TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, September 5, 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. 24CV01636, Citibank N.A. v. Cruz

Plaintiff Citibank, N.A., moves for an order vacating the dismissal entered in this case and entering judgment under the terms of the stipulated settlement of this case. **The motion is GRANTED.**

A Stipulated Agreement was filed in this case on October 11, 2024. Pursuant to the agreement, Defendant Greysi Ramirez Cruz ("Defendant") stipulated to entry of judgment in Plaintiff's favor in the amount of $7,993.57, plus court costs. Plaintiff agreed not to have the judgment entered against Defendant if Defendant timely made payments to Plaintiff on the amount owed. The parties agreed that Defendant would pay Plaintiff a minimum of $150 on or before the 20th day of each month beginning May 2024; followed by a minimum payment of $225 on or before the 20th day of every month beginning August 2024; followed by a final payment of $118.57 on or before May 20, 2027. Defendant's dismissal was entered on October 14, 2024.

Pursuant to the declaration of attorney Ruonan Wang, Defendant has defaulted on the payment arrangement under the Stipulation Agreement. (Wang decl., ¶5.) The business records of Plaintiff's Counsel indicate that the last payment received was on July 20, 2024. (*Ibid*.) Defendant has paid a total of $450. (*Id.,* ¶7.) The balance now due, owing, and unpaid to Plaintiff from Defendant is the principal sum of $7,543.57 plus court costs in the sum of $583.61 for a total judgment of $8,127.18. (*Id.,* ¶8.)

Pursuant to the foregoing, the motion is GRANTED. This court hereby sets aside and vacates the dismissal and enters judgment in favor of Plaintiff and against Defendant in the principal sum of $7,543.57 plus court costs in the sum of $583.61 for a total judgment of $8,127.18.

The court will sign the proposed orders.

2. 24CV04611, Wells Fargo Bank N.A. v. Hernandez

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") moves for judgment on the pleadings against Defendant Claudia A. Hernandez ("Defendant") on the grounds that the complaint and Defendant's responsive pleading entitle Plaintiff to judgment as a matter of law. **The motion is GRANTED.**

On August 6, 2024, Plaintiff filed its complaint alleging that Defendant owed it $8,967.13 on a credit card agreement. After Defendant failed to respond to Plaintiff's request for admissions, Plaintiff moved for an order deeming the admissions admitted. That motion was granted on March 25, 2025. Pursuant to that order, Defendant was deemed to have admitted that she owed $8,967.13 on the credit card agreement she took out with Plaintiff. (Plaintiff's Request for Judicial Notice, Exhibit A, Exhibit 1.)

The motion is GRANTED. Judgment will be entered in favor of Plaintiff, and against Defendant, in the sum of $8,967.13, plus court costs in the sum of $285.00 ($225.00 filing fee and $60.00 for the instant motion), for a total Judgment of $9,252.13.

The court will sign the proposed orders.

3. 25CV01533, Flores v. Transdev Services, Inc.

Defendant Transdev Services, Inc. ("Transdev") demurs to the first through fifth, and fourteenth causes of action alleged in the complaint filed by Plaintiff Maria Flores ("Plaintiff") on the grounds of failure to state facts sufficient to constitute a cause of action. **The demurrer to Plaintiff's first through fifth, and fourteenth causes of action is SUSTAINED without leave to amend.**

On February 28, 2025, Plaintiff filed a complaint against defendant Transdev and others. The causes of action alleged against Transdev are for Violence Based On Sex in Violation of the Ralph Civil Rights Act, Civ. Code section 51.7; Gender Violence in Violation of Civ. Code section 52.4; Denial of Rights Under the Banes Civil Rights Act, Civ. Code section 52.1; Hostile Work Environment/Sexual Harassment in Violation of the FEHA, Gov. Code section 12940, et seq.; Disability Harassment in Violation of the FEHA, Gov. Code section 12940(j)(i); Failure to Provide a Reasonable Accommodation in Violation of the FEHA, Gov. Code section 12940(m); and, Failure to Engage in a Good-Faith Interactive Process, Gov. Code section 12940(n).

The complaint alleges that Transdev does business as Sonoma County Transit and employed Plaintiff as a bus driver. Plaintiff alleges she and several of her female coworkers were required to endure a sexually hostile work environment created by, among others, defendant Arturo Montero, aka Arturo Monter ("Monter"), a bus driver; another bus driver named Burt Campanelli; and managers Jonathan Henry and defendant Richard Mitchell ("Mitchell"). Plaintiff alleges, through those persons, Transdev allowed a sexually hostile work environment to fester and took no corrective action to prevent it.

Separately, Plaintiff alleges she sustained injuries to her arm and leg as a result of her long hours of driving a bus. She filed a workers' compensation claim and received work restrictions. Plaintiff alleges, upset by this, Mitchell directed one of his staff to call Plaintiff's primary treating physician to have the physician allow Plaintiff to return to work full duty, which she did, thereby sustaining further injury as a result and having to go back on a medical leave of absence.

1. Vicarious Liability

Plaintiff's first through fifth causes of action against Transdev are based upon its alleged vicarious liability for the acts of its employees.

Plaintiff's First Cause of Action for Civil Battery, CCP section 335.1, alleges "Sonoma County Transit" is vicariously liable for the alleged battery by Montero. Transdev is alleged to do business as Sonoma County Transit. (Complaint, 2: 15.)

Plaintiff's Second Cause of Action -- Violence Based On Sex in Violation of the Ralph Civil Rights Act, Civ. Code section 51.7 alleges that Transdev is vicariously liable for the sexual assault and acts of intimidation committed by its employee, Monter.

Plaintiff's Third Cause of Action -- Gender Violence in Violation of Civ. Code section 52.4 alleges Monter violated Civil Code section 52.4 by willfully using force and/or violence against Plaintiff without her consent, and based at least in part on her gender, this being a violation of California Penal Code section 242.

Plaintiff's Fourth Cause of Action -- Denial of Rights Under the Banes Civil Rights Act, Civ. Code section 52.1 alleges California Civil Code section 52.1 (California's Bane Civil Rights Act) provides that any individual whose enjoyment of rights secured by California law, has been interfered with, or attempted to be interfered with, by threat, intimidation, or coercion, or attempts thereby, may prosecute a civil action in their own name, and obtain injunctive relief, recover damages, and, under Civil Code section 52.1(h), obtain attorneys' fees.

Plaintiff's Fifth Cause of Action for sexual battery, Civil Code section 1708.5, alleges Transdev is vicariously liable for the alleged sexual battery committed by Monter.

a. Scope of Employment

Transdev argues that Plaintiff's causes of action based upon Monter's sexual harassment do not allege facts showing he was acting within the scope of his employment.

An employer is vicariously liable for the torts of its employees committed within the scope of the employment. (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 296.) An employee's willful, malicious and even criminal torts may fall within the scope of his or her employment for purposes of respondeat superior, even though the employer has not authorized the employee to commit crimes or intentional torts. (*Id*. at p. 296-297.) In order for the employer to be liable for an assault or other intentional tort, there must be a causal nexus to the employee's work. (*Id.* at p. 297.) This has also been described as the tort being engendered by, or being an outgrowth of, the employment. (*Id.,* at p. 298.) The employment must be such as predictably to create the risk employees will commit intentional torts of the type for which liability is sought. (*Id.,* at p. 299.) Ordinarily, the determination whether an employee has acted within the scope of employment presents a question of fact; it becomes a question of law, however, when the facts are undisputed and no conflicting inferences are possible. (*Ibid*.)

In *Lisa M.,* the Supreme Court of California stated "a sexual tort will not be considered engendered by the employment unless its motivating emotions were fairly attributable to work-related events or conditions." (*Id.,* at p. 301.)

In analyzing the issue in terms of foreseeability, the court stated: "An intentional tort is foreseeable, for purposes of respondeat superior, only if "in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business." (*Id.,* at p. 302 [italics omitted].) The employment must be such as predictably to create the risk employees will commit intentional torts of the type for which liability is sought. (*Ibid*.)

When it comes to workplace violence, courts are willing to find the action arose out of one's employment when employees get into an argument related to the work activity. For example, in *Carr v. Wm. C. Crowell Co*. (1946) 28 Cal.2d 652, a carpenter was determined to be acting within

the scope of his employment when he got into an argument with a coworker about the coworker's work performance and ended up hitting the coworker over the head with a hammer.

When it comes to sexual violence at work, outside of the context of police officers misusing their official powers, courts are reluctant to find sexual assault within the course and scope of one's employment. For example, in *Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, an ultrasound technician was required to touch the plaintiff's breasts and public region as part of his job and ended up sexually assaulted her with the ultrasound wand. Despite the workplace setting the stage for the assault, the court determined that the motivating emotions were not attributable to work-related events or conditions; but "only to 'propinquity and lust.'" (*Lisa M., supra,* at 302.)

