TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, May 1, 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-259829, Looney v Haddad**

This matter is on calendar for the motion of Landon McPherson, the court-appointed receiver in this action. Mr. McPherson moves for an order approving his fees and costs. **Fees and costs are approved in the amount of $3,475.00; however, the request to withhold the subject liquor license until such time as Mr. McPherson's fees are paid is denied.**

Mr. McPherson was appointed receiver in this case on June 23, 2023. Notice of the appointment was served on Defendant Basel Haddad, Individually and dba Cee Vees Liquor ("Defendant") on July 3, 2023. Mr. McPherson's original motion for fees was filed on December 4, 2023, and heard on January 24, 2024. That motion was denied. The court's ruling stated:

"Court-appointed receiver Landon McPherson moves for an order approving his fees and costs. Mr. McPherson spent 15.5 hours on this case. His rate is $300 per hour. He incurred costs in the amount of $375. Therefore, he is requesting a total of $5,024.00. **The motion is DENIED.**

"Mr. McPherson reports that the underlying debt in this case has been paid in full. During the process of obtaining repayment, the defendant in this case, Mr. Haddad, surrendered his liquor license to Mr. McPherson. Mr. McPherson now seeks approval to maintain possession of the liquor license until his receivership fees are paid in full. He also requests that he be allowed to sell the liquor license, if necessary, to pay his fees.

"Mr. McPherson's motion suffers from several defects. He has attached exhibits to his motion; however, he has not provided a declaration under penalty of perjury supporting the evidence provided. In addition, when requesting fees, particularly at a rate of $300 per hour, a declaration should be provided supporting the reasonableness of the requested hourly rate.

"Mr. McPherson was appointed on June 23, 2023. The appointment order required Mr. McPherson to file an undertaking in the amount of $1,000.00 and the bond to be posted within two weeks of the order. The same day as he was appointed, Mr. McPherson filed a declaration with a copy of a bond. The bond indicates that it is for case number MCV-258657, *Looney v. Homran*, et al. wherein Mr. McPherson was appointed receiver on March 29, 2023. This same bond was filed with this motion. (Motion, Exhibit B.) The file does not contain a bond specifically for this action. Therefore, Mr. McPherson has not established that he is entitled to fees as it appears he did not comply with this court's order requiring him to post a bond prior to taking any actions as a receiver." (January 24, 2024 order.)

Mr. McPherson filed his amended motion on March 4, 2024. He notes that, having been alerted to having filed the incorrect bond, on January 24, 2024, he filed a declaration indicating that he had previously attached the incorrect bond to the declaration filed in this case. The January 24, 2024 declaration attaches the correct bond issued on June 27, 2023.

As Mr. McPherson has now established that he obtained a bond as required by this court, the court can address the amount of fees requested. Mr. McPherson charges $300 per hour and spent 15.5 hours on this matter. While generally $300 per hour is not unreasonable for a receiver, it becomes unreasonable if the receiver spends substantial time on low-skill tasks. In review of Mr. McPherson's time statements, it shows, for example, that Mr. McPherson spent one hour obtaining a court order, half an hour creating a file for this case, and one hour preparing a cover sheet and filing the bond declaration. Low-skill tasks such as these do not warrant $300 per hour.

On April 25, 2024, Mr. McPherson filed a supplemental declaration indicating that he hired an attorney to make a few edits and changes to the motion. Mr. McPherson incurred $2,565.00 in attorney fees, which he requests reimbursement for as part of this motion. Mr. McPherson did not provide notice in the Notice of Motion that he would be requesting attorney fees. Accordingly, the request for attorney fees is denied.

Receiver's fees are awarded in the amount of $3,100 and costs in the amount of $375.

Mr. McPherson's request to maintain possession of Defendant's liquor license is denied.

Mr. McPherson is directed to submit a written order to the court consistent with this ruling.

