TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, December 18, 2024 3:00 p.m.
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

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252 US (San Jose)

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. 24CV01008, Gewalt v. Gewalt

Plaintiffs Kendall Gewalt ("Kendall"[1]) and SKG Development, LLC ("SKG", together with Kendall, "Plaintiffs"), filed the complaint (the "Complaint") against defendants Gregory W Gewalt ("Greg"), High Desert Properties, LLC ("High Desert", together with Gregory, "Defendants"), along with Does 1-10, arising out of allegations fraud derived from a series of loans. This matter is on calendar for the motion by Plaintiffs to compel attendance at deposition and for monetary sanctions. The Motion is **GRANTED**. Gregory shall attend a properly noticed deposition from Plaintiffs within thirty (30) days' notice of this order. Plaintiff's request for sanctions is GRANTED.

I. Relevant Law

CCP § 2025.450(a), provides: "If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection

[1] Kendall and Gregory share familial affiliation and a surname, along with non-party Vincent Gewalt ("Vincent"). As a result, first names are used for both clarity and brevity. No disrespect is intended.

under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice." On non-appearance of a deponent, the moving party shall attempt to meet and confer in good faith regarding the non-appearance. *Leko v. Cornerstone Building Inspection Service* (2001) 86 Cal.App.4th 1109, 1124. After service of a deposition notice, a party may object to disclosure of privileged or protected information. CCP § 2025.460. Objections to the sufficiency of the deposition notice must be served three court days prior to the deposition. CCP § 2025.410.

CCP § 2025.450(a), provides: "If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice."

The scope of discovery is one of reason, logic and common sense. *Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1612. The right to discovery is generally liberally construed. *Williams v. Superior Court* (2017) 3 Cal.5th 531, 540. "California law provides parties with expansive discovery rights." *Lopez v. Watchtower Bible & Tract Society of N.Y., Inc.* (2016) 246 Cal.App.4th 566, 590-591. Specifically, the Code provides that "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." CCP § 2017.010; see also, *Garamendi v. Golden Eagle Ins. Co*. (2004) 116 Cal.App.4th 694, 712, fn. 8. ("For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement…") See *Lopez, supra,* 246 Cal.App.4th at 590-591, citing *Garamendi, supra,* 116 Cal.App.4th at 712, fn. 8. "Admissibility is not the test and information[,] unless privileged, is discoverable if it might reasonably lead to admissible evidence." *Id*. "These rules are applied liberally in favor of discovery, and (contrary to popular belief), fishing expeditions are permissible in some cases." *Id.*

"If a motion under subdivision (a) is granted, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." CCP § 2025.450(g)(1).

II. Analysis

On July 9, 2024, Plaintiffs noticed Gregory for a deposition to occur on July 29, 2024. Gregory responded to the notice averring that he was not available on that date due to prior family obligations. Plaintiffs' counsel proposed multiple alternative dates and accommodations to allow

the deposition to proceed, to which Gregory stated that he believed that High Desert's motion to quash bore relevance to whether the deposition should go forward, and that he would not participate in a deposition until after October 17, 2024. Plaintiffs proceeded to file this motion on August 9, 2024. High Desert's motion to quash was denied on October 2, 2024. A motion for reconsideration of that ruling has followed. Gregory has filed an opposition to this motion, stating that a deposition is premature and that a protective order should issue.

Plaintiffs have properly noticed a deposition, and the obligation thereon is to appear. Gregory has refused to appear for deposition, arguing that the jurisdictional issues argued by High Desert may render this action unviable. Had Gregory been able to show that this results in the case being unviable, it would be within the discretion of the Court to stay discovery in precisely this manner. *Terminals Equipment Co. v. City and County of San Francisco* (1990) 221 Cal.App.3d 234, 247. However, there are several reasons why no stay is proper to prevent Plaintiffs' deposition of Gregory.

First, at the current time, the Court has entered an order denying High Desert's motion to quash and special demurrer. High Desert has filed a motion for reconsideration but a motion for reconsideration being filed does not render the Court's prior order infirm. Indeed, whether the case is at issue does not preclude discovery. *Mattco Forge, Inc. v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 1436. A motion under CCP § 1008 does not prevent an order from being in effect until such time that it is modified by the Court. There is no persuasive reason to prevent Gregory's deposition as a result.

