

TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, October 21, 2026 at 3:00 p.m.

Courtroom 18 – Hon. Dana Simonds

Civil and Family Law Courthouse

3055 Cleveland Avenue

Santa Rosa, California 95403

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

TO JOIN ZOOM ONLINE:

Department 18:

Meeting ID: 160—739—4368

Password: 000169

<https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWIL3NBcE9LVHU2NVVpQlVRUT09>

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

1. SCV-273623, Alexander Valley Gourmet v. Industry West Commerce Center, LLC

Plaintiff's motion to Compel Further Responses to Plaintiff's First Set of Requests for Documents and Things is **GRANTED in part** and **DENIED in part**. It is **GRANTED** as to requests numbers 1, 2, and 4, subject to the limitations herein described and the protective order herein issued. It is **DENIED** as to requests numbers 3 and 5. Plaintiff's request for monetary sanctions against Defendant is **DENIED**. Defendant's request for monetary sanctions against Plaintiff is **DENIED**.

Defendant shall produce Vincent Rizzo's current Apple iPhone, each device used by Vincent Rizzo during the relevant period, from the notice of intent to file litigation (the notice of litigation hold), other than Mr. Rizzo's current Apple iPhone (as defined in the demand), and each account registered to or used by Vincent Rizzo during the relevant period (as defined) within 5 days of notice of entry of an order on this motion.

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

The Court notes that the parties stipulated to the appointment of a discovery referee to hear all discovery related matters, but explicitly agreed that matters addressed by the Court's April 30, 2026 spoliation order shall remain with the Court. This motion directly relates to that order; therefore, it is heard by the Court.

Analysis:

On April 30, 2026, this Court issued an order granting Plaintiff's motion for sanctions for spoliation of evidence against Defendant Industry West Commerce Center, LLC ("IWCC") relating to the deletion of text messages by its principal, Vincent Rizzo, from his iPhone. The Court will not herein reiterate the facts or circumstances underlying that order, but will incorporate its April 30, 2026 order into this one. At the hearing on the motion, the Court agreed with Plaintiff that a forensic examination of the phone was appropriate, but did not issue an order requiring one. The Court encouraged the parties to meet and confer regarding a forensic examination.

The parties could not reach an agreement and the matter came on for a case management conference in June wherein the Court discussed with the parties the need for an inspection demand for Mr. Rizzo's cell phone and accounts in the absence of an agreement. Since the time of the spoliation motion, this Court has consistently agreed that Plaintiff is entitled to an inspection of Mr. Rizzo's iPhone considering the evidence of spoliation of text messages.

Plaintiff subsequently propounded the inspection demand that is the subject of this motion. In it, they seek not only inspection of Mr. Rizzo's current and past iPhones and accounts, they also seek inspection of all devices and accounts belonging to Defendant IWCC as defined in the demand. Such a broad and sweeping demand has never been discussed with the Court. Plaintiff now argues that inspection of all of Defendant's devices and related accounts is necessary because their responses to previous inspection demands were deficient. As will be discussed below, such argument is not persuasive.

I. Requests Numbers 1, 2, and 4 Regarding Mr. Rizzo's Devices and Accounts

The Court agrees that Plaintiff should be permitted to inspect the current and past devices of Mr. Rizzo, as well as the associated iCloud accounts, for text message-related evidence. However, the Court also agrees with Defendant that the inspection demands, as written, are too broad and overly burdensome. They seek full and unfettered inspection of Mr. Rizzo's devices and accounts and seek to have the devices and accounts available for an undefined period of time—which would deprive Mr. Rizzo of use of his personal cell phone. Plaintiff has not provided good cause for being granted complete and total access to all information on Mr. Rizzo's phones and accounts. The record before this Court is that there is evidence of spoliation of text messages only. Any argument regarding the deficiencies of Defendant's responses to other discovery requests as supporting the purported need for full access to all information on the devices and accounts is not persuasive.

Plaintiff is not entitled to a full scale search through Mr. Rizzo's devices and accounts without limitation and has not supplied good cause for demanding this. Plaintiff urges the Court to analyze these inspection demands completely divorced from the spoliation motion that started the Plaintiff

down the path of demanding inspection of these devices. However, that is an unrealistic and unreasonable request.

