TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, May 22, 2024 3:00 p.m.
Courtroom 17 – Hon. Bradford DeMeo
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. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

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

TO JOIN ZOOM ONLINE:

D17 – Law & Motion
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 DeMeo's Judicial Assistant by telephone at **(707) 521-6725**, 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. 23CV00625, County of Sonoma v. Hagemann

Plaintiff County of Sonoma's (the "County") unopposed motion for default judgment and permanent injunction against Defendant Hagemann is **GRANTED**. Relief is granted in the amount of $162,273.25 as prayed for in the complaint.

PROCEDURAL HISTORY

Defendant owns property located at 4005 Burnside Road in Sebastopol (APN 073-030-060) (the "Property"). The County's Permit and Resources Management Department ("PRMD") conducted an aerial site inspection of the Property and observed a greenhouse that approximately contained 75 cannabis plants. PRMD issued a Notice and Order for unlawful commercial cannabis use on the Property and civil penalties due for violating various county code sections. Several months later, the County entered the locked Property by force with an Inspection Warrant because Defendant was not there at the time and found several violations as described in Paragraph 29 of the County's complaint. PRMD personally handed Defendant copies of all Notices and Orders of code violations and unpermitted uses of the Property and also mailed the same to Defendant. Defendant neither abated any of the code violations nor appealed any of the notices or orders issued by the County.

The County brought this action against Defendant to abate and enjoin the alleged illegal uses of the Property. The County served process on Defendant by personal service on October 16, 2023, at 1245 Hagemann Lane, Rohnert Park, California 94928, and again on December 13, 2023, at the Property. Defendant has not filed a responsive pleading, so the County requested entry of default against Defendant, which the Court entered on January 22, 2024. Defendant has neither moved to set aside the default nor notified the County of any intent to do so.

REQUEST FOR JUDICIAL NOTICE

Per Evidence Code section 452(d)(1), which allows judicial notice of any record of any court of this state, the County requests judicial notice of the following items:

1. Complaint filed in this matter on September 19, 2023;
2. Proof of Personal Service of Summons and Complaint filed with this Court on December 13, 2023; and
3. County's Request for Entry of Default and this Court's Entry of Default on January 22, 2024.

Per to Evidence Code section 452(b), which allows judicial notice of regulations and legislative enactments issued by or under authority of any public entity in the United State, the County requests judicial notice of the following items:

1. Various Sonoma County Code sections within Chapters 1, 7, 11, 24, and 26.

Finally, pursuant to *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 549, the County requests judicial notice of the following recorded deeds:

1. Interspousal Transfer Deed, Recorded Doc. No. 2018009102, February 9, 2018;
2. Notice of Abatement Proceedings, Recorded Doc. No. 2018039182, May 25, 2018; and
3. Notice of Abatement Proceedings, Recorded Doc. No. 2023031131, June 28, 2023.

The County's requests for judicial notice are **GRANTED**.

<u>ANALYSIS</u>

Legal Standard

Code of Civil Procedure ("C.C.P.") section 585(b) allows for default where defendant has been served, other than by publication, and has neither responded nor appeared. Plaintiff can, after the requesting for an entry of default and the Court entering default, apply for the relief demanded in the complaint. (C.C.P. § 585(b).) The court may enter judgment in plaintiff's favor for relief that must not exceed the amount prayed for in the complaint, in the statement required by 425.11 or 425.115, or as appears by the evidence to be just. (C.C.P. §§ 580(a), 585(b).) Furthermore, "courts have consistently held section 580 is an unqualified limit on the jurisdiction of courts entering default judgments. As a general rule, a default judgment is limited to the damages of which the defendant had notice. Further, the courts have reaffirmed the language of section 580 is mandatory. Therefore, 'in all default judgments the demand sets a ceiling on recovery.'" (*Finney v. Gomez* (2003) 111 Cal.App.4th 527, 534, footnotes omitted.)

