TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, November 13, 2026, 3:00 p.m.
Courtroom 16 – Hon. David Kim for 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

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. SCV-271011, Pratt v. Higgins

Plaintiff David Pratt individually and on behalf of 3G Green Garden Group, LLC, doing business as Emerald Harvest ("Plaintiff") moves for an order issuing letters rogatory to the Supreme Court of British Columbia for compelling production of documents and deposition testimony from MNP LLP ("MNP"), a Canadian accounting firm, and (2) 0928267 BC Ltd. ("BC Ltd."), a Canadian entity allegedly owned and controlled by Defendants Robert C. Higgins and Sharon E. Higgins ("the Higgins'"). Relatedly, all Defendants Robert C. Higgins, Sharon E. Higgins, 3G Green Garden Group, Inc., a Canadian corporation ("3GI"), Emerald Harvest, Inc., a Canadian Corporation ("EHI"), and Nominal Defendant/Cross-Complainant 3G Green Garden Group, LLC ("3GL") (collectively as "Defendants") apply to seal portions of the Memorandum of Points and Authorities and in Support of Plaintiff's Motion for Issuance of Letters Rogatory, the Declaration of Michael Shklovsky and documents attached therein all filed confidentially under seal. The Court shall also consider the Reply filed conditionally under seal as it relates to the application to seal but was filed after the application was filed by Defendants.

The application to seal is **GRANTED**. The motion for an order issuing letter rogatory is **DENIED without prejudice**. The Court also appoints a Discovery Referee for the other pending discovery motions in this case, discussed below.

I. Factual & Procedural History

Plaintiff filed the Complaint on June 15, 2022, alleging breach of duty of good faith and fair dealing and wrongful taking of assets by Defendants among other causes of action. On July 20, 2022, Defendants removed the case to federal court. From July 20, 2022, through May 24, 2024, the U.S. District Court for the Northern District of California heard various motions in the case. On May 24, 2024, the federal court signed an order granting Defendants' motion to remand this case back to this Court. Before the case was remanded, Plaintiff filed the same motion in federal court currently in front of this Court, a motion to issue letters rogatory, but the federal court remanded the case before it held a hearing on the motion. The Court now considers Plaintiff's motion to motion for an order issue letters rogatory and Defendants' application to seal records associated with Plaintiff's motion that the Court advanced to be heard on the same date.

II. Governing Law

A. Application to Seal

Court records are presumed to be open unless confidentiality is required by law. (Cal. Rules of Court, rule 2.550(c).) A court may order that a record be filed under seal only if it expressly finds facts that establish: (1) there exists an overriding interest that overcomes the right of public access to the record; (2) the overriding interest supports sealing the record; (3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest." (Cal. Rules of Court, rule 2.550(d).) Mere agreement between the parties alone is insufficient to constitute an overriding interest; there must be a specific showing of serious injury with specificity being essential. (*McNair v. National Collegiate Athletic Assn.* (2015) 234 Cal.App.4th 25, 35–36 citing *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1281.) These rules "apply to records sealed or proposed to be sealed by court order" and "to discovery materials that are used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings." (Cal. Rules of Court, rule 2.550(a)(1), (3).)

B. Letters Rogatory

Subdivision (e) of C.C.P. section 2027.010 requires a court to issue a commission, letters rogatory, or a letter of request, if it determines that one is necessary or convenient to allow a party to take oral deposition in a foreign nation. "The commission, letters rogatory, or letter of request may include any terms and directions that are just and appropriate." (C.C.P. § 2027.010(e).)

III. Discussion

A. Defendants' Application to Seal

In support of the motion to issue letters rogatory, Plaintiff filed several documents under conditional seal, which includes the following information:

> [E]xact tax amounts paid and tax strategies confidentially conveyed by Ryan Calder, Defendants' accountant (Ziemianek Sealed Decl., Exh. 3 at Exhibit C); exact revenue figures and insurance coverage details (see id., Exh. 3 at Exhibit D); the salary of each

> employee (*see id.*, Exh. 3 at Exhibit E); specific payments made to vendors (*see id.*, Exh. 3 at Exhibit G); exact dollar amounts of tax payments (*see id.*, Exh. 3 at Exhibit H); tax strategies employed by the companies (see Exhibit I); exact bank account information (*see id.*, Exh. 3 at Exhibits K, L); and a Director's Resolution redeeming shares in Emerald Harvest, Inc., which provides exact share price and quantity (*see id.*, Exh. 3 at Exhibit M).

(Defendants' MPA in Support of Application to Seal, 5:15–23.) Defendants seek to seal the information above that Plaintiff filed in support of its motion for letters rogatory, including the MPA, the Declaration of Michael Shklovsky and documents attached therein. The Court also considers the Reply as it was filed after the application to seal but filed conditionally under seal. The Court previously ordered further briefing on the issue of the application of rule 2.550(a)(3) of the California Rules of Court. In their supplemental brief, Defendants' contend that the records at in this case lie outside of the application of rule 2.550(a)(3) because producing documents in accordance with a protective order that are then produced by the nonproducing party in support of their discovery motion is "a different posture from the party-to-party discovery disputes the Advisory Committee described [in the application of subdivision (a)(3)]."

