TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, December 13, 2024 9:30 a.m.
Courtroom 22 –Hon. Lawrence E. Ornell
3055 Cleveland Avenue, Santa Rosa

TO JOIN "ZOOM" ONLINE:
Meeting ID: 161-312-0396
Passcode: 219644
https://sonomacourt-org.zoomgov.com/j/1613120396

TO JOIN "ZOOM" BY PHONE:
By Phone (same meeting ID and password as listed above):
(669) 254-5252

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, it will be necessary for you to contact the department's Judicial Assistant by telephone at (707) 521 - 6836 by 4:00 p.m. on the day before the hearing. Any party requesting an appearance must notify all other opposing parties/counsel of their intent to appear.

1. **23FL00092 LASHINSKI DISSOLUTION**

Motion for Leave to File Amended Response to Petition for Dissolution of Marriage, Bifurcation and Termination of Marital Status, and Other Requests in Declaration DENIED without prejudice to Respondent again, and properly, requesting the relief and raising the issues in this motion. Respondent must present one or more proper and complete noticed motions, specifically and clearly identifying and giving notice of all issues and specific relief requested, and presenting points and authorities with applicable law, analysis of the legal standards, and providing evidence and factual analysis sufficient to allow the court to make a ruling.

The court **invites the parties to appear at this hearing** in order to address the matters in this motion, and the defects, in order to determine if these issues may be resolved now. However, unless the parties do so, the court must deny the motion without prejudice as stated.

Facts

Petitioner filed this action for dissolution of marriage with one minor child on September 12, 2023. The child was a minor at the time, but turned 18 two days later and there are no longer any minor children involved in this proceeding. Respondent filed his response on November 2, 2023,

stating, among other things, that the parties married on June 16, 2001 and separated on August 17, 2023.

Respondent on June 28, 2024 filed a Request for Order ("RFO") and Motion for Leave to File Amended Response to Petition for Dissolution of Marriage, Bifurcation and Termination of Marital Status, and Other Requests in Declaration. The parties stipulated to continuing the RFO from its original hearing date of August 12, 2024 to September 25, 2024. The parties then entered into a stipulation regarding tax issues, entered as an order in September 2024. Both parties' attorneys subsequently appeared at the hearing on the RFO and agreed to continue the matter to October 9, 2024. At the following hearing, the attorneys both again appeared and agreed to continue the matter to November 18 2024. The parties entered into another stipulation regarding tax issues in October 2024 and the court rescheduled the RFO matter to December 13, 2024.

Motion

In his RFO and Motion for Leave to File Amended Response to Petition for Dissolution of Marriage, Bifurcation and Termination of Marital Status, and Other Requests in Declaration, continue rom the prior hearings, Respondent seeks a range of different relief. He requests leave to file a first Amended Response ("FAR") to the petition in order to change the date of separation stated therein, that the court bifurcate the issue of marital status, and he makes "other requests outlined in" his attached declaration. In his form RFO, he has filled in the portions stating that as conditions for the bifurcation, he will hold Petitioner harmless for, or maintain, or otherwise provide, the stated insurance coverage, retirement benefits, social security consequences, and taxes or related issues. He states that he agrees to pay attorney's fees from blocked funds in an account, and he requests that Petitioner obtain her own automobile and homeowner's insurance. He explains that the parties have entered into a stipulation for termination of marital status, which he attaches as Ex.A. He notes that the parties have community retirement plans and he "stipulate[s] to all relevant protections" related to the early, bifurcated termination of the marriage.

There is no opposition.

General Applicable Authority

According to the Family Law Rules of the California Rules of Court ("CRC") 5.2(d), and Family Code ("Fam.Code") section 210, provisions applicable to civil actions generally apply to

proceedings under the Family Code unless otherwise provided. This includes the rules applicable to civil actions in the California Rules of Court and the Code of Civil Procedure ("CCP"). See, e.g., *In re Marriage of Boblitt* (2014) 223 Cal.App. 4th 1004, at 1022; *In re Marriage of Zimmerman* (2 Dist. 2010) 183 Cal.App.4th 900, at 910-911.

Issues Regarding The Motion, Notice, and Motion Papers

According to California Rule of Court ("CRC") 3.1113, formerly CRC 313, the memorandum of points and authorities "must contain a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced." The court "may construe the absence of a memorandum as an admission that the motion or special demurrer is not meritorious and cause for its denial…."

Ordinarily, the court may not grant relief, or grant a motion based on grounds, not asserted in the notice of motion. CCP section 1010; CRC 3.1110(a); see *People v. America Sur. Ins. Co*. (1999) 75 Cal.App.4th 719, 726; *Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1124; *Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1277-1278.

