

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, April 26, 2023, 3:00 p.m.
Courtroom 16 –Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa**

PLEASE NOTE: Per order of the Court, any party or representative of a party must appear remotely through Zoom for this calendar, unless you request in person appearance by 4:00 p.m. the day before the hearing.

**TO JOIN “ZOOM” ONLINE,
Courtroom 16
Meeting ID: 824-7526-7360
Passcode: 840359
<https://us02web.zoom.us/j/82475267360?pwd=M0o4WVRSaysydlU5VWhBZEK1MEhpdz09>**

**TO JOIN “ZOOM” BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 900-6833 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. SCV-269636, Vigil v VanVorst

This matter is on calendar for the motion of defendant Community Support Network (“CSN”) for summary judgment in its favor against Plaintiff David Vigil. The motion is made on the grounds that the undisputed facts show that defendant Kymberly Van Vorst was commuting home at the time of the accident and no exception applies; therefore, the coming and going rule bars Plaintiff’s claim against CSN.

On January 20, 2023, defendant Van Vorst filed a Notice of Stay of Proceedings. The Notice indicates that due to Van Vorst’s filing for bankruptcy, this action is stayed. Accordingly, **the motion is DROPPED and will be reset once the stay is lifted.**

2. SCV-270407, Wiley v Lake County Contractors, Inc

The Court has recused on this matter. The Motion is continued to May 3, 2023, at 3:00 p.m., in Department 19.

3. **MCV-250562, Citibank v Lee**

This matter is on calendar for Plaintiff/Judgment Creditor CITIBANK, N.A.'s motion opposing Defendant/Judgment Debtor Brian Lee's Claim of Exemption. Defendant/Judgment Debtor informed this Court at the last hearing held February 24, 2023, that he filed for bankruptcy under Chapter 13, through his counsel Randi Michaelson, under filing number "23180." This Court ordered that written information regarding the bankruptcy filing and a stay shall be filed with the Court prior to the April 26, 2023, hearing date. However, nothing has been filed regarding Defendant/Judgment Debtor's bankruptcy.

Thus, the Court **continues this matter to May 10, 2023**, to give the parties time to file information needed to determine whether a stay on proceedings is mandated by Defendant/Judgment Debtor's bankruptcy filing.

4-6. **SCV-269379, Martinez Verdugo v Ayala**

This matter is on calendar for the motions of Defendant Esteban Ayala ("Defendant") to compel Plaintiff Jesus Rodolfo Martinez Verdugo ("Plaintiff") to provide responses to Defendant's Form Interrogatories, Set One; Special Interrogatories, Set One; and Requests for Production of Documents, Set One. **The motion is GRANTED. Plaintiff is ordered to provide complete and verified responses, without objections, to Defendants' discovery requests within 15 days of the service of this order.**

On June 29, 2022, Defendant served Plaintiff with Defendant's Form Interrogatories, Set One; Special Interrogatories, Set One; and Requests for Production of Documents, Set One. (Noble decls., ¶3.) On July 27, 2022, Defendant granted Plaintiff an extension to their discovery responses up to and including August 16, 2022. (*Id.*, ¶4.) As of the date of the motion, Defendant has not received responses from Plaintiff to Defendant's form interrogatories, special interrogatories, or requests for documents. (*Id.*, ¶8.)

In opposition, counsel for Plaintiff states that, as Defendant is aware, she has been unable to locate Plaintiff for an extended period of time. Counsel argues that granting Defendants' motion would unfairly prejudice Plaintiff as it is likely that Plaintiff is unaware of the pending discovery. No authority is provided that a plaintiff who fails to communicate with his counsel in order to continue to prosecute his case should be relieved of his duty to respond to discovery requests.

The court notes that Plaintiff's counsel had filed a motion to be relieved as counsel which had been set for February 17, 2023. However, subsequent to Judge Pardo recusing himself in this matter, the tentative ruling on the motion to be relieved as counsel was withdrawn. The motion does not appear to have been rescheduled.

The motion is GRANTED. Plaintiff is ordered to provide complete and verified responses, without objections, to Defendants' discovery requests within 15 days of the service of this order.

Defendant'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.

