TENTATIVE RULINGS
LAW & MOTION CALENDAR
October 1, 2025 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

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) 521-6602**, 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 19 Hearings
MeetingID: 160-421-7577
Password: 410765
https://sonomacourt-org.zoomgov.com/j/1604217577

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PLEASE NOTE: The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1. 24CV02049, Cederborg v. Hanford Applied Restoration & Conservation

Plaintiff Mark Cederborg ("Plaintiff") filed the complaint in this action against Hanford Applied Restoration and Conservation ("HARC"), Douglas Hanford ("Hanford", together with HARC "Defendants") and Does 1-10 with causes of action for breach of contract and declaratory relief (the "Complaint"). Defendants have in turn filed a cross-complaint against Plaintiff (the "Cross-Complaint"). Defendants had also filed an action in Solano County (case CU24-07002, the "Consolidated Action") now under the current operative first amended consolidated complaint (the "FACC") against EIP III Credit Co., LLC ("EIP"), Ecosystem Investment Partners III, LP ("Eco Investment"), EIP Partners III LP ("EIP Partners"), U.S. Specialty Insurance Company ("USS Insurance"), the State of California Department of Water Resources (the "DOWR", together with other Consolidated Action FACC defendants, "Consolidated Action Defendants"), and Does 1-100. EIP has in turn filed a cross-complaint in the Consolidated Action against Defendants (HARC and Hanford), and Does 1-10 (the "Consolidated Cross-Complaint", or "CXC".

This matter is on calendar for HARC's motion to compel further responses to requests for production of documents under CCP § 2031.310 ("RPODs") from EIP, Eco Investment, and EIP Partners.

As of July 8, 2025, the Court has appointed a discovery referee, the Hon. Kevin Murphy (the "Referee") as to this matter, and all the parties have signed the stipulation. The referee was stipulated by the parties, and was appointed to "hear and determine any and all discovery disputes." The Referee filed a discovery management order on August 11, 2025, and to the Court's knowledge have been heard by the Referee on September 22, 2025. The Referee has filed a discovery management order on August 8, 2025 asking the Court to take these motions off calendar as a result. This motion is properly adjudicated by the appointed referee, especially given that the matters should already be under submission at this time. Therefore, until such time as there is a referee's report under CCP § 643, the Court will take the motion off the calendar.

2. <u>24CV04577, Kelly v. Kia Motors America, Inc.</u>

Plaintiff Dennis Kelly ("Plaintiff") filed the complaint in this action against defendants Kia Motors America, Inc. and Kia America (together "Defendants"), with causes of action arising under the Song-Beverly Act. This matter is on calendar for Plaintiff's motion for attorneys' fees and costs pursuant to the parties' settlement agreement and Cal. Civ. Code § 1794.

The Motion is **GRANTED**, in the amount of **$35,456.76.**

I. <u>The Basis for Fees</u>

Cal. Civ. Code §1794(d) provides: "If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." This statute "is consistent with California's approach to determining a reasonable attorney fee in various statutory and contractual contexts, which approach 'ordinarily begins with the "lodestar," *i.e.,* the number of hours *reasonably* expended multiplied by the *reasonable* hourly rate.'" *Warren v. Kia Motors Am., Inc.* (2018) 30 Cal.App.5th 24, 36 *quoting PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (emphasis by the *Warren* court). The statute also permits use of a multiplier of the lodestar figure. *Robertson v. Fleetwood Travel Trailers of California, Inc*. (2006) 144 Cal.App.4th 785, 822.

The parties settled the case in principle December 17, 2024, requiring Defendants to pay Plaintiff $33,577.33, and entitling Plaintiffs to attorney fees from Defendant under Cal. Civ. Code § 1794, in an amount either to be stipulated, or determined by the Court if the parties could not agree. Plaintiffs brought the instant motion on July 25, 2025.

According to the Motion, two attorneys worked on the case for Plaintiffs, accruing billed hours of 51 hours for billed fees of 30,600.00, 2.5 prospective hours for $1,500, with a requested multiplier of 30% ($9,630.00) for a total fee request of $41,730.00, plus $806.76 in accrued costs, for a total of $42,536.76.

Defendants' opposition raises a number of arguments (addressed below) resulting in adjustments that the award not exceed $18,725.