Respondent provides no points and authorities, makes no mention of the legal authority for this motion or the specific requests in the motion, makes no mention of the standards which the court is to apply, and also provides no legal analysis of any sort.

A party should file separate, clearly noticed and identified, motions when seeking entirely separate and unrelated relief. This helps to ensure clarity, ensure proper notice to the opposing party, and advise the court of the need to consider separate matters, which may require more time. All of these issues are important to the efficient and thorough administration of justice, fairness for all parties, and a proper and complete consideration of matters before the court.

The fact that the RFO seeks, among others, unspecified "other requests in Declaration" compounds the problems of uncertainty and lack of proper notice as a practical matter and violates the stated rule that a notice of motion must specify the relief requested. Simply referring to "other requests in Declaration" is insufficient and makes it impossible for the court or other parties to determine exactly and with certainty what the moving party is requesting.

Respondent further compounds these problems with the complete lack of any points or authorities, or legal analysis of any sort.

That said, in this situation, the court is able, and finds it appropriate, to address the substantive merits of part of this RFO and motion. Although the court reached no substantive decision on this motion, the motion was previously on calendar, resulting in continuances. Importantly, both parties were involved in the prior proceedings regarding this motion and the continuances resulting in the current hearing date and even stipulated to a continuance. In addition, the record also demonstrates proper notice via a complete proof of service. Petitioner has, to the court's knowledge, not raised any of the above issues or claimed lack of notice, or otherwise raised any substantive or procedural issues or opposed the motion despite clearly having had notice and opportunity to do so in paper or at the prior hearing. She instead stipulated to continuing this motion to the current hearing.

Bifurcation and Termination of Marriage

Although Respondent completely fails to cite or discuss the applicable authority, the law is clear that marital dissolution actions may be "bifurcated" for an early "status-only" judgment, reserving jurisdiction over all other issues. Fam. Code section 2337. Upon noticed motion, the court may sever, or bifurcate, the issue of marital status from other issues and grant an early and separate trial on the issue of dissolution of marriage status, i.e, a "status only" judgment, expressly reserving jurisdiction of all other pending issues for a later determination. Fam.Code § 2337(a), (f); see *Marriage of Wolfe* (1985) 173 Cal.App.3d 889, 894; *Marriage of Bergman* (1985) 168 Cal.App. 3d 742, 755. According to Fam. Code section 2337(c)(5),

> Until judgment has been entered on all remaining issues and has become final, the party shall indemnify and hold the other party harmless from any adverse consequences to the other party if the bifurcation results in the loss of the other party's rights with respect to any retirement, survivor, or deferred compensation benefits under any plan, fund, or arrangement, or to any elections or options associated therewith, to the extent that the other party would have been entitled to those benefits or elections as the spouse or surviving spouse of the party.

A party should request bifurcation request on the FL-300 Request for Order form with attached FL-315 Request or Response to Request for Separate Trial form. CRC 5.390(a).

The Judicial Council has adopted a form FL-340 Findings and Order After Hearing cover sheet as well as form attachment FL-347 for an order granting a status-only bifurcation request.

However, the FL-180 form for judgments also applies and includes options for bifurcation and reservation of remaining issues. FL-347 reflects the Family Code conditions for bifurcation of the status of marriage or domestic partnership. Form FL-347 section 3 sets forth the court's orders regarding retirement plans. It states, in pertinent part and with emphasis added,

> To preserve the claims of each party in all retirement plan benefits on entry of judgment granting a dissolution of the status of the marriage or domestic partnership, the court makes *one of the following orders for each retirement plan* in which either party is a participant:
>
> (1) A final domestic relations order or qualified domestic relations order under Family Code section 2610 disposing of each party's interest in retirement plan benefits, including survivor and death benefits.
> (2) An interim order preserving the nonemployee party's right to retirement plan benefits, including survivor and death benefits, pending entry of judgment on all remaining issues.
> (3) A provisional order on Pension Benefits—Attachment to Judgment (form FL-348) incorporated as an attachment to the judgment of dissolution of the status of marriage or domestic partnership (Judgment (Family Law) (form FL-180)). *This order provisionally awards to each party a one-half interest in all retirement benefits attributable to employment during the marriage or domestic partnership*.

Following this recitation of orders, the form requires the court to list each retirement plan and the type of order, i.e., 3a(1), 3a(2), or 3a(3), which the court is making for that plan.

Accordingly, in FL-347 section 3, the court is supposed to list, and make an order for, every retirement plan in which either party is participating. Section 3's first paragraph concludes by stating, with emphasis added, "the court makes one of the following orders for *each* retirement plan in which *either* party is a participant…."