2-3. SCV-2723444, Wilde v Morrone

1. Demurrer

Defendant Marco Morrone ("Morrone") demurs to the second amended complaint ("SAC") with respect to Plaintiffs Jane Doe 1, Jane Doe 2, Linnet Vacha, Morgan Apostle, Jane Doe 3, and

Hannah Holt ("Plaintiffs") on the grounds of failure to state facts sufficient to constitute a cause of action. **The demurrer is OVERRULED**.

Plaintiffs' SAC alleges that, in response to a group of female alumni going public concerning Morrone's sexual misconduct with students attending Sonoma Academy ("SA"), SA retained the New York law firm, Debevoise & Plimpton LLP ("Debevoise") to investigate allegations of sexual misconduct by adults employed at SA. On November 28, 2021, Debevoise released its final report revealing decades of inappropriate sexual misconduct toward students by SA employees, including Defendant Morrone, as well as the sexual abuse of at least two SA students by Defendant Belic. The investigation further detailed SA's abject failure to take corrective action once it was informed about incidents of sexual harassment, sexual abuse, and sexual assaults.

Morrone was employed as a teacher at SA from 2002 to 2020. Plaintiffs allege that during that time Morrone selected young female students each year whom he "groomed" for his own sexual gratification. The Debevoise investigation found that, over the course of his eighteen years as a SA teacher, Morrone sexually harassed, abused, and/or molested at least thirty-four children, including Plaintiffs, while they were SA students. The SAC alleges causes of action against Morrone for Intentional Infliction of Emotional Distress, Childhood Sexual Assault, and Battery.

Morrone argues that without an established action for childhood sexual assault, the claims are time-barred, and that the allegations do not rise to the level of criminal conduct necessary to plead childhood sexual assault and revive an otherwise time-barred claim.

Morrone's four-page memorandum concludes that the allegations in the SAC with respect to six Plaintiffs are insufficient to support a finding of criminal conduct to meet the "annoy or molest standard" because the conduct must be such that a normal person would unhesitatingly be irritated. Morrone argues that because the conduct occurred outside the presence of other students or faculty members, this standard cannot be met, emphasizing that it is the Plaintiff's experience which is emphasized in the SAC. In other words, Morrone argues that Plaintiffs' subjective beliefs and suspicions should not be considered. Morrone condenses the bulk of facts alleged in the SAC concluding that "[s]imply engaging in physical contact during a conversation about a student's academic work is not a criminal act."

Morrone has not considered the entirety of the allegations in the SAC. This includes the alleged well-known facts among the student body, including Plaintiffs, that Morrone groomed female students who were known as "Marco's girls," he was seen taking female students off campus, and was widely considered to be involved in sexual relationships with students. (SAC, ¶¶36, 62, 81.) Regarding Jane Doe 1, Morrone gave her looks that made her peers believe Morrone was sexually interested in her (SAC, ¶60) as well as creating situations to be alone with her, having prolonged physical contact under a pretense of instruction, and emotionally manipulating her and other "Marco's girls" with academic and emotional attention or punishment depending upon the girls' responses to his grooming. (SAC ¶61.)

Similarly, with Jane Doe 2, Morrone allegedly looked at her, spoke to her, got close to her, and flirted with her in such a way that it was apparent he was sexually interested in her. (SAC, ¶¶79, 82.) In addition, Morrone allegedly gave his minor students, including Jane Doe 2, writing assignments and lectures focusing on sexually explicit descriptions of sex and prostitution. (SAC, ¶80.)

Regarding then 16-year-old Linnet Vacha, Morrone groomed her by encouraging her to open up to him about her personal life, leered at her, assigned her sexually explicit reading material, and closely stood over her when she was seated. (SAC, ¶¶87-93.)

Similarly, regarding Morgan Apostle, Morrone allegedly created opportunities to be alone with her, groomed her by encouraging her to open up to him about her personal life and her sexual experiences, focused discussions on sex and physical attraction, gave her a book with a pedophile as the main character and described to Apostle how he identified with the main character, complimented her appearance, sat too close to her and placed his hand on her bare leg above the knee, and attempted to convince her to date someone his age. (SAC, ¶¶ 140-157.)