As noted above, the issue is normally reserved for the trier of fact. However, here the facts are not disputed and no additional inferences can be made. Based upon the strict application of vicarious liability to sexual assault cases, it appears few will meet the test. Thus, if the conduct in *Lisa M.* does not arise out of the course and scope of employment as an ultrasound technician, the alleged conduct in this case cannot be said to arise out of one's employment as a bus driver.

The first five causes of action based upon sexual assault by employees of Transdev fail to allege a cause of action based upon vicarious liability. The demurrer to these causes of action are sustained without leave to amend.

2. Plaintiff's Third Cause of Action -- Gender Violence in Violation of Civ. Code section 52.4

Transdev argues that Plaintiff's Third Cause of Action -- Gender Violence in Violation of Civ. Code section 52.4 fails as a matter of law because it expressly exempts employers.

Civ. Code, § 52.4(e) provides: "Notwithstanding any other laws that may establish the liability of an employer for the acts of an employee, this section does not establish any civil liability of a person because of his or her status as an employer, unless the employer personally committed an act of gender violence."

Plaintiff argues that section 52.4 does not include a definition of employer so that it should be given the broadest and most liberal interpretation. She also argues that vicarious liability should be allowed under section 52.4 because Transdev ratified Monter's alleged unlawful conduct.

Plaintiff's complaint does not allege that Transdev is anything other than Monter's employer. Nor does she provide any authority supporting her argument, which goes against the plain language of the statute.

The demurrer to this cause of action is SUSTAINED without leave to amend.

3. Fifth Cause of Action – Sexual Battery, Civil Code section 1708.5

Plaintiff's fifth cause of action for sexual battery, Civil Code section 1708.5, alleges Transdev is vicariously liable for the alleged sexual battery committed by Monter.

Despite the demurrer being for failure to state facts sufficient to constitute a cause of action, Transdev also argues that this cause of action fails for uncertainty because it is not clear that it is alleged against Transdev.

Under the title of the cause of action, it states it is "Against Arturo [Mo]ntero." However, paragraph 63 states: "In doing the acts complained of herein, Arturo Montero violated Civil Code section 1708.5, a violation for which Defendant Transdev is vicariously liable through principles of *respondeat superior*." (Complaint, ¶63.)

The pleading is not so incomprehensible that a defendant cannot reasonably respond. (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695.) The plain language of the complaint alleges Transdev is liable for Monter's conduct. However, as the demurrer to this cause of action was sustained on the basis of failure to state facts sufficient to constitute a cause of action, the argument based upon uncertainty is MOOT.

4. Fourteen Cause of Action – Breach of Fiduciary Duty

Plaintiff's fourteen cause of action for Breach of Fiduciary Duty alleges that Transdev owed a fiduciary duty to its employees, including Plaintiff, and breached that duty when it ratified the misconduct of its managers and employees.

A fiduciary relationship is " 'any relation existing between parties to a transaction wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other party. Such a relation ordinarily arises where a confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interest of the other party without the latter's knowledge or consent....' " (*Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 29 [citing cases].) " 'A "fiduciary relation" in law is ordinarily synonymous with a "confidential relation." It is ... founded upon the trust or confidence reposed by one person in the integrity and fidelity of another, and likewise precludes the idea of profit or advantage resulting from the dealings of the parties and the person in whom the confidence is reposed.' " (*Ibid*.)

Traditional examples of fiduciary relationships in the commercial context include trustee/beneficiary, directors and majority shareholders of a corporation, business partners, joint adventurers, agent/principal, and trustee and beneficiary. (*Id.,* at p. 30.)

Plaintiff's opposition does not address this cause of action. Therefore, it appears she concedes this point.

The demurrer to this cause of action is SUSTAINED without leave to amend.

5. Conclusion and Order

The demurrer to Plaintiff's first through fifth, and fourteenth causes of action is SUSTAINED without leave to amend.

Transdev's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

4. 25CV01866, NCSBA Inc., NCC, LLC, and Frank v. Knechtel

Respondent Brad Knechtel ("Respondent") moves pursuant to Labor Code section 98.2 to require Appellants to comply with California Labor Code section 98.2(b) by posting the required undertaking or dismiss their appeal. **The motion is GRANTED. Appellants are ordered to file an appeal bond issued by a licensed surety or a cash deposit with the court in the amount of $30,137.72 by September 22, 2025, or this action will be dismissed.**

This action is an appeal from the decision of the California Department of Industrial Relations Labor Commissioner. The Labor Commissioner's award ordered that plaintiff Brad Knechtel, here the Respondent, recover from defendant, the Appellant, $30,137.72. Out of the award of $30,137.72, a sum of $14,416.84 was awarded jointly against Dona Frank.

Labor Code section 98.2(b) provides: "As a condition to filing an appeal pursuant to this section, an employer shall first post an undertaking with the reviewing court in the amount of the order, decision, or award. The undertaking shall consist of an appeal bond issued by a licensed surety or a cash deposit with the court in the amount of the order, decision, or award. The employer shall provide written notification to the other parties and the Labor Commissioner of the posting of the undertaking. The undertaking shall be on the condition that, if any judgment is entered in favor of the employee, the employer shall pay the amount owed pursuant to the judgment, and if the appeal is withdrawn or dismissed without entry of judgment, the employer shall pay the amount owed pursuant to the order, decision, or award of the Labor Commissioner unless the parties have executed a settlement agreement for payment of some other amount, in which case the employer

shall pay the amount that the employer is obligated to pay under the terms of the settlement agreement. If the employer fails to pay the amount owed within 10 days of entry of the judgment, dismissal, or withdrawal of the appeal, or the execution of a settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, is forfeited to the employee."

On April 1, 2025, Dona Frank filed an Undertaking by Personal Sureties. It states that she is relying upon certain property in Lower Lake, California, to qualify her on the undertaking.

In opposition, Appellants argue, pursuant to CCP section 995.930, Respondent was required to file any objection within 10 days of service of the copy of the undertaking notice. Apellants argue that Respondent's objection was filed 30 days after notice of the undertaking and is therefore untimely and deemed waived.

CCP section 995.930 provides, in full: "(a) An objection shall be in writing and shall be made by noticed motion. The notice of motion shall specify the precise grounds for the objection. If a ground for the objection is that the amount of the bond is insufficient, the notice of motion shall state the reason for the insufficiency and shall include an estimate of the amount that would be sufficient.

"(b) The objection shall be made within 10 days after service of a copy of the bond on the beneficiary or such other time as is required by the statute providing for the bond.

"(c) If no objection is made within the time required by statute, the beneficiary is deemed to have waived all objections except upon a showing of good cause for failure to make the objection within the time required by statute or of changed circumstances."

Here, Dona Frank's Undertaking by Personal Sureties does not comply with Labor Code section 98.2 as it is not an "appeal bond issued by a licensed surety or a cash deposit with the court in the amount of the order, decision, or award." Thus, it is not clear that an objection must have been made within 10 days as the undertaking does not comply with Labor Code section 98(b). In addition, appellate cases out of the Second District Court of Appeals hold that the filing of an undertaking is mandatory and jurisdictional. (*Palagin v. Paniagua Construction, Inc.* (2013) 222 Cal.App.4th 124, 140; *Adanna Car Wash Corp. v. Gomez* (2023) 87 Cal.App.5th 642, 649.) The First District Court of Appeals also acknowledges that a trial court can order an employer to post an undertaking in a certain amount by a certain date or be subject to sanctions, including dismissal of the employer's appeal. (*Progressive Concrete, Inc. v. Parker* (2006) 136 Cal.App.4th 540, 551.)

The motion is GRANTED. Appellants are ordered to file an appeal bond issued by a licensed surety or a cash deposit with the court in the amount of $30,137.72 by September 22, 2025, or this action will be dismissed.

Respondent'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.

5. SCV-268610, Chettero v. Aurora Behavioral Healthcare-Santa Rosa, LLC

Plaintiff Nicole Chettero ("Plaintiff"), on behalf of herself and the Settlement Class, will and hereby does respectfully move this Court for an order granting Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement. Specifically, Plaintiff moves the Court for an order: (1) finally approving the Class Action Settlement Agreement ("Settlement"), which was fully executed on October 16, 2024; (2) entering judgment consistent with the terms of the Settlement; (3) ordering a final compliance hearing on a date to be set by the Court; and (4) retaining jurisdiction over the parties to enforce the terms of the judgment. This motion was originally heard on May 30, 2025; however, as Class Counsel had a second motion for attorney fees pending for

September 5, 2025, the hearing on Plaintiff petition for final approval was continued to this calendar. Plaintiff also moves for an order awarding Class Counsel $2,083,333.33 in attorney fees. While the motion also refers to costs, Plaintiff's costs were approved on the motion for final approval of the settlement. **The motions are GRANTED.**

On December 7, 2023, this court certified the class consisting of: "All former and current registered nurses ("RNs"), licensed vocational nurses and psychiatric technicians ("LVNs" or "LPTs"), and mental health workers and technicians ("MHWs" or "MHTs") who worked at least one shift in the Nursing Department at Aurora Santa Rosa Hospital (also known as Santa Rosa Behavioral Healthcare Hospital) from July 21, 2016 through the date of class notice." On January 24, 2025, this court preliminarily approved Plaintiff's proposed class action settlement.