Respondent presents this motion on the proper forms. The relief requested is consistent with the law, as set forth above. However, while he provides a proposed judgment on Form FL-180, with attached FL-347, and an additional attachment explaining the orders, he has not completed the FL-347 section regarding retirement accounts or attached the FL-348 for the order requested on the IRAs.

It is therefore possible for the court to grant the motion as to bifurcation of status from other issues. The court unequivocally has authority to bifurcate the issue of status and to enter an order terminating the marriage but leaving other issues ending with the court retaining jurisdiction over them. Respondent also has a right and a basis for making such a request while the court is aware of no basis for denying such a request properly made.

However, the motion as presented is defective and the court is unable, without more, to grant the motion on this issue. Respondent demonstrates that each party has a retirement account in which the community has an interest, and he indicates that he agrees to "protections," but he fails to address the properly. He does not provide complete information, he does not discuss the alternative options for addressing such accounts in the context of bifurcation with reserved jurisdiction, and he fails to include the applicable forms regarding them or to address them in the form RFO provided. He also refers to the stipulation attached to the RFO but this stipulation is not signed. It is merely a proposed stipulation and order. Respondent fails to show that either he or Petitioner signed it or otherwise agreed to it. He has provided no FL-347 and he has not filled in the relevant portions of the FL-315 which he has filed, leaving it blank as to the retirement accounts. The court has neither a specific request nor clear information regarding these and is therefore at this time unable to enter an order regarding the retirement accounts. This prevents it from entering the requested order for bifurcation at this time. Respondent, although stating that he agrees to protections and other issues, also fails to provide specific reference to, much less analysis of or evidence regarding, the remining issues over which the court will retain jurisdiction.

Amendment of the Response

Respondent's failure to present authority regarding his request to amend is potentially more problematic, but he appears, however vaguely, to be referring to CCP section 473(a)(1), which allows a court to grant leave to amend pleadings. Under this provision, amendments are left to the sound discretion of the trial court. CCP section 473(a)(1) states, in pertinent part, "The court may..., in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code." Judicial policy favors amendment to allow resolution of all potential claims and disputes between parties, so such motions are examined liberally. *Nestlé v. Santa Monica* (1972) 6 Cal.3d 920, 939. As long as the motion is "timely" and

will not prejudice a party, it is normally an abuse of discretion to refuse to allow amendment if the denial will deprive a party of a meritorious claim or defense. *Morgan v. Sup.Ct.* (1959) 172 Cal.App.2d 527, 530; *Mabie v. Hyatt* (1998) 61 Cal.App.4th 581, 596.

Normally, delay alone is not a sufficient reason to deny amendment, unless the delay has resulted in prejudice to another party. *Hirsa v. Sup.Ct. (Vickers)* (1981) 118 Cal.App.3d 486, 490. Prejudice exists where the amendment would require delaying trial so as to cause a loss of critical evidence, added costs of preparation, increased discovery burdens, and similar problems. *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488. There is in fact a strong policy in favor of granting leave to amend. *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939. CCP section 576 expressly states that the court may allow a party to amend a pleading "at any time before or after commencement of trial." The policy of liberally allowing parties to amend pleadings therefore applies to allowing them to amend at any time up to and after the start of trial, absent prejudice. *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761.

Respondent's motion appears to be narrow and limited, but again the court is not certain and finds the lack of discussion to be problematic and to leave the matter unclear. Respondent refers to his desire to change the date of separation alleged in the original response and the court understands the motion to be limited to this one specific aspect of the response. The court finds no other evident desired change discussed in the motion, although the language is unclear. The court therefore finds that Respondent has only given notice of a request to alter the response as to the one specific item of the separation date alleged in the response, and no other aspect of the response.

Respondent also does not provide any explanation for the change, the reason for making the change, the purpose, or the specifics of the change, and he provides no propose amended response for the court to examine. He claims that the amendment will not prejudice Petitioner but he provides no explanation or other information by which the court could assess this factor. Respondent must correct these defects in order for the court to grant the relief requested.

"Other Requests"

Respondent also asks to be allowed to use blocked funds in an account to pay attorney's fees but is otherwise completely unclear. He presents no legal authority or analysis whatsoever for this request and also does not even explain what blocked funds he means, why the funds or blocked, or why he should be allowed to access them. He does not even indicate whose fees and costs he

means to pay. He appears to mean that he wants to pay his own fees and costs, but this is not clear and he does not detail the amounts or if these are still ongoing.

