TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, June 10, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The 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, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

TO JOIN ZOOM ONLINE:

Department 18:
Meeting ID: **160—739—4368**
Password: **000169**
https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWlIL3NBeE9LVHU2NVVpQlVRUT09

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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. 24CV02508, Johnson v. Israni

Plaintiffs' unopposed motion for issue, evidence and monetary sanctions against Defendants is **GRANTED in part and DENIED in part**. Monetary sanctions are **GRANTED** in the amount of $5,910.00. Defendants shall pay these sanctions no later than 30 days from notice of an order on this motion. Issue, evidence, and terminating sanctions are **DENIED**.

Plaintiffs' counsel shall submit a written order consistent with this tentative ruling. Due to the lack of opposition compliance with Rule 3.1312 is excused.

Analysis:

In the underlying case, Plaintiffs entered into a Settlement Agreement with Defendants to settle Plaintiffs' claims of Elder Abuse, Neglect, Wrongful Death, and Violation of Patient's Rights. This

action results from a purported breach of that settlement agreement by Defendants' failure to timely pay the full amount, thus incurring a late fee.

Plaintiffs have been seeking the deposition of defendant Deepak Israni (a named Defendant and chief operating officer of Defendant corporation) in the instant breach of contract case since late 2024. According to Plaintiffs, Mr. Israni was the final authority on settlement in the underlying/related elder abuse/wrongful death case. Plaintiffs filed a motion to compel the deposition of Deepak Israni, which was granted by this Court on December 18, 2024. However, the Court declined to impose monetary sanctions because it found that doing so would be unjust. This was because the Court found that it was reasonable for Defendants to have expected Plaintiff not to continue litigating the issue after Defendants had paid the late fees that Plaintiffs were after. (December 18, 2024 Minute Order.)

Plaintiffs filed another motion to compel Mr. Israni's attendance, along with a motion to compel the attendance of Carl Knepler. According to Plaintiffs, Mr. Knepler is a high-ranking corporate officer of the Defendant corporation Pacifica Senior Management, LLC and regularly communicates with Mr. Israni regarding budgetary and financial issues. These motions were granted on August 20, 2025. However, the Court again declined to impose monetary sanctions, stating, "Given that defense counsel offered a reasonable explanation for the nonappearances and attempted to reschedule the depositions, but Plaintiffs' counsel ignored that attempt, the Court finds that imposing sanctions upon Defendants would be unjust." (October 20, 2025 Minute Order.)

The parties engaged in a back and forth of emails with suggested dates for the depositions. Once it became clear that the parties were unable to agree on dates, Plaintiffs served the Fourth Amended Deposition of Deepak Israni and the Second Amended Notice of Deposition of Carl Knepler on March 6, 2026, both scheduled for March 26, 2026. The witnesses failed to appear at the noticed depositions. Plaintiffs' counsel took notice of their non-appearance.

I. Plaintiffs Have Shown that Sanctions Are Appropriate

The Civil Discovery Act imbues trial courts with broad discretion in selecting the appropriate penalty for the misuse of the discovery process. (*Lopez v. Watchtower Bible & Tract Society of New York* (2016) 246 Cal.App.4th 566, 604; CCP § 2023.030.) As pertinent here, "misuse of the discovery process" includes "[f]ailing to respond [to] or to submit to an authorized method of discovery," and "[d]isobeying a court order to provide discovery." (CCP § 2023.010.) When confronted with such misuse, a court may impose (1) monetary sanctions; (2) sanctions that deem specified issues to be 'established' or that 'prohibit' the non-compliant party from raising 'opposing ... claims or defenses (so-called 'issue sanctions'); (3) sanctions that preclude the admission of evidence (so-called 'evidentiary sanction[s]'); or (4) 'terminating sanction[s],' which include ordering the action dismissed. (CCP § 2023.030(a)-(d).)

> "The discovery statutes evince an incremental approach to discovery sanctions, starting with monetary sanctions and ending with the ultimate sanction of termination. 'Discovery

> sanctions "should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery." ' [Citation.] If a lesser sanction fails to curb misuse, a greater sanction is warranted: continuing misuses of the discovery process warrant incrementally harsher sanctions until the sanction is reached that will curb the abuse.

(*Creed-21 v. City of Wildomar* (2017) 18 Cal.App.5th 690, 701–02, citing *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967.)

While the Court has ordered the depositions of the two witnesses to occur, and they have not yet occurred, the Court has yet to impose monetary sanctions for the failure to produce the witnesses. This was because the Court found circumstances existed that would render the imposition of monetary sanctions unjust at the time. In other words, the Court found sufficient justification for the Defendants' failure to produce the witnesses.

At this point, since the witnesses have yet to be produced despite orders of this Court, it is clear that some type of sanction is warranted. However, since the discovery statutes evince and incremental approach starting with monetary sanctions, and since monetary sanctions have yet to be imposed, the Court finds that monetary sanctions alone are appropriate at this point. Plaintiffs' request for issue, evidence, and terminating sanctions is denied.

