TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, June 4, 2025, 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) 521-6725**, 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. 24CV02603, McFarland v. Saffren Joshua L TR & Saffren-Bloom Heather TR

Defendants' motion to compel Plaintiff's attendance and testimony at deposition is **GRANTED**. Defendants' request for sanctions is **GRANTED** in the amount of $477.38. Plaintiff shall appear for his deposition no later than July 31, 2025. The Court will sign the proposed order lodged with the moving papers.

CCP § 2025.450(a), provides:

> If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice.

The motion "shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice." (CCP § 2025.450(b).)

CCP § 2025.410(a) provides, "Any party served with a deposition notice that does not comply with Article 2 (commencing with Section 2025.210) waives any error or irregularity unless

that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled…"

Defendants have made the required showing of good cause for the deposition of Plaintiff. Plaintiff failed to object to the deposition and failed to file an opposition to this motion. Plaintiff is ordered to comply with the deposition notice.

The Court finds that sanctions are warranted pursuant to CCP § 2023.450. Defendants requested $477.38 in sanctions, which the Court finds to be reasonable.

2. 24CV04026, Looney v. Sullivan

This matter is on calendar for the motion of Plaintiff Gary E. Looney, dba Collectronics of California ("Plaintiff") for an order compelling Defendant Casey James Sullivan ("Defendant"), to furnish responses to Plaintiff's First Set of Post Judgment Interrogatories and Plaintiff's Post Judgment Demand for Production of Documents and Tangible Things. Plaintiff requests sanctions in the amount of $60. **The motion is GRANTED. Defendant is ordered to provide responses, without objections, to Plaintiff's discovery requests and to pay sanctions within 30 days of this order.**

On October 14, 2024, Plaintiff obtained a judgment against Defendant in the amount of $1,073.66. On October 28, 2024, Plaintiff served Defendant with form interrogatories and a request for production of documents. (Looney Decl. ¶1, Ex. A.) As of the date of the motion, no responses have been provided. (*Id.*, at ¶¶2, 3.)

The motion is GRANTED. The court will sign the proposed order.

3. 24CV05079, Pride v. Lang

Request for Production of Documents

Defendant Safari West Wildlife Foundation seeks to compel Plaintiff's initial responses to Defendant's Request for Production of Documents, Set One, propounded in January 2025. Plaintiff has represented in his opposition that he provided responses to this discovery demand on May 16, 2025. Accordingly, Defendant's motion to compel responses is **MOOT**. However, the issue of sanctions remains. Defendant's request for sanctions is **GRANTED** in the amount of $1,310. Plaintiff shall pay these sanctions within 20 days of notice of issuance of an order on this motion.

Defendant's counsel shall submit a written order consistent with this ruling and in compliance with Rule 3.1312.

Defendant argues in its reply that the motion to compel should be granted because the responses provided by Plaintiff are deficient. However, the sufficiency of Plaintiff's responses is not before the Court at this time. The motion before this Court is to compel Plaintiff to respond. Plaintiff has done so. The motion is moot. Challenging the sufficiency of those responses will require a motion to compel further responses.

Defendant seeks $1,310 in sanctions, reflecting the attorney's fees and costs incurred in filing this motion. The Court finds the imposition of sanctions to be appropriate. Defendant propounded the discovery requests in January. Responses were due in February. After timely responses were not sent, Defendant inquired with Plaintiff's counsel who represented that responses would be provided within a week. Defendant's counsel agreed to wait one week before filing this motion. Three weeks elapsed with no responses having been sent, so Defendant filed and served this motion. Even after Defendant filed and served this motion on March 17, 2025, Plaintiff still did not

produce responses until the date his opposition to another motion to compel filed by Defendant was due, May 16, 2025.

Plaintiff represents that his delay in providing responses was due to a mistake in calendaring the initial response due date and then another mistake in calendaring the agreed upon extension. However, this does not explain why Plaintiff's responses were still not produced until two months after the motion was filed and served. The Court finds the amount of sanctions requested to be reasonable.

Request to Deem Matters Admitted

Defendant Safari West Wildlife Foundation seeks to deem as admitted the matters set forth in Defendant's Request for Admissions, Set No. One, propounded on Plaintiff in January 2025. Plaintiff has represented in his opposition that he provided responses to this discovery demand on May 16, 2025. Plaintiff argues that the motion is now moot. CCP § 2033.280 provides that the Court shall grant the motion unless the proposed late response is in "substantial compliance with Section 2033.220." While Plaintiff did not submit his response to the request for admission in support of his opposition, Defendant has submitted a reply declaration that concedes that Plaintiff's responses "appear to substantially comply with CCP § 2033.220." Based on Defendant's representation, the Court agrees that the motion is **MOOT**. However, the issue of sanctions remains. Defendant's request for sanctions is **GRANTED** in the amount of $1,310. Plaintiff shall pay these sanctions within 20 days of notice of issuance of an order on this motion.