7. **SCV-270624, Pedraza v Leanos**

This matter is on calendar for the motion of Plaintiffs Roberto Pedraza, Gualberto Menendez Caceres, Rocio Cambray, Luz Emily Richardson Saavedra, Salvador Monjaras, Veronica Gil Rodriguez, Sergio Lopez, and Sebastian Lazaro Ortiz (“Plaintiffs”) for an order compelling further discovery responses and for sanctions pursuant to Code of Civil Procedure (“CCP”) sections 2023.010, 2023.030, 2030.290, and 2033.290, against Defendant Raul Valdivia Leanos dba Valdivia Trucking (“Defendant”). The motion is made on the grounds that Defendant did not provide substantive responses to Request for Admission Number 3 and to several special interrogatories. Plaintiffs’ motion and request for sanctions is **DENIED**, for failure to include a separate statement as is required by California Rules of Court, rule 3.1345(a)(1)-(2).

Plaintiffs argue that Defendant has failed to provide code-compliant responses to “RFA No. 3 on behalf of Cambray, Lopez, Monjaras, Ortiz, Rodriguez, and Saavedra, SROGs 9-11 on behalf of Saavedra, Cambray, Ortiz, Lopez, and Rodriguez, SROGS 11 and 13-15 on behalf of Monjaras, and SROGS 13-15 on behalf of Rodriguez.” (Memorandum of Points and Authorities for Motion to Compel [“MTC”], 4:10-14.) Defendant opposed, arguing that Plaintiffs failed to include the required separate statement for a motion to compel further responses to request for admission and interrogatories. (Opposition, 3:4-22.)

A propounding party may move to compel a further response to an interrogatory if: “(1) An answer to a particular interrogatory is evasive or incomplete. (2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate. (3) An objection to an interrogatory is without merit or too general.” (CCP § 2030.300(a).) Likewise, a motion to compel further responses to a request for admission may be brought if: “an answer to a particular request is evasive or incomplete. (2) An objection to a particular request is without merit or too general.” (CCP § 2033.290) Among other requirements, either motion to compel must be accompanied by a separate statement, “that provides all the information necessary to understand *each discovery request and all the responses to it that are at issue.*” (C.R.C., rule 3.1345, emphasis added). It is required that “the separate statement must be full and complete so that no person is required to review any other document in order to determine the full request and the full response.” (*Ibid.*) For each request or interrogatory, the separate statement must include the text of the request or interrogatory, the text of the response, and a statement of the “factual and legal reasons for compelling further responses, answers, or production as to each matter in dispute.” (*Ibid.*) The only exceptions are if no responses at all were provided, or if the court has ordered otherwise. (*Ibid.*)

Courts may also otherwise impose monetary sanctions for fees and costs upon a party engaging in the misuse of the discovery process (CCP § 2023.030.) Misuses include, but are not limited to, failing to respond or to submit to an authorized method of discovery and making an evasive response to discovery. (CCP § 2023.010.)

Here, no such separate statement was included, though moving party has generally referred to groups of interrogatories and generally stated reasons for compelling in the motion and supporting declaration. This is not sufficient for a motion to compel further responses because it does not meet the procedural requirements. Neither exception applies here for failing to include a required separate statement, so the motion is deficient on this basis. As a result, sanctions are also not warranted.

Plaintiffs' motion to compel further responses and request for sanctions is **DENIED**. Prevailing party'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.

8. SCV-269310. Percy-Dunhams v Hannah Boys Center

Defendants Hanna Boys Center and Cameron Safarloo (together "Defendants") demurrer to Plaintiff Stephanie Percy-Dunhams' ("Plaintiff") Amended Complaint is **SUSTAINED**, as to the entire Complaint, with leave to amend within 10 days of the service of notice on this ruling to Plaintiff, pursuant to California Rules of Court, rule 3.1320(g).

I. Procedural History

Plaintiff, self-represented, brought this action on September 16, 2021, and a year later amended her personal injury Complaint to allege causes of action for general negligence and intentional tort against Defendants (Amended Complaint, ¶ 10.) Plaintiff claims that she suffered wage loss, general damage, and as other damage, she specified "severe mental anguish, loss of consortium with son, depression, punitive damages, financial loss, loss of important time as well with son." (*Id.* at ¶ 11.) The Court notes, as Defendant points out in the demurrer, that that no attachments, supplemental facts, or declarations were included with the PLD-PI-001 Complaint form to support Plaintiff's causes of action. (Memorandum of Points and Authorities in support of Demurrer ["Demurrer"], 2:22-28.)

II. Motion

Defendants demur, per Code of Civil Procedure ("CCP") section 430.10(e), to the entire Complaint and each individual cause of action alleged therein, for failure to state facts sufficient to constitute a cause of action and for uncertainty. (Notice of Demurrer, 2:7-13.) No separately factual bases were alleged in the Amended Complaint to support Plaintiff's causes of action against Defendants, and Defendants were served with an incomplete form that Defendants find as uncertain and unclear as to who is exactly being named as a defendant, which causes of action are being alleged and against which defendants, and what the facts supporting are for those causes. (Demurrer, 4:10-26.)