II. The Rates Requested Are Reasonable

Beginning with counsel's rates, "[t]he reasonable hourly rate is that prevailing in the community for similar work." *PLCM*, 22 Cal.4th at 1095. Plaintiffs have had 2 attorneys work on this case. Plaintiffs request a billing rate of $600 per hour for both their Counsel. See Declaration of John Hendrickson ¶ 6, 9.

The Court finds that the hourly rates are not reasonable based on the expected rate in Sonoma County for similar work. The "experienced trial judge is the best judge of the value of professional services rendered in his court…" *Serrano v. Priest* (1977) 20 Cal.3d 25, 49 (internal citation omitted). A court is entitled to rely on it's own practical experience in determining what is a proper rate within the community. See *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009 (*Heritage Pacific Financial*) ["The court may rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate"]; accord, *569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 437 (*569 East County Boulevard*).

Defendant cites to *Mikhaeilpoor v. BMW of North America, LLC* (2020) 48 Cal.App.5th 240, 256, for the proposition that the rate of $350 per hour is the appropriate amount for Song-Beverly cases. This is an incorrect recitation of the holding of that court. The Court in *Mikhaeilpoor* merely stated that the trial court had not abused its discretion in reducing plaintiff's requested hourly fees when assessing an attorney who had been practicing around five years. *Ibid*. To read that to broadly constrain the hourly amount courts can award in Song-Beverly cases would both unnecessarily constrain a trial court's discretion and be an improper divestiture of the Court's duty to assess the appropriate fee award in an individual case.
This case is distinguishable from *Mikhaeilpoor.* Both of the attorneys in this case are partners in their small, specialty practice, and each have more than fifteen years of experience practicing law. Declaration of John Hendrickson ¶ 2, 4. Defendant fails to show that the rate requested and supported by evidence is unreasonable. The Court finds that with the qualifications and experience set forth in the Hendrickson Declaration, fees requested are approximately in range of the rate expected for similarly qualified attorneys in the local Sonoma County community for both of Plaintiffs' counsel. The Court finds $600 per hour as the appropriate amount for attorneys in this locality.

III. The Hours Were Reasonably Expended

Plaintiff seeks to recover for a total of 51 hours, plus 2.5 additional hours for the hearing and a reply. Plaintiff has filed a reply. At the time of this tentative ruling, no hearing has occurred, and the reply does not disclose the amount of time expended in its preparation. The Court reduces the prospectively requested time by one hour, for reasonable time expenditure of 52.5 hours. This results in reasonable fees of $31,500.

IV. Some Multiplier is Proper

Plaintiff seeks a multiplier of 1.3. Defendants argue against a multiplier on the basis that the work "did not involve any novel or complex issues"; Song-Beverly litigation is comprised of largely routine facts, the issues are framed by the statute, the proof is straightforward, and the stakes are limited. Defendants aver that in fact the Court should apply a negative multiplier. While Defendants are correct that the case is uncomplicated, the Court concludes that a multiplier of 1.1 is appropriate under the considerations set forth in *Serrano v. Priest* (1977) 20 Cal.3d 25, 42-47.

The evidence submitted shows that Defendants initially rejected the repurchase requests, refused to fulfill their settlement agreement without court intervention, most of the work occurred while the result was uncertain in a contingency matter, and that both the contingent nature of the case and the results achieved are factors supporting a multiplier. The Court is not awarding the full 1.3 multiplier requested, as the case appears to be fairly routine for Song-Beverly matters, there is a not insubstantial percentage of billable time which incurred after settlement (and the matter is not contingent), and that the settlement amount appearing to be nothing more than the statutory recovery. *See Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (lodestar determination may be adjusted upward based on the following factors: 1) the novelty and difficulty of the questions involved; 2) the skill displayed in presenting them; 3) the extent to which the nature of the litigation precluded other employment by the attorneys; and 4) the contingent nature of the fee award). Plaintiff filed no motions before settlement. Plaintiff was success on the motion to enforce the settlement. The contingent nature of the of the case inherently represented some basis for a multiplier, and approximately seven hours of the work performed on the case occurred after the finalized settlement in December of 2024. Therefore, the multiplier of 1.1 is appropriate. $31,500 in fees are properly applied at the 1.1 multiplier, resulting in those fees totaling $34,650.

V. Costs

Plaintiff seeks $806.76 in actual costs. Hendrickson Decl. ¶ 13. Defendants do not object to any of the costs. Therefore, the Court grants costs of $806.76.