Plaintiffs request monetary sanctions of $5,910.00 based on 9 hours of managing partner time attempting to obtain these depositions, researching the file and drafting the motion and supporting documents at an hourly rate of $650.00 and a $60 filing fee. The Court finds this request to be reasonable and it is granted.

2. 23CV01136, Zamora v. Kovich

Defendant's unopposed motion to compel initial responses to Defendant's Form Interrogatories, Set Two from Plaintiff Madlene Nena Zamora is **GRANTED**. Plaintiff's request for sanctions is **GRANTED** in the amount of $1,770.00.

Defendant's counsel shall submit a written order consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

Analysis:

Defendant propounded Form Interrogatories, Set Two, on Plaintiff Madlene Nena Zamora on March 12, 2026. Plaintiff failed to serve any response. Defendant attempted to meet and confer, but Plaintiff still failed to provide responses to the Form Interrogatories.

By failing to respond to these discovery requests, Plaintiff has waived all objections to them. (CCP §§ 2030.290.) As such, Plaintiff is ordered to provide code-compliant, objection-free responses to Defendant's Form Interrogatories, Set Two, within 30 days of notice of entry of an order on this motion.

Sanctions are warranted pursuant to CCP § 2030.290(c). Plaintiff requests $3,195.00 in sanctions based on an hourly rate of $285 and 11 hours spent on this motion, including anticipated hours for replying and appearing at a hearing. Considering no opposition was filed, the Court will not award the anticipated time for a reply and hearing. Sanctions are granted in the amount of $1,770 for the 6 hours of time spent on the moving papers plus the $60 filing fee.

3. 25CV02310, Jackson v. Laurie

Defendants' unopposed Motion for Leave to Conduct Plaintiff's Neuro-Psychiatric Examination is **GRANTED**.

If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

Analysis:

Plaintiff has sued the State of California and Sean Peter Laurie for negligence arising out of a vehicle collision where Defendant Laurie, a CHP Officer, is alleged to have reversed his patrol vehicle into Plaintiff's car. Plaintiff's clinical psychologist, David Lipsitt, Psy.D, conducted psychological tests of Plaintiff and prepared an "Initial Psychological Evaluation" report, dated May 19, 2023. The contents of this report have placed Plaintiff's psychiatric/emotional condition at issue. Defendants herein seek their own mental examination of Plaintiff, conducted in a two-part test.

CCP § 2032.310 provides that a party shall seek leave of court to obtain discovery by mental examination. It also provides that the motion seeking such leave "shall specify the time, place, manner, conditions, scope, and nature of the examination, as well as the identity and the specialty, if any, of the person or persons who will perform the examination." It shall also be "accompanied by a meet and confer declaration under Section 2016.040." According to CCP § 2032.320, the Court shall grant the motion only for good cause shown. Furthermore, the order granting the motion "shall specify the person or persons who may perform the examination, as well as the time, place, manner, diagnostic tests and procedures, conditions, scope, and nature of the examination."

Defendants' motion complies with each of the requirements of CCP § 2032.310. The Court finds that Defendants have shown good cause for conducting the mental examination and for conducting it in a two-part test.

4. 23CV00448, Harris v. Foremost Insurance Co. Grand Rapids, Michigan

Defendant Foremost Insurance Co.'s motion for summary judgment is **GRANTED**. Defendant's request for judicial notice is **GRANTED**. Plaintiff's objections to Defendant's evidence are **OVERRULED**.

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

Factual Background:

Defendant issued Policy No. 381 5003480562 02 (the "Policy") to its Named Insured, Plaintiff Carla Harris. (Undisputed Material Facts "UMF," 1.) The Policy insured premises located at 1123 Rutledge Avenue, Santa Rosa, California, with limits of $262,314 for the Dwelling, $110,500 for Personal Property and $44,200 for Additional Living Expense. (UMF, 2.) The Policy includes Condition 8, entitled Legal Action Against Us, which provides: "You may not bring legal action against us concerning this policy unless you have fully complied with all of the policy terms […] Suit must be brought within one year after the loss occurs." (UMF, 3.)

On September 18, 2021, a Forest River Salem RV that was parked in the back yard of the insured premises caught fire and burned. (UMF, 4.) On September 21, 2021, a claim arising from the fire was first reported to Defendant. (UMF, 5.)

On October 21, 2021; November, 1, 2021; February 14, 2022; February 18, 2022; April 15, 2022; June 28, 2022; and July 29, 2022 Defendant sent Plaintiff letters discussing certain aspects of the Claim and quoting the Legal Action Against Us condition verbatim. (UMF, 7-13.)

On September 12, 2022, after completing its investigation and issuing certain payments to Plaintiff, Defendant sent her a "Claim Outcome Letter." This letter was mailed to the address provided by Plaintiff in her Proof of Loss, and was never returned by the post office as undeliverable. (UMF, 14.) Plaintiff alleges in her Complaint that she received the Claim Outcome Letter on or around September 17, 2022. (UMF, 15.) The letter contained a payment representing the "actual cash value" of plaintiff's personal-property loss. (PAMF, 5.) It stated that "actual cash value" is based on replacement cost less any applicable depreciation and "To recover depreciation, please send a copy of any invoices or receipts that demonstrate replacement or repairs." (Def. Comp. of Ex., Ex. J, p. 000102.) It further stated,

> Your policy provides that once you actually repair or replace the damaged property, you may make a claim for the withheld depreciation, subject to coverage limits. You must notify us of your intent to repair or replace the damaged property within 365 days of our first Actual Cash Value payment, or by September 12, 2023…If you do not notify us of your intent to repair or replace by September 12, 2023 your claim will be settled at actual cash value.