The Court acknowledges Mr. Rizzo's legitimate privacy and privilege concerns. However, the Court finds that those concerns can be sufficiently addressed with a protective order. The Court issues the following protective order in regard to Mr. Rizzo's devices and accounts:

- 1) The inspection of Mr. Rizzo's phones and accounts shall be conducted by Plaintiff's retained forensic expert, David A. Greetham of Level Legal.
- 2) The inspection and analysis shall be limited to all recoverable data, device settings, and artifacts relating to text messages and the deletion of text messages only, from the date Defendant was notified of the pending litigation to the date of the examination.
- 3) The Examiner shall maintain and document chain of custody for all devices and forensic images.
- 4) The defendant shall make all identified devices physically available to the Examiner or his agent at a mutually agreed location or, if the parties cannot agree, at Level Legal's facilities.
- 5) Mr. Rizzo shall not be deprived of his current personal cell phone for longer than 6 hours.
- 6) Defendant and Mr. Rizzo shall provide all passcodes, Apple ID passwords, two-factor authentication access and any other credentials necessary to log into accounts and/or to complete the extraction.
- 7) Upon completion of the forensic imaging, the physical devices shall be returned to the defendant and/or Mr. Rizzo. The Examiner shall retain only forensic images.
- 8) The Examiner shall store all forensic images in a secure environment with access limited to the Examiner and Plaintiff's counsel of record.
- 9) Upon completion of the examination, the Examiner shall provide the defendant's counsel with the extracted data before providing it to Plaintiff.
- 10) Defendant's counsel shall have ten (10) calendar days from receipt of the data to designate any documents as protected by the attorney-client privilege or work product doctrine.
- 11) Plaintiff shall be entitled to challenge any claims of privilege or other protection afforded to documents.
- 12) Communications not designated as protected within the ten-day period shall be deemed non-privileged and may be provided by the Examiner to Plaintiff.
- 13) The Examiner shall prepare a written report summarizing: (1) the devices and accounts examined; (2) the tools and methodologies employed; (3) the categories and volume of data recovered; (4) findings regarding when and how messages and other data were deleted, including the auto-delete setting history and deletion pattern analysis; (5) findings regarding other device settings; (6) the Examiner's forensic observations; and (7) any limitations encountered during the examination.

II. Requests Numbers 3 and 5 Regarding Defendant's Devices and Accounts

In requests numbers 3 and 5, Plaintiff seeks each device and related accounts used by the defendant during the relevant period other than those of Mr. Rizzo. Plaintiff argues that "the deficiencies in

the defendant's collection and production of information in this litigation establish good cause to require production of the requested devices and accounts." The Court does not agree that Plaintiff's representations regarding purported deficiencies in discovery responses that are not the subject of this particular motion provide good cause to support requiring Defendant to turn over all of its devices and accounts for inspection. It has not been established that any further spoliation of evidence occurred other than text messages off of Mr. Rizzo's phone. There is no good cause for allowing Plaintiff to inspect every device and account belonging to Defendant based on Plaintiff's speculations that there may be further information out there that has not been produced. This is especially so considering that Plaintiff has not sought any further recourse with the Court regarding those purportedly deficient discovery responses and has instead jumped to seeking inspection of every device and account. The Court is not persuaded. Plaintiff has not provided good cause for compelling further responses to these requests or for compelling inspection of Defendant's devices/accounts other than Mr. Rizzo's. The Court agrees with Defendant that these requests are overbroad, unduly burdensome, and unsupported by good cause. Finally, Plaintiff's argument regarding the technical form of Defendant's responses is not compelling. It is clear what objections are raised. The Court finds many of those objections to have merit.

III. Sanctions

Plaintiff seeks monetary sanctions against Defendant; however, the Court finds that Defendant acted with substantial justification in responding the way that it did to the discovery demand. This Court has agreed with Defendant that each of the inspection demands was overbroad and unduly burdensome as written. While the Court has herein ordered Defendant's compliance with a number of the demands, the Court has greatly narrowed the scope of the production and issued a necessary protective order. The Court finds substantial justification warranting the denial of monetary sanctions on this motion.

2. **25CV04864, CSAA Insurance Exchange v. Carlino's Auto Repair**

Counsel Alexander A. Wiegel and Perry, Johnson, Anderson, Miller & Moskowitz LLP's motion to be relieved as counsel for Defendant Reyna C. Sanchez dba RC Auto Body is **GRANTED**. Counsel represents that conduct has arisen that makes the representation unreasonably difficult and there has been a breach of a material term of the representation agreement.

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

3. **25CV04551, Portfolio Recovery Associates, LLC v. Kilsheimer**

Plaintiff's unopposed motion to vacate dismissal and enter judgment under CCP § 664.6 is **GRANTED**. Plaintiff's request for judicial notice is **GRANTED**.