Finally, he asks the court to order Petitioner to obtain her own car and homeowner's insurance. He merely states, vaguely and with no other details, that an insurance adjustor who seems to be handling the claims regarding an automobile accident involving Petitioner, is "insisting the parties now obtain their own… policies because they live in different residences." This information id insufficient and vague. Moreover, he presents no legal authority and the court notes that generally automatic mutual restraining orders ("ATROs"), Fam.Code section 231-235, 2040(a), and CRC 5.50(b), may require one party to a proceeding in family law to provide insurance coverage for the other. Respondent does not address this. The court notes that it may be possible and appropriate, at least for the parties to have separate policies, but the court has no information on which to make a determination that Petitioner should be left to pay for her own insurance. Even if the parties were to have different policies, Respondent may be required to pay for Petitioner's and the court lacks information on which it may make such a determination.

Conclusion

At this point, the court is unable to grant the motion on any point. It therefore will DENY the motion without prejudice to Respondent again, and properly, requesting the relief and raising the issues in this motion. Respondent must present one or more proper and complete noticed motions, specifically and clearly identifying and giving notice of all issues and specific relief requested, and presenting points and authorities with applicable law, analysis of the legal standards, and providing evidence and factual analysis sufficient to allow the court to make a ruling. The court invites the parties to appear at this hearing in order to address the matters in this motion, and the defects, in order to determine if these issues may be resolved now. However, unless the parties do so, the court must deny the motion without prejudice as stated.

2. SFL56476 MULLEN DISSOLUTION

Motion to Charge Member's Interest in a Limited Liability Company

CONTINUED to the law and motion calendar of February 14, in Department 22 at 9:30 a.m. because there is no proof of service showing notice of this hearing. Prior to the new hearing, the moving party must file timely proof of service in accord with California Rule of Court 3.1300, demonstrating service of notice of the hearing.

Facts

Petitioner filed this action for marital dissolution on September 14, 2011. Judgment (the "Judgment") was entered on March 23, 2018. Since then, the parties have continued to litigate over issues of spousal support and Respondent's failure to pay court-ordered support. The Judgment awarded Petitioner spousal support of $2,200 per month from June 2016 until further order of the court plus an award of $50,000 in arrearages for unpaid spousal support up to that time, payable at $200 a month until fully paid. The judgment is final and enforcement has not been stayed, but Respondent has failed to pay any amount due. Etienne Declaration ("Etienne Dec."), ¶¶3-5. According to Petitioner, Respondent purchased real property in Wisconsin (the "Property") and she has discovered that Respondent has an interest in Mullen Family Enterprises LLC (MFE"), qualified to do business in California with an address at 22519 Lina Lane, Twain Harte, CA, with Respondent and his partner being the only registered members. Brett Ramsaur Declaration ("Ramsauer Dec."), ¶¶2-3.

Motion

In her Request for Order ("RFO") and Motion to Charge Member's Interest in a Limited Liability Company, Petitioner moves the court pursuant to Code of Civil Procedure sections 708.310 to 708.320, 708.610-708.620 and 564, and Corporations Code section 17705.03 for an order charging Respondent's membership interest in the limited liability company ("LLC") MFE for payment of the unpaid balance of the judgment entered in this action. She contends that the judgment is final, enforcement is not stayed, and Respondent has failed to pay the amount owed under the judgment.

There is no opposition.

Applicable Authority

According to the Family Law Rules of the California Rules of Court ("CRC") 5.2(d), and Family Code section 210, provisions applicable to civil actions generally apply to proceedings under the Family Code unless otherwise provided. This includes the rules applicable to civil actions in the California Rules of Court and the Code of Civil Procedure ("CCP"). See, e.g., *In re Marriage of Boblitt* (2014) 223 Cal.App. 4th 1004, at 1022; *In re Marriage of Zimmerman* (2 Dist. 2010) 183 Cal.App.4th 900, at 910-911.

Service and Notice

The only proof of service filed for this motion shows service proper to filing the motion, and thus prior to obtaining a hearing date. Therefore, nothing shows service of notice of the hearing date and information. The court must CONTINUE the motion on this basis unless the court finds that Respondent has received sufficient and proper notice.

Discussion

Any judgment or other court order or decree requiring payment of money is treated as a "money judgment." CCP §§ 680.230, 680.270. CCP §680.230 defines a "judgment" for purposes of enforcement of judgments. It states, in full, '"Judgment" means a judgment, order, or decree entered in a court of this state.' CCP §680.270 defines "money judgment" and states, in full, '"Money judgment" means that part of a judgment that requires the payment of money.'