(*Ibid*.)

The Claim Outcome Letter also advised, among other things, that

> [o]ur investigation did not find evidence of soot, fire or smoke damages to the home or any collateral damage to separate structures in your property to support the fire spread beyond the RV fire of September 18th. We noted water damages to the interior of the home as a result of wear and tear and rot to the siding. The policy provides coverage for sudden damages and excludes wear and tear. Therefore, the claimed fire, subsequent water damages to the dwelling and loss of use coverage are not covered based on the information known to us at this time.

(UMF, 16.) It also advised that "We've completed the adjustment of your loss and we are closing your claim. While we welcome any additional information you may wish to provide, the claim will not be reopened unless we notify you of such in writing." (UMF, 17.) The Claim Outcome Letter also advised plaintiff of the Legal Action Against Us condition, by quoting it verbatim. (UMF, 18.)

On or about November 16, 2022, Defendant received a letter of representation from attorney Eric Young, who subsequently filed this lawsuit on behalf of the plaintiff. (UMF, 19.) On December 1, 2022, Defendant emailed a letter to attorney Young, enclosing a copy of the Claim Outcome Letter. (UMF, 20.)

Plaintiff, represented by attorney Young, filed this lawsuit on September 12, 2023. Plaintiff asserts causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, tortious breach of the implied covenant of good faith and fair dealing, deceit/concealment, intentional infliction of emotional distress, and unfair competition.

Analysis:

Defendant argues that all of Plaintiff's causes of action are barred by the one-year limitation period contained in the "Legal Action Against Us" provision of the policy. Plaintiff has not refuted that this limitation period applies to Plaintiff's claims arising out of the insurance policy or the legality of the provision. Plaintiff opposes the motion on the ground that (1) the Claim Outcome Letter did not constitute an unequivocal denial of Plaintiff's claim—thus it did not act to end the tolling of the limitations period; (2) Defendant is equitably estopped from asserting the suit is time-barred; and (3) the one-year contractual limitation does not apply to all of Plaintiff's six causes of action.

I. No Triable Issues of Material Fact Exist Regarding Whether the September 12, 2022 Claim Outcome Letter Constituted an Unequivocal Denial of Plaintiff's Claim

The Legal Action Against Us policy condition provides that suit must be brought within one year of the date of the loss. However, this limitations period is tolled "from the time an insured gives notice of the damage to his insurer…until coverage is denied." (*Prudential-LMI Com. Insurance v. Superior Court* (1990) 51 Cal.3d 674, 693.)

Defendant submits that Plaintiff gave notice of the loss on September 21, 2021, and that the claim was formally denied as expressed in Defendant's Claim Outcome Letter sent on September 12, 2022. Therefore, as argued, Plaintiff had 365 days from the date of loss, plus 357 days of tolling, to file suit—a total of 722 days. Suit was therefore due no later than September 11, 2023 (technically September 10th, but that was a Sunday). Plaintiff filed her Complaint on September 12, 2023, one

day late.

Plaintiff argues that Defendant's September 12, 2022 Claim Outcome Letter did not constitute an unequivocal denial of Plaintiff's claim because it was "hedged, partial, and open-ended." Therefore, Plaintiff argues that it was insufficient to end the tolling period. Plaintiff relies on *Prudential-LMI Com. Ins. v. Superior Court* (1990) 51 Cal.3d 674, 678 ("*Prudential*") and *Aliberti v. Allstate Ins. Co.* (1999) 74 Cal.App.4th 138, 148 ("*Aliberti*").

Plaintiff argues that in *Prudential*, "an insurer's letter 'proposing that coverage would be denied based on the earth movement exclusion unless the insureds had any additional information that would favor coverage' was insufficient to end tolling." (Pl. Oppo. P. 6-7.) This is not entirely accurate. In *Prudential*, the plaintiffs "received a letter from Prudential *proposing that coverage would be denied* based on the earth movement exclusion unless the insureds had any additional information that would favor coverage." (*Id*. at 692. Italics added.) "It was not until September 1987, that plaintiffs' claim was denied unequivocally." (*Ibid*.)

That is not the case here. Defendant's Claim Outcome Letter was not a proposal that coverage would be denied. It was an unequivocal denial and reasonable minds cannot disagree. It stated in no uncertain terms, "Therefore, the claimed fire, subsequent water damages to the dwelling and loss of use coverage are not covered based on the information known to us at this time," "We've completed the adjustment of your loss and we are closing your claim," and "If you believe your claim has been wrongfully *rejected or denied*, in whole or in part, please contact us for further clarification." (Def. Comp. of Ex., Ex. J. Italics added.)
Plaintiff's argument that the language "based on information known to us at this time" "telegraphs" that Defendant's position is provisional, dependent on currently-available data, and subject to change if further information is provided is not persuasive. The letter clearly states that the claim is being closed. An offer to re-open the claim if new information comes to light does not leave it open-ended. Furthermore, contrary to what Plaintiff asserts, this language does not make this case analogous to *Prudential*. In *Prudential*, the "unless" language was contained in a letter that merely proposed denial. The Court found that formal denial did not occur until much later after that proposal letter was sent. Such is not the same here.