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

The parties entered into a stipulated agreement wherein Defendant agreed to pay Plaintiff \$1,515.29 in monthly installments. The parties agreed that the Court would retain jurisdiction pursuant to CCP § 664.6. They agreed that if Defendant defaulted on payments, Defendant would pay the full

balance of the account, plus costs according to a memorandum of costs including any motion and/or order fee(s) required by the court, less payments received in good funds before default. Defendant has defaulted on the payments after paying \$1,015.29. Plaintiff seeks to have judgment entered against Defendant in the amount of \$995.61, which is comprised of \$500 for the remaining principal balance and \$495.61 for costs. The request is granted.

4. 23CV01860, Santos Velasquez v. Redwood Empire Vineyard Management, Inc.

Plaintiff's unopposed motion for preliminary approval of class action settlement is **GRANTED**. The final approval hearing shall be set on March 3, 2027, at 3:00 p.m. in Department 18.

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

Analysis:

On December 5, 2023, Plaintiff, Severino Santos Velasquez, commenced this action by filing a class action complaint alleging causes of action against Defendant for violations of the Labor Code. The parties engaged in informal discovery. The parties thereafter participated in an all-day mediation, which did not lead to a settlement. After engaging in formal discovery, the parties attended another day of mediation, after which they were finally able to reach a settlement.

Plaintiff now seeks preliminary approval of the settlement agreement. The parties' settlement is for a total amount of \$1,250,000 with the following amounts to be deducted from the settlement sum: (i) Settlement Administrator costs not to exceed \$35,000; (ii) the attorneys' fees up to one third of the of the Gross Settlement Amount (about \$416,666.67) and costs up to \$30,000; (iii) a service award of up to \$12,000.00 to Plaintiff; and (iv) PAGA penalties in the amount of \$50,000.00, seventy-five percent of which will be paid to the LWDA out of the Gross Settlement Amount, and twenty-five percent of which will be distributed to the Allegedly Aggrieved Employees.

The Parties have agreed to retain Apex Class Action to handle the notice and settlement administration process. The Claims Administrator will determine each Settlement Class Member's pro rata share of the available Net Settlement Amount based on the total number of workweeks worked during the Class Period. Plaintiff has submitted the procedure by which the individual settlement amounts will be calculated and disbursed. Plaintiff has also submitted proposed notice and exclusion or objection procedures.

I. The Settlement

A presumption of fairness exists where: 1) the settlement is reached through arm's length bargaining; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The test is not the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.)

The settlement appears generally within the reasonable range of possible judicial approval. At this preliminary stage, Plaintiff has demonstrated the existence of many elements for the presumption of fairness to apply.

Plaintiff includes requests for the finding that the representative award and attorney's fees are reasonable. At this juncture, this request is premature, as attorney's fees and representative awards are both matters which may be the subject of objections by the class members at final approval. The Court is required at final approval to review the fees independently for fairness (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801); counsel should be prepared for analysis on either the lodestar or the common fund theory.

II. The Class

Plaintiff seeks certification of the provisional settlement class in connection with approval of the settlement. The two basic requirements to sustain a class action are an ascertainable class and a well-defined community of interest in the questions of law and fact involved. (CCP § 382; *see also Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 809.) The settlement class has been identified as “all individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period.” The Class Period is from December 5, 2019 through the date of preliminary approval of the settlement. Members of the class can be ascertained from Defendant's records, and a class with an estimated 2,670 members is sufficiently numerous. The community-of-interest requirement embodies common questions of law or fact, a class representative with claims or defenses typical of the class, and a class representative who can adequately represent the class. (*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) The Court concludes that these requirements are met. The Court would approve the class.

III. The Notice

“Notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.” (*Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.) The purpose of a class notice in the context of a settlement is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Ibid.*) The proposed notice appears to fully apprise the class members of the relevant considerations. Therefore, preliminary approval appears appropriate.

5. 25CV08248, Oliver v. Saris

Defendants Anthony “Tony” Saris, Saris Fund One, LLC, and Saris Fund Two, LLC (“Saris Defendants”)’s motion to stay this action is **DENIED**.

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

Analysis:

This Court previously denied the Saris Defendants’ motion to compel arbitration and stay the action. In that ruling the court included an in-depth recitation of the allegations in this matter including a description of the many parties and their members. The court will not herein repeat that recitation but will incorporate it’s July 13, 2026 Order Denying Defendants’ Motion to Compel Claims into Separate Arbitrations and Stay the Action into this ruling.