CCP section 708.310 governs the satisfaction of a judgment against a partner of a partnership or member of an LLC. It states that " [i]f a money judgment is rendered against a partner or member but not against the partnership or limited liability company, the judgment debtor's interest in the partnership or limited liability company may be applied toward the satisfaction of the judgment by an order charging the judgment debtor's interest pursuant to Section 15907.03, 16504, or 17705.03 of the Corporations Code." Corp. Code section 17705.03 states, in pertinent part,

(a) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

Substantively, the motion is persuasive. The record is clear that Respondent owes Petitioner the stated amounts according to the Judgment and Petitioner has demonstrated that Respondent has failed to pay this amount. Petitioner also demonstrates that Respondent as the stated LLC interest, against which this court may make a charging order for satisfaction of the Judgment.

Should the court find there to be proper notice, the court will grant the motion.

Conclusion

The court CONTINUES the motion as explained above.

3. SFL60389 WENTLAND DISSOLUTION

Motion for Change of Venue to Butte County DROPPED.

Facts

Petitioner filed this action for dissolution of marriage with minor on August 29, 2012. The children are still minors. Judgment was entered on November 16, 2012. No litigation occurred after that date until August 2019. From then through November 12, 2020, the parties litigated over custody, visitation, other parenting issues, and child support. Until now, no other litigation has occurred since November 12, 2020.

On July 3, 2024, Respondent filed a Request for Order ("RFO") and Motion for Change of Venue to Butte County. Shortly before the August 9, 2024 hearing on that motion, on July 31, 2024, the moving party filed a request to continue the hearing to a date after September 23, 2024

because the moving party had not served the moving papers. The court entered an order on that request, continuing the motion to October 11, 2024. At the October hearing, the court again continued the motion, to December 13, 2024, because there was no proof of service for the moving papers or for notice of the hearing.

Motion

In the continued Motion for Change of Venue to Butte County, Respondent moves the court to transfer venue to the County of Butte ("Butte County"). She asserts that no parties currently reside in this county, the children primarily reside with her in Butte County, the children's schools, physicians, and friends are all in Butte County, and Petitioner resides out of state.

There is no opposition.

Service and Notice

There is still no proof of service for this motion and RFO. The court had determined, prior to the original hearing, that the record contained no proof of service or indication of notice of the motion or hearing and, as noted above, the moving party sought a continuance for this very reason. The court continued the motion a second time for this defect but the record still contains no proof of service for the continuance, the new hearing date, or indeed for the moving papers. The court therefore DROPS the motion.

Substantive Analysis

According to the Family Law Rules of the California Rules of Court, at CRC 5.2(d), and Family Code section 210, provisions applicable to civil actions generally apply to proceedings under the Family Code unless otherwise provided. This includes the rules applicable to civil actions in the California Rules of Court and the Code of Civil Procedure ("CCP"). See, e.g., *In re Marriage of Boblitt* (2014) 223 Cal.App. 4th 1004, at 1022.

CCP sections 395 and 396 thus generally apply to actions under the Family Code, specifically actions for marital dissolution, nullity or marriage, legal separation, and support obligations. CCP section 395(a). For marital-dissolution actions, venue is proper in any "county where either the petitioner or respondent has been a resident for three months next preceding the commencement of the proceeding…." CCP section 395(a).

Proper venue may also be determined based on the "convenience of witnesses and ends of justice." CCP section 397(c). This is discretionary. Ibid. The convenience which the court must consider is that of the nonparty witnesses and the court should consider the parties' convenience only in extraordinary circumstances. *Wrin v. Ohlandt* (1931) 213 Cal. 158, 160. The circumstances that might warrant considering the parties' convenience include cases where a party is unable to travel without endangering his or her life due to health or related reasons. See *Simonian v. Simonian* (1950) 97 Cal.App.2d 68, 69.

With respect to proceedings under the Family Code, two specific provisions apply to allow the court to make a venue determination based on issues of convenience and justice, but neither is directly applicable to this case. CCP section 397(e) allows the court in a proceeding for dissolution of marriage filed in the county in which the petitioner has been a resident for three months next preceding the commencement of the proceeding, and the respondent at the time of the commencement of the proceeding is a resident of another county in this state, to transfer venue to the county of the respondent's residence when doing so would promote the ends of justice. CCP section 397.5 states that, in proceeding for dissolution or nullity of marriage or legal separation of the parties under the Family Code, where both petitioner and respondent have moved from the county rendering the order, the court may transfer venue to the county in this state where either resides when the order would promote the ends of justice and the convenience of the parties.

Respondent demonstrates that no party still resides in this county; she and the children reside in Butte County; all witnesses are in Butte County; the distance from Butte County to this court is about 148 miles, or roughly a 3-hour drive; and Petitioner now resides in a different state. Request for Order ("RFO"), signed by Respondent under penalty of perjury; Collins Dec. This satisfies the requirements for transferring venue to Butte County under CCP sections 397 and 397.5.