Defendant's counsel shall submit a written order consistent with this ruling and in compliance with Rule 3.1312.

Defendant seeks $1,310 in sanctions, reflecting the attorney's fees and costs incurred in filing this motion. The Court finds the imposition of sanctions to be appropriate. Defendant propounded the discovery requests in January. Responses were due in February. After timely responses were not sent, Defendant inquired with Plaintiff's counsel who represented that responses would be provided within a week. Defendant's counsel agreed to wait one week before filing this motion. Three weeks elapsed with no responses having been sent, so Defendant filed and served this motion. Even after Defendant filed and served this motion on March 17, 2025, Plaintiff still did not produce responses until the date his opposition to another motion to compel filed by Defendant was due, May 16, 2025.

Plaintiff represents that his delay in providing responses was due to a mistake in calendaring the initial response due date and then another mistake in calendaring the agreed upon extension. However, this does not explain why Plaintiff's responses were still not produced until two months after the motion was filed and served. The Court finds the amount of sanctions requested to be reasonable.

4. <u>24CV05298, Looney v. Orbit Spirit, LLC, a California Limited Liability Company</u>

This matter is on calendar for the motion of Plaintiff Gary E. Looney, dba Collectronics of California ("Plaintiff") for an order compelling Defendants Orbit Spirit, LLC dba Orbit Spirits, and Paula Truong, individually as personal guarantor of Orbit Spirit, LLC ("Defendants"), to furnish responses to Plaintiff's First Set of Post Judgment Interrogatories and Plaintiff's Post Judgment Demand for Production of Documents and Tangible Things. Plaintiff requests sanctions in the amount of $60. **The motion is GRANTED. Defendants are ordered to provide responses, without objections, to Plaintiff's discovery requests and to pay sanctions within 30 days of this order.**

On November 24, 2024, Plaintiff obtained a judgment against Defendants in the amount of $7,410.42. On December 31, 2024, Plaintiff served Defendants with form interrogatories and a request for production of documents. (Looney Decl. ¶1, Ex. A.) As of the date of the motion, no responses have been provided. (*Id.*, at ¶¶2, 3.)

The motion is GRANTED. The court will sign the proposed order.

5. <u>24CV06239, Viking Properties LTD v. Bursten</u>

Defendant Stuart L. Bursten ("Defendant") moves for summary judgment of the complaint filed by Plaintiff Viking Properties LTD ("Plaintiff"). **The motion is DENIED.**

1. Complaint

This is an unlawful detainer action filed by Plaintiff against Defendant over property located at 436 Laguna Vista Road in Santa Rosa. The complaint states that Defendant's tenancy was terminated in October 2024 for at-fault just cause pursuant to Civil Code section 1946.2(b)(1) for failure to pay rent.

2. CCP section 1161(2)

Defendant first argues that the motion does not comply with the requirements of CCP section 1161(2). Section 1161(2) provides:

> When the tenant continues in possession, in person or by subtenant, without the permission of the landlord, or the successor in estate of the landlord, if applicable, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, excluding Saturdays and Sundays and other judicial holidays, in writing, requiring its payment, stating the amount that is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure, or possession of the property, shall have been served upon the tenant and if there is a subtenant in actual occupation of the premises, also upon the subtenant.
>
> The notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, if the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the landlord or the successor in estate of the landlord, if applicable, the tenant shall be deemed to be holding by permission of the landlord or successor in estate of the landlord, if applicable, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during that year, and the holding over for that period shall be taken and construed as a consent on the part of a tenant to hold for another year.

Defendant argues that the 3-day notice to quit: (1) does not identify the name of the person to whom the money is to be paid, (2) does not give 3 court days within which to pay the rent, and (3) it requires payment over 1,300 miles away.

i. Person to be paid

The 3-day notice to quit provides that payment may be made to Viking Properties LTD, 261 Oneida Street, Denver, CO 80220.