The Settlement establishes a common fund of $6,250,000. (SA, ¶ 3.1.) Subject to Court approval, this fund will be allocated as follows: $100,000 in civil penalties pursuant to PAGA, attorneys' fees up to $2,083,333.33 (one-third of the fund), class counsel expenses of $190,832.93, a class representative award up to $30,000, and administration costs of $17,000. (SA ¶ 3.6; Declaration of Marcus Bulthuis Regarding Notice and Settlement Administration ["Bulthuis Decl."] ¶ 12.) The remaining $3,828,833.74 will be distributed to the Class Members without a claim form in proportion to the number of weeks worked. (SA, ¶ 3.6(e); Bulthuis Decl. ¶ 13.)

After preliminary approval, the court determines whether the settlement is fair, adequate, and reasonable in a final hearing. (CRC 3.769(g); *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801; see also *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F. 2d 615, 625; Fed. Rule of Civ. Proc., Rule 23(e).) The trial court has broad powers to determine whether the settlement is fair. (*Dunk v. Ford, supra*, at 1801; *Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434.) The purpose of this requirement is "the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." (*Officers for Justice v. Civil Service Com., supra*, 688 F. 2d at 624.)

At this hearing, the Court should consider relevant factors, such as the strength of Plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement. However, the list is not fixed and the factors which the court considers must be tailored to each case. (*Dunk v. Ford, supra*, at 1801.) Ultimately, "the inquiry 'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.' [Citation.]" (Ibid.) The determination is in the end "'an amalgam of delicate balancing, gross approximations and rough justice." (*Officers for Justice v. Civil Service Com*. (9th Cir.1982) 688 F.2d 615, 625; see also *Dunk v. Ford, supra*, at 1801, quoting Officers for Justice, supra.)

However, while the party seeking settlement approval has the burden of showing the settlement is "fair and reasonable," nevertheless "there is a presumption of fairness when: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the trial court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337; see also *Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43; *Dunk v. Ford, supra*, at 1801.)

1. Notice; Lack of Objectors; Presumption of Fairness

On February 24, 2025, Settlement Administrator Simpluris mailed and emailed the court-approved notice, and texted court-approved information about the Settlement, to Class Members.

(Bien Decl. Ex. 2 (Bulthuis Decl.) ¶¶ 8-10.) The deadline for objections or to dispute the workweek data that will be used to allocate settlement funds was April 10, 2025. (*Id*. ¶¶ 16-17.) No Class Member objected to the settlement. (*Id.* ¶ 17.) Four Class Members disputed the calculation of their payments. (*Id*. ¶ 16.) The Administrator resolved each of the disputes in favor of the Class Members. (*Id*.)

As recognized by the preliminary motion for approval, the fairness of the settlement is presumed in this case due to the settlement through arms-length bargaining, sufficient investigation and discovery, having experienced counsel; and, as there were no objectors. (*Dunk v. Ford Motor Co., supra,* 48 Cal. App. 4th at p. 1802.)

2. Attorney Fees and Costs

A finding that the settlement is fair is not dispositive of the attorney fees issue. This court assumes a fiduciary role for the class members in evaluating a request for an award of attorney's fees from the common fund. (*In re Mercury Interactive Corp. Securities Litigation* (9th Cir. 2010) 618 F.3d 988, 994.) The distribution of fees must bear some relationship to the services rendered. (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1142.)

Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254.) This method is most commonly used in statutory fee-shifting schemes to reward attorneys for engaging in socially useful litigation. It is also applied when the type of recovery does not allow easy calculation of the settlement's value.

Class Counsel are seeking a percentage of the settlement fund. In determining what percentage is reasonable, courts commonly consider: the percentage likely to have been negotiated between private parties in a similar case (e.g., 30-40% in tort cases); percentages applied in other class actions (usually around 25%); the quality of class counsel; and the size of the award. (See Weil, et al, Civil Procedure Before Trial, (TRG 2024) § 14:145.3, citing *In re Ikon Office Solutions, Inc. Secur. Litig.* (ED PA 2000) 194 FRD 166, 193.)

Use of the percentage method is particularly appropriate in "common fund" cases such as this one, as it simply awards counsel some percentage of the settlement fund. (*In re Ikon Office Solutions, Inc. Secur. Litig, supra,* at p. 193.) This method theoretically aligns the interests of counsel and class more closely than does the lodestar method: a larger recovery with fewer hours expended benefits all parties. (*Ibid*.)

Class Counsel argue that they should be awarded the entire 33% because they actively litigated the case by propounding substantial discovery, filed two discovery motions, and negotiated with Defendants to resolve the case. They argue that they used lower-billing associates, legal assistants, and paralegals for document review, initial drafting of complaints, meet and confer letters, and other documents; while senior counsel focused on the complex legal analysis, negotiations, and motion practice. Class Counsel also note that no class member has objected to the fee request and that they obtained excellent results for the class, with the settlement providing an average recovery of approximately $4,493.94 per class member.

Class Counsel cite the usual contingency risk for contingency cases and that handling this case precluded other employment.

Class Counsel argue that this case required a high level of skill and expertise. Counsel states that "novel and difficult" issues were involved regarding the duty to provide meal and rest periods, the ability of employees to agree to waive meal and rest periods, as well as the impact that bankruptcy would have on the claims.

a. Valerian Law

Valerian Law, P.C. was one of two law firms to work on this case. Attorney Xinying Valerian states her firm's lodestar is $1,182,782.50 based on a total of 1,463.4 hours. (Valerian decl., ¶ 27.)

Partners Dan Gildor and Valerian are listed at $1,050 per hour; Associate Helen Halldorsson at $800 per hour; Paralegals at $375 per hour; an Apprentice at $375 per hour; a Junior Paralegal at $325 per hour; and Legal Assistants at $300 per hour.

Attorney Valerian states she has billed 573.8 hours on this case. (Valerian Decl., ¶36.) She states her work included developing theories, drafting pleadings, negotiating with defense representatives, leading discovery meet and confers, working with mediators, supervising investigation activities, working with Plaintiff and key witnesses, drafting and responding to discovery, drafting discovery motions, overseeing document review and reviewing key documents and data, and drafting briefs relating to discovery and the merits. (*Ibid*.)

Attorney Gildor billed 330.4 hours to this case. (Valerian Decl., ¶ 39.) Attorney Valerian states he wrote the motion for class certification, the motion for preliminary approval, as well as this motion. (*Ibid*.) Attorney Valerian states Mr. Gildor also helped negotiate the settlement agreement in this case, developed a damages model, and assisted Attorney Valerian in the day-to-day management of this case. (*Ibid*.)

Attorney Halldorsson conducted legal research, supervised legal assistants' litigation tasks, worked on factual investigation and witnesses, drafted certain filings, worked on outreach to potential class members, assisted in preparations for class certification, and handled day-to-day management of the case. (Valerian decl., ¶ 40.) She billed 82.7 hours to this case. (*Ibid*.)

Paralegal Eileen Torrez worked on investigation, class member outreach, one of the mediations, drafting declarations, document management, and other routine litigation support. (Valerian decl., ¶ 41.)

Legal Assistant Alex Li provided first-line paralegal support for all stages of the case, including assisting with pleadings and filings, assisting with discovery and case management, drafting a deposition outline, analyzing data and documents analysis, and interviewing class members. (Valerian decl., ¶ 42.) He billed 49.1 hours. (*Ibid*.)

Paralegal Christina McKenzie helped prepare the motion for class certification, other motions, calendaring, coordination, vendor management, depositions, transcript analysis, analysis of evidence, and drafting discovery responses, among other tasks. (Valerian decl., ¶ 43.) She billed 251.9 hours. (*Ibid*.)

Paralegal Ella Zalon provided backup and overflow support for this case. (Valerian decl., ¶ 44.) Ms. Zalon worked on interviewing class members, drafting class member declarations, and assembling and filing the class certification motion. (*Ibid*.) She also drafted separate statements in support of a motion to compel discovery. (*Ibid*.)

Legal Assistant Marcelo Lopez helped with class investigations and document management. (Valerian decl., ¶ 45.) He billed 25.5 hours. (*Ibid*.)

Attorney Valerian states her firm spent 331 hours on pre-and post-filing factual investigation and written discovery; 238 hours communicating with the client and class members; 820 hours drafting the pleadings—both the complaint and amended complaint—and engaging in motion practice including the several motions to compel, a successful motion for class certification, several ex parte applications to move the case forward, the motions for preliminary and final approval, and the attorney fee motion; 204 hours on hearing and deposition preparation and attendance; 445 hours on three mediations and settlement negotiations, and overseeing settlement implementation; 79

hours drafting expert disclosures and engaging with experts; 146 hours of trial preparation; and 247 hours of case analysis, case management, and litigation strategy meetings. (Valerian decl., ¶ 13.)

b. Olivier & Schreiber PC

Oliver & Schrieber PC was the other firm to work on this action. Class Counsel, Rachel Bien, states her firm spent proximately 1,082 hours investigating, litigating, and settling this case, resulting in a lodestar of approximately $726,679.00 as of April 30, 2025. (Bien decl., ¶48.) The lodestar will increase as counsel continue to spend time preparing for the final approval hearing, attending the hearing, and assisting with the administration of the settlement. (Bien decl., ¶¶48, 55.)

