is the same email address that appears on Plaintiff's caption in her motion to set aside dismissal.

On June 21, 2024, the Court called this matter for trial in Department 16 with the Hon. Patrick Broderick presiding, but there were no appearances by any party. The Court noted in its Minute Order that Defendant Culbertson's motion for summary judgment was granted on June 18, 2024, but that Doe Defendants still remained in this matter. As such, the matter was continued to Department 17's Order to Show Cause regarding dismissal. The Proof of Service by Mail attached to the Court's minute order reflects that service was only sent to the dismissed Defendants' addresses but not to the Plaintiff.

On July 25, 2024, the Court did not receive any timely requests for appearances on the Order to Show Cause calendar regarding dismissal, so the Court dismissed the matter without prejudice as to Doe Defendants.

Plaintiff now seeks to set aside the dismissal arguing that her mail has been getting stolen and that she never received notice of the motion for summary judgment. No opposition has been filed as there are no named defendants remaining in this matter.

ANALYSIS

Though Plaintiff brings her motion to set aside the dismissal under C.C.P. section 473(b), the Court finds that C.C.P. section 473(d) is more relevant here.

Section 473(d) provides in relevant part, the court may "correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed." When correcting clerical mistakes, "the function of a nunc pro tunc order is merely to correct the record of the judgment and not to

alter the judgment actually rendered—not to make an order now for then, but to enter now for then an order previously made. (*In re Marriage of Padgett* (2009) 172 Cal.App.4th 830, 852.) In other words, "the court can only make the record show that something was actually done at a previous time; a nunc pro tunc order cannot declare that something was done which was not done." (*Johnson & Johnson v. Sup. Ct.* (1985) 38 Cal.3d 243, 256.) The difference between a clerical error and a judicial error is whether the error was made in rendering the judgment (judicial error) or in recording the judgment (clerical error). (*People v. Karaman* (1992) 4 Cal.4th 335, 345.) To distinguish a clerical error from judicial error, courts consider "whether the challenged portion of the judgment was entered inadvertently (which is clerical error) versus advertently (which might be judicial error but is not clerical error)." (*Tokio Marine & Fire Ins. Cop. V. Western Pacific Roofing Corp*. (1999) 75 Cal.App.4th 110, 117-18.)

On review of the Court's own record, the Court finds that in the Court's own error, the Court did not give sufficient notice to Plaintiff regarding the setting of the Order to Show Cause regarding dismissal of this matter as to Doe Defendants. Based on section 473(d), the Court will set aside the dismissal of this matter entered on July 25, 2024.

However, the Court will not set aside the order granting Defendant Culbertson's motion for summary judgment. Though Plaintiff claims that her mail was being stolen, Defendant Culbertson also served the moving papers to her personal email address, which is included in her caption on her motion to set aside dismissal. This suggests that Plaintiff likely had notice of the motion for summary judgment via her personal email address. Furthermore, Plaintiff has not appropriately brought a motion to set aside the order and judgment entered against her as a result of the motion for summary judgment for the Court to consider here.

CONCLUSION

Based on the foregoing, Plaintiff's motion to set aside the dismissal as to the Doe Defendants is **GRANTED**, per C.C.P. section 473(d). 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).

Department 16 Matters: Hon. Jane Gaskell for the Hon. Patrick Broderick

7. 24CV01435, Pienta v. Natoli

Defendants American Medical Response ("AMR"), Andrew Natoli ("Natoli"), and Kevin Comalli ("Comalli")(altogether "Defendants") move for an order granting summary judgment in their favor again Plaintiffs.

This case was filed subsequent to the tragic death of Jayden Pienta. Plaintiff Travis Pienta is Jayden's father and Misty Lenwell is Jayden's mother. Both have brought this action as Jayden's successors in interest and in their capacity as intestate heirs.

The complaint alleges that after Jayden was stabbed at his school, Defendants responded to the scene and undertook to provide medical care. Defendant Natoli was AMR's paramedic. Defendant Comalli was a paramedic intern. The complaint alleges that Defendants were grossly negligent by failing

to provide necessary and appropriate life saving care, including, but not limited to, failing and refusing to administer tranexamic acid, which is an antifibrinolytic agent which blocks the breakdown of blood clots and prevents excessive blood loss.