Defendant made this same argument in his demurrer, which was overruled on May 9, 2025. As there are no disputed factual issues, Defendant's motion for summary judgment is essentially a second demurrer. Regardless, "[p]erson' includes a corporation as well as a natural person. (§ 17, subd. (b)(6).)" (C*ity of Alameda v. Sheehan* (2024) 105 Cal.App.5th 68, 76.)

ii. Usual Days and Hours

Defendant argues, without supporting authority, that the statute requires the notice itself to provide the "usual days and hours that person will be available to receive the payment," which does not allow for a drop-box because a drop-box is not a live natural person. As noted above, a "person" includes business entities. Here, the business entities' hours are stated, as is its address.

iii. Three Days to Pay Rent

Defendant argues that the law changed to require three court days (i.e., three days' notice, excluding Saturdays and Sundays and other judicial holidays) to pay rent, which he argues did not happen here.

Tenants are subject to eviction if they continue in possession after defaulting on agreed-upon rent. (CCP §§ 1161(2), 1161.1; Civ.C. § 1946.2(b)(1)(A)(n).) Under the COVID-19 Tenant Relief Act, through January 31, 2025, they were entitled to receive a notice to cure before being served with a three-day notice to quit for curable lease violations. (CCP section 1161(3).) If not cured within the time set forth in the notice, a three-day notice to quit without an opportunity to cure may be served. (Civ.C. § 1946.2(c), (n).)

Here, Defendant was served with a 3-Day Notice to Pay Rent In Full or Quit, i.e., the notice to cure, on Wednesday October 2, 2024. (Complaint, Exhibit 2.) Thereafter, six court days later, on Friday, October 10, 2024, Defendant was served with a 3-Day Notice to Quit. (*Id*., Exhibit 3.) This complies with the statutes.

iv. Payment to Colorado

Defendant next argues that the Notice to Pay did not allow for mailing, only personal delivery of rent to the Colorado address.

CCP section 1161(2), provides, in relevant part: "…if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure…"

Defendant could have mailed payment.

v. 3-day notice to pay

Defendant appears to argue that the Notice to Quit somehow waived the 3-day notice to Pay or Quit. No supportive authority is provided. The cases presented are not unlawful detainer actions. Nor could Plaintiff's following the statutory scheme, by serving a Notice to Pay or Quit followed by

a Notice to Quit, give Defendant a reasonable belief that Plaintiff did not want payment for possession or possession for lack of payment.

3. Conclusion an Order

The motion is DENIED.

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.

6. 24CV06709, Wells Fargo Bank, N.A. v. Fabiani

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") moves for judgment on the pleadings against Defendant Marcia Fabiani ("Defendant").

On November 8, 2024, Plaintiff filed its complaint against Defendant alleging breach of contract on a credit card. Plaintiff alleges that Defendant owes it $16,407.64.

In its motion, Plaintiff states that Defendant's answer admits all the allegations in the complaint are true. Attached as Exhibit B to the motion is what purports to be Defendant's answer admitting the truth of Plaintiff's allegations. However, there is no answer on file with this court. As Defendant did not file her answer, judicial notice is denied.

Because there is no answer on file that this court can take judicial notice of, judgment on the pleadings cannot be granted as the motion cannot be based solely on the allegations in the complaint. Accordingly, **the motion is DENIED.**

Due to the lack of opposition, this court's minute order shall constitute the order of the court.

7. 24CV07973, Schiffman v. Spencer

The Hon. Patrick Broderick hereby recuses himself in this matter. Case is reassigned to Department 17/the Hon. Jane Gaskell. Notice of reassignment to issue separately. Please see Department 17's tentative ruling page for the tentative on the Anti-SLAPP motion.

8. SCV-265109, County of Sonoma v. Stavrinides

Defendant Elias Stavrinides ("Stavrinides") moves for an order to set aside and vacate the March 21, 2022, Judgment After Court Trial. **The motion is DENIED.**

The motion is brought pursuant to CCP section 473(d) which provides: "The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order."

The motion is based upon a 2024 federal case heard in the Northern District of California, *Thomas v. County of Humboldt, California* (9th Cir. 2024) 124 F.4th 1179 ("*Thomas"*). *Thomas* involves a putative class action filed on behalf of Humboldt County residents alleging constitutional claims regarding the county's system of administrative penalties and fees for cannabis abatement. Plaintiffs filed the action under 42 U.S.C. section 1983. The district court dismissed all claims. The appellate court considered one claim, plaintiffs' allegation that the county's system of administrative penalties and fees violated the Eighth Amendment's Excessive Fines Clause. The district court dismissed that claim because it concluded that the claim was not justiciable and that it

was untimely. The appellate court reversed the district court's dismissal, in part, and remanded for further proceedings.