Attorney Rachel Bien states, her partner, Christian Schreiber provided "substantial support on strategy matters at critical points throughout the litigation," participated in the mediations and settlement negotiations, drafted, reviewed, and edited briefs, and participated in trial preparation. (Bien decl., ¶ 29.) Attorney Schreiber spent almost 250 on this action. (*Ibid*.) His hourly rate is listed as $1,025. (*Id.,* ¶ 58.)

Associate Attorney Cassidy Clark conducted legal research, assisted with trial preparation, communicated with class members, and drafted discovery and expert disclosures. (Bien decl., ¶ 33.) Her hourly rate is $550. (*Id.,* ¶ 58.)

Associate Attorney Hannah Shirey drafted discovery requests, conducted meet and confer telephone calls with defense counsel, conducted class member interviews, and drafted correspondence to defense counsel regarding discovery deficiencies. (Bien decl., ¶ 34.) Her hourly rate is $500. (*Id.,* ¶ 58.)

Law Clerk Estefania Palacios performed legal research, conducted interviews with class members, and assisted with trial preparation. (Bien decl., ¶ 35.) Her hourly rate is $410. (*Id.,* ¶ 58.)

Unnamed paralegals performed work on this case, including reviewing and analyzing documents, editing and preparing briefs and other documents for filing, and filing and serving documents with the court and other parties. (Bien decl., ¶ 36.) In Attorney Bien's hourly rate schedule, unnamed paralegals bill at $250 and unnamed law clerks bill at $200. (*Id.,* ¶ 58.)

Attorney Bien states the firm spent 258 hours on motion practice, research, and drafting of the pleadings; 80 hours for hearing and deposition preparation and attendance; 135 hours on discovery and factual investigation; 147 hours in settlement negotiations and mediation; 83 hours communicating with clients and class members; 55 hours drafting expert disclosures and engaging with experts; 118 hours in trial preparation; and, 169 hours for litigation strategy, case management, and case analysis. (Bien decl., ¶ 55.)

c. Percentage Method Cross-Checked against the Lodestar

The court will apply the percentage method, cross-checked against the lodestar. The percentage will be based on the net settlement fund after deducting the costs of litigation, as this approach increases the incentives for cautious expenditure and, again, helps align the interests of the class more closely with those of counsel. (*See In re Ikon Office Solutions, supra,* at p. 193.)

In support of their hourly fees, Attorney Valerian cites the Laffey Matrix for the San Jose-San Francisco-Oakland metro area. (Valerian decl., ¶ 51.) The website link provided is for the salary of judicial officers. (*Ibid*.)

In reviewing http://www.laffeymatrix.com, which is for the Washington D.C.-Baltimore metropolitan area, the website provides the following rates for 2025: $258 for paralegals and law clerks; $473 for attorneys with 1 to 3 years out of law school; $581 for attorneys with 4 to 7 years out of law school; $839 for attorneys with 8 to 10 years out; $948 for attorneys with 11 to 19 years out; and $11,41 for attorneys 20 plus years out. However, the hourly rates for Washington D.C. and Baltimore are significantly higher than the reasonable rate charged in Sonoma County.

Adjusting Class Counsel's hourly rates to more appropriate rates based upon the work performed, the difficulty of the issues, and the quality of the work, including an additional 50 hours for work taking place after the date of this motion, the lodestar amount becomes $1,168,200.

To approve the amount requested, a multiplier of 1.36, for the contingency nature of the case, would need to be added. This multiplier is within the reasonable range for this type of case. Accordingly, the requested attorney fees are granted.

3. Costs

Plaintiff requests costs in the amount of $190,832.93. This amount is reasonable for this case with 852 class members.

4. Service Award

Plaintiff seeks a service payment of $30,000. Plaintiff's declaration supports the requested fee award based upon the number of hours expended and the risk associated with litigating the action.

5. Conclusion and Order

Based on this court's review of the motion and the terms of the settlement, the settlement is "fair, adequate and reasonable" and the rights of the class members have been protected such that there is no sign of fraud, collusion, or unfairness. Accordingly, the motion for final approval of the class action settlement is granted.

The amount of attorney fees requested is also within the range of what is reasonable for this case. Accordingly, Plaintiff's motion for attorney fees is GRANTED.

This court will enter final judgment in this case in accordance with the terms of the Settlement Agreement and this order. Pursuant to Cal, Rules of Court, Rule 3.769(h), this Court retains continuing jurisdiction over the parties to enforce the terms of the judgment.

This court recognizes that Class Counsel filed a proposed order on May 6, 2025. However, that order differs in some ways from this court's ruling. Therefore, Class Counsel are directed to submit a written order consistent with this court's ruling.

6. SCV-271011, Pratt v. Higgins

1. Motion to Compel Deposition Subpoena for Production of Business Records

Plaintiff's unopposed motion to compel compliance with the deposition subpoena for production of business records to David Hagar is **GRANTED**.

The Court will sign the proposed order lodged with the moving papers.

Plaintiff served a deposition subpoena for the production of business records to non-party Dr. David Hagar. Dr. Hagar is a chemist who was hired by Defendant 3G Green Garden Group, LLC ("3GL") shortly after it commenced business in 2014. Plaintiff submits that Dr. Hagar was instrumental in the research and development process of 3GL's product line of fertilizers. Dr. Hagar assisted in creating the chemical formulas for each, working with outside laboratories to test and refine product formulations, and advising 3GL on compliance with applicable regulatory guidelines promulgated by the California Department of Food & Agriculture.

Defendants objected to the subpoena asserting several bases for their objections. Defendants did not file a motion to quash the subpoena nor seek a protective order. Defendants have also failed to file an opposition to this motion.

Plaintiff argues that Defendants' objections are not properly before this Court because Defendants did not file a motion to quash or a motion for a protective order. Therefore, the Court need not consider them. The Court does not agree that the Court need not consider Defendants'

objections under these circumstances. However, by failing to oppose this motion Defendants have failed to demonstrate that their objections have merit.

Plaintiff submits that the documents and information requested from Dr. Hagar bear directly on a contested factual issue of the case, specifically, the ownership of the fertilizer formulas that he developed. Defendants assert that all intellectual property that Dr. Hagar developed for 3GL, such as the formulations of the fertilizers manufactured and sold by 3GL, is owned by Defendant Emerald Harvest, Inc. ("EHI"). Plaintiff argues that this assertion is directly relevant to Plaintiff's allegations that Defendants have looted the assets of 3GL to the detriment of 3GL and Plaintiff. Plaintiff also submits that the documents will lead to the identification of potential witnesses.

Plaintiff has sufficiently demonstrated the relevance of the documents sought from Dr. Hagar and has shown good cause for requiring his compliance with the subpoena.

2. <u>Motion to Quash Deposition Subpoena to Merrill, Arnone & Jones, LLP</u>

Defendant 3G Green Garden Group, LLP ("3GL")'s motion to quash the deposition subpoena to Merrill, Arnone & Jones, LLP ("MAJ") is **GRANTED in part**. The Court orders that MAJ need only turn over the requested documents and communications from the limited time period of March 23, 2015, to March 26, 2015. All other documents and communications requested by the subpoena are privileged under the attorney-client privilege, as explained below.

Defendant's request for their reasonable attorney's fees incurred in making this motion is **GRANTED** in the amount of $7,811. Plaintiff shall pay this amount within 20 days of service of notice of entry of an order on this motion. Plaintiff's opposing request for attorney's fees from Defendant is **DENIED**.

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

<u>Analysis:</u>

On November 7, 2024, Plaintiff served the Deposition Subpoena for the Production of Business Records ("Subpoena") pursuant to Code of Civil Procedure §§ 2020.410, *et seq.*, to the law firm Merrill, Arnone & Jones, LLP ("MAJ"). The Subpoena sought copies of MAJ's 3GL client files and records, including all communications, pleadings, discovery, billing records, and correspondence in the matter of *Advanced Nutrients Ltd. et al. v. 3G Green Garden Group, LLC, et al.*, Sonoma County Superior Court Case No. SCV-256825 ("AN Litigation").

3GL subsequently filed this motion to quash the deposition subpoena arguing that the records it seeks are shielded from discovery based on the attorney-client privilege and that the records are irrelevant to the present dispute. In this dispute, 3GL is a named as a nominal defendant. Plaintiff alleges in his Second Amended Complaint that Defendants Robert C. Higgins and Sharon E. Higgins ("the Higginses"), formed the other corporation defendants, 3G Green Garden Group, Inc. ("3GI") and Emerald Harvest, Inc. ("EHI"), to masquerade as 3GL, and wrongfully divert assets and funds away from 3GL to the Defendants and third parties for the Higginses' personal gain. 3GL maintains a cross-complaint against Plaintiff alleging breach of fiduciary duty.