Plaintiff's attempt to distinguish *Singh v. Allstate Ins. Co.* (1998) 63 Cal.App.4th 135 is unpersuasive. *Singh* provides, "Once a claim has been made, the carrier has pursued its investigation, and the claim has been denied, the policies behind allowing equitable tolling have been fulfilled." (*Id*. at 142.) Furthermore, any period of reconsideration after a denial is sent does not act to further toll the limitations period. (*Ibid*.) Similar to the letter in this case, the insurer's denial letter in *Singh* "told plaintiffs their claim was denied, but stated that, if plaintiffs had any further information they would like Allstate to consider, to bring the information to Allstate's attention." (*Id*. at 143.) The Singh Court stated,

> Plaintiffs' attempt to cast themselves in the same light as the plaintiffs in *Prudential-LMI* is not well taken. We do not have the text of the carrier's letter in *Prudential-LMI* before us. But the Supreme Court's description of the letter indicates it was a preliminary, tentative, and proposed decision, not a final one.

(*Ibid*.) "The extension of a courtesy, to look at anything else that plaintiffs might have to offer, did not render the denial equivocal." (*Ibid*.) The same is true here.

Furthermore, Plaintiff's argument that Defendant's payment of content benefits and setting up a framework for additional payments for content benefits renders the Claim Outcome Letter equivocal is also not persuasive. The letter clearly states that the claimed fire and water damage to the residence are not covered and thus the related claims are denied.
Plaintiff has failed to raise a triable issue of material fact regarding whether the Claim Outcome Letter constituted an unequivocal denial of Plaintiff's claim under *Prudential*, *supra*. The Court agrees with Defendant that the last day for Plaintiff to file this suit was September 11, 2023 and Plaintiff did not file in time.

II. No Triable Issues of Material Fact Exist Regarding Equitable Estoppel

Plaintiff argues that Defendant is equitably estopped from invoking the suit limitation as a defense because of two reasons: (1) the Claim Outcome Letter misrepresented the deadline for bringing this suit as being September 12, 2023; and (2) Defendant failed to comply with the fair claims settlement practices regulations.

Plaintiff's first argument is unpersuasive. Plaintiff claims that the Claim Outcome Letter misrepresents Plaintiff's deadline for filing suit as being September 12, 2023. The Court does not agree. Any reference to September 12, 2023 was clearly in relation to the deadline for Plaintiff to submit proof of replacement or repairs in order to recover the withheld depreciation from the payment made for the actual cash value of Plaintiff's claim. Reasonable minds could not differ on such an interpretation.

Plaintiff's second argument that Defendant failed to comply with the fair claims settlement practices regulations is also not persuasive. California Code of Regulations, title 10, section 2695.4 (a), requires that "[e]very insurer shall disclose to a first party claimant or beneficiary, all benefits, coverage, time limits or other provisions of any insurance policy issued by that insurer that may apply to the claim presented by the claimant." "By its terms, section 2695.4, subdivision (a) requires the insurer to 'disclose to' a claimant insured all policy 'time limits.' This obviously implies a type of notice, communicated independent of the policy itself, which is calculated to achieve actual rather than constructive knowledge." (*Spray, Gould & Bowers v. Associated Internat. Ins. Co.* (1999) 71 Cal.App.4th 1260, 1272.)

Furthermore, Section 2695.7 requires every insurer to provide written notice of any statute of limitations or other time period requirement upon which the insurer may rely to deny a claim "not less than sixty (60) days prior to the expiration date." It further states, "This subsection shall not apply to a claimant represented by counsel on the claim matter." It is undisputed that Plaintiff has been represented by counsel on this matter since at least November 16, 2022.

Plaintiff argues that Defendant failed to discharge these duties because it "misstates" the deadline as being September 12, 2023. As explained above, this argument is not persuasive. Rather, the record reflects that between the period of October 21, 2021 and July 29, 2022, Defendant sent seven separate letters to Plaintiff that contained the time-limit policy condition verbatim. Defendant also included the language in its September 12, 2022 Claim Outcome Letter. Even if Section 2695.7(f) applied here, each of these letters predated the 60 day requirement of Section 2695.7. Accordingly, Defendant has shown that it complied with these regulations. Plaintiff has failed to raise a triable issue of material fact otherwise. Accordingly, Plaintiff has failed to show a triable issue of material fact exists regarding whether Defendant is equitably estopped from invoking the limitations period.

III. All of Plaintiff's Causes of Action are Time-Barred

The "Legal Action Against Us" provision of the policy states that it applies to legal actions against Defendant "concerning this policy." (Def. Comp. of Ex., Ex. A, p. 000030.) Defendant asserts that each of Plaintiff's causes of action are encompassed within this language; accordingly, they are all time-barred.