VI. Conclusion

Plaintiff's motion for fees and costs is GRANTED. Total fees are granted in the amount of $34,650.00. Costs are granted in the amount of $806.76. The total cost and fee award is therefore **$35,456.76**.

Plaintiff's counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

3. 24CV06352, Looney v. Sarpai Brothers, Inc.

Plaintiff Gary E. Looney dba Collectronics of California ("Plaintiff"), obtained a default judgment against defendant Sarpai Brothers, Inc. ("Defendant"). This matter is on calendar for Plaintiff's motion to compel answers to special interrogatories ("SIs") against Defendant under Code of Civil Procedure ("CCP") §§ 708.020 & 2030.290, and to compel production of documents ("RPODs") from Defendant under CCP §§ 708.030 & 2031.300. The unopposed Motion is **GRANTED**. Defendants shall serve verified code-compliant responses free of objections within thirty (30) days of notice of entry of the order on this Motion. Defendant shall pay $60 in sanctions to Plaintiff within thirty (30) days of notice of entry of the order on this Motion.

I. Governing Law

A judgment creditor generally has the same rights to propound discovery to the judgment debtor in order to facilitate collection of the judgment. Particularly, a judgment debtor may propound interrogatories as allowed under CCP § 2030.010, et seq. See CCP § 708.020. Judgment creditors may also request production of documents under CCP § 2031.010. See CCP § 708.030.

Regarding the SIs, a party responding to an interrogatory must provide a response that is "as complete and straightforward as the information reasonably available to the responding party permits" and "[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible." Code Civ. Proc. ("CCP") §2030.220(a)-(b). "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." CCP §2030.220(c). If a party fails serve a timely response to interrogatories, the court shall impose sanctions unless it finds that the party subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. CCP §2030.290(c). Code of Civil Procedure section 2030.290 provides that if a party to whom interrogatories were directed fails to serve timely responses, the responding party waives all objections, including those based on privilege and work product protection, and the propounding party may move for an order compelling responses. CCP §2030.290(a)-(b); see also, *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404; CCP § 708.020(c). All that the moving party needs to show in its motion is that a set of interrogatories was properly served, that the time to respond has expired, and that no response has been provided. See, *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.

Similarly, Code of Civil Procedure section 2031.300 provides that if a party fails to serve timely responses to requests for production of documents, the responding party waives all objections, including those based on privilege and work product and "[t]he party making the demand may move for an order compelling [a] response to the demand." CCP §2031.300(a)-(b); CCP §708.030(c). When the motion to compel seeks a response to document requests, as opposed to further responses, no showing of "good cause" is required. CCP §2031.300.
When a party serves response after a motion to compel is filed, the court maintains jurisdiction within its discretion to determine the sufficiency of the response. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 410-411.

CCP § 2030.290(c) (relating to interrogatories), and CCP § 2031.300(c) (relating to requests for production of documents), provide that a monetary sanction "shall" be imposed against the party losing a motion to compel further responses unless the court finds "substantial justification" for that party's position or other circumstances making sanctions "unjust."

II. Analysis

Plaintiff served their SIs and RPODs on April 29, 2025. Defendant has served no responses.

There is no opposition to the motion, nor is there evidence that there have been responses to the underlying requests. The time to respond has expired. Compelling responses is appropriate. Plaintiff's motion to compel responses to SIs and RPODs GRANTED. Defendant will serve code compliant, objection-free responses within 30 days of notice of this order.

III. Sanctions

Sanctions are mandatory under the CCP for discovery abuses, absent substantial justification. Absent substantial justification, the Court must grant compensatory monetary sanctions which represent reasonable and actual costs to Plaintiff. While Plaintiff appears to also ask for some form of discretionary sanctions, he provides no authority to support them.

Plaintiff requests sanctions of his actual costs of filing fees of $60. Filing fees of $60 is appropriate. The Court **GRANTS** Plaintiff's request for monetary sanctions in the amount of $60. Defendant shall pay $60 to Plaintiff within 30 days' notice of this order.

IV. Conclusion

Plaintiff's motion to compel responses to SIs and RPODs is **GRANTED**. Defendant will serve code compliant, objection-free responses within 30 days of notice of this order. The request for sanctions is **GRANTED** and Defendant shall pay $60 to Plaintiff within 30 days' notice of this order.

Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4. 25CV00987, Jensen v. Syeda

I. Introduction

Plaintiff's motion for an order staying and quashing Defendants' notices of deposition and subpoenas of Colleen Pedrazzi and Alan M. Pedrazzi is DENIED. Plaintiff's request for protective order is DENIED. Plaintiff's request for judicial notice is GRANTED. Plaintiff's request for sanctions is DENIED. Defendants' request for sanctions against Plaintiff is DENIED.

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

II. Relevant Chronology

On July 3, 2025, Defendants served on Alan M. Pedrazzi (defendant in this action) a Notice of Taking Deposition and Request for Production of Documents scheduled for July 21, 2025. While Defendants have not herein produced a proof of service for this document, Defendants' counsel declared under the penalty of perjury in his declaration that this notice was served on Mr. Pedrazzi personally at the Pedrazzi's residence on July 3, 2025. An identical notice was served on that same date at the Pedrazzi's residence for Colleen Pedrazzi (defendant in this action), though personal service was not effectuated upon her.

On Tuesday, July 8, 2025, Defendants' counsel received an email from Alan Pedrazzi indicating that he and Colleen Pedrazzi had a scheduling conflict and were requesting that the depositions be rescheduled to a later time. Defendants' counsel responded to Mr. Pedrazzi and inquired whether they would be available for depositions on Tuesday, July 29, 2025, at 10:00 a.m. and 1:00 p.m. He also informed Mr. Pedrazzi that Colleen Pedrazzi had not yet been personally served with her deposition subpoena and asked whether she would accept service via email. Mr. and Mrs. Pedrazzi agreed to accept service by email and confirmed their availability for the proposed date.

Defendants' counsel subsequently served amended notices of deposition for both defendants and a subpoena for Colleen electronically via email on July 9, 2025, for depositions on July 29, 2025. Plaintiff's counsel objected to both amended notices since she was unavailable on July 29th due to being in trial. Accordingly, Defendants electronically served second amended notices of the Pedrazzis' depositions on July 29, 2025, for deposition to occur on August 4, 2025. A subpoena was again sent for Colleen Pedrazzi's deposition but not for Alan's. Plaintiff served objections to these notices on July 30th.

III. Plaintiff's Motion

Plaintiff herein seeks to quash the notices of deposition sent to both Alan and Colleen Pedrazzi and the subpoena sent to Colleen Pedrazzi claiming that the notices were untimely and the subpoena was deficient. Plaintiff also seeks a protective order which orders that the depositions of Alan and Colleen Pedrazzi are not to be scheduled until after all parties have appeared in this matter.

A. Subpoena to Colleen Pedrazzi

Plaintiff seeks to quash the subpoena directed to Colleen Pedrazzi on the grounds that the subpoena was procedurally defective and did not match the notice of deposition that was served with it. Plaintiff also argues that no subpoena was ever sent to Alan Pedrazzi. Defendants argue in opposition that the Pedrazzis are parties to this action; therefore, Defendants did not need to propound subpoenas to these deponents to compel their depositions. Plaintiff argues that the Pedrazzis are no longer parties to this action since Plaintiff entered a stipulated judgment with them.

It is true that Plaintiff and the Pedrazzis signed a stipulated judgment that was approved by the Court on June 26, 2025. However, the Pedrazzis have not been dismissed from the action. Furthermore, when Plaintiff amended her complaint on August 15, 2025, she still named the Pedrazzis as defendants and alleged causes of action against them. Therefore, they are still parties to this action. Defendants are correct that subpoenas were not necessary to require their appearance at their depositions. (CCP § 2025.280(a).)

Since CCP § 2025.280(a) provides that notices of depositions under Section 2025.240 are sufficient to require a deposition of a party, and since Colleen Pedrazzi is a party, the claimed deficiencies of the subpoena sent to her are immaterial. Therefore, even if Plaintiff had standing to raise the issue of procedural deficiencies sent to a party other than Plaintiff, Plaintiff's arguments would not persuade the Court to quash the notice of deposition. The Notice of Taking Deposition that was sent to Colleen Pedrazzi was sufficient to require her appearance at her deposition. Furthermore, the fact that no subpoena was sent to Alan Pedrazzi does not effect the sufficiency of the Notice of Taking Deposition sent to him.