Conclusion

The motion is DROPPED due to the lack of proof of service. However, it will be GRANTED in the event that the moving party demonstrates proper service and notice.

4. SFL090540 HERNANDEZ/UONG DISSOLUTION

Motion to Compel Discovery Responses/Sanctions CONTINUED to the law and motion calendar of February 14, in Department 22 at 9:30 a.m. because there is no proper proof of service of the moving papers. Prior to the new hearing, the moving party must file timely proof of service in accord with California Rule of Court 3.1300, demonstrating service of notice of the hearing.

Facts

Petitioner filed this action for marital dissolution with minor children on March 11, 2022.

The matter resulted in a judgment after default based on a marital settlement agreement ("MSA"). Petitioner filed a request to enter default on March 24, 2023 and the parties' stipulation and waiver of final declaration and disclosure on March 30, 2023. On April 24, 2023, she filed a declaration for default or uncontested dissolution, the judgment based on the attached MSA, and the notice of entry of judgment.

Nothing further took place on the record until September 9, 2024, when Petitioner's prior attorney filed a substitution of attorney and Respondent filed an income and expense declaration ("IED") as well as Request for Order ("RFO") to change the order for spousal support on the basis that he lost his job and is not currently able to pay support. The hearing on the modification RFO was set for October 21, 2024, but twice continued by stipulation to its current date of January 15, 2025.

In the context of Respondent's RFO to modify support, on September 13, 2024 Petitioner served Respondent by mail with Family Law Form Interrogatories and Demands for Production (the "Discovery"), with responses due by October 18, 2024. Declaration of Rebecca Dao Cornia (the "Cornia Dec."), ¶1. Petitioner has received no responses to the discovery but she received an e-mail from Respondent on October 15, 2024 stating that he would not respond to the discovery on the basis that the discovery is not relevant and is beyond the scope of the litigation because the date of separation was December 2021. Cornia Dec., ¶¶2-3.

On November 7, 2024, Respondent, up to that point self represented, filed a substitution of attorney naming Andrew Conway ("Conway") as his attorney of record.

Motion

In her Request for Order ("RFO") and Motion to Compel Discovery Responses/Sanctions, Petitioner moves the court to compel Respondent to serve responses to the Discovery. She also seeks monetary sanctions for the attorney's fees and costs of bringing this motion.

There is no opposition.

Applicable Authority

According to the Family Law Rules of the California Rules of Court ("CRC") 5.2(d), and Family Code section 210, provisions applicable to civil actions generally apply to proceedings under the Family Code unless otherwise provided. This includes the rules applicable to civil actions in the California Rules of Court and the Code of Civil Procedure ("CCP"), and specifically proceedings pursuant to the Civil Discovery Act set forth at CCP section 2016.010, et seq. See, e.g., *In re Marriage of Boblitt* (2014) 223 Cal.App. 4th 1004, at 1022 (discovery).

Service and Notice

Petitioner filed the proof of service for the moving papers on November 4, 2024, showing only electronic service on Respondent. At that time, Respondent was still self represented and Petitioner has not shown that Respondent agreed to electronic service.

Electronic service on a self-represented party is not sufficient absent an affirmative consent to such service. CRC 2.251(c)(3)(B); CCP section 1010.6. CRC 2.251(c)(3)(B)states that self-represented parties, and other parties who otherwise are not required to file or serve documents electronically, may only be served electronically if they "affirmatively consent to electronic service."

Respondent hired an attorney, who substituted in to the action, but only after Petitioner states she served him. There is also no opposition indicating notice of the motion. The court therefore CONTINUES this motion due to the defective service. Petitioner must file new, timely,

and legally sufficient proof of service prior to the new hearing date showing roper service of all the moving papers as well as notice of the new hearing information.

Substantive Discussion

Fam. Code section 218 states, "when a request for order or other motion is filed and served after entry of judgment, discovery shall automatically reopen as to the issues raised in the postjudgment pleadings currently before the court." The date initially set for trial in CCP section 2024.020, it adds, "shall mean the date the postjudgment proceeding is set for hearing on the motion or any continuance thereof, or evidentiary trial, whichever is later"

Where a party seeks to compel responses to interrogatories under CCP section 2030.290 and production demands under CCP section 2031.300, the moving party need only demonstrate that the discovery was served, the time has expired, and the responding party failed to provide a timely response. CCP sections 2030.290, 2031.300; *Leach v. Sup.Ct.* (1980) 111 Cal.App.3d 902, 905-906. Failure to provide a timely response waives objections, "including one based on privilege or on the protection for work product…." CCP sections 2030.290, 2031.300. There is no meet-and-confer requirement or a deadline for a motion to compel response where none has been made. CCP sections 2030.290, 2031.300. Where a party has failed to respond on time to a request for production, the first step is not to compel production but, as with interrogatories, to compel a response. CCP section 2031.300.