Plaintiff, on the other hand, argues that her Fourth through Sixth Causes of Action turn on conduct that is independent of the policy claims and are each governed by their own statutes of limitations, which exceed one year. Plaintiff's Fourth through Sixth causes of action are for Deceit/Concealment, Intentional Infliction of Emotional Distress, and Unfair Competition respectively. Plaintiff does not dispute that her breach of contract and breach of the implied covenant of good faith and fair dealing claims are governed by the policy's one-year limitation.

Civil Code § 2071 permits contractual limitations periods for claims that are "on [the] policy for the recovery of any claim…" The Court in *Rosenberg-Wohl v. State Farm Fire & Casualty Co.* (2024) 16 Cal.5th 520, 531 explained, "We regard this language, read in the context of the statute as a whole, as concerned with causes of action that in some manner seek a financial recovery *attributable to a claimed loss that was coverable under a policy*." (Italics added.)

As supporting her Fourth Cause of Action for Deceit/Concealment, Plaintiff alleges "DEFENDANTS' representations about coverage under the policy were false, they knew they were false; or in the exercise of reasonable care, should have known they were false." (Complaint, ¶ 48.) This causes of action arises out of alleged representations made "about coverage under the policy." The conduct complained of is conduct underlying the denial of Plaintiff's claim. Accordingly, this cause of action is "on [the] policy" and it is time-barred.

As supporting her Fifth Cause of Action, Plaintiff alleges that "the conduct of DEFENDANTS," was outrageous and committed with the intention to cause Plaintiff to suffer emotional distress. When referring the "the conduct of DEFENDANTS" it is clear that Plaintiff is referring the conduct alleged earlier in the complaint, i.e. the breach of contract and deceitful misrepresentations regarding policy coverage. Therefore, this cause of action is also "on [the] policy" and it is time-barred. Plaintiff's attempt to distinguish *Prieto v. State Farm Fire & Casualty Co.* (1990) 225 Cal.App.3d 1188 is not persuasive. There, the plaintiffs asserted similar claims as those raised by Plaintiff here and the Court stated, "we conclude that plaintiffs' bad faith cause of action based on failure to pay benefits, and the emotional distress cause, which is merely a theoretical restatement of the same claim…are governed by the one-year limitation prescribed by section 2071 for actions on the policy." (*Id*. at 1196.)

Finally, in regard to Plaintiff's Sixth Cause of Acton for Unfair Business Practices, Plaintiff cites *Rosenberg-Wohl v. State Farm Fire & Casualty Co.* (2024) 16 Cal.5th 520, 531 to argue that UCL claims seeking injunctive and declaratory relief are not "on the policy." However, *Rosenberg-Wohl* is not helpful to Plaintiff. In that case, the plaintiff's claims were found to be not "on the policy" because the plaintiff pursued "*only* broad declaratory relief…" which was "being invoked here on behalf of consumers generally and in service of the UCL's protective and preventive functions." (*Id*. at 531, italics added.) That is not the case here. Plaintiff does not seek *only* declaratory relief. Plaintiff is not invoking the Sixth Cause of Action on behalf of consumers generally in service of the UCL's protective and preventative functions. Plaintiff is seeking an injunction, but she is also

seeking restitution of policy benefits, which Plaintiff concedes in her opposition "could be characterized as 'on the policy.'" (Pl. Oppo., p. 15.) The fact mere that Plaintiff also seeks an injunction does not indicate that this claim is not "on the policy" as Plaintiff suggests.

It is clear from the complaint that each of Plaintiff's causes of action "in some manner seek a financial recovery attributable to a claimed loss that was coverable under a policy." (*Rosenberg-Wohl, supra*, at 531.) Accordingly, each of Plaintiff's claims fall under the purview of Section 2071 and they are time-barred.

5. 25CV06792, Kusich v. Stanton

Defendant Westlake Hardware, Inc.'s motion to compel arbitration is **GRANTED**.

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

Analysis:

On October, 1, 2025, Plaintiff, Marc Kusich, a former employee of Defendant Westlake Hardware Inc. ("Westlake" or "Ace Hardware") filed a complaint against Defendant Westlake and against another former employee of Westlake, Scott Stanton. Plaintiff raises causes of action for 1) Wrongful Constructive discharge – Violation of Cal. Labor Code §1102.5; 2) Wrongful Constructive discharge in Violation of Public Policy; 3) Violation of California Labor Code §6310; 4) Assault and Battery; 5) Negligent Hiring and Retention.

Plaintiff alleges that he began working at Ace Hardware in April of 2017. Beginning on September 19, 2024, Plaintiff alleges that Defendant Stanton verbally insulted and threatened him in front of other people. He alleges that the verbal harassment was continuous and that on May 22, 2025, Defendant Stanton physically assaulted him in front of the assistant manager of the store. Plaintiff asserts that he complained of Defendant Stanton's behavior to his manager several times, that his manager failed to report the conduct to HR, that Plaintiff's hours were cut to minimize his contact with Defendant Stanton. and that once HR was informed, they did nothing to protect Plaintiff from Defendant Stanton. Plaintiff alleges that even after the physical assault and subsequent complaints made by Plaintiff, Westlake continued to ignore his complaints and he felt forced to quit, fearing for his physical safety.