B. Notices of Taking Deposition

Plaintiff argues that both notices of taking deposition sent to the Pedrazzis on July 29th should be quashed because they were untimely. They were served electronically only 6 days before the deposition date, though CCP § 2025.270(a) requires they be served at least 10 days prior, with an additional two court days for electronic service pursuant to CCP §1010.6.

The Court does not find this to be sufficient reason to quash the deposition notices. The Pedrazzis had received two deposition notices prior to the one sent on July 29th. Therefore, they were aware of Defendants' intent to take their depositions. Furthermore, if the August 4th date was objectionable to Plaintiff's counsel, it has now long since passed. The Court sees no compelling reason why the parties cannot meet and confer in good faith to find a date that works for everyone. Rather, the parties are ORDERED to do so.

Plaintiff also argues that the notices of deposition should be quashed because the pleadings are not yet settled and many defendants have not yet made appearances. This argument is not compelling because the defendants who have made appearances are entitled to conduct discovery, including depositions. Plaintiff has not provided anything more than speculation that conducting the Pedrazzis' depositions at this stage in the proceedings would result in undue burden, expense, or hardship.

C. Protective Order

Plaintiff requests that in addition to, or in the alternative of, quashing the notices of deposition, the Court issue a protective order staying the notices of depositions until all parties have appeared in the action. Plaintiff has not provided a compelling reason why such a protective order should be issued. As stated above, Plaintiff generally argues that the depositions being taken at this point in the proceedings would cause undue burden, expense, and hardship. The Court does remind the parties that deposition time limits do apply to parties or witnesses. CCP §2025.290(a). However, Plaintiff has not elaborated any further or submitted evidence that would support this argument. The parties are ORDERED to discuss these time limitations during the meet and confer process.

D. Sanctions

Both parties request sanctions be imposed upon the other pursuant to CCP § 1987.2, which provides that the Court may, in its discretion, "award the amount of the reasonable expenses incurred in making or opposing the motion, including reasonable attorney's fees, 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." The Court notes that CCP § 1987.2 does not provide for sanctions, but for an award of attorney's fees and costs. In any case, the Court does not find that the motion was made or opposed in bad faith or without substantial justification.

Plaintiff also seeks sanctions against Defendants under CCP §§ 2023.020 for failing to meet and confer in good faith and 2023.030 for misusing the discovery process. The Court does not find that Defendants failed to meet and confer in good faith or misused the discovery process.

5. <u>25CV01828, John W. Conomos v. Landsdown</u>

Plaintiff John W. Conomos ("Plaintiff") filed the presently operative complaint ("Complaint") against defendants Melissa Lansdown ("Defendant"), Ellis Greenberg ("Greenberg")[1], as well as and Does 1-20. This matter is on calendar for the motion by Defendant under Code Civ. Proc. ("CCP") § 473 (d) to set aside the judgment.

There is no opposition or proof of service in the Court's file, and as such the matter is properly dropped from calendar.

6. <u>SCV-271287, Holly & Associates, Inc. v. Novich</u>

Plaintiff Holly & Associates, Inc. ("Plaintiff"), filed the First Amended Complaint (the "FAC") against defendants Lee Novich and Renee Novich as trustees of the Novich Family Trust ("Defendants"), as well as Does 1-20, arising out of alleged breach of contract. Defendants have in turn filed a cross complaint against Plaintiff, Janver C. Holly, Richard Holly, Justin Hunter (all together, the "Hollys"[2]), ten subcontractors, and eight surety companies and insurers, relating to breach of contract, construction defects, and negligence as to the work performed under the construction contract (the "DXC"). The Hollys have thereafter filed a cross-complaint for indemnity and breach of contract against the ten subcontractors named in the DXC, along with eleven more subcontractors not named therein (the "HXC"). The matter was subsequently consolidated with *RCX, Inc. v. Novich.*, MCV-258894, also pending in Department 17 (the "Associated Action"). The Associated Action is filed by plaintiff RCX, Inc. ("Consolidation Plaintiff") against Plaintiff and Defendants. This matter comes on calendar for cross-defendants

[1] Greenberg has made no appearance in the case, and as such is not relevant to determination of this motion.
[2] While the Court notes cross-defendant Justin Hunter does not have the surname Holly, his presence is inherently related to his association with Plaintiff, Holly & Associates, and therefore he is included here for ease of reference. No disrespect is intended.