The AN Litigation was initiated on March 6, 2015, by Advanced Nutrients Ltd., a Canadian corporation, and its U.S. affiliate, against 3GL, Plaintiff, the Higginses, and a non-party hereto, Dimitar Dimitrov. The individual defendants were former employees of Advanced Nutrients Ltd. and the gravamen of the lawsuit was that they allegedly misappropriated trade secrets and formed 3GL to unfairly compete with Advanced Nutrients Ltd.

Plaintiff does not assert that 3GL has waived the attorney-client privilege but instead argues that an exception to the privilege applies here because the parties were jointly represented or maintained a common interest in the AN Litigation. Evidence Code § 962 provides,

> Where two or more clients have retained or consulted a lawyer upon a matter of common interest, none of them, nor the successor in interest of any of them, may claim a privilege under this article as to a communication made in the course of that relationship when such communication is offered in a civil proceeding between one of such clients (or his successor in interest) and another of such clients (or his successor in interest).

Plaintiff submits that MAJ represented him individually and as President of 3GL in the AN Litigation and that he retained additional counsel, Mr. Warren at Abbey Weitzenberg, to also represent him individually in the AN Litigation. Plaintiff submits evidence that MAJ required all of the jointly represented defendants to sign a consent to joint representation and conflict of waiver form which informed them of the risks of joint representation. Plaintiff signed it in his individual capacity and as President of 3GL.

3GL has presented evidence establishing that the joint representation lasted only 3 days, from March 23, 2015, to March 26, 2015. (Pratt Decl. ¶ 5-10; Higgins Sup. Decl., Ex. A.) Contrary to Plaintiff's assertions, MAJ did not continue to jointly represent him in his individual capacity. This was clearly communicated by MAJ on May 4, 2015, when Counsel Ross Jones of MAJ sent a letter to all of the individual defendants stating,

> On March 23, 2015, we sent each of you a package which included a Conflict of Interest Waiver Letter, a separate letter regarding 3G's willingness to provide for your defense, and Professional Services agreement. As you know, since that time it was decided that my firm will only represent 3G Green Garden Group, LLC; the Abbey law form is representing your interests as individually named defendants in the lawsuit.

Abbey law firm's representation of Plaintiff began on March 26, 2015. (Pratt Decl. ¶ 20.) "California courts sensibly have suggested that § 962 of the Evidence Code does not apply unless both of the persons or entities involved can be characterized in a meaningful sense as 'clients' of the same attorney." (*Bank of the W. v. Valley Nat. Bank of Arizona* (N.D. Cal. 1990) 132 F.R.D. 250, 252.) "[I]f multiple clients retain or consult with an attorney on a matter of common interest and the joint clients later sue each other, then the communications between either client and the attorney *made in the course of that relationship* are not privileged in the suit between the clients." (*Anten v. Superior Ct.* (2015) 233 Cal.App.4th 1254, 1256. Emphasis added.)

Plaintiff's argument suggests that Evidence Code § 962 applies to communications occurring after the time Abbey law firm was retained since the parties had common interests and their two law firms were engaged in a "collaborative defense" of the parties in the AN Litigation. This argument is not supported by authority and was squarely rejected by the Court in *Rockwell Internat. Corp. v. Superior Court* (1994) 26 Cal.App.4th 1255. In *Rockwell*, in an action between insurance carriers and their insured, the insurance carriers claimed they shared a "common interest" with Rockwell in a prior litigation and thus come within the "joint client" exception to the attorney-client privilege. (*Id*. at 1266.) The *Rockwell* Court explained, "the 'joint client' or 'common interest' exception applies only where 'two or more clients have retained or consulted a lawyer upon a matter of common interest,' in which event neither may claim the privilege in an action by one against the other." (*Id*. at 1267.) Since Rockwell's attorney's in the preceding action were "retained to represent Rockwell and only Rockwell" the "joint client" or "common interest" exception did not entitle the insurers to receive those privileged communications.

In the present matter, beginning on March 26, 2015, MAJ was retained to represent 3GL and only 3GL. MAJ was no longer retained as counsel for Plaintiff in his individual capacity. Plaintiff's argument that the parties' common interest in defending against the litigation invokes the exception of Evidence Code § 962, even after March 26th, is unpersuasive as it is contrary to the law.

Since Plaintiff was the joint client of MAJ for three days from March 23 to March 26, 2015, the communications that occurred during those three days are not privileged. Thus, MAJ must comply with the subpoena for this narrow period of time.

3GL argues that Evidence Code § 962 only applies to communications made while all joint clients are present, and not to those made by one client to the attorney in confidence. The authority cited to this point is *Glade v. Superior Court* (1978) 76 Cal.App.3d 738. The *Glade* Court stated, "the exception to the privilege defined by this section is not invoked as to communications made in confidence to the attorney by one of the joint clients at a time when the other client was not present." (*Id*. at 747.) However, the *Glade* decision predates the decision in *Glacier Gen. Assurance Co. v. Superior Court* (1979) 95 Cal.App.3d 836, wherein the Court of Appeal stated, "The language that no client "*may claim a privilege ... as to a communication made in the course of that relationship ...*"…seem explicitly and unambiguously to include *all* communications—bilateral as well as trilateral. If the Legislature had meant otherwise, it could have easily said so. It is not for us to rewrite the statute." (*Id*. at 841. Italics in original.) Since the *Glacier* decision was decided after the *Glade* decision, this Court must follow the *Glacier* Court's reasoning.

Finally, Plaintiff has sufficiently demonstrated that the present matter relates, at least in part, to the AN Litigation such that the documents requested in the subpoena could reveal information that is relevant to this litigation. Plaintiff has shown that the exception set forth in Evidence Code § 962 applies to the documents and communications requested in the subpoena, but only from the time period of March 23, 2015, to March 26, 2015, which was the only time that MAJ was retained as Plaintiff's counsel jointly with 3GL.

Attorney's Fees

CCP § 1987.2(a) provides that the Court may in its discretion award reasonable expenses, including attorney's fees, to the party making or opposing a motion to quash "if the court finds the motion was made or opposed in bad faith or without substantial justification or that one or more of the requirements of the subpoena was oppressive."

This Court finds that the subpoena's requirement of all turning over all communications and documents from MAJ's entire representation of 3GL was oppressive and that Plaintiff failed to supply substantial justification for the request in his opposition. Plaintiff had received a letter from MAJ in 2015 clearly informing him that MAJ no longer represented him as an individual beginning March 26, 2015. Therefore, Plaintiff knew or should have known that he was only jointly represented by MAJ for 3 days. Furthermore, Plaintiff's argument that the "collaborative defense" precluded MAJ from asserting the attorney-client privilege is unsupported by authority. Therefore, Plaintiff lacks substantial justification for maintaining such an argument.

The Court finds that the amount of attorney's fees requested by Defendant is reasonable. Plaintiff shall pay Defendant the $7,811 that Defendant incurred in making this motion.

3. Plaintiff's Motion to Compel Further Responses

Plaintiff's Motion to Compel Further Responses to Request for Production of Documents, Set No. One, And Request for Monetary Sanctions is **GRANTED**. Defendants shall provide further responses to Plaintiff's request for production of documents, set one, within 20 days of service of notice of entry of an order on this motion. Defendants shall pay $10,060 in sanctions to Plaintiff within 20 days of notice of entry of an order on this motion. Defendants' alternative request for sanctions against Plaintiff is **DENIED**.

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

Plaintiff has filed this lawsuit in his individual capacity and derivatively on behalf of the nominal Defendant 3G Green Garden Group, LLC d.b.a. Emerald Harvest ("3GL"), a California limited liability company of which he is a founding member. Defendants Robert C. Higgins ("Mr. Higgins") and Sharon E. Higgins ("Mrs. Higgins") (collectively "the Higginses"), who are Canadian citizens, are also alleged to be members of 3GL. Plaintiff alleges that Mr. Higgins is also the sole owner/shareholder of the other two Co-Defendants 3G Green Garden Group, Inc. ("3GI") and Emerald Harvest, Inc. ("EHI"), which are both Canadian corporations. Plaintiff's action is based on his allegations of wrongful diversion of assets and funds away from 3GL to 3GI, EHI, and the Higginses for their personal gain.

Plaintiff alleges that in early 2014, Plaintiff and Mr. Higgins formed 3GL to develop, own, manufacture, market, and sell fertilizer products for the hydroponics industry. Mr. Higgins is the majority owner with 51% equity in 3GL, Plaintiff owns 25%, and Mrs. Higgins owns the remaining 24%. 3GL is a California company with its principal place of business in Santa Rosa, California, and Plaintiff is also a resident of California.