Plaintiff's first three causes of action for wrongful constructive discharge and violation of whistleblower protection are against Westlake only. The fourth cause of action for assault and battery are against Defendant Stanton as well as Westlake. Plaintiff alleges that Westlake is liable for Defendant Stanton's conduct by ratifying it. The fifth cause of action for negligent hiring, supervision, or retention is against Westlake only, alleging that Westlake knew or should have known that Defendant Stanton was unfit and created a risk to his fellow employees.

Defendant Westlake now seeks to compel arbitration based on two Mutual Arbitration Agreements signed by Plaintiff. The first is a hand-signed agreement dated September 15, 2022 (the "2022 Agreement"), and the second is an electronic agreement dated October 19, 2023 (the "2023 Agreement"). Each of these agreements is attached to the Declaration of Sam Mushamel in support of this motion.

Defendant Westlake submits that it acquired the Guerneville/Fulton Ace Hardware store on August 28, 2022. Plaintiff was employed at the time of the acquisition. Between the time of August 28, 2022 and September 1, 2022, the HR managers visited the store to complete onboarding for the pre-existing employees. The HR managers met with the employees one-on-one, reviewed their rate of pay and position, and provided onboarding documents for them to review and sign. Westlake did not impose a time limit on employees' completion of onboarding documents and the HR managers were available for questions. On September 15, 2022, Plaintiff hand-signed onboarding documents, including a Mutual Agreement to Arbitrate. Under paragraph 8 of the Agreement, Plaintiff had 30 days from the date of signing to withdraw or opt-out of the agreement. According to Mr. Mushamel, Regional HR Manager, Westlake does not impose any consequences on employees who do not sign the Agreement.

On December 25, 2022, Westlake started using an HR management system called Workday. Each employee is assigned a unique 7-digit identification number to use as their username when logging in for the first time. Once logged in for the first time, the system prompts the employee to create a unique password. Plaintiff has a profile and created a unique password in accordance with the process. Plaintiff was instructed to keep his password private and not to share it with anyone else under any circumstances.

Employees complete Required Documents through Workday. Once those are completed, employees can voluntarily review additional company policies and resources, including the Mutual Arbitration Agreement, and can elect to sign certain documents or not sign them. There is no requirement for an employee to sign a document before moving on to the next one.

Since Workday was implemented after Plaintiff's initial onboarding with Westlake, Plaintiff was provided with the opportunity to review and sign onboarding documents again. Westlake records indicate that Plaintiff again signed the Mutual Arbitration Agreement on October 19, 2023. In order to do so, Plaintiff would have had to review the Agreement page-by-page and then click "Acknowledge" on the final page of the Agreement. Plaintiff could have closed out of the Agreement without acknowledging it. Westlake has no record of Plaintiff ever withdrawing or opting out of the Agreement.

I. Defendant Has Shown the Existence of an Arbitration Agreement that Applies to this Dispute

"The party seeking to compel arbitration has the initial burden to plead and prove the existence of a valid arbitration agreement that applies to the dispute. Once that burden is satisfied, the party

opposing arbitration must prove any defense to the agreement's enforcement, such as unconscionability." (*Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209.) "Because arbitration is a matter of contract, the general rule is that one must be a party to an arbitration agreement to invoke or be bound by its terms." (*Enmark v. KF Community Care, LLC* (2024) 105 Cal.App.5th 463, 471.)

Defendant seeks to compel arbitration based on two Mutual Arbitration Agreements: a hand-signed agreement dated September 15, 2022 (the "2022 Agreement"), and an electronic agreement dated October 19, 2023 (the "2023 Agreement"). Each of these agreements is attached to the Declaration of Sam Mushamel in support of this motion.

Plaintiff challenges the authenticity of Plaintiff's signature on these agreements stating that he does not recall signing the 2022 Agreement and that Defendant does not meet the *Garcia* standard for authenticating electronic signatures on arbitration agreements relating to the 2023 Agreement. (Citing *Garcia v. Stoneledge Furniture LLC* (2024) 102 Cal.App.5th 41 ("*Garcia*").) Both arguments are unpersuasive.

"A party opposing arbitration by challenging the authenticity of his or her signature 'need not prove that his or her purported signature is not authentic, but must submit sufficient evidence to create a factual dispute and shift the burden back to the arbitration proponent.'" (*Garcia v. Stoneledge Furniture LLC, supra,* 102 Cal.App.5th at 52.) "[A] denial of signing an arbitration agreement is sufficient to shift the burden." (*Ibid*.)

Regarding the 2022 Agreement, Mr. Kusich does not deny signing the agreement but states that he does not recall signing it. Such is insufficient to create a factual dispute to shift the burden of proof back to Defendants. This is especially so considering that Mr. Kusich concedes that the handwriting on the agreement appears to be his.

The same is true regarding the 2023 Agreement. Mr. Kusich does not deny signing it. He only states that he does not recall signing it. This is not sufficient to shift the burden back to Defendant.