Moving Papers

The County moves for default judgment against Defendant per section 585(b) and requests a permanent injunction for the unpermitted and substandard uses of the property. The County argues that default judgment is proper for Defendant's failure to respond and to abate the code violations on the Property. In the complaint's prayer for relief, the County claimed the following costs:

(1) $2,743.25 in PRMD costs;
(2) $5,537.00 in County Counsel attorneys' fees;
(3) $48.00 in County Counsel's costs;
(4) $100.00-$250.00 in County Counsel's costs for service anticipated;
(5) $1,420.00 in additional anticipated attorneys' fees;
(6) $152,275.00 in civil penalties accrued up to date of filing;

The County now seeks an increased amount to be entered in default judgment for costs, fees, and civil penalties against Defendant for the total amount of $434,155.75. The County also requests that Defendant be ordered to abate the violations on the Property within 30 days of this Court executing a judgment.

No opposition has been filed with the Court. The County filed a reply to Defendant's non-opposition requesting the motion be granted. The County has filed an updated memorandum of costs and proposed order as well, seeking additional costs.

Application

The Court finds that the County has established a prima facie case entitling it to entry of default judgment per section 585(b) and to a permanent injunction. Per the evidence, Defendant has been

properly and personally served with process, but failed to file a responsive pleading. Per the complaint, Defendant had notice of all violations the County alleged against him, of the facts upon which the causes of action in the complaint were based, each code section that Defendant allegedly violated, and the civil penalties, fees, and costs that the County requested.

In total, the civil penalties, fees, and costs requested in the complaint total $162,273.25, with note that the penalties and costs will continue to accrue. Per C.C.P. section 580(a), the Court may not grant relief in a default judgment against Defendant that exceeds this amount demanded in the complaint by the County. Therefore, the Court will not grant relief for the additional costs sought by the County in this Motion and in the reply brief for abatement costs and civil penalties is in excess of what was prayed for in the complaint.

CONCLUSION

Based on the foregoing, the County's motion is **GRANTED**, with relief granted in the amount of $162,273.25 as requested in the complaint. The County 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).

2. 23CV00731, Security National Insurance Company v. Bartolomei Tommervik Bartolomei Properties LLC

The Court previously granted Plaintiff's unopposed motion for an assignment order up to a maximum of $112,883.64 in payments due or will become due from sale of the Farmhouse Inn.

The Court also continued Plaintiff's unopposed motion for applying proceeds from sale and appointing a receiver to sell the liquor licenses so that Plaintiff could propose a qualified receiver for the task described in the motion. Plaintiff has not yet proposed a qualified receiver. **The Court CONTINUES this motion to June 26, 2024, at 3:00 p.m. in Dept. 17. The Court will deny the motion if Plaintiff does not propose a qualified receiver before the next hearing date.**

3. 23CV01081, Port Sonoma Assocates LLC v. Wilhelm, LLC

Defendant Wilhelm, LLC's ("Wilhelm") motion to set aside the default judgment entered against it is **GRANTED**, per Code of Civil Procedure ("C.C.P.") section 473(b).

PROCEDURAL HISTORY

Wilhelm is a tree-cutting contractor that leased office space from Plaintiff Port Sonoma Associates LLC ("Plaintiff") to park a fleet of trucks and equipment for Wilhelm's tree-cutting operations. After the lease ended, Plaintiff demanded that Wilhelm pay $800,000 to replace the asphalt driveway on the property that was used daily for truck access. Plaintiff claimed that a lease provision required Wilhelm to maintain the asphalt driveway throughout the lease, but that Wilhelm failed to do so.

The parties continue to dispute this demand and have been unsuccessful in negotiating a settlement over several months. Plaintiff commenced this action as a result and requested Wilhelm's counsel to accept service of the complaint and summons while communicating its most recent settlement offer. Wilhelm's counsel failed to respond and Wilhelm claims that counsel never advised it regarding the complaint.

Wilhelm claims that through its own mistake, inadvertence, surprise, or excusable neglect, which was caused by personnel changes and layoffs occurring around the time the complaint was likely served, Wilhelm overlooked that the complaint was served on it.

After learning that Plaintiff requested default against Wilhelm, Wilhelm's counsel contacted Plaintiff's counsel to request that the default be set aside, but Plaintiff's counsel advised that he was not authorized to stipulate to set aside the default. Wilhelm now moves to set aside the default and Plaintiff opposes.