Petitioner has met her burden here. She shows that she properly served Respondent with the Discovery but Respondent has not provided responses, even though the deadline has expired, and has informed her that he will not respond.

Should the court find service and notice to be sufficient, the court will grant the motion.

Sanctions

For compelling responses to interrogatories and production requests, the court shall impose monetary sanctions on the losing party unless that party acted with substantial justification, or other circumstances make sanctions unjust. CCP sections 2023.010, 2023.030, 2030.290, 2031.300. In order to obtain sanctions, the moving party must request sanctions in the notice of motion, identify

against whom the party seeks the sanctions, and specify the kind of sanctions. CCP section 2023.040. The sanctions are limited to the "reasonable expenses" related to the motion. *Ghanooni v. Super Shuttle of Los Angeles* (1993) 20 Cal.App.4th 256, 262.

Petitioner here asks for monetary sanctions of $950 for three hours spent, including meeting and conferring, plus two hours anticipated, at $175 an hour, and costs of $75 for filing the motion. Cornia Dec., ¶¶4-5. This is facially reasonable but the court may only compensate for time both reasonably and actually incurred, so it may at this point compensate Petitioner only for the three hours spent, resulting in total sanctions of $600. Should the court grant the motion, the court will award Petitioner, against Respondent, monetary sanction of $600, without prejudice to Petitioner obtaining more subject to proof.

Conclusion

The court CONTINUES the motion as set forth above due to the lack of proper service.

5. SFL090902 HAILE/HAILE DISSOLUTION

Motion to Quash Illegal Subpoena DROPPED due to lack of proof of service.

Facts and History

Petitioner filed this action for dissolution of marriage on April 21, 2022. Respondent had filed a related action for domestic violence and temporary restraining order against Petitioner on April 8, 2022, and the two actions were consolidated under this matter. Respondent's representation has changed several times. He is currently self represented.

Respondent appealed different court orders, apparently including orders on discovery motions and an award of attorney's fees in favor of Petitioner. Some appeals were dismissed but ultimately the court of appeal heard the appeal from several orders and rejected Respondent's arguments, affirming the court's orders in a decision of October 2023, with a remittitur filed in this case on December 29, 2023. The court awarded costs to Petitioner, noting that this was "if any, as she did not file a respondent's brief."

Petitioner obtained a writ of execution for enforcement of money judgment, in the amount of $8,987.50 and filed the writ on January 22, 2024. Respondent asserted a claim of exemption regarding Petitioner's efforts to collect money owed, including her writ of execution. Petitioner filed an opposition to the Exemption and motion for hearing on it. The claim of exemption was filed with the court on February 9, 2024. At the initial hearing on the claim of exemption, on February 16, 2024, this court continued the matter to March 15, 2024 for further briefing. At the hearing on March 15, 2024, the court continued the matter again, to June 21, 2024, for an evidentiary hearing and to put Respondent under oath regarding his financial situation. It ordered Respondent to be personally present.

Upon the retirement of the judge who had been hearing these proceedings and assignment to a new judge, Respondent filed a peremptory challenge pursuant to Code of Civil Procedure ("CCP") section 170.6. This was accepted and the matter was reassigned. At that time, the pending hearings were rescheduled to the calendars in the new department.

Respondent also filed a Motion to Quash Petitioner's 2nd Time Subpoena. After a hearing on July 26, 2024, this court denied that motion.

The court held the continued evidentiary hearing on Respondent's claim of exemption on August 22, 2024. Petitioner's attorney was present but Respondent was not present, despite the court having ordered him to be present in order to provide his evidence and despite the record demonstrating that Respondent was aware of both the requirement and the hearing. At the conclusion of the hearing, the court denied the claim of exemption based on the evidence before it, which included Respondent's title to the residential real property demonstrated sufficient equity in that property.

Respondent filed a "Motion to Act Under CCP 128(8)." At the hearing on that motion on September 13, 2024, this court continued the motion because the court record contained no proof of service demonstrating notice of the hearing and there was no opposition.

On September 25, 2024, Respondent filed a notice of appeal of the order denying his claim of exemption. On September 26, 20204, Respondent filed a declaration stating, "ALL PROCEEDINGS HEREINAFTER ARE STAYED AS A MATTER OF RIGHT" and citing Code of Civil Procedure sections 916(a) and 410.10.