Plaintiff did not file any opposition. Defendants filed a reply in support of the demurrer and noticing non-opposition on April 19, 2023. Defendants' counsel spoke with Plaintiff on the phone to meet and confer regarding ineffective service and the issues brought up in the demurrer about missing forms PLD-PI-001(2)-(3) which require a description of the reasons for liability. (Declaration of Ryan E. Abernethy in support of Demurrer ["Decl. Abernethy"], ¶¶ 6-10; Reply Declaration, ¶¶ 5-7.) Defendants' counsel declares that over various telephonic conversations, he learned from Plaintiff that she was having difficulty obtaining legal counsel and considered dismissing the matter. (*Ibid.*) However, as the issues raised as to the Amended Complaint were not resolved, Defendants' counsel continued efforts to confer with Plaintiff, and spoke with Plaintiff as recently as April 19, 2023, during which Defendants' counsel declares that Plaintiff intended to proceed with this litigation and stated that she would provide completed forms PLD-PI-001(2)-(3).

(Reply Declaration, ¶ 5.) Still, Defendants have not received these and nothing of the sort has been filed with this Court. (*Ibid.*)

III. Analysis

a. Legal Standard

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Generally, the pleadings “must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts.” (*Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal. App. 3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367, 384.) Each evidentiary fact that might eventually form part of a party’s proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) “The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree.” (*Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

b. Application

The Court agrees with the grounds stated Defendants’ demurrer and finds Plaintiff’s Amended Complaint to be deficient in that it is incomplete and fails to state facts sufficient on its face to constitute or support stated causes of action for general negligence or intentional tort. The Court further finds that the Amended Complaint does not make clear against which defendants these causes of action are being alleged. However, the Court does find that Plaintiff is able to cure these defects by amendment to state additional facts supporting her causes of action, and also by submitting the additional required forms PLD-PI-001(2)-(3).

IV. Conclusion

Defendants’ demurrer to Plaintiff’s Amended Complaint is **SUSTAINED**, as to the entire Complaint, with leave to amend within 10 days of the service of notice on this ruling to Plaintiff, pursuant to California Rules of Court, rule 3.1320(g).

Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with California Rules of Court, rule 3.1312(a)-(b).

9. SCV-269529, Forte v Riebli, Jr

This matter is on calendar for the ex parte application of Defendant Arnold Joseph Riebli, Jr. (“Defendant”) for an order staying all proceedings pending resolution of the criminal matter against Defendant. The ex parte application was filed on February 17, 2023. Plaintiff filed a notice of unconditional settlement of entire case on April 14, 2023, stating that a request for dismissal will be filed within 45 days of the date of settlement (April 13, 2023.) The Court’s tentative ruling is to **DENY** the application for staying all proceedings pending the resolution of the criminal matter against Defendant based on Plaintiff’s notice of unconditional settlement and upcoming dismissal of this entire matter. Parties’ appearance is required at the April 26 hearing to update the Court regarding the status of the criminal matter and pending dismissal of this matter.

This matter involves a motor vehicle accident. The complaint allege that Defendant drove while hypoglycemic and emotionally upset, during which he reached down to pick up his phone and did not see the vehicles stopping in front of him. His car collided with another and propelled that car across the median line and into Plaintiff’s vehicle. Plaintiff was severely injured, and his wife was killed.

As a result of the accident, Defendant has been charged with Penal Code section 192(c)(2) vehicular manslaughter. The application requested the court stay this matter pending the resolution of the criminal matter so that he will not have to waive his Fifth Amendment right in order to present a full and complete defense in this case.

Evidence Code section 940 specifically excludes from discovery self-incrimination information. (*Pacers, Inc. v. Superior Court* (1984) 162 Cal.App.3d 686, 688.) Thus, civil defendants who are facing possible criminal prosecution involving the same facts as in the civil action have no obligation to disclose information reasonably believed might be used against them in criminal proceedings. (*Ibid.*) In order not to penalize civil defendants from exercising their privilege against self-incrimination by making them choose between their silence and a meaningful chance of avoiding the loss through judicial process of a substantial amount of property, when confronted with this issue, trial courts should stay discovery pending expiration of the criminal statute of limitations or resolution of the criminal case. (*Id.* at 688-690.)