In short, this lawsuit arises from two Santa Rosa residential development projects—the 888 Fourth Street Project and the Holly Hock Project—in which Plaintiff Jennifer Oliver (“Jennifer”), through her entities (Kali Equity, LLC (“Kali”) and Bluestone Main, LLC (“Bluestone”)), collectively “Plaintiffs,” invested approximately \$3.5 million. Plaintiffs sued the Saris and Futrell Defendants, alleging that Saris (Oliver’s longtime friend, CPA and financial advisor) fraudulently induced her investments through promises of high returns and short timelines, but mismanaged the ventures, resulting in the 888 Fourth Street property being sold at a substantial loss and the Holly Hock Project becoming stalled and underwater. The Futrell Defendants have denied Plaintiffs’ allegations and have also accused Saris of fraud.

Plaintiffs filed this action on November 24, 2025, against the Saris Defendants and the Futrell Defendants, asserting causes of action for fraud, negligent misrepresentation, breach of fiduciary duty, breach of contract, unjust enrichment, and accounting arising from investments in the 888 Fourth Street Project and Holly Hock Project. On March 16, 2026, the Futrell Defendants answered and filed a Cross-Complaint against the Saris Defendants for intentional fraud, negligent misrepresentation, breach of fiduciary duty, indemnity, and contribution.

On December 3, 2024, Tony Saris, through entities he controlled (such as SF1, 8 Cubed, LLC (“8 Cubed”), and 888 Fourth Street LLC) caused to be filed two separate arbitration demands referred to as “The 888 Fourth Construction Arbitration” and the “888 Fourth Street Operating Agreement Arbitration.” In the Construction Arbitration, 888 Fourth Street LLC asserts claims against HFC, Futrell, and Walter arising from alleged mismanagement of the project, including fraud and breach of the same Construction Contract at issue in this lawsuit. In the Operating Agreement Arbitration, SF1 and 8 Cubed allege that FWP, 888 Equity Fund, LLC, 888 Fourth Street Fund, LLC, Futrell, WPI, and Walter failed to make payments in response to capital calls, breached the operating agreement, and committed fraud and deceit concerning the Operating Agreement and its Amendments.

In the Construction Arbitration and the Operating Agreement Arbitration (collectively, the “Arbitrations”), Futrell, Walter, and their related entities have consistently objected, and continue to object, to the Arbitrations proceeding. Moreover, although the Arbitrations were initiated in December 2024, neither proceeding has advanced beyond initial administration: no arbitrator has been appointed in either and no substantive determinations have been made.

During an administrative conference on October 7, 2026, the AAA confirmed that, absent a court order staying proceedings, the AAA intends to appoint arbitrators and proceed with administering both Arbitrations over Respondents’ objections to arbitrability. Consequently, on October 8, 2026, Futrell, Walter and their entities filed a separate civil action against SF1, 8 Cubed, and 888 Fourth Street in this Court for declaratory and injunctive relief. They will seek a temporary restraining order preventing the Arbitrations from proceeding until this Court has the opportunity to rule on the issue of arbitrability and whether, regardless of potentially arbitrable claims, the Arbitrations and this action should be heard together pursuant to Code of Civil Procedure section 1281.2(c).

On October 17, 2025, Lillian Oliver (“Lillian”), Jennifer’s elderly mother, filed a lawsuit against Saris, SF1, SF2, Futrell, HFC, and another entity affiliated with Futrell, Meda/Brookwood, LLC, related to the Holly Hock Project. Lillian’s claims concerning the Holly Hock Project are virtually identical to Jennifer’s claims in this action related to the Holly Hock Project, except that Lillian also has a claim for financial elder abuse based on her age.

On December 24, 2025, Saris and SF2 filed a motion to compel arbitration of the Lillian Oliver Matter. The Court ultimately granted the motion, and compelled arbitration of Lillian’s claims. However, on June 12, 2026, Futrell and HFC filed a Motion for Reconsideration asking the Court to reconsider its order compelling the Lillian Oliver Matter to arbitration. Their argument for reconsideration is based on their position that the Court declined not to compel arbitration under CCP § 1281.2 based on the assumption that Jennifer’s case would be compelled to arbitration. However, this Court denied the motion to compel Jennifer’s case to arbitration. Accordingly, it is currently uncertain whether the Lillian Matter will remain in arbitration.

Finally, on February 7, 2025, WPI, Walter, FWP, and Futrell sued Saris, SF1, and 8 Cubed in Sonoma County Superior Court, Case No. 25CV01004 (the “Walter Matter”), regarding the 888 Fourth Street Project. In response, Saris and his entities moved to compel arbitration solely as to the plaintiffs’ claims. The Court granted the motion to compel arbitration, ordering that WPI, Walter, FWP, and Futrell must pursue their claims in arbitration. Since the Court compelled arbitration, no arbitration has been initiated to pursue WPI, Walter, FWP, and Futrell’s claims against Saris, SF1, and 8 Cubed.