Plaintiff alleges that subsequent to the formation of 3GL and unbeknown to Plaintiff, Mr. Higgins formed EHI in late 2014 and formed 3GI in 2017. Plaintiff alleges that the names given to these two Canadian companies by Mr. Higgins deliberately mimic 3GL's legal name and dba name. As alleged in the SAC, the Higginses assumed total control over the affairs of 3GL in California and hid its financial and business information from Plaintiff. As alleged, Defendants made a series of improper transfers of monetary and intellectual property assets from 3GL, thus harming 3GL and funneling 3GL's assets to the Higginses, 3GI and EHI, and their foreign bank accounts beyond Plaintiff's reach or knowledge.

Plaintiff also alleges that EHI and 3GI operate as a single enterprise run by their alter ego, Mr. Higgins, their sole owner and decisionmaker. As alleged, EHI and 3GI share identical equity ownership, officers and directors, registered offices, records offices, mailing addresses, and delivery addresses as Mr. Higgins is the exclusive owner and sole director of EHI and 3GI, and also President and CEO of 3GI, and CEO of EHI, while Mrs. Higgins represents herself as President of EHI. Plaintiff alleges that EHI and 3GI act interchangeably to serve as the mere conduits of Mr. Higgins and one another and that the sole function of EHI and 3GI is to provide the Higginses with shell corporations that assist them in obtaining, transferring, and concealing the funds, intellectual property assets, and other assets from 3GL.

Plaintiff alleges causes of action for (1) Breach of Fiduciary Duty (2) Breach of Duty of Good Faith and Fair Dealing (3) Receiving Improper Distributions (4) Unjust Enrichment and Restitution (5) Conversion (6) Concealment (7) Accounting (8) Dissociation (9) Appointment of Receiver (10) Violation of Bus. & Prof. § 17200 (11) Fraudulent Concealment (12) Violation of Penal Code § 496 and (13) Aiding and Abetting.

Defendants removed this matter to the Federal Court based on diversity of citizenship. By subsequent motion of the Defendants, the matter was remanded to this Court based on the fact that the Federal Court did not have subject matter jurisdiction since there was no complete diversity between the parties. In granting the motion for remand, the Federal Court vacated its previous order dismissing Defendants 3GI and EHI for lack of personal jurisdiction.

After the matter was remanded, anticipating Defendants to repeat their arguments regarding personal jurisdiction in this Court, Plaintiff propounded identical sets of document inspection demands to 3GI and EHI for the purposes of discovering information relevant to jurisdiction. Defendants 3GI and EHI filed a motion to quash service of the summons upon them based on their

arguments that this Court does not have personal jurisdiction over them. The motion to quash is scheduled for hearing concurrently with this motion.

Defendants both responded to each of Plaintiff's document demands with identical boilerplate objections asserted as to each request. The only document that they agreed to turn over is their Articles of Incorporation. As for all other document requests, Defendants objected on the grounds that the request was unduly burdensome, overbroad, not relevant to the limited issue of personal jurisdiction, vague, ambiguous, seeks privileged or confidential information, was based on annoyance or harassment, and was not reasonably calculated to lead to the discovery of relevant information. The Court notes that on August 13, 2024, the Court signed a stipulated protective order, agreed to by all parties, for the purpose of protecting the sensitive confidential information related to this case. The Court also notes that Defendants did not produce a privilege log to support their privilege objections.

Analysis:

"[W]hen jurisdiction is challenged by a nonresident defendant, the burden of proof is upon the plaintiff to demonstrate that 'minimum contacts' exist between defendant and the forum state to justify imposition of personal jurisdiction." (*Mihlon v. Superior Ct.* (1985) 169 Cal.App.3d 703, 710.) "The plaintiff has the right to conduct discovery with regard to the issue of jurisdiction to develop the facts necessary to sustain this burden." (*Ibid*.) "'A plaintiff attempting to assert jurisdiction over a nonresident defendant is entitled to an opportunity to conduct discovery of the jurisdictional facts necessary to sustain its burden of proof,'" (*Hardell v. Vanzyl* (2024) 102 Cal.App.5th 960, 974–75.) A plaintiff "'should demonstrate that discovery is likely to lead to the production of evidence of facts establishing jurisdiction.'" (*Ibid*.)

"The granting of a discovery request 'lies in the discretion of the trial court, whose ruling will not be disturbed in the absence of manifest abuse.'" (*Goehring v. Superior Ct. (Bernier)* (1998) 62 CalApp.4th 894, 911.) Engaging in such discovery does not constitute a general appearance unless and until the Court denies the motion to quash. (CCP § 418.10(e)(2).)

Plaintiff seeks production of documents relating to the following categories:

1) Documents related to 3GI and EHI's corporate formation, ownership structure, officers, directors, employees, and independent contractors.
2) 3GI and EHI's corporate meeting minutes and resolutions from the date of their inception to present.
3) Records related to 3GI and EHI's licenses and registrations held in California, including those issued by the California Department of Food & Agriculture ("CDFA").
4) 3GI and EHI's communications with California government agencies, including CDFA, and more generally communications with residents of California.
5) Documents related to 3GI's and EHI's sale of goods and services in California, including payments received, total annual sales, and use of their claimed intellectual property in California.
6) Documents reflecting 3GI's and EHI's bank accounts in California, as well as any real property in California owned or leased by these entities.
7) Documents reflecting transfers of funds and any written agreements between any of the Defendants.
8) Records pertaining to insurance policies issued to 3GI and EHI in California.
9) Documents related to any advertising by 3GI and EHI in California.

Plaintiff argues that the documents sought in his inspection demands are narrowly tailored and relevant to proving (1) Defendants purposely availed themselves of this jurisdiction and thus

this Court has personal jurisdiction over them; or (2) in the alternative, even if they did not purposely avail themselves of this jurisdiction, they are the alter egos of Mr. Higgins and thus asserting jurisdiction over them is proper.

Defendants first argue that this motion should be denied because the Federal Court already concluded that personal jurisdiction does not exist. This argument is ineffective because, as argued by Defendants, and as found by the Federal Court, the Federal Court did not have subject matter jurisdiction over this controversy. The Federal Court's order dismissing the defendants was vacated. Any decisions made by the Federal Court were lacking jurisdiction. To the extent Defendants argue that the Federal Court's analysis regarding personal jurisdiction should persuade this Court, the Federal Court's decision was made without jurisdictional discovery having been conducted. Accordingly, this Court is not persuaded by it.

Defendants next argue that Plaintiff's discovery requests should be denied because they broadly request documents regarding information that is not related to Plaintiff's alleged harm. For example, Defendants argue that Plaintiff seeks information regarding Defendants' sale of goods in California even though Plaintiff's claims against the Defendants are not based on their sale of goods in California. They make the same arguments regarding each other category of information sought, such as licenses and registration, insurance policies, advertisements, etc. They argue that, since Plaintiff's harm is not alleged to have been caused by their advertisement, licensing, registration, insurance, etc., Plaintiff is not entitled to the information. Defendants' argument is unconvincing. While Plaintiffs' claims against Defendants must be related to their contacts with California in order for this Court to have specific jurisdiction over them (*Halyard Health, Inc. v. Kimberly-Clark Corp.* (2019) 43 Cal.App.5th 1062, 1070), Defendants have cited no rule prohibiting Plaintiff from presenting evidence of all of Defendants' contacts with California to establish that Defendants have sufficient contacts with this state.

Defendants' objections regarding the discovery requests being vague, overbroad, unduly burdensome, or not reasonably calculated to lead to the discovery of relevant information are without merit. Plaintiff has demonstrated that his document demands are likely to lead to the production of evidence of facts establishing specific jurisdiction. (*Hardell v. Vanzyl, supra,* 102 Cal.App.5th at 975.)

Defendants objections regarding privilege are unsupported. Defendants did not produce a privilege log nor identify in their opposition which documents are purportedly privileged. As such, it is impossible for this Court to determine the merit of these objections.

Defendants' objections on the basis of confidential information are likewise unsupported. The parties have entered into a stipulated protective order requiring the careful management of the confidential information potentially produced in this matter. Defendants have failed to articulate how the protective order would be insufficient to protect any potential confidential information that may be present in their document production.

Plaintiff has also demonstrated that the documents requested are likely to lead to the production of evidence of facts establishing Plaintiff's alternative alter ego theory. Defendants argue that Plaintiff should not be permitted to conduct discovery regarding his alter-ego theory because the allegations in the SAC are nothing more than conclusory speculation. This argument is paradoxical. The purpose of discovery is to obtain evidence to support the allegations of the accusatory pleading.

Finally, Plaintiff has shown that sanctions are warranted. Plaintiff requests $23,560 in sanctions. However, the declaration of Michael Shklovsky does not support this request. Mr. Shklovsky represents that his hourly rate is $500 per hour. He spent 10 hours drafting the motion and anticipated spending an additional 10 hours reviewing the opposition, replying, and attending the hearing. He also advanced the $60 filing fee. This would total $10,060. It is unclear how Mr.

Shklovsky reached the requested total of $23,560. Since foundation is provided for $10,060 in attorney's fees and costs associated with this motion, sanctions are awarded in the amount of $10,060.