The Court is not persuaded by Defendants' inherently inconsistent argument that confidential documents produced pursuant to a stipulated protective order filed in support of a discovery motion do not qualify as a discovery dispute within the meaning of subdivision (a)(3), warranting application of the 5-part test under subdivision (d). The plain language of the rule states that the rules for sealing do not apply to discovery motions and records filed or lodged in connection with discovery motions or proceedings. (Cal. Rules of Court, rule 2.550(a)(3).) The Rutter Group offers the following interpretation:

> There is no right of public access to, and hence no need to seal, discovery materials exchanged between civil litigants (e.g., pretrial depositions and interrogatories). These items are not usually in the court's files. Nor do the sealing rules of court apply to discovery motions or materials filed or lodged in court in connection with discovery motions or proceedings (e.g., confidential material subject to a protective order). [CRC 2.550(a)(3); see ¶ 9:418.27]
>
> [paragraphs omitted]
>
> Although discovery motions and materials lodged or filed with the court in connection with discovery motions are generally exempt from the sealing rules (¶ 9:418.25), a right of public access may exist where the discovery motion involves "questions of great significance to members of the public." [*H.B. Fuller Co. v. Doe* (2007) 151 CA4th 879, 893, 60 CR3d 501, 511—motion to quash subpoena affecting First Amendment right to speak anonymously]
>
> A protective order may require certain information or documents to be maintained confidentially and may address how they are to be handled in connection with discovery and other motions. However, the court may modify those orders in appropriate circumstances where there is a question of great public significance.

(Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group, June 2026 Update) ¶ 9:418.25–9:418.26.)

The records at issue are various confidential business records Plaintiff filed in support of his motion for issuance. The parties' August 13, 2024, protective order explicitly covers "disclosure and discovery activity" invoking various provisions of the Discovery Act in defining what qualifies as confidential information or items. The Rutter Group confirms that the sealing rules do not apply in this case: confidential materials subject to a protective order. However, the Court does not interpret this section of the Rutter Group to mean that the records at issue should remain in the public file without redaction. The Rutter Group clarifies that exemption from the sealing rules means that there is *no right* of public access to such materials unless there is a question of great significance to members of the public citing *H.B. Fuller Co. v. Doe* (2007) 151 CA4th 879, 893. A partnership dispute over alleged conversion of funds and related breaches of duties in private companies is not a question of great significance to members of the public that warrants public access to the records. Therefore, the application to seal is **GRANTED**. The Court finds that Defendants' proposed sealing discussed in the Ziemianek Declaration is sufficiently tailored, including the redaction of Exhibits C–F as discussed further in Defendants' supplemental briefing.

B. Motion for Letters Rogatory

Plaintiff seeks discovery from nonparties MNP and BC Ltd. (seven requests for production each) as well as deposition testimony from Ryan Calder, an accountant and owner of MNP. He argues that the issuance of letters rogatory is necessary because the discovery sought is directly relevant to his claims and cannot be obtained through any means available within this Court's jurisdiction. He argues that the issuance is also convenient because this Court will not need to participate in the transmittal and enforcement of the letters.

Defendants argue that BC Ltd.'s relationship to EHI and 3GI alone does not satisfy Plaintiff's burden of establishing a right to discovery from BC Ltd. and is not relevant to Plaintiff's claims concerning what Defendants allegedly took from 3GL. Defendants argue that the motion is procedurally deficient because it lacks proposed deposition notices for Calder, MNP, or BC Ltd. Defendants claim Plaintiff has obtained "substantial" discovery related to MNP, Calder, and BC Ltd., including communications with MNP, accounting records, and a "sandbox" version of their accounting database. Defendants further argue that the statute only authorizes foreign depositions, not foreign discovery. Defendants challenge the proposed letters claiming that they improperly ask this Court to make contested findings of fact. Defendants contend that the discovery requests are overbroad and unduly burdensome and request privileged and confidential information.

There is no argument regarding the appropriateness of letters rogatory given that Canada is not a party to the Hague Evidence Convention.

A letter rogatory is "a judicial request addressed to a foreign court that a witness be examined within the latter's territorial jurisdiction by written interrogatories or, if the foreign court permits, by oral interrogatories." (*Volkswagenwerk Aktiengesellschaft v. Superior Court* (1973) 33 Cal.App.3d 503, 506–507 citing Ballentine's Law Dictionary.) Black's Law Dictionary defines a letter of request, also termed letter rogatory, as " [a] document issued by one court to a foreign court, requesting that the foreign court (1) take evidence from a specific person within the foreign jurisdiction or serve process on an individual or corporation within the foreign jurisdiction and (2) return the testimony or proof of service for use in a pending case." (Black's Law Dict. (12 ed. 2024).)