Second, even if the order as to High Desert were not properly treated as currently in effect, Gregory has not displayed any pertinent argument as to why discovery should be stayed as to him. There is no dispute as to jurisdiction over Gregory. He has filed an answer, and for all meaningful purposes, the case is at issue between Gregory and Plaintiffs. Plaintiffs are entitled to his deposition 20 days after he appears in the action. CCP § 2025.210 (b). Gregory filed his answer in May of 2024. There is no articulated reason why Gregory is not properly deposed given that the Court has jurisdiction over him, and Plaintiffs are statutorily entitled to his deposition.

Gregory also argues that this Court should issue a protective order. Gregory has not filed a motion thereon, and therefore the Court declines to consider it. The burden is on the deponent to "promptly move" for a protective order (CCP § 2025.420(a)), and Gregory has undertaken no action to move the Court, but instead asserts this in opposition. A motion is required. CCP § 2025.420(a) ("The **motion** shall be accompanied by a meet and confer declaration"). As is noted above, a protective order is also not substantively justified here given that the case should appropriately proceed regardless of whether High Desert's motion for reconsideration is granted. Gregory's other argument for protective order is equally unprevailing on the merits, as Gregory argues that the discovery is duplicative with the Idaho case but provides no evidence of undue burden. Duplicative discovery alone is not a basis to issue a protective order.

The motion to compel is **GRANTED**. Gregory shall attend a properly noticed deposition from Plaintiffs within thirty (30) days' notice of this order.

III. Sanctions

Sanctions are mandatory under the CCP for discovery abuses, absent substantial justification. Without a showing of substantial justification, the Court **must** grant compensatory monetary sanctions which represent reasonable and actual costs to Plaintiffs. Gregory's objections are without justification for all the reasons above. When the Court grants sanctions compelling attendance, "the court shall impose a monetary sanction". CCP § 2025.450 (g)(1). Sanctions remain appropriate. *Mattco Forge, Inc. v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 1436.

Plaintiffs request a billing rate for Tamarah Prevost of $675 per hour for one hour expended on the motion. The Court finds the reasonable, local rate for attorneys with comparable experience to Ms. Prevost is $450 per hour. The time expended on a motion is reasonable. The Court **GRANTS** Plaintiffs' request for monetary sanctions in the amount of $450. Gregory shall pay $450 to Plaintiffs within 30 days' notice of this order.

IV. Conclusion

For the reasons above, the Motion is **GRANTED**. Gregory shall attend a properly noticed deposition from Plaintiffs within thirty (30) days' notice of this order. Plaintiffs' request for monetary sanctions is GRANTED in the amount of $450. Gregory shall pay $450 to Plaintiffs within 30 days' notice of this order.

Plaintiffs' 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).

2. 24CV01511, County of Sonoma v. Miller

In this property abatement action, the County of Sonoma (the "County") seeks a Default Judgment and Permanent Injunction against defendant Ryan Miller ("Defaulted Defendant"), as partial owner of the property commonly known as 16965 Sweetwater Springs Road, aka 0 Camino Del Arroyo, Guerneville, California (the "Property"), in the County of Sonoma. Also named in the action, and having appeared, is Rick Jones ("Answered Defendant"). The Judgment requested in this motion would include an order permanently enjoining Defaulted Defendant, and his agents and assigns, from maintaining ongoing violations of the Sonoma County ordinances and the unlawful use of the property.

The County filed the underlying Complaint on March 1, 2024, for injunctive relief related to multiple public nuisances on the Property. The County personally served the Defaulted Defendant, at 1039 S. Wright Road, Santa Rosa, California, on April 15, 2024. On May 29, 2024, when Defaulted Defendant had not filed a response to the Complaint, the County filed a Request for Entry of Default against Defaulted Defendant, and the default was entered the same day.

As of the time the motion was filed, five of the nine violations in the complaint had been abated. See Declaration of Jesse Cablk ¶ 33. Four violations remain unabated. *Ibid*. Penalties continue to accrue as a result.

The County moves for a default judgment against Defaulted Defendant under Code of Civil Procedure section 585(b) and requests that the Court issue a permanent injunction enjoining Defaulting Defendant from, among other things, "from maintaining any condition or use upon the Property contrary to the ordinances of the County of Sonoma; and . . . immediately cease the present unlawful uses of the Property in Violation of the Sonoma County Code". Proposed Order at ¶ 10-11. The County also requests an Order requiring Defaulted Defendant to pay unrecovered abatement costs, County Counsel costs, civil penalties and unrecovered attorneys' fees. The County requests $6,200.10 in abatement costs, $8,875 in attorneys' fees, $100 in legal costs and $98,400 in civil penalties to this point. See Declaration of Diana Gomez, ¶ 11; Declaration of Jesse Cablk ¶ 34. The County states that these penalties and fees will continue to accrue through the final satisfaction of the case. The County served the motion by mail on September 9, 2024.