4. **Plaintiff's Motion to Dismiss or Stay for Forum Non Conveniens**

This matter is also on for Defendants 3G Green Garden Group, Inc.'s and Emerald Harvest, Inc.'s ("Defendants'") motion to dismiss this action or stay this action in its entirety under the doctrine of forum non conveniens in favor of litigating the claims asserted in this action in British Columbia, Canada. On August 13, 2025, the motion was **tentatively DENIED**. Appearances were requested but, due to lack of time, the hearing on the motion was continued to this calendar.

The tentative ruling published on August 12, 2025, follows:

Defendants 3G Green Garden Group, Inc. and Emerald Harvest, Inc. ("Defendants") move to dismiss this action or stay this action in its entirety under the doctrine of *forum non conveniens* in favor of litigating the claims asserted in this action in British Columbia, Canada. **The motion is DENIED.**

Forum non conveniens is an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere. (*Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751.)

In determining whether to grant a motion based on forum non conveniens, a court must first determine whether the alternate forum is a "suitable" place for trial. If it is, the next step is to consider the private interests of the litigants and the interests of the public in retaining the action for trial in California. The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation. (*Ibid*.)

a. Plaintiff's Objections

i. Objection numbers 1, 3, 6, 7, 8 – New evidence in reply

Plaintiff is correct that Defendants provided significant additional information in reply. However, this objection is now moot as Plaintiff has been allowed to file a sur-reply.

ii. Objection numbers 2, 4, 5, 8-15

Objection Numbers 2, 4, 5, 9, 10, 11, 12, 13, 14, and 15 are overruled. While some of the evidence objected to is argumentative, and Defendants did not object on that basis, the court has not construed argument made in the declaration as evidence.

b. Suitable Alternative Forum

i. Statute of Limitations

"A forum is suitable if there is jurisdiction and no statute of limitations bar to the action. It is sufficient that the action can be brought, although not necessarily won, in the suitable alternative forum." (*Morris v. AGFA Corp.* (2006) 144 Cal.App.4th 1452, 1464.) In *Morris*, all parties consented to jurisdiction in Texas and that they would not assert the statute of limitations as a defense in Texas. Therefore, there was no bar to proceeding in Texas. (*Ibid*.)

Defendants argued that even the California statute of limitations was barred prior to the filing of this or the Canadian action. However, some causes of action may be barred in Canada due to the later date that action was filed which would not be barred in this action. Plaintiff is correct that it is Defendants' burden to establish that Canada is a suitable forum. Defendants' reply does not address the specific statutes of limitations. However, Defendants are correct that they are not

required to waive *any* statute of limitations. Statutes of limitations must be waived only to the extent that the alternative forum would bar an action which is not barred in the original forum. In *Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 752, it was acceptable for Defendants to stipulate to the tolling of the statute of limitations during the pendency of the original action. Due to the fact that the Canadian action was filed two years after this action, tolling the statute of limitations is also appropriate here. Therefore, in the event this court adopts its tentative ruling granting the motion, the ruling will be conditioned upon Defendants' stipulation to the tolling of the statute of limitations during the pendency of this action.

Defendants argue that there is already an action pending against them in Canada based upon the same issues raised in this action. They argue judicial efficiency supports ordering a stay pending the resolution of that action. Defendants argue that some of Canada's statute of limitations may be longer, and some may be shorter than comparable California statutes of limitations, but that they are amenable to stipulating to the California statute of limitations. They also argue that Canadian courts would apply California statutes of limitations where California law governs.

Plaintiff argues that Defendants have taken the position in the action filed in British Columbia that, with respect to at least one cause of action, it is barred by the statute of limitations. Plaintiff argues that the forum is unsuitable if it is barred by a statute of limitations. Plaintiff argues that it was Defendants' burden to establish that none of the applicable statute of limitations have run under Canadian law. Plaintiff noted that the Canadian action was filed two years after this action was filed, which may potentially impact the viability of Plaintiff's causes of action.

Plaintiff notes that the statute of limitations is shorter in Canada; therefore, despite any statute of limitations being tolled, Plaintiff will still be subjected to a shorter time frame. For example, in Canada, "a claim must not be commenced more than 2 years after the day on which the claim is discovered." (*Limitation Act*, SBC 2012, Chpt. 13, section 6(1).) In California, a cause of action for conversion, for example, is not deemed to have accrued until the discovery of the conversion, which commences a three-year statute of limitations.

"A forum is suitable if there is jurisdiction and no statute of limitations bar to the action. It is sufficient that the action can be brought, although not necessarily won, in the suitable alternative forum." (*Morris v. AGFA Corp.* (2006) 144 Cal.App.4th 1452, 1464.) In *Morris*, all parties consented to jurisdiction in Texas and that they would not assert the statute of limitations as a defense in Texas. Therefore, there was no bar to proceeding in Texas. (*Ibid*.)

Defendants argued that even the California statute of limitations was barred prior to the filing of this or the Canadian action. However, some causes of action may be barred in Canada due to the later date that action was filed which would not be barred in this action. Plaintiff is correct that it is Defendants' burden to establish that Canada is a suitable forum. Neither Defendants' motion nor their reply addresses the specific statutes of limitations. However, Defendants are correct that they are not required to waive *any* statute of limitations. Statutes of limitations must be waived only to the extent that the alternative forum would bar an action which is not barred in the original forum. In *Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 752, it was acceptable for Defendants to stipulate to the tolling of the statute of limitations during the pendency of the original action. Due to the fact that the Canadian action was filed two years after this action, tolling the statute of limitations is also appropriate here. Therefore, in the event this court grants the motion, the ruling will be conditioned upon Defendants' stipulation to the tolling of the statute of limitations during the pendency of this action and to the use of California statute of limitations.

ii. California-based causes of action

Plaintiff argues that six of the claims in this action have not been alleged in Canada as they are explicitly based upon California law.

After this action was removed to federal court, on August 7, 2023, Plaintiff filed a Second Amended Complaint ("SAC"). The SAC alleges causes of action for 1) Breach of Fiduciary Duty; 2) Breach of Duty of Good Faith and Fair Dealing; 3) Receiving Improper Distributions; 4) Unjust Enrichment and Restitution; 5) Conversion; 6) Concealment; 7) Accounting; 8) Dissociation; 9) Appointment of Receiver; 10) Violation of Bus. & Prof. Code section 17200; 11) Fraudulent Concealment; 12) Violation of Penal Code section 496; and 13) Aiding and Abetting. The SAC was given effect in this action via this court's October 8, 2024, order. As noted by Plaintiff some of these are specifically based upon California law.

Defendants argue that the allegations in the Canadian action are the same as here. Defendants cite to the Canadian complaint but do not address how all relief requested in this action is also available in Canada. Defendants have not even addressed the California-specific causes of action. Thus, Defendants have not met their burden to establish that Canada is a proper alternative forum for this action.

c. Balance of Private and Public Interests

The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation.' [Citation.] No single factor is predominant. Instead, all factors should be weighed together. (*Roman v. Liberty University, Inc*., *supra*, 162 Cal.App.4th at p. 684.) The private and public interest factors must be applied flexibly, without giving undue emphasis to any one element. (*Stangvik, supra,* at p. 753.)

Ordinarily, there is a strong presumption in favor of the plaintiff's choice of forum. (*Ibid*.) If the plaintiff is a resident of the jurisdiction in which the suit is filed, the plaintiff's choice of forum is presumed to be convenient as a state has a strong interest in assuring its own residents an adequate forum for the redress of grievances. (*Id.,* at p. 754.)

If a corporation is the defendant, the state of its incorporation and the place where its principal place of business is located is also presumptively a convenient forum. (*Id.,* at p. 754.)

Overall, the jurisdiction with the greater interest should bear the burden of entertaining the litigation. (*Id.,* at pg. 757.) Preventing court congestion resulting from the trial of foreign causes of action is an important factor in the forum non conveniens analysis. (*Id.,* at p. 758.) Other factors considered are California's interest in deterring wrongful conduct in this forum, the competitive disadvantage to California business that may result, and the interests and policy concerns of Canada in the litigation. (*Id.,* at 758-760.)

Where a California resident has filed the action, if the court determines the alternate forum is more appropriate, it must stay the action rather than dismiss it. (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 858-860; see also *Wang v. Fang* (2021) 59 Cal.App.5th 907, 921-922.)

i. Foreign Witnesses

Defendants argue that this court does not have jurisdiction over unwilling witnesses located in Canada who Plaintiff will seek out for discovery.

Plaintiff argues Defendants have not shown that Canadian courts could compel California witnesses to appear and that there are mechanisms available in both countries permitting parties to depose foreign residents, such as a letter rogatory in Canada or discovery in California under CCP section 2027.010.

ii. Number of Witnesses in Each Forum

Defendants argue that all, or nearly all, of the potential witnesses, all of witnesses' documents, and the documents of third-parties are in British Columbia, making it more expedient and efficient to litigate there.