Finally, Plaintiff argues that it would have been impossible for him to sign the 1) Westlake Arbitration Agreement CA.pdf (the 2023 Agreement, a four-page document); 2) Associate Handbook Supplement-California.pdf; and 3) Westlake Ace Hardware Associate Handbook.pdf at the same time, as indicated by the timestamps on the documents. This argument is also not persuasive. As explained, all three agreements would have been signed by clicking the "Acknowledge" button at the end of the page-by-page review.

Plaintiff has failed to submit sufficient evidence to create a factual dispute regarding the authenticity of his signature on the arbitration agreements. Defendant has sufficiently shown that an arbitration agreement exists that applies to this dispute.

II. The Agreement is Not Unconscionable

Plaintiff argues that the arbitration agreement is unconscionable because it was presented to Plaintiff during his onboarding process in connection with Westlake's acquisition of the store. As such, Plaintiff argues that it was a contract of adhesion.

However, there is insufficient evidence in the record to suggest that the arbitration agreement was a condition of Plaintiff's employment. On the contrary, the evidence indicates that signing the agreement was not a condition of continued employment. Furthermore, Plaintiff had 30 days to opt out of the arbitration agreement, but did not.

Moreover, unconscionability has two elements: procedural and substantive. Well-established California law requires that both elements be present for an unconscionability defense to succeed. The two elements, however, need not be present to the same degree and are evaluated on a sliding scale. "[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114.)

Even if Plaintiff had shown that this was a contract of adhesion, this would speak only to procedural unconscionability. Plaintiff has not argued that the substance of the arbitration agreement is unconscionable. Rather, the Court finds no substantive unconscionability. Both must be present in order for an arbitration agreement to be unenforceable as unconscionable.

III. Defendant Has Not Waived the Right to Compel Arbitration

Plaintiff argues that Defendant waived the right to compel arbitration because it acted in a manner inconsistent with an intent to compel arbitration by (1) filing an answer; (2) asking for an extension to respond to discovery, rather than objecting or seeking a stay of discovery; and (3) delaying 5 months from filing the *complaint* to file this motion.

"To establish waiver under generally applicable contract law, the party opposing enforcement of a contractual agreement must prove by clear and convincing evidence that the waiving party knew of the contractual right and intentionally relinquished or abandoned it." (*Quach v. California Com. Club, Inc.* (2024) 16 Cal.5th 562, 584.) "Under the clear and convincing evidence standard, the proponent of a fact must show that it is 'highly probable' the fact is true." (*Ibid*.) "The waiving party's knowledge of the right may be 'actual or constructive.'" (*Ibid*.) "Its intentional relinquishment or abandonment of the right may be proved by evidence of words expressing an intent to relinquish the right or of conduct that is so inconsistent with an intent to enforce the contractual right as to lead a reasonable factfinder to conclude that the party had abandoned it." (*Ibid*.)

"The waiver inquiry is exclusively focused on the waiving party's words or conduct; neither the effect of that conduct on the party seeking to avoid enforcement of the contractual right nor that party's subjective evaluation of the waiving party's intent is relevant." (*Id*. at 585.) "To establish

waiver, there is no requirement that the party opposing enforcement of the contractual right demonstrate prejudice or otherwise show harm resulting from the waiving party's conduct." (*Ibid*.)

Here, the Court does not agree that Defendant's conduct demonstrates an intent to relinquish or abandon the right to compel arbitration. Simply filing an answer to the Complaint does not demonstrate such. This is especially so considering that Defendant raised an affirmative defense stating that the claims are subject to arbitration. Furthermore, there is no evidence that Defendant participated in any discovery. Simply asking for an extension of time to respond does not support waiver of the right to arbitrate.

Finally, Plaintiff argues that Defendant delayed 5 months in filing this motion. Plaintiff is basing this off of the date the Complaint was filed. There is no proof of service of summons in the Court's docket on this matter, so the Court cannot tell when processed was served. Defendant submits that Plaintiff issued a Notice of Acknowledgment of Receipt to Westlake on December 3, 2025. Nonetheless, Defendant brought this motion less than 2 months after filing its answer. During that time, Defendant attempted meeting and conferring with Plaintiff to resolve this motion informally, to no avail. There was no significant delay.

IV. CCP § 1281.2 Does Not Apply Here

Plaintiff argues that the Court should exercise its discretion under CCP § 1281.2(c) to decline to order arbitration since this action involves Defendant Scott Stanton, who is not a party to the arbitration agreement. Defendant Westlake argues that CCP § 1281.2 is not applicable here because the parties expressly agreed that both the substantive and procedural provisions of the Federal Arbitration Act ("FAA") would govern.

The arbitration agreement provides, "The Parties agree that the Company is engaged in transactions involving interstate commerce, and this Agreement shall be enforceable under the substantive and procedural provisions of the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq." (Mushamel Decl., ¶ 14, Ex. A at ¶ 14.)

Where parties expressly agree that arbitration proceedings should be governed by the FAA's procedural provisions, rather than under state procedural law, the FAA procedural provisions are controlling. (*Wright v. WellQuest Elk Grove, LLC* (2026) 119 Cal.App.5th 267, 878-283.) If no such express agreement exists, California procedural rules will generally govern. (*Id*. at 283.)