Defaulted Defendant has not filed an opposition. Having received no opposition, the Court rules as follows:

The County's Request for Judicial Notice is GRANTED. The County's Motion for a Default Judgment and Permanent Injunction is GRANTED and the County's requests for abatement costs, civil penalties, and attorneys' fees are also GRANTED.

The CCP provides that if the defendant has been served, other than by publication, and no response has been filed, "the clerk, upon written application of the plaintiff, shall enter the default of the defendant" and "[t]he plaintiff thereafter may apply to the court for the relief demanded in the complaint." (Code Civ. Proc. §585(b).) "The court shall hear the evidence offered by the plaintiff and shall render judgment in the plaintiff's favor for that relief, not exceeding the amount stated in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115, as appears by the evidence to be just." (*Ibid*.) "If the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose." (*Ibid*.) Additionally, Sonoma County Code section 1-7 allows for the assessment of civil penalties and recover of costs, including "any administrative overhead, salaries and expenses incurred by the following departments: health services, permit and resource management, county counsel, district attorney, transportation and public works, agriculture/weights & measures, and fire and emergency services." (See, SCC at §1-7(d).)

In this case, the County's Complaint; entry of default; and this motion for a default judgment and permanent injunction provide a sufficient basis for the Court to enter the judgment and injunction as requested. Accordingly, the motion is GRANTED.

Unless oral argument is requested, the Court will sign the Proposed Order lodged with the motion.

3. 24CV03208, Joost, III v. Joost, JR

Plaintiff Wendell Joost, III ("Plaintiff"), both individually and derivatively on behalf of Joost Family Development Company (the "Company") initiated this action on May 24, 2024 by filing the complaint against defendants Wendell Joost, Jr. ("Defendant") and nominal defendant the Company, with causes of action for breach of fiduciary duty, breach of the covenant of good faith and fair dealing, false promise, accounting, conversion, concealment, UCL violations, and a derivative cause of action for breach of fiduciary duty (the "Complaint"). This matter is on calendar for the Plaintiff's demurrer to the cross-complaint.

Defendant has filed a dismissal of the Cross-Complaint and the demurrer is therefore MOOT.

4. MCV-253881, Hunter v. Kovacs

Attorney Nathan Bernate seeks to withdraw from representation of Defendants Adam Kovacs and Kovacs Motors, Inc. The Proof of Service reflecting service to Defendants states that they were served with the moving papers via mail at their last known address on the California Secretary of State's website, and via email. Counsel has served the hearing date to Defendants via electronic service as well. This appears sufficient. There is no opposition. Therefore, Attorney Nathan Bernate's motion to be relieved as counsel for Defendants Adam Kovacs and Kovacs Motors, Inc., is **GRANTED**.

The Court will sign the submitted proposed order.

5. SCV-266372, Cetto v. Loya

Plaintiff Joshua Cetto ("Plaintiff"), filed this action against Benito Loya ("Loya"), Snake Trail Farms, LLC ("Snake Trail"), Ridgefront Properties, LLC("Ridgefront"), Greenhouse Family Farms, LLC ("Greenhouse"), Eel River Consulting, Inc. ("Eel River", erroneously sued as Eel River Trails, LLC)(all together, "Defendants"), and Does 5-100, with causes arising out an alleged injury sustained during the course of employment (the "Complaint").

This matter is on calendar for the motion by Plaintiff to lift the Court's prior order for stay entered June 10, 2024. The motion is **GRANTED**.

I. Governing Law

California courts maintain the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency. *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Ca1.4th 739, 758; *Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1488. An order denying a writ petition is final upon issuance of the denial. Cal. Rules of Court, Rule 8.490 (b)(1)(A). No remittitur need issue. Cal. Rules of Court, Rule 8.490 (d).

II. Analysis

Defendants filed a writ of mandate with the First District Court of Appeal ("DCA") on June 5, 2024, challenging the trial court's ruling which summarily denied the fifteenth (15th) affirmative defense in its answer to Plaintiff's Complaint. The Defendants subsequently requested that this Court stay the matter until the writ was determined. The Court granted the request for stay on June 10, 2024. The DCA denied the writ on July 17, 2024.