To recover damages in a suit alleging negligence against paramedics, plaintiffs must prove gross negligence. "Gross negligence is pleaded by alleging the traditional elements of negligence: duty, breach, causation, and damages. However, to set forth a claim for 'gross negligence' the plaintiff must allege extreme conduct on the part of the defendant." (*Rosencrans v. Dover Images, LTD* (2011) Cal.App.4th 1072, 1082.) "'Gross negligence' long has been defined in California and other jurisdictions as either a 'want of even scant care' or 'an extreme departure from the ordinary standard of conduct.' [Citations.]" (*City of Santa Barbara v. Superior Court* (2007) 41 Cal. 4th 747, 754.)

Defendants' evidence establishes that their conduct was within the standard of care and did not amount to gross negligence. (Defendants' Separate Statement of Undisputed Facts, Nos. 1-18.) Plaintiffs have not filed opposition papers countering Defendants' evidence; therefore, they have not raised a triable issue of fact.

Defendants' motion is GRANTED.

Defendants' counsel is directed to submit a written order to the Court consistent with this ruling.

8. 24CV04869, County of Sonoma v. Odbert

Defendants Global Capital Trust ("GCT"), Larry Obert ("Obert"), individually and as trustee (together "Defendants") demur to the complaint filed by Plaintiff County of Sonoma ("County") on the grounds that the complaint as a whole and to each cause of action is uncertain and fails to state facts sufficient to constitute a cause of action as there is a defect or misjoinder of parties and misfiling of case.
The demurrer is OVERRULED.

Allegations

On August 20, 2024, the County filed a complaint to abate a public nuisance; to permanently enjoin a grading code violation; for money judgment for costs, fees, and delinquent civil penalties; and for injunctive relief. The complaint alleges Defendants own property located at 1966 Alan Drive in Penngrove ("the Property") and that prior owners imported 600 cubic yards of fill to create a berm without a grading permit and build a culvert and swale in the County right of way.

On February 21, 2023, a judgment for abatement was entered against the Property's prior owners David McDonald, Allen D. Martin, and Paula R. Martin. (Complaint, ¶6.) A permanent injunction was granted against defendant David McDonald, and persons acting on his behalf or in concert with him and his successors, assigns, agents or principals. (*Id.*, ¶42.) On April 20, 2023, David McDonald died, and William Fowler and Violet McDonald were named administrators of his estate. (*Id.*, ¶7.) On January 18, 2024, the Martins quitclaimed their interest in the Property to defendant Global Capital Concepts, Inc. ("Global Capital") (*Id.*, ¶8.) The Secretary of State lists defendant Odbert as the CEO, Secretary, CFO, and Director of Global Capital. (*Id.*, ¶9.) On January 18, 2024, Global Capital granted the Property to

GCT and Odbert as trustee. (*Id.,* ¶10.) On March 18, 2024, Defendants granted a beneficial interest in the Property to Global Capital. (*Id.,* ¶11.) Notice of the abatement order was given to Defendants, no appeal was made, but the conditions have not been abated, and fees, costs, and penalties have not been paid. (*Id.*, ¶¶48-59.)

Defendants' argument

Defendants argue that they are not the correct parties to this action. Their argument is based upon the fact that the illegal grading was caused by the Property's prior owners. However, Defendants have not addressed the allegation that they took ownership of the Property with full knowledge of the grading violations. Nor do they state that they are not the current owners of the Property.

Sonoma County Code section 1-7(B)(3) defines the "Responsible Party" as a person who maintains or allows a violation to continue, or who possesses or controls the real property upon which a violation is found.

Meet and Confer

The Court notes that the parties disagree upon whether they actually met and conferred prior to the filing of this demurrer, with each counsel differing in their interpretation of the communications between the parties to date. However, it is clear to the Court that extensive communication has taken place over an extended period of time. Therefore, the Court will deem the meet and confer requirement satisfied for the purpose of this demurrer, and encourage the parties to continue their efforts to resolve this matter.

Conclusion and Order

The demurrer is OVERRULED. Plaintiff's 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.