Similar allegations are made by Jane Doe 3 who was 15 when Morrone allegedly started similar grooming behaviors. (SAC, ¶¶161-175.) Hannah Holt was a junior when Morrone allegedly made inappropriate comments, fostered sexual closeness with her, hugging her, calling her a "Goddess," and telling her he wished he had met her in high school. (SAC, ¶260.)

Section 647.6, subdivision (a), states a misdemeanor offense for every person who "annoys or molests any child under the age of 18." Section 647.6 does not require a touching but does require (1) conduct a "normal person would unhesitatingly be irritated by" and (2) conduct "motivated by an unnatural or abnormal sexual interest" in the victim. (*People v. Lopez* (1998) 19 Cal.4th 282, 289.) "Annoy" and "molest" ordinarily relate to offenses against children, with a connotation of abnormal sexual motivation. (*Id.,* at 290.) The forbidden annoyance or molestation is not concerned with the child's state of mind, but rather refers to the defendant's objectionable acts that constitute the offense. (*Ibid*.)

Morrone has not provided authority that the entirety of the allegations in the SAC with respect to these six Plaintiffs cannot as a matter of law be objectively and unhesitatingly viewed as irritating or disturbing and prompted by an abnormal sexual interest in children. This case is not as objectively benign as in *People v. Carskaddon* (1957) 49 Cal.2d 423, 426-427, the only case the appellate court in *People v. Lopez* found where a section 647.6 conviction had been reversed. In *Carskaddon,* despite suspicions of an intent to later molest the children, the defendant's conduct only consisted of siting under a tree with two young children and then walking with one of them down a public street, conduct which could not be said to unhesitatingly irritate or disturb a normal person. (*People v. Lopez, supra,* 19 Cal. 4th at p. 292.) Morrone has failed to demonstrate that the allegations in the SAC are insufficient.

The demurrer is OVERRULED. Plaintiffs' 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.

2. Motion for Leave

Plaintiffs request leave to file a third amended complaint to add additional allegations required by Cal. Civil Code section 340.1; clarifying allegations in several causes of action; adding defendants Ellie Dwight and Janet Durgin to the fifth cause of action for intentional infliction of emotional distress; deleting vicarious liability allegations; adding a request for punitive damages; adding duty of care standards; and adding a cause of action against Sonoma Academy by plaintiff Jane Doe 6 for Childhood Sexual Assault.

This action was filed in December of 2022. The majority of the proposed changes are ones that could have been alleged in a prior complaint. However, despite being filed almost a year and a half ago, no trial has yet been set in this matter and Defendants have not established prejudice. Accordingly, **the motion is GRANTED.** Plaintiffs' counsel is directed to submit a written order to the court consistent with this ruling.

4. <u>SCV-272551, Creditors Adjustment Bureau Inc v Jantes</u>

This matter is on calendar for the motion of Plaintiff Creditors Adjustment Bureau, Inc. ("Plaintiff") for an order for terminating sanctions, striking Defendant Jose Romero Jantes' ("Defendant's) answer, and entering default against him. Plaintiff also seeks monetary sanctions in the amount of $1,572.75. **The motion for terminating sanctions is GRANTED. Plaintiffs' request for additional monetary sanctions is DENIED.**

Plaintiff filed its complaint on February 2, 2023, alleging causes of action for breach of contract, open book account, accounted stated, and reasonable value. Plaintiff alleges it is the assignee of amounts due under a workers compensation insurance fund. Plaintiff alleges that Defendant owes $70,549.68, plus interest, on the policy.

On May 19, 2023, Defendant filed a general denial.

After failing to provide responses to discovery, on November 30, 2023, Plaintiff's motions to compel responses to its special interrogatories and inspection demands were granted. This court imposed $1,072.75 in sanctions on each motion. Responses were required to be provided within 15 days of the service of the order and sanctions were to be paid within 30 days of the service of the order. Plaintiff served Defendant with the orders on the motions to compel on January 15, 2024. (Brown decl., Exhibit 1.)

As of the date of this motion, Defendant has not produced any written responses or responsive documents. Nor has he paid sanctions.