Defendants have filed a non-opposition to the Plaintiff's motion. While no remittitur has issued, none is necessary under the circumstances. Cal. Rules of Court, Rule 8.490 (d). Therefore, dissolving the stay appears appropriate.

Plaintiff's motion is GRANTED.

IV. Conclusion

Based on the foregoing, the motion is **GRANTED**.

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).

6. SCV-273509, Gutierrez Ortega v. American Honda Motor Co, Inc.

Plaintiffs Pedro Gutierrez Ortega and Yolanda Rivera Gonzalez ("Plaintiffs") initiated this action and filed the complaint ("Complaint") against defendants American Honda Motor Co., Inc. ("Defendant") and Does 1 through 10, for alleged defects in a 2020 Honda Accord Hybrid, VIN 1HGCV3F98LA000348 (the "Vehicle"). The Complaint contains causes of action for: 1) breach of express warranty under the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act"); 2) breach of implied warranty under the Act; and 3) violation of §1793.2 under the Act. This matter is on calendar for the motion by Plaintiffs to compel compliance with the Court's prior discovery order issued on July 3, 2024.

As an initial matter, there is no proof of service in the file reflecting the Plaintiff has served the above motions on the Defendant with the hearing date. Plaintiff has served the moving papers but failed to subsequently serve notice of the hearing date after it was assigned by the Court. See Code of Civil Procedure §§ 1005, 1010; Cal. Rule of Court, Rule 3.1300(a); Sonoma Court Local Rule 5.1 (B). The proof of service was required to be filed by December 11, 2024, and no proof of service is on file. Cal. Rule of Court, Rule 3.1300(c). The motion not being served in accordance with CCP § 1010, there is no cause to consider the merits.

Plaintiffs' motion is DENIED without prejudice.

Defendant 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. SCV-273844, Kangas v. Toivonen

This matter is on calendar for plaintiff Andrew Paul Kangas's (hereinafter "Plaintiff") motion for leave to set aside the dismissal entered as to the case as to the complaint filed August 10, 2023 ("Complaint") against defendants Petri Toivonen ("Petri"), Sarra-Sinnika Toivonen ("Sarra-Sinnika", together with Petri, the "Toivonens"), FAHA Palms ("Palms"), and Finnish American Home Association ("Finnish", together with the Toivenens and Palms, "Defendants") pursuant to California Code of Civil Procedure ("CCP") § 473(b) on the basis of mistake, inadvertence or excusable neglect. The motion is **GRANTED**.

I. Procedural History

Plaintiff filed the request for dismissal on April 3, 2024, and that dismissal was entered by the court the same day. This dismissal was entered as to the Complaint. See Plaintiff's Request for Dismissal Filed 4/3/2024 ¶ (b)(5). Plaintiff filed the instant request to set aside dismissal on August 30, 2024.

II. Governing Law

> "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken."

CCP § 473 (b).

Dismissal which is the equivalent of default for the purposes of CCP § 473 (b) is subject to the same analysis. *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 618. "Moreover, because the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default." *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233. Courts will generally indulge all presumptions and resolve all doubts in favor of orders setting aside defaults and an order setting aside a default under section 473 will not be reversed unless the record clearly shows an abuse of discretion. *Pearson v. Continental Airlines* (1970) 11 Cal.App.3d 613, 619. An honest mistake of law may provide a valid ground for relief from judgment, where the problem is complex and debatable. *Toho-Towa Co., Ltd. v. Morgan Creek Productions Inc.* (2013) 217 Cal.App.4th 1096.

III. Relief is Proper

First, the Court notes that Plaintiff has not served the motion, but that is because there is currently no other party within the case. Plaintiff has not served the complaint to any other party, so there are no parties necessary to serve.

Plaintiff has moved for discretionary relief under CCP § 473 (b) based on mistake or neglect. Plaintiff dismissed the case. He requests the Court relieve him from that dismissal as it was done

in error. Plaintiff seeks to reinstate the action to assert a new cause of action which was not apparent to him at the time of dismissal. The motion is unopposed and timely. Plaintiff's motion to set aside the dismissal is GRANTED.

IV. Conclusion

Based on the foregoing, the motion is **GRANTED**.

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).

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