Plaintiff's attempt to analogize the circumstances of this case to those of *Wright*, *supra*, is not persuasive. In *Wright*, the Court found that the CAA applied because the parties' contract contained no express agreement regarding what procedural rules applied. (*Wright*, *supra*, at 823.) "Because we have no such express indication that the FAA procedural provisions apply instead, we conclude they do not." (*Ibid*.) It is the opposite here where there *is* an express indication that the FAA procedural provisions apply instead of the CAA.

Here, since the parties expressly agreed that the FAA procedural provisions would apply, CCP § 1281.2 does not apply. Plaintiff has not cited any authority under the FAA that would authorize this Court to exercise discretion to deny this motion.

As a final note, Defendant argues in its reply that Plaintiff's claims against Defendant Stanton should be compelled into arbitration. The Court declines to address this argument because it was not included in Defendant's notice of motion and Defendant Stanton has not been given an opportunity to respond to it. He has not been served with this motion. Defendant's notice of motion states that it is moving to compel Plaintiff to "submit his claims against Westlake to binding arbitration." Defendant did not move to compel Plaintiff's claims against Defendant Stanton to arbitration.

6. SCV-270486, Sager v. Summit Food Service, LLC

On December 17, 2025, this Court issued and served an Order to Show Cause ordering Plaintiffs to appear on June 10, 2026 at 3:00 p.m. in Department 18 to show cause why monetary sanctions should not be imposed in the amount of up to $1,500 and/or why this action should not be dismissed in its entirety for Plaintiff's failure to dismiss the Doe defendants. This matter is also set for a status update on June 10th regarding distribution of the settlement funds.

Plaintiff's counsel has submitted a declaration outlining the plan for distribution of the funds, but has failed to address the order to show cause. Accordingly, monetary sanctions are imposed in the amount of $1,500 pursuant to Local Rule 4.12 against Plaintiffs and the Doe defendants are ordered dismissed from this action.

7. 25CV01337, Bushman v. Volkswagon Group of America, Inc.

Defendant's motion to deem requests for admissions, set two, admitted is **GRANTED**. Defendant's request for sanctions is **GRANTED** in the amount of $2,074.50.

The Court notes that defense counsel has cited many cases in his motion which do not have citations. The case name is listed, but the citations must also be included.

If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

Analysis:

On February 20, 2025, Plaintiff initiated this breach of warranty action alleging several defects with his 2022 Volkswagen. On February 5, 2026, Defendant served its Requests for Admission, Set Two ("RFAs"), as well as other discovery requests, on Plaintiff. On March 10, 2026, Plaintiff served unverified responses to the discovery requests. Plaintiff's counsel failed to respond to Defendant's meet and confer effort seeking to receive verifications.

Defendant brings this motion to deem the RFAs as admitted considering Plaintiff has failed to verify them. Plaintiff opposes the motion by arguing that the motion is moot because Plaintiff has served a supplemental response, which is—again—not verified. It states, "verification to follow" on the last page.

The motion is not mooted by Plaintiff's unverified supplemental responses. Unverified responses are tantamount to no responses at all. (*Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636; see also *Melendrez v. Superior Court* (2013) 215 Cal.App.4th 1343.) Accordingly, neither Plaintiff's initial response, nor his supplemental response, amounts to a response at all. Since Plaintiff has failed to respond to the RFAs, they shall be deemed admitted.
Sanctions are warranted pursuant to CCP §2033.280(c). Defendant requests $2,074.50 based on an hourly rate of $395 and 5.1 hours on this motion, plus a $60 filing fee. The Court finds this request to be reasonable.

8. 25CV07008, Morawitz v. Windsor Sonoma County Sheriff's Office

Defendant's unopposed demurrer to Plaintiff's Complaint is **SUSTAINED**. Leave to amend is **DENIED**.

Defendant's counsel shall submit an order consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

Analysis:

On October 21, 2025, Plaintiff filed a complaint against Defendants Windsor Sonoma County Sheriff's Office, Deputy Jose Vega, and Deputy Gardner Duncan asserting one cause of action for general negligence. Plaintiff's complaint lists the following reasons for his claim of general negligence: excessive force, unlawful detention, false arrest, conspiracy to violate Civil Rights, false imprisonment, deprivation of familial association, supervisor liability, Bane Act, negligence. The complaint does not contain any factual allegations whatsoever.

Defendants Sonoma County Sheriff's Office, Jose Vega, and Duncan Gardner demur to the complaint on the grounds that it fails to state facts sufficient to constitute a cause of action. Furthermore, the County argues that public entities are immune from liability for general negligence.

The Court agrees that the demurrer should be sustained. The complaint does not allege any facts whatsoever. Therefore, Plaintiff has failed to state a cause of action for general negligence against any of the defendants. Since no facts are alleged, the Court is unable to determine whether the County is immune from liability.

It is Plaintiff's burden to show how the complaint can be amended to state a cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) Since Plaintiff failed to oppose this motion, he has failed to meet this burden. Accordingly, leave to amend is denied.

*****This is the end of the Tentative Rulings*****