In reply, Defendants specify witnesses, including all of Emerald Harvest Inc. and 3G Inc. employees (a total of approximately 30 witnesses), including material witnesses: a) Hollee Wark, General Manager and Director of Sales (who was also involved in product registrations and compliance with state regulatory requirements, as well as package design, product design, bottle color, product names, competitive research); b) Rasa Noreitka, who can testify as to the graphic design of the at-issue artwork; c) Valerie Papp, who was responsible for human resources for all of the entities; d) Bob Fugger, who is in charge of marketing; and (e) Francesca Shannahan, EHI's former employee who served as Controller. (Higgins decl., at ¶¶ 15-16.)

Defendants argue that out of these witnesses, Ms. Shannahan is the most knowledgeable about the accounting between the Canadian Entities and 3GL as Ms. Shannahan planned, set up, and maintained the accounting systems and records, prepared financial reports, bank reconciliations, trained the accounting team, created financial projections, and worked with the outside accountant on financial statements and tax returns. (*Id.* at ¶ 15.)

Defendants argue other material witnesses in British Columbia include, but are not limited to, Ryan Calder, outside accountant to the entities; Chris Bullock, the co-creator of the at issue trademarked artwork; Dal Banwait, who was involved in Emerald Harvests' web design and marketing; Denning Inglis, who was involved in the packaging and bottle design and color; Globe Printers, who was involved in Emerald Harvest's product guides, brochures, business cards, and other marketing materials; and Wim Kerkhoff, who was involved in Emerald Harvest's IT. (*Id.* at ¶¶ 17-18.) Of these witnesses, Defendants argue Ryan Calder is an especially key witness because he was the outside accountant providing services to the Canadian Entities and 3GL since inception. (*Id.* at ¶ 18.) Among other things, he is knowledgeable regarding the financial interrelationship between the entities, price transfer agreement structure (and related valuation of the contributions of the entities in conjunction therewith), transactions between the three entities, adherence to accounting guidelines and separate finances of the companies, and related matters. *Id.*

Plaintiff argues that numerous documents and material witnesses are located in California. He mentions: (1) Dr. David Hager, the scientist who formulated the fertilizer products at issue; (2) multiple attorneys (Edward Sherman and Ross Jones) who were directly involved in the registration and protection of various intellectual property assets at issue, including disputed trademarks; (3) Dimitar Dimitrov, 3GL's Factory Manager in California with direct knowledge of 3GL's order fulfillments and Defendants' payment and shipment practices; (4) multiple 3GL Sales Representatives, factory employees, customers, distributors, shippers, brokers and vendors with knowledge regarding the diversion of revenues from 3GL, and to rebut Defendants' crossclaims alleging that Pratt failed at his 3GL job and damaged business relationships; (5) 3GL's California-based landlords knowledgeable about contracts, negotiations and payments bearing on Plaintiff's alter ego allegations; and (6) 3GL's California-based non-bank financial institutions knowledgeable about 3GL's financial transactions. (See Pratt Decl., ¶13.) 3GL is also located in Sonoma County and therefore its employees and business files are local. (Pratt Decl., ¶4.)

Plaintiff argues other third-party witnesses located in California include: (i) 3GL's banking institutions Well Fargo and Bank of America, with local branches in Rohnert Park and Sebastopol which will possess bank statements, transaction ledgers, records of 3GL's transfer of monies to EHI, 3GI, and the banks' correspondence with Defendants (who controlled the California bank accounts as alleged in Plaintiff's Second Amended Complaint, at ¶¶42, 46 and 49); and (ii) the California Department of Food and Agriculture (CDFA) which issued a business license to Defendant EHI. (Pratt Decl., ¶¶5, 7, and 14, and Defendants' Counterclaim, at ¶57.) Plaintiff argues

that the California Franchise Tax Board is also a fact witness with knowledge of tax-related information related to 3GL transactions and Defendants' multiple ways of diverting sales revenue away from California. (Pratt Decl., ¶13.) Plaintiffs argue that the only material witnesses in British Columbia are the Higgins Defendants themselves, both of which have admitted they are subject to personal jurisdiction in California.

Defendants argue that most witnesses identified by Plaintiff are not material to this action. For example, the employees listed, Dimitar Dimitrov, Stoyen Dimitrov, Veselina Dimitrova, and Silvia Maldonado, are factory employees who perform services relating to manufacturing of products. (Higgins Decl. ¶ 20.) Other than Dimitar, who is authorized to issue checks on 3GL's behalf, they have no involvement in 3GL's financials or transfers. (*Ibid.*) 3GL's sales representatives have no knowledge regarding Plaintiff's or Defendants' mismanagement or responsibilities. (*Id.* at ¶ 21.)

Defendants argue that third-party California-based financial institutions listed by Plaintiff would not have any specific knowledge regarding "financial transactions" that are not already reflected in 3GL's records.

In sur-reply, Plaintiff argues that Defendants inflate the number of witnesses available to testify because the BC court would not allow all employees of the corporations to be deposed and would not allow non-parties to be deposed.

Plaintiff argues that Rasa Noreitka, Valerie Papp, Bob Fugger, and Dal Banwait, among others, are not material witnesses as they do not possess much relevant information and some were not employed by EHI for very long. Plaintiff also notes Denning Inglis (a bottle supplier – which has zero to do with the facts of this case); Globe Printers (a minor vendor that merely printed product catalogs); and Wim Kerkhoff (who hosted 3GL's servers – a function that bears little relevance to this case).

iii. Place of the Wrongful Conduct

"[T]he place of the wrong has the predominant interest." (*Roman v. Liberty University, Inc.* (2008) 162 Cal.App.4th 670, 684.) In *Roman,* the plaintiff's injury occurred in Virginia as did the allegedly negligent conduct. Defendants argue that the alleged wrongful conduct occurred in British Columbia. However, it also allegedly reached beyond Canada's borders in into California bank accounts.

iv. Presumptions based upon residency

Plaintiff notes the presumption in favor of this forum based upon his residency and that of 3GL.

v. Enforcement of a Judgment in Canada

Defendants argue that a Canadian court could find this court lacked jurisdiction, rendering any judgment against the Defendants unenforceable in Canada.

vi. Use of California Resources – Connection to Forum

Defendants point out the consumption of resources here in California, and the burden on jurors who would have to decide issues that do not concern their community. Defendants argue that British Columbia has a strong interest in Plaintiff's challenge to ownership of intellectual property that was vested in Defendants in connection with the lawsuit between Defendants and Christopher Bullock in British Columbia.

Plaintiff argues that California has a strong interest in adjudicating this action as Plaintiff is a resident as is 3GL, which were allegedly stolen from here in California; millions of dollars were allegedly drained from California bank accounts and transferred to Canadian bank accounts. Plaintiff argues that this harmed a California company and deprived Plaintiff of years of distributable 3GL profits.

Plaintiff argues that the product labels created by Mr. Bullock were: (i) commissioned by 3GL (in California); (ii) paid for by 3GL; and (iii) used on 3GL's products sold to the public. (Pratt Decl., ¶5(i).) The Bullock IP therefore has nexus to California. Plaintiff argues that 3GL owns registered trademarks, including the EMERALD HARVEST, HONEY CHOME, EMERALD GODDESS, KING KOLA, STURDY STALK, ROOT WIZARD and CALI PRO marks, which Defendants dispute. (See SAC, at ¶¶27, 29 and 30; RJN, at Exh. 3; Pratt Decl., ¶6.)

Plaintiff argues that in "single plaintiff" cases, in which multiple defendants are represented by the same counsel, there is little to no impact on court congestion from a trial in this state.

Plaintiff argues California has a substantial interest in deterring Defendants' wrongful mismanaging of a California company (3GL), diverting millions of dollars' worth of 3GL's assets, and harming Plaintiff's equity interest in the company.

vii. Untimeliness of a motion if brought by different defendants

Plaintiff argues that this motion is untimely as to some of the defendants. However, no authority is provided that this affects the outcome of the motion timely made by Defendants.

viii. Amount of discovery conducted in this case

Plaintiff argues that this action has been litigated for three years and that substantial discovery has been conducted amounting to production of hundreds of thousands of documents, whereas the British Columbian action has barely any activity. Without citing authority, Plaintiff concludes that the discovery in this action could not be used in the BC action. It's not clear why the parties could not stipulate to the use of all discovery from this case, which would, except as to the outstanding subpoenas, render this argument moot.

Overall Determination

There are two factors to be considered: whether there is a suitable alternative forum, and the balance of public and private factors. Here, Defendants have not fully addressed what all has occurred in the Canadian action, how it fully encompasses this litigation, or how none of Plaintiff's claims would be barred. Therefore, Defendants have not met their burden on this issue.

In addition, because Plaintiff is a California resident, Defendants must show the balance strongly favors British Columbia, Canada. Here, either forum is reasonable. The balance of interests does not tip *strongly* in Defendants' favor.

Conclusion and Order

Based upon the foregoing, the motion is DENIED.