Respondent, meanwhile, filed a Request for Order ("RFO") and "Motion to Quash Illegal Subpoena," set for October 11, 2024. The court continued the motion to December 13, 2024 due to lack of proof of service or other indicia of notice.

Motion

In his Request for Order ("RFO") and "Motion to Quash Illegal Subpoena," Respondent moves the court to quash one or two subpoenas issued on July 25, 2024 and August 9, 2024, to Redwood Credit Union ("RCU") for financial records of Respondent.

There is no opposition.

Service and Notice

As was the case at the prior hearing, the only proof of service for this motion was filed on August 15, 2024, at the time Respondent filed this motion, and it shows service having occurred on August 13, 2024, two days before Respondent filed this motion. Accordingly, nothing demonstrates service of any notice that a motion was filed or notice of the hearing. The court has provided Respondent a second chance to cure this defect and he has failed to do so. Accordingly, the court DROPS the motion.

The court nonetheless presents a discussion of the merits below, as they currently stand, in case the court determines the notice issue to be resolved.

Appeal

The court notes that Respondent has filed a notice of appeal and a notice claiming that the appeal stays these proceedings.

Some proceedings or events automatically stay other proceedings. See, e.g., *Daly v. San Bernardino County Board of Supervisors* (2021) 11 Cal.5th 1030, at 1035 (appeals of mandatory injunctions automatically stay such injunctions); *U.S. v. Dos Cabezas Corp.* (9th Cir.1993) 995 F.2d 1486, at 1491 (automatic stay of proceedings upon filing of a bankruptcy action). However, stays are otherwise not automatic and do not take effect until a court issues a stay. See, e.g., *Daly, supra* (appeal of decision does not automatically stay enforcement of prohibitory injunctions); *IBM Corp. v. Brown* (C.D.Cal.1994) 857 F.Supp.1384, at 1387 (courts may, in their discretion, stay civil proceedings involving a party to pending related criminal proceedings, but such a stay is not

required); *Avant! Corp. v. Sup.Ct.* (2000) 79 Cal.App.4th 876, at 882-883 (the same); *Smith v. Jones* (1900) 128 Cal.14 (it is permissible but not mandatory to stay ejectment proceedings pending appeal of a judgment quieting title to the property).

Discussion

According to the Family Law Rules of the California Rules of Court ("CRC") 5.2(d), and Family Code section 210, provisions applicable to civil actions generally apply to proceedings under the Family Code unless otherwise provided. This includes the rules applicable to civil actions in the California Rules of Court and the Code of Civil Procedure ("CCP"), and specifically proceedings pursuant to the Civil Discovery Act set forth at CCP section 2016.010, et seq. See, e.g., *In re Marriage of Boblitt* (2014) 223 Cal.App. 4th 1004, at 1022.

A party seeking to compel deposition testimony or production of items and things, including records or other documents, from a non-party may serve that non-party with a subpoena to compel the non-party's attendance, testimony, or production of documents. CCP sections 2020.010(b), 2020.220, 2020.410, 2025.280(b); *Terry v. SLICO* (2009) 175 Cal.App. 4th 352, 357.

A party, witness, consumer, or employee may bring a motion to quash, condition, modify, or compel compliance with, a subpoena requiring attendance or production of items before a court, at trial, or a deposition. CCP section 1987.1. The order compelling compliance shall be pursuant to the terms and conditions which the court declares. CCP section 1987.1.(a). The court itself may bring such a motion on its own. CCP section 1987.1. The court may also on such a motion make an order "as appropriate to protect the person from unreasonable or oppressive demands…." Ibid. See also CCP sections 1985.3(g), 1985.6(f).

Respondent provides no point and authorities and makes no mention of the legal authority for this motion, the standards which the court is to apply, or any explanation as to how the subpoena is "illegal" or what this means.

California Rule of Court ("CRC") 3.1113 makes it clear that a moving party must provide a memorandum of points and authorities, which "must contain a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced." The court "may construe the absence of a memorandum as an admission that the motion… is not meritorious and cause for its denial…."

Moreover, a court ordinarily may not grant a motion based on grounds which are not asserted in the notice of motion or grant relief not requested in the notice of motion. CCP section 1010; CRC 3.1110(a); see *People v. America Sur. Ins. Co*. (1999) 75 Cal.App.4th 719, 726; *Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1124; *Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1277-1278.

Not only does Respondent violated the above requirements but, as a practical matter, the lack of any explanation, authorities, or discussion, means that the court has nothing on which to base its decision. Respondent fails to indicate why the subpoena should be quashed or what the possible defect is.

Conclusion

At this point, the court DROPS the matter as explained above.

END OF TENTATIVE RULINGS