The Court continued the hearing on this matter on March 22, 2023, and requested that parties supply further briefing and presentation of oral argument with an update regarding the criminal case and how it affects this civil matter. Defendant notes in his supplemental briefing that a hearing will take place on the morning of April 26 in the criminal matter that will heavily impact it in that Plaintiff wants Defendant to serve jail time rather than agreeing to the diversion program. However, plaintiff has also filed a notice of unconditional settlement of this entire matter, as a result of which a request for dismissal will be filed within 45 days of settlement date April 13, 2023. Based on this update, the Court’s tentative ruling is to **DENY** a stay on the civil proceedings pending the dismissal.

10. MCV-258735, JP Morgan Chase Bank v Clay

This matter was continued from April 12, 2023, because Defendant Heidi D. Clay (“Defendant”) appeared to present oral argument without having first given notice to either the Court or Plaintiff

JPMorgan Chase Bank, N.A. (“Plaintiff”) on Plaintiff’s motion for entry of judgment under the terms of the Stipulated Agreement entered into by the parties.

Pursuant to Code of Civil Procedure (“CCP”) section 664.6(a), Plaintiff’s motion is **GRANTED**. Judgment shall be entered in the amount of **\$5,139.06** against the Defendant. Unless the parties request and appear for oral argument, the Court will sign the proposed order and judgment Plaintiff filed on April 18, 2023.

I. Procedural History

Plaintiff brought this action against Defendant on June 10, 2022, to collect payment on a debt that Defendant owed to Plaintiff. On July 26, 2022, Plaintiff filed with this Court the Stipulation Agreement the parties entered into and signed, according to which Defendant owed Plaintiff the principal sum of \$7,979.06. (Plaintiff’s Motion, Exhibit A.) The parties further agreed that if Defendant made 12 of the 18 installment payments, she would be able to deduct the remaining payments totaling \$2,379.06. (*Ibid.*) The agreed upon payments were for 1 payment of \$500 on or before June 29, 2022, 1 payment of \$500 on or before July 15, 2022, 15 payments of \$460 starting on or before August 15, 2022, and 1 payment of \$79.06 on or before November 15, 2023. (*Ibid.*) In the event of a default, Plaintiff would have the amount due, minus the amount paid, entered as a judgment against the Defendant. (*Ibid.*) Defendant defaulted on payments after November 15, 2022, so Plaintiff requested to vacate the dismissal and moved for entry of judgment on Defendant per the Stipulation Agreement and CCP 664.6. (Declaration of Brian Langedyk [“Decl. Langedyk”], ¶ 5.) The Court notes that Plaintiff has abided by the notice requirements of this motion as well to Defendant.

II. Motion

Since the parties entered into the above-described Stipulation Agreement, Plaintiff moves that this Court enter judgment per CCP section 664.6 against Defendant to pay the remaining debt. Defendant made the first payment of \$500 by June 29, 2022, the second payment of \$500 by July 15, 2022, and four payments of \$460 on August 15, September 15, October 15, and November 15 of 2022. Since then, Plaintiff claims that Defendant has not made a payment. (Decl. Langedyk, ¶¶ 5-6.) As Defendant did not make 12 of the 18 payments, she owes the entire \$7,970.60 due, less the \$2,840.00 she paid. Thus, she continues to owe only \$5,139.06.

III. Request for Judicial Notice

Pursuant to California Evidence Code section 452, judicial notice may be taken of “...(d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States...(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Plaintiff requests judicial notice of the below items:

1. Code of Civil procedure section 664.6 Stipulation Agreement filed July 26, 2022.

Plaintiff’s request for judicial notice is **GRANTED**.

IV. Analysis

a. Legal Standard

If parties to a pending litigation agree to sign a written stipulation for settlement of the case, then the court may upon motion enter judgment pursuant to the terms of the settlement. (C.C.P. 664.6(a).) The court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement if the parties request it. (*Ibid.*) “Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit.” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809, 71 Cal.Rptr.2d 265.)

b. Application

Here, Plaintiff has sufficiently demonstrated that the parties entered into a valid written and signed Stipulation Agreement, under which Defendant continues to owe \$5,139.06 after she defaulted on her payment obligations. On motion by Plaintiff, the Court finds an entry of judgment for the remaining \$5,139.06 against Defendant is reasonable per the Stipulation Agreement and CCP section 664.6.

V. Conclusion

Accordingly, the motion is **GRANTED**. Judgment shall be entered in the amount of \$5,139.06 against the Defendant. Unless the parties request and appear for oral argument, the court will sign the proposed order and judgment.

11. **SCV-271285, Warren v California Department of Motor Vehicles**

Matter is DROPPED. Dismissal of Entire Action by Petitioner’s Counsel.