The appellate court considered the issues of standing, ripeness, timeliness, and the plausibility of the claim. It determined that at least one plaintiff had standing; that their claim was ripe; with one exception, plaintiffs' claims were timely; and plaintiffs had "plausibly alleged a violation of the Excessive Fines Clause." (*Id.*, at p. 1186.)

In considering whether the plaintiffs alleged a plausible claim for relief under the Excessive Fines Clause, the court laid out the rule and determined the plaintiffs alleged sufficient facts that, if proven true, would meet each element of the rule. It therefore remanded the action for further proceedings.

Stavrinides inaccurately concludes that the federal appellate court in *Thomas* determined that the type of fines that total $1,056,850.00 based upon the code violations found to be present in this case violates the Eighth Amendment of the US Constitution such that the judgment in this case is void. The *Thomas* court did not deal with the merits of the action. It only addressed a pleading issue: whether the plaintiffs in that action could *move forward* with their cause of action alleging violation of the Excessive Fines Clause. The district court had dismissed the action at the pleading stage. The appellate court determined that their allegations were sufficient to allow them to make their case. *Thomas* said nothing of whether they could prove their case or that such fines were constitutionally excessive. Plaintiffs in that case still had to move their case forward at the district level and establish the factors discussed in *Thomas.*

Stavrinides also argues that this court did not apply the *Thomas* factors prior to entering judgment in this action. This court had no reason to do so. The instant action was brought on behalf of the County of Sonoma for code violations. The *Thomas* case was brought by plaintiffs alleging a constitutional violation. Thus, the test applied in *Thomas* was not applicable.

The motion is DENIED. County 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.

9. SCV-267759, The Design Build Company, LLC v. Conway

Cross-Defendant, and Cross-Complainant, The Design Company, LLC ("TDC"); and Cross-Complainant-In Intervention, Scottsdale Insurance Company, LLC ("SIC")(collectively "Movants") move for summary adjudication pursuant to California Code of Civil Procedure section 437c, subdivision (f), on the following issue: Cross-Defendant Tony K Construction, Inc. ("Tony K") has a past, present, and continuing contractual duty to defend Movants against the claims arising out of the structural steel girders, and asserted by Cross-Complainant Ray and Emily Conway in their Cross-Complaint, from the initial tender date of May 27, 2021.

This action was commenced on January 29, 2021, by TDC against Defendants Ray Conway and Emily Conway ("Defendants"). It arises out of the construction of a single-family residence located at 3878 Skyfarm Drive in Santa Rosa where TDC acted as the general contractor. TDC alleges that Defendants unilaterally terminated their contract with TDC at which time Defendants owed TDC no less than $188,589.29, which Defendants refused to pay.

On July 18, 2022, SIC filed a Cross-Complaint In-Intervention on Behalf of The Design Build Company, LLC ("Cross-Complaint") against numerous cross-complainants including Tony K. The Cross-Complaint alleges causes of action for equitable indemnification, equitable contribution, breach of contract, express indemnity, and equitable indemnity against all cross-defendants. There are no specific allegations in the Cross-Complaint alleged against Tony K. The

Cross-Complaint alleges, in general, that cross-defendants are the responsible parties for the allegations alleged in Defendant's cross-complaint. Tony K. filed an answer on October 21, 2022.

This motion was filed on February 14, 2025, and set for June 4, 2025. Trial is set for June 6, 2025. On May 20, 2025, Tony K. filed an objection to the motion based upon CCP section 437c(a)(3), which provides: "The motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise. The filing of the motion shall not extend the time within which a party must otherwise file a responsive pleading."

Unless and until the trial court finds good cause to hear the motion within the 30-day timeframe, the notice of the hearing is invalid. (*Robinson v. Woods* (2008) 168 Cal.App.4th 1258, 1268.) Here, this court has never made a good cause finding to have the motion heard within 30 days of trial. Therefore, the notice of hearing is invalid.

Tony K. also objects that the only "notice" that was served had no date or time for the hearing in violation of CCP section 437a(a)(2). (Prountzos Decl., ¶ 3.) As the notice is invalid, this issue is moot.

For the reason stated above, **the motion is DROPPED**. This court's minute order shall constitute the order of the court.