MOTION TO SET ASIDE

Legal Standard

C.C.P. section 473(b) allows the court to relieve a party from judgment entered against that party due to the party's mistake, inadvertence, surprise, or excusable neglect. Relief from a judgment is mandatory "whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect" In response to such an application for relief, a trial court shall "vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect." (C.C.P. § 473(b).) The affidavit need not disclose the reasons for the mistake, inadvertence, surprise, or neglect. (*Martin Potts & Assocs., Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 435–36.) Moving party bears the burden of showing that the mistake, inadvertence, surprise, or neglect was one that "a reasonably prudent person under the same or similar circumstances might have made." (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 258.)

Moving Papers

Wilhelm moves to set aside the default entered due to its own mistake and its counsel's mistake, inadvertence, surprise, or neglect regarding the service of the complaint. Wilhelm attributes the mistake, inadvertence, surprise or neglect to its counsel's layoffs and staffing changes around the time the complaint was served on it. Wilhelm sought a stipulation from Plaintiff to set aside the default, but Plaintiff did not agree thus making this motion necessary. Wilhelm requests the Court to exercise its discretion and set aside the default so that the matter may be determined on its merits. A copy of the proposed answer has been attached as Exhibit A to the Wallace Declaration for the Court's consideration.

Plaintiff opposes the motion. Plaintiff argues that Wilhelm has failed to adequately show mistake, inadvertence, or excusable neglect on its part because personnel changes and lack of awareness are not satisfactory reasons for setting aside the default. Plaintiff claims that Wilhelm unnecessarily waited over five months to file this motion. Plaintiff also claims that the California Rules of Court required Plaintiff to request the default within 10 days after expiration of the time for service of a responsive pleading unless an extension of time has been granted.

In the reply, Wilhelm reaffirms the arguments made in the motion. Wilhelm argues that the opposition did not identify any prejudice that has been caused by any delay in the two months it took Wilhelm to serve this motion after learning of the default.

Application

The Court finds that Wilhelm has sufficiently shown that due to its own and its counsel's mistake, inadvertence, and excusable neglect, Wilhelm failed to timely respond to Plaintiff's complaint. Wilhelm's motion to set aside per section 473(b) is timely brought and procedurally compliant as it includes a copy of Wilhelm's proposed answer that it wishes to file should the Court grant the motion to set aside.

CONCLUSION

Based on the foregoing, Wilhelm's motion is **GRANTED**. Unless oral argument is requested, the Court will sign the proposed order lodged with the motion on March 15, 2024. Wilhelm shall file its proposed answer within 10 days of the entry of this Court's order.

4. MCV-259731, Looney v. Rama Management, Inc.

Plaintiff Gary Looney ("Plaintiff") moves unopposed to appoint Landon McPherson as the receiver to seize and sell Defendant Rama Management, Inc.'s ("Defendant") California Liquor License number 420358 to satisfy the $1,867.31 judgment entered March 22, 2023. The motion is **GRANTED**, per California Code of Civil Procedure ("C.C.P.") section 564(b)(3). Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312.

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

Defendant Culbertson unopposed motion for summary judgment on Plaintiff Wilcox's complaint is **GRANTED** per Code of Civil Procedure ("C.C.P") section 437c.

PROCEDURAL HISTORY

Plaintiff injured her jaw during a motorcycle crash and was brough to Santa Rosa Memorial Hospital Emergency Room. There, Defendant evaluated Plaintiff's condition over several days and based on her CT scan and information obtained during the evaluation, Defendant determined

Plaintiff required jaw surgery. Defendant discussed the risks, benefits, alternatives, and foreseeable complications of the surgery with her, and with Plaintiff's consent, performed the surgery. According to Defendant, he placed arch bars and screw fixations between and away from Plaintiff's tooth roots and intentionally left one screw out of the upper mandible plate out of concern for its proximity to the tooth root. Defendant claims that the procedure reduced the fracture and that there were no reported complications or mishaps immediately after.

Defendant followed up with Plaintiff about twenty days after the surgery and concluded that the arch bars were intact and stable although Plaintiff reported that a wire on the left side had loosened. Defendant placed guiding elastics to promote stability in Plaintiff's jaw, instructed Plaintiff on how to replace the elastics if they broke or fell off, and instructed her about caring for her mouth and jaw during the healing period. Plaintiff was to follow up in a few weeks or sooner if there were any issues.

Over the next few months, Plaintiff maintained communication via text messages and images of her jaw with Defendant who continued giving her medical advice. Throughout that time, Plaintiff was admitted to multiple emergency departments to have scans and evaluations done on her jaw. Ultimately, Plaintiff underwent a surgical repair procedure at UCSF Medical Center four months after her initial surgery with Defendant.