Navigator's Insurance Company's ("Navigator") motion to discharge Navigator as stakeholders under Code of Civil Procedure sections 386.5 and 386.6. The motion is GRANTED.

I. Governing Law

Code of Civil Procedure section 386 states in relevant part as follows:

> "Any person, firm, corporation, association or other entity against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability, may bring an action against the claimants to compel them to interplead and litigate their several claims.
>
> When the person, firm, corporation, association or other entity against whom such claims are made, or may be made, is a defendant in an action brought upon one or more of such claims, it may either file a verified cross-complaint in interpleader, admitting that it has no interest in the money or property claimed, or in only a portion thereof, and alleging that all or such portion is demanded by parties to such action, and apply to the court upon notice to such parties for an order to deliver such money or property or such portion thereof to such person as the court shall direct; or may bring a separate action against the claimants to compel them to interplead and litigate their several claims. The action of interpleader may be maintained although the claims have not a common origin, are not identical but are adverse to and independent of one another, or the claims are unliquidated and no liability on the part of the party bringing the action or filing the cross-complaint has arisen. The applicant or interpleading party may deny liability in whole or in part to any or all of the claimants. The applicant or interpleading party may join as a defendant in such action any other party against whom claims are made by one or more of the claimants or such other party may interplead by cross-complaint; provided, however, that such claims arise out of the same transaction or occurrence."
>
> (Code Civ. Proc. §386(b).)

Additionally "[w]here the only relief sought against one of the defendants is the payment of a stated amount of money alleged to be wrongfully withheld, such defendant may, upon affidavit that he is a mere stakeholder with no interest in the amount or any portion thereof and that conflicting demands have been made upon him for the amount by parties to the action, upon notice to such parties, apply to the court for an order discharging him from liability and dismissing him from the action on his depositing with the clerk of the court the amount in dispute and the court may, in its discretion, make such order." Code Civ. Proc. §386.5. The propriety of a motion under section 386.5 turns on whether the stakeholder is truly a disinterested party, whose discharge still leaves parties in litigation with substantial rights to be resolved with respect to the property in question." *Lincoln Nat. Life Ins. Co. v. Mitchell* (1974) 41 Cal.App.3d 16, 19–20, citing, 4 Am.Jur.2d, 93, pp. 607-608. "The right to the remedy by interpleader is founded, however, not on the consideration that a [person] may be subjected to double liability, but on the fact that he is threatened with double vexation in respect to one liability." *City of Morgan Hill v. Brown* (1999) 71 Cal.App.4th 1114, 1122; quoting *Pfister v. Wade* (1880) 56 Cal. 43, 47. The true test of suitability for a motion is the stakeholder's disavowal of interest in the property at issue, coupled with the perceived ability of the court to resolve the entire controversy as to entitlement to that property without the need for the stakeholder to be a party to the suit." *S. California Gas Co. v. Flannery* (2014) 232 Cal.App.4th 477, 486–487, citing, *Pacific Loan Management Corp. v. Superior Court* (1987) 196 Cal.App.3d 1485, 1489–1490. If the proof is sufficient that the moving party has no interest in the property at issue, or it is admitted by failure to object or by stipulation, the court makes an Interlocutory order and directs the stakeholder to deposit the amount or deliver the property to the Court and requires the claimants to litigate their claims among themselves. *Lincoln Nat. Life Ins. Co., supra.* 41 Cal.App.3d at 19–20.

"A party to an action who follows the procedure set forth in Section 386 or 386.5 may insert in his motion, petition, complaint, or cross complaint a request for allowance of his costs and reasonable attorney fees incurred in such action. In ordering the discharge of such party, the court may, in its discretion, award such party his costs and reasonable attorney fees from the amount in dispute which has been deposited with the court. At the time of final judgment in the action the court may make such further provision for assumption of such costs and attorney fees by one or more of the adverse claimants as may appear proper." CCP § 386.6 (a).