CCP section 2031.320 allows this court, after a motion to compel an inspection demand has been granted, to impose a terminating sanction against a party who fails to obey the court order. (CCP section 2031.320(c).)

The court may impose a terminating sanction by one of the following orders: (1) An order striking out the pleadings or parts of the pleadings of any party engaging in the misuse of the discovery process; (2) An order staying further proceedings by that party until an order for discovery is obeyed; (3) An order dismissing the action, or any part of the action, of that party; or, (4) An order rendering a judgment by default against that party. (CCP section 2023.030(d).)

The trial court may order a terminating sanction for discovery abuse "after considering the totality of the circumstances: [the] conduct of the party to determine if the actions were willful; the detriment to the propounding party; and the number of formal and informal attempts to obtain the discovery." (*Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1246.) Generally, "[a] decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance

with the discovery rules, the trial court is justified in imposing the ultimate sanction." (*Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279–280.) Under this standard, trial courts have properly imposed terminating sanctions when parties have willfully disobeyed one or more discovery orders. (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 390.)

Here, Defendant has failed to comply with this court's discovery orders and failed to appear for the case management conference scheduled for February 13, 2024. An Order to Show Cause RE Dismissal is scheduled for June 4, 2024. Defendant's refusal to comply with this court's discovery orders and court procedure is willful. Accordingly, the motion for terminating sanctions is GRANTED. Plaintiff's request for additional monetary sanctions is DENIED.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling.

5. <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 ("Aimaq") and Sonoma Pacific Homebuilders, Inc. ("SPH") (together "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 GRANTED as to Cross-Complainants' Amended Requests for Admissions, Amended Form Interrogatories, Amended Special Interrogatories directed at Aimaq and SPH; and Amended Requests for Production, Numbers 1 through 34 directed at SPH. The motion is DENIED as to Cross-Complainants' Amended Request for Production, Numbers 35 through 54.**

On April 25, 2024, Cross-Complainants filed the declaration of David Culver laying out his attempts to meet and confer with Cross-Defendants. Despite such efforts, no additional responses have been forthcoming.

With respect to Cross-Defendants' responses to Cross-Complainants' requests for admissions, and form and special interrogatories, Cross-Defendants have not justified their objections. (*Coy v. Sup.Ct. (Wolcher)* (1962) 58 Cal. 2d 210, 220-221; *Fairmont Ins. Co. v. Sup.Ct. (Stendell)* (2000) 22 Cal. 4th 245, 255.) In addition, Cross-Complainants have established good cause exists to compel further responses to their requests for production of documents numbers 1 through 34 as they pertain to documents supporting responses to interrogatories. The motion as to these requests is GRANTED.

With respect to Request for Production of Documents, numbers 35 through 54, Cross-Complainants have not provided the requisite good cause to compel production.

Request for Production number 35 requests: "Any and all minutes and resolutions constituting or evidencing actions taken by YOUR directors or shareholders regarding YOUR governance and/or business affairs at any time during YOUR existence." Request number 36 similarly requests all filings made with the California Secretary of State at any time during Cross-

Defendants' existence. Request numbers 37 through 38 request all correspondence between Cross-Complainants and the secretary of state. Request number 39 seeks all notices from the California Franchise Tax Board. Request number 40 seeks all communications with creditors. Request numbers 42 and 44 through 46 request financial statements. Request number 43 seeks documents supporting Cross-Defendants' method of accounting. Request numbers 47 through 52 seek documents related to Cross-Defendants' corporate meetings, stocks, ledgers, and organization. Numbers 53 and 54 seek communications with the California Contractors State License Board and the Franchise Tax Board.

The parties' dispute arises from a construction contract to rebuild Cross-Complainants' home. Cross-Defendants allege that they performed but were not completely paid. Cross-Complainants allege that Cross-Defendants' work was substantially delayed, some work was not finished, and other work needed repairing. It is not clear how document requests 35 through 54 are reasonably calculated to lead to the discovery of admissible evidence. Accordingly, as to these requests, the motion is DENIED.

Cross-Complainants' counsel is directed to submit a written order to the court consistent with this ruling.