Plaintiff commenced this action against Defendants Culbertson and Santa Rosa Memorial Hospital alleging a single cause of action for medical negligence. The complaint alleged defendants failed to exercise the appropriate standard of care because Defendant Culbertson misplaced surgical screws and used the wrong arch bars during the surgery. Plaintiff claims Defendant breached his duty of care towards Plaintiff, who was required to undergo multiple corrective surgeries as a result and continues to undergo medical care for the issue.

Defendant Santa Rosa Memorial Hospital was dismissed without prejudice leaving Defendant Culbertson as the only defendant in this matter. Defendant now moves for summary judgment arguing that there are no triable issues of material fact because he did not commit any act or omission that breached the applicable standard of care owed to Plaintiff.

Plaintiff is currently self-represented and has not filed any opposition to the motion. Per Defendant's notice of hearing and proof of service for this motion, Defendant properly and timely served Plaintiff at her address at 2500 Road "L" Redwood Valley, CA 94570. Plaintiff confirmed that this is her most recent address in her signed consent to substitution of attorney dated November 8, 2023. Plaintiff's former counsel substituted out and the Court's record does not reflect that she has yet obtained alternative legal representation.

ANALYSIS

Legal Standard

Motion for Summary Judgment or Adjudication

Summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (C.C.P. § 437c(c).) A party moving for summary judgment must show that the action has no merit or triable issue of fact as to the causes of action alleged. (C.C.P. § 437c(a)(1).)

If moving party meets this initial burden, the burden shifts to the opposing party to provide sufficient evidence to raise a triable issue of fact. (C.C.P. § 437c(p)(1).) An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 845.) A moving party does not meet the initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 840.)

Professional Negligence

In order to allege a cause of action for medical malpractice or negligence, plaintiff must allege the following: "(1) a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) a breach of the duty; (3) a proximate causal connection between the negligent conduct and the injury; and (4) resulting loss or damage." (*Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 968.) "Professional negligence" is defined as a "negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital." (C.C.P. § 340.5.) To establish causation, plaintiff has to show that the alleged negligent act is more probable than not the cause-in-fact of plaintiff's injury; a "possible" cause becomes "probable" if in the absence of other reasonable causal explanation, plaintiff's injury is more likely than not a result of that particular action or omission by the healthcare provider. (*Belfiore-Braman v. Rotenberg* (2018) 25 Cal.App.5th 234, 247.)

<u>Defendants' Motion</u>

Defendant argues he met the applicable standard of care in all aspects in treating Plaintiff. Defendant claims he examined, evaluated, decided a diagnosis and treatment plan, treated, performed the procedure on Plaintiff with her consent, and followed up with her as was required per medical records, imaging studies, and other materials in accordance with the standard of care for a plastic surgeon. Defendant contends that there was no act or omission on his part that caused or contributed to Plaintiff's alleged injuries and damages. For these reasons, Defendant moves for summary judgment arguing there are no triable issues of material fact on Plaintiff's single cause of action for medical negligence.

Plaintiff has not opposed the motion.

<u>Application</u>

In the complaint, Plaintiff alleges that Defendant "failed to exercise the appropriate standard of care to include, but not limited to, misplacement of surgical screws and utilizing incorrect arch bars." Plaintiff did not allege any facts that establish what the local standard of care is regarding such a procedure and how Defendant's alleged acts or omissions strayed from this standard. Defendant's explanation is that the surgical screws and arch bars were purposefully placed to avoid proximity to Plaintiff's tooth root and Plaintiff has not opposed the motion to argue against this point that this placement was a breach of Defendant's duty of care because it did not conform to the local standard regarding such a procedure. Thus, Defendant has met his burden of showing that there is not a triable issue as to the Plaintiff's cause of action for medical negligence and the burden of proof has shifted to Plaintiff to provide sufficient evidence to raise a triable issue of fact. As Plaintiff has failed to do so by not opposing this motion, the Court will grant Defendant's motion for summary judgment.

CONCLUSION

Based on the foregoing, Defendants' motion for summary judgment is **GRANTED**. Defendant 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).