10. SCV-272228, Institute of Imaginal Studies v. Lyman

Defendant James Garrison's Motion to Strike Plaintiff's Second Amended Complaint Pursuant to CCP § 425.16 is **CONTINUED** to June 18, 2025, at 3:00 p.m. in Department 18 in order for Defendant Garrison to correct the procedural deficiencies in the moving papers. The notice of motion and the memorandum of points in authorities in support of the motion are not signed. The declaration in support of the motion is neither signed nor made under the penalty of perjury. These procedural deficiencies violate CCP § 128.7(a), CCP § 2015.5, and California Rules of Court, Rule 2.257.

CCP § 128.7(a) provides, in part, "Every pleading, petition, written notice of motion, or other similar paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party." It also provides, in part, "An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party." If Defendant Garrison does not submit signed copies of these documents, they will be stricken from the record and the motion dropped from calendar.

Defendant Garrison is not permitted to submit any additional briefing. He is only permitted to cure these defects. He must do so no later than June 11, 2025. No other briefing is permitted from any party.

11. SCV-272918, Duarte v. Packard Pacifica, Inc.

Defendant Packard Pacifica, Inc. ("Defendant"), moves for an order staying all further proceedings in this action pending resolution of *Camp v. Home Depot U.S.A, Inc.*, S277518 (H049033; 84 Cal.App.5th 638 (Santa Clara County Superior Court, Case No. 19CV344872), pending before the California Supreme Court ("*Camp v. Home Depot*"); and vacating or continuing the existing trial date in this action.

According to the California Supreme Court's website, *Camp v. Home Depot* presents the following issue: "Under California law, are employers permitted to use neutral time-rounding practices to calculate employees' work time for payroll purposes?" (https://supreme.courts.ca.gov/sites/default/files/supremecourt/default/2025-05/pendingissues-civil%20-%20052325_0.pdf.)

More specifically, the issue is whether it was lawful for Home Depot to round hours worked to the nearest quarter-hour when its technology was capturing each hour worked, and where the plaintiffs were not actually paid for all hours worked. The trial court found that rounding was lawful because it determined the policy was neutral on its face and was used in a manner that would not result over a period of time in the failure to compensate employees properly for all time they actually worked. The appellate court invited the Supreme Court to review the issue and to provide guidance on the propriety of time rounding by employers, especially in view of the technological advances that now exist which help employers track time more precisely. (*Camp v. Home Depot, supra,* at p. 73.)

Defendant argues that rounding is a primary issue in this action and if this action is not stayed and the existing trial date is not vacated or continued, Defendant will be denied a fair hearing and adequate due process. Defendant argues that completing discovery and any dispositive motions in a wage and hour class action of this complexity will require significant financial resources. It argues none of it can be completed while the *Camp v. Home Depot* remains pending, especially the expert analysis and formulation of opinions related to the rounding of time.

At the time Defendant filed this motion, trial was set for June. Trial has already been continued to January 2026. In reply, Defendant requests a further continuance for at least another six months to allow the Supreme Court to issue its decision.

As noted by Plaintiff in opposition, the parties to this action are not the same as in *Camp v. Home Depot,* and the issue on appeal only involves the rounding time system in light of technological advances, where employers are actually capturing all time earned, and employees were not actually paid all time worked. The current action involves many other issues, such as unpaid overtime and minimum wages, failure to provide meal periods and rest periods, unpaid meal and rest break premiums, inaccurate wage statements, failure to pay final wages at termination, and failure to reimburse business expenditures.

The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. (*Landis v. North American Co.* (1936) 299 U.S. 248, 254.) How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance. (*Id.*, at p. 254-255.) However, to grant a request for a stay, the moving party must make a clear case of hardship or inequity if required to move forward with the action if the stay infringes on another's rights. (*Id.*, at p. 255.) "Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both." (*Ibid*.) "Especially in cases of extraordinary public moment, the individual may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted." (*Id.*, at p. 256.) The instant case is not a case of extraordinary public moment. The Supreme Court of the United States emphasized moderation in ordering stays. (*Id.* at p. 254-256.)

Ultimately, review of *Camp v. Home Depot* will determine a legal issue that does not impact the merits of whether class certification may be granted in this case or the non-rounding issues presented here. And, while it may have a bearing on other damage claims, such as the amount of overtime due, this action can proceed on class certification and other issues as *Camp v. Home Depot*

is determined. Trial, which is already over seven months out, need not be continued at this time. If the appellate court issues its decision within that timeframe, the trial in this case will have been needlessly continued.

For the reasons stated above, the motion is DENIED, with one exception. The parties are to keep this court informed of whether a decision comes down in *Camp v. Home Depot.* If no decision is made by the time this action is within a month of trial, the parties are directed to file a stipulation and order to continue the trial.

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.