TENTATIVE RULINGS: CIVIL LAW & MOTION

Friday, February 21, 2025 at **3:00 p.m.**
Courtroom 18 – Hon. Kenneth G. English
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) 521-6604**, 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=aW1JTWlIL3NBeE9LVHU2NVVpQlVRUT09

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
Call: +1 669 900 6833 US (San Jose)

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. 23CV02016, Cruz v. McGoon: Compel Initial Responses

Defendant Caturegli moves the court to compel Plaintiff Silbio Moran Hernandez to respond to the Discovery and she requests monetary sanctions. There is no opposition.

Defendant Stephanie Caturegli ("Caturegli") served Plaintiff Silbio Moran Hernandez with Form Interrogatories, Special Interrogatories, and Request for Production of Documents (collectively, the "Discovery") on February 14, 2024. Zamora Dec. Plaintiffs had 35 days to respond with responses due by March 18, 2024. Ibid. Plaintiffs failed to respond by the deadline and, although Caturegli made efforts to resolve the matter informally through letters on April 19, 2024, September 25, 204; and October 29, 2024, Plaintiffs have never responded.

The court **GRANTS** the motion in full and awards monetary sanctions. Caturegli in her notice of motion and motion requests monetary sanctions of $322.84 against Plaintiff Silbio Moran Hernandez. This is based on two hours spent at $131.42 an hour plus the $60 filing fee. Zamora

Dec., ¶10. This amount is reasonable. The court awards the moving party sanctions of $322.84 against Plaintiff Silbio Moran Hernandez.

The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

2. <u>24CV02350, Looney v. Y & S USA, Inc.:</u