Defendants contend that the Discovery Act's normal deposition procedures, including a notice to every party and a description of the matters for examination, still apply to the issuance of letters under subdivision (e). However, the Court does not read subdivision (e) to be dependent on subdivision (c), i.e., requiring the service of a deposition notice before the issuance of the letters. Defendants cite to no authority requiring as much.

It is unclear whether section 2027.010 contemplates production-only depositions. (See C.C.P. §§ 2027.010, subds. (b), (c) ["to compel the deponent to attend, *as well as* to produce any document…"] [emphasis added].) The subdivision at issue, subdivision (e), likewise states "On motion of the party seeking to take an oral deposition in a foreign nation..." Subdivision (a) cites to section 2025.010, persons and entities within the state subject to deposition. While California authorizes deposition subpoenas that only seek the production of business records for copying without oral testimony under C.C.P. section 2020.410, this section is not referenced by section 2027.010. Plaintiff does not frame his production requests from BC Ltd. and MNP as production-only depositions. The definitions from Ballentine's Law Dictionary as cited in *Volkswagenwerk* and Black's Law Dictionary also contemplate oral testimony and do not discuss standalone production requests. Under the plain language of the statute and the authorities cited herein, section 2027.010 does not contemplate production-only depositions. Therefore, the Court may not issue letters rogatory concerning BC Ltd. as there is no deposition request for any officer or person affiliated with BC Ltd. with Plaintiff's production request.

For MNP, Plaintiff alleges that the request includes a foreign deposition, the deposition of Calder. The proposed letters filed with the motion describe Calder at one point as a partner of MNP (4:20) and then later describe him as an accountant employed by MNP (6:9–10). The evidence in support of Calder's connection to MNP warranting production is minimal. Defendant Sharon Higgins and Robert Higgins' declarations from other motions in this case declaring that Calder was an outside accountant retained to provide accounting and guidance concerning accounting between EHI, 3GI, and 3GL is insufficient. However, even if the Court found that MNP's production request was sufficiently connected to Calder's deposition under section 2027.010, the Court would struggle to find necessity or convenience in issuing letters when Plaintiff has initiated a lawsuit in British Columbia. Plaintiff contends that Canadian law generally provides that discovery materials obtained in British Columbia cannot be used in this Court citing to *Juman v. Doucette*, 2008 SCC 8, [2008] 1 R.C.S. 157, 163. However, based on *Juman*, it appears that Plaintiff could make an application to the Canadian court to be relieved from the obligations imposed by the implied undertaking rule to use discovery from the Canadian court in the instant case.

Regarding Calder, the letters nor the supporting papers give deposition subjects for Calder as accountant for EHI, 3GI, and 3GL. The Court finds that deposition subjects for Calder are necessary in order for it to determine whether the letters concerning Calder are necessary or convenient, especially considering that Plaintiff simultaneously seeks all accounting files from MNP for any of the affiliated entities (3GL, EHI, 3GI, and BC Ltd.) from 2014 to the present.

The motion is **DENIED without prejudice**.

C. <u>The Court Appoints a Discovery Referee for the Other Discovery Motions</u>

In addition to the instant motion to issue letters rogatory, there are seven other pending discovery motions in this case, filed by Plaintiffs and Defendants, seeking to compel initial and further

responses. The hearings on these motions are January 22, 2027, February 24, 2027, and March 24, 2027. The Civil Discovery Act of 1986's central precept is that civil discovery should be essentially self-executing. (*Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1281.) As the parties' counsel are unable to productively work together to produce discovery in this matter and the upcoming trial on April 30, 2027, this Court finds a Discovery Referee is needed.

By close of business on Monday, November 23, 2026, the parties are ordered to either submit the name of an agreed upon Discovery Referee, or if there is no agreement, each party shall submit three nominees to the Court. The Court will then appoint a Discovery Referee nominee against whom there is no legal objection. (C.C.P. §§ 640(a),(b).) The names of proposed Discovery Referees shall be submitted in writing in the form of a pleading and electronically filed with the Clerk's Office, with a courtesy copy delivered to chambers.

The Court will issue an Order Appointing Referee after receiving an agreed upon selection or each party's nominees. The Discovery Referee's fees will be shared equally by Plaintiff and Defendants unless the Discovery Referee has good cause to recommend that the fees are paid on a different basis.

Any objection to this Notice of Intent to Appoint a Discovery Referee shall be filed with the Court within five (5) days of the service of this Notice and Order or may be made at Oral Argument at the November 13th hearing.

The Court hereby **VACATES** all discovery motions pending in this case. The Court will keep Defendants' two applications to seal on calendar set for hearings on April 14, 2027.

IV. CONCLUSION

The application to seal is **GRANTED**. Defendants' counsel shall lodge a separate order for the application to seal, conforming to the request made in paragraph 9 of the Ziemianek Declaration, but also including the highlighted portions of the Reply.

The motion to issue letters rogatory is **DENIED without prejudice** in its entirety.

By close of business on Monday, November 23, 2026, the parties are ORDERED either submit the name of an agreed upon Discovery Referee, or if there is no agreement, each party shall submit three nominees to the Court.

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