A bond remains in effect until "(t)he purpose for which the bond was given is satisfied" or "(a) judgment of liability on the bond that exhausts the amount of the bond is satisfied" CCP, § 995.430 (b) and (c). "Notwithstanding any other statute <u>other than Section 996.480</u>, the aggregate liability of a surety to all persons for all breaches of the condition of a bond is limited to the amount of the bond." CCP, § 996.470(a). "Payment by a surety of the amount of a bond constitutes a full discharge of all the liability of the surety on the bond." CCP, § 996.490. "A surety's liability under a contractor's license bond is established by statute, and no burden may be imposed on the surety other than those specifically set forth by statute." *All Bay Mill & Lumber Co. v. Surety Co.* (1989) 208 Cal.App.3d 11, 15.

II. <u>Analysis</u>

Navigator has filed a motion for discharge, and intends to tender $15,000, which is the bond amount between Navigator and their insured, defendant Stewart Builders, Inc. ("Stewart"). Navigator requests that the Court allow them to tender this amount reduced by their attorney fees incurred in this matter under CCP § 386.6.
Based on the Reply, the Court is under the impression that Defendants have served Navigator with an opposition to the motion. However, there is no opposition within the Court's record, and as such it is apparent that it was never filed. The Court will not address Navigator's construal of Defendants' argument. There is no timely opposition on file with the Court.

Navigator shows that the only cause of action within the Cross-Complaint asserted against the sureties are the fifth cause of action for "Action on Contractors (sic) License Bond". Those claims are statutorily constrained to a particular amount. CCP § 386.5 allows a defendant against whom is sought "the payment of a stated amount of money alleged to be wrongfully withheld", to move for discharge. Navigator offers to tender the entire bond amount. This appears to be a discrete form of liability properly subject to CCP § 386.5. Navigator disavows an interest in the amount, other than for fees allowed under CCP § 386.6. They request that the bond therefore be exonerated, because it is being tendered in full to the Court. Sureties may only be liable for the total amount of the bond at issue. CCP § 996.470(a). Bonds continue until the purpose of the bond has been satisfied, or the bond is subject to judgment in the full amount. CCP § 995.430 (b) and (c). Full payment of the bond amount "constitutes a full discharge of all the liability of the surety on the bond." CCP, § 996.490 (a). The bond appears to therefore be satisfied. Discharge is appropriate. The bond is exonerated under CCP § 996.490. This will take effect upon deposit of the full amount of the bond minus any granted fees.

Fees under § 386.6 are discretionary. See CCP § 386.6 (a) ("the court may, in its discretion, award such party his costs and reasonable attorney fees…"). Navigator's fees are reasonable and were incurred in defending the action, up to the bond being expended for the instant discharge. Navigator requests $1,740.50 in attorney's fees and $35.82 in costs, resulting in a total award of $1,776.32. The Court finds the requested fees reasonable and appropriate, and exercises its discretion to grant those fees and costs.

III. Conclusion

Based on the foregoing, Navigator's motion for discharge is GRANTED. Navigator will tender $13,223.68 to the Court within 10 days of notice of this order. Thereafter, they will be discharged and the bond will be exonerated.

Navigator shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

7-8. SCV-273878, Parks v. Ensign

Plaintiff Michael Parks ("Plaintiff"), as successor-in-interest to decedent Robert Parks ("Decedent"), filed the presently operative first amended complaint (the "FAC") against defendants Ensign Montgomery, LLC ("Montgomery"), Flagstone Healthcare North, Inc. ("Flagstone"), The Ensign Group ("TEG"), Luke Ensign ("Individual Defendant"), Ensign Services, Inc. ("ESI", together with other named defendants "Defendants"), and Does 1-50, arising out of Defendants' care of Decedent. The FAC contains causes of action for: 1) elder neglect/abuse; 2) negligence; 3) Violations of the Patient's Bill of Rights; 4) Violations of California's Unfair Competition Law under Business and Professions Code § 17200 *et seq*. (the "UCL"); 5) fraud; and 6) wrongful death.

This matter is on calendar for the motions by the TEG and ESI ("Moving Defendants") for summary judgment or adjudication of Plaintiff's FAC pursuant to Cal. Code Civ. Proc. ("CCP") § 437(c). Plaintiff has requested that this matter be either denied or continued under CCP § 437c(h).

I. Evidentiary Issues

Moving Defendants have objected to the Jay Declaration, ¶ 14 and Ex. O. The objection is SUSTAINED for the purposes of the request to continue. This is without prejudice to any subsequent submission of the same evidence on the merits, or objections thereon.

II. Governing Law

Summary judgment or adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CCP § 437c(c). All evidence and inferences drawn reasonably drawn therefrom must be viewed in the light most favorable to the party opposing summary adjudication. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 ("*Aguilar*").