6. SCV-273045, People of the State of California, City of Santa Rosa v. The Testate and Intestate Successors of Norman Hartung, Deceased

Defendant Dilly's and Defendant Leo Avatar's ("Defendant") motion to set aside this Court's order appointing receiver dated June 17, 2023, recorded is **DENIED**.

PROCEDURAL HISTORY

Decedent Norman Hartung ("Decedent") owned the real property commonly known as 642 Benjamins Road, Santa Rosa, California (the "Property"). On or about October 28, 2022, Decedent was found dead on the Property. He had no known next of kin, so the People of the State of California, City of Santa Rosa ("Plaintiff") commenced a receivership action to take control of the Property and abate all existing nuisances found thereon. The Court appointed Robert Wakefield as receiver on June 17, 2023.

Defendant Dilly, as Decedent's intestate successor and administrator his estate, filed this motion to set aside the Court's order appointing Mr. Wakefield pursuant to Code of Civil Procedure ("C.C.P.") section 473(d). Defendant Bobbie (Roberta) Bryan filed a joinder in the motion.

REQUEST FOR JUDICIAL NOTICE & OBJECTIONS TO EVIDENCE

Both parties' requests for judicial notice are **GRANTED** per Evidence Code section 452(d).

Defendant's objections to Plaintiff's accounting report and other evidence are **OVERRULED**.

MOTION TO SET ASIDE

Legal Standard

The court may correct clerical mistakes or errors, or set aside a void order, on its own motion or on a party's motion. (C.C.P. § 473(d).)

Moving Papers

Defendant argues that this Court lacked jurisdiction to order the appointment of a receiver per Health & Safety Code section 17980.7(c), which requires all "owners" be served in addition to the requirement that notice of the petition be posted on the building and mailed first-class to all persons with a recorded interest. Section 17980.7(c) provides as follows:

> "The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision. In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of the petition was posted in a prominent place on the substandard building and mailed first-class mail to all persons with a recorded interest in the real property upon which the substandard building exists not less than three days prior to filing the petition. The petition shall be served on the owner pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure."

Section 17980.7(f) defines an "owner" as "the owner, including any public entity that owns residential real property, at the time of the initial notice or order and any successor in interest who had actual or constructive knowledge of the notice, order, or prosecution." Defendant argues that Plaintiff should have provided service by publication per the above Health & Safety Code section despite there being no owner or successor in interest.

Defendant also argues that Plaintiff was required to amend the complaint and serve summons on him when it learned that he was an intestate heir per C.C.P. sections 377.40, 377.41, and 412.10, and *Gillette v. Burbank Comm. Hosp.* (1976) 56 Cal.App.3d 430.

Finally, Defendant argues that the order appointing the receiver should be set aside due to extrinsic fraud or mistake claiming that Plaintiff had promised to continue the hearing on the receivership motion to allow Defendant to abate nuisances on the property.

Plaintiff and Receiver both oppose the motion. Plaintiff argues that because Plaintiff has complied with all notice requirements under section 17980.7 of the Health & Safety Code and because the Code of Civil Procedure sections cited by Defendant are not applicable here, that a set aside per section 473(d) and equitable relief are not warranted. Receiver likewise argues that there is no basis for Defendant's argument that the Court lacked jurisdiction and that his newly presented theories in the amended motion regarding section 762.030 are misguided and do not demonstrate that Plaintiff complied statutorily with all steps required to have a receiver

appointed under section 17980. Currently, the receiver has obtained lending in the amount of $350,000.00 and will commence construction on the Property since the Court approved the Receiver's proposed rehabilitation plan and authorized Receiver to obtain funding.

In both replies, Defendant reaffirms arguments made in support of the motion and amended motion.

Application

The Court finds that there was no owner and no successor in interest to the Property prior to Defendant being appointed as Decedent's personal representative and as such, notice by publication was not required per Health & Safety Code section 17980.7 as there was no owner. On this basis, the Court's order appointing Mr. Wakefield as receiver is not void. The claimed promise to continue the hearing is not supported by evidence and the code sections cited to by Defendant do not demonstrate that Plaintiff did not abide by statutory notice requirements such that the Court's order on the receivership motion is voided.

CONCLUSION

Based on the foregoing, Defendant's motion is **DENIED**. 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).

7. SCV-273668, Lau v. Perry

A dismissal was filed on 5/17/2024; as such, the Court DROPS this matter from calendar as moot.