In summary, aside from the instant case, there are four additional cases that have arisen out of the 888 Fourth Street Project and/or the Holly Hock Project. Those four additional cases involve similar entities as are involved in the instant case, but do not involve any of the plaintiffs in this case. In the two Saris party-initiated arbitrations, an arbitrator has yet to be appointed and no substantive determinations have been made. Serious issues regarding the arbitrability of those claims are at issue and must still be decided. In the Lillian Oliver-related matter, it is also uncertain whether the claims will be arbitrated or whether the Court will reconsider its order compelling arbitration. In the WPI, Walter, Futrell, FWP matter, no arbitration has been initiated.

I. A Stay of These Proceedings is Not Appropriate

The Saris Defendants herein ask this Court to stay Plaintiffs’ case pending these four other potential arbitrations based on their argument that this action substantially overlaps with multiple pending arbitrations involving the same projects, parties, and agreements, and there is a risk of contradictory rulings. They argue that the same individual actors stand behind the various corporate entities involved in these proceedings therefore the witness testimony and factual determinations will substantially overlap. They call on the Court’s inherent power to stay these proceedings pending determination of the related actions, as described in *Thompson v. Continental Ins. Co.* (1967) 66 Cal.2d 738 and *St. Paul Fire and Marine Insurance Company v. AmerisourceBergen Corporation* (2022) 80 Cal.App.5th 1.)

The *St. Paul Fire* case discusses the Court’s “inherent power, in its discretion, to stay proceedings when such a stay will accommodate the ends of justice...” which “is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time

and effort for itself, for counsel, and for litigants.” (*St. Paul Fire and Marine Insurance Company v. AmerisourceBergen Corporation* (2022) 80 Cal.App.5th 1, 13–14.)

The *Thompson* Court discussed the factors that the Court must consider when “Granting a stay in a case where the issues in two cases are substantially identical...” (*Id.* at 746.) Under such circumstances, granting the stay is “addressed to the sound discretion of the trial court.” (*Ibid.*)

“In exercising its discretion the court should consider the importance of discouraging multiple litigation designed solely to harass an adverse party, and of avoiding unseemly conflicts with the courts of other jurisdictions. It should also consider whether the rights of the parties can best be determined by the court of the other jurisdiction because of the nature of the subject matter, the availability of witnesses, or the stage to which the proceedings in the other court have already advanced.”

(*Id.* at 746-747.)

This Court notes that the four related cases are not “substantially identical” to this one. These Plaintiffs are not involved in any of them and none of those cases would resolve any of the claims raised by Plaintiffs or Cross-Complainants. They merely involve the same underlying projects/contracts and the defendants in this action.

Nevertheless, the Court has considered the *Thomson* factors and the overall economy of staying this action pending these potential arbitrations and has found that none of the factors weigh in favor of a stay. The Saris Defendants have described difficulties that they alone would face in having to be involved in multiple actions related to the same development projects, such as overlapping discovery. They argue that the cases all involve overlapping agreements and alleged misconduct but have not identified a single issue raised by Plaintiffs that could potentially be resolved by any of the claims raised in those other four cases. The core of this litigation is Jennifer’s claim that Saris systematically defrauded her. Neither the pending Arbitrations nor the Lillian Oliver Matter will dispose of Plaintiffs’ claims against Saris or the Futrell Parties—nor will they resolve the Futrell Parties’ cross-claims against the Saris Parties for fraud, breach of fiduciary duty, and indemnity.

The Court acknowledges that certain issues may overlap. However, at this point, the potential risk of this happening does not appear to be so great as to require these Plaintiffs to freeze their case indefinitely as they wait on proceedings that they cannot participate in to conclude—which could take years. Such would substantially prejudice these Plaintiffs. The Saris Defendants have not raised a compelling enough argument that would justify subjecting these Plaintiffs to such prejudice.

Moreover, it is not clear at this stage in the proceedings whether any of the other four cases will ultimately proceed in arbitration. As explained above, serious questions are currently at issue regarding whether three of the cases should in fact proceed in arbitration. Regardless, even if there were no question regarding the arbitrability of those cases, this Court would still find a stay of this case to be inappropriate.

As a final note, the Court does not agree with Plaintiffs that this motion is in effect a motion for reconsideration of a matter already raised in Defendants’ March 2, 2026 “Motion to Compel Claims into Separate Arbitrations and Stay the Action.” The stay requested in that motion was different than the stay requested here. There, Defendants sought a stay of proceedings pending the Court’s

determination of that motion to compel arbitration. They did not seek a stay of the entire action pending the determination of the four related cases as they seek here.

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