A moving defendant meets its initial burden to show that one or more elements of a cause of action "cannot be established" (CCP § 437c(p)(2)) by presenting evidence that, if uncontradicted, would constitute a preponderance of evidence that an essential element of the plaintiff's case cannot be established. *Aguilar, supra,* 25 Cal.4th at 851; *Kids Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 879. Alternatively, a defendant may show that there is a "complete defense" to a cause of action. CCP § 437c(p)(2). To show a complete defense, a defendant must present admissible evidence of each essential element of the defense upon which it bears the burden of proof at trial. *See, e.g. Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 289. A defendant cannot base its "showing" on the plaintiff's lack of evidence to disprove its claimed defense. *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 472.

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840.

If a defendant meets its initial burden to show a "complete defense," the burden shifts to the plaintiff to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(2). *Consumer Cause, Inc.*, 91 Cal.App.4th at 468. An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar*, 25 Cal.4th at 845.

"When a party makes a good faith showing by affidavit demonstrating that a continuance is necessary to obtain essential facts to oppose a motion for summary judgment, the trial court must grant the continuance request. The affidavit is required to show that (1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain [or discover] these facts." *Braganza v. Albertson's LLC* (2021) 67 Cal.App.5th 144, 152 (internal quotations and citations omitted).

III. Analysis

The instant motions for summary judgment were filed on June 20, 2025. In tandem, the parties have been having discovery disputes adjudicated by a discovery referee, the Hon. James

Lambden (the “Referee”), appointed by the Court under CCP § 639. The Referee issued a ruling on the discovery disputes on August 18, 2025. Defendants filed an objection to the Referee’s decision on August 29, 2025. Plaintiff in turn filed a response to the objection on September 8, 2025. Plaintiff has filed an opposition to the motions for summary judgment requesting that the Court continue the summary judgment motion to allow Plaintiff to perform discovery necessary to support their theory of liability. Plaintiff argues that Defendants have refused to produce several individuals for deposition, inhibiting their ability to oppose the summary judgment motion on its merits.

Plaintiff avers that there is potentially relevant evidence to support their claims against Moving Defendants to be found. The theory of liability against Moving Defendants is predicated on agency or alter ego liability for the acts of Montgomery. The motion for summary judgment is predicated on Moving Defendants assertion of a lack of connection between Moving Defendants and Montgomery. Plaintiff’s motions to compel go to evidence which seems salient to opposing summary judgment. Plaintiff provides detailed theories which they seek to substantiate with evidence resulting from the production included in the Referee’s order. Given that such evidence may exist, and it appears essential to Plaintiff’s opposition, the first two elements for mandatory continuance are met. The remaining question is whether Plaintiff is entitled to additional time to discover these facts.

The facts and circumstances here appear to justify additional time for Plaintiff to obtain disposition of the currently pending discovery motions. While Moving Defendants’’ reply asserts that Plaintiff should have moved more timely to obtain the relevant discovery, this contention is unpersuasive. The motions to compel production of persons most knowledgeable was filed on July 24, 2025, just over a month after the at issue motions for summary judgment was filed. Accounting for the preceding time where Plaintiff made the request and Defendants refused to produce the deponents, Plaintiff has moved with reasonable haste in attempting to gather the relevant discovery. The Referee’s order thereon was issued less than a month after the motion, granting Plaintiff’s request.

Defendants are entitled, by nature of the appointment of the Referee, to a ruling on their objections to the Referee’s order. However, by the nature of having to litigate discovery motions, either before the Referee or before the Court, timeliness of production invariably suffers. It appears inherent to the summary judgment statute, by the inclusion of subdivision (h), that the Legislature was mindful of these potential effects. The facts at issue appear to conform to the motives under which the Legislature intended this request to be considered. Continuance for Plaintiff to potentially obtain the at issue discovery or have their denial of which adjudicated by the Court, appears to be mandated. Even if it were not, it appears to be an appropriate exercise of the Court’s discretion to allow these matters to be decided on their merits, rather than allow Defendants’ objection to the Referee’s order to in turn be dispositive on their summary judgment motions.

Plaintiff’s request for continuance is GRANTED. The motions for summary judgment are continued to January 23, 2026, at 3:00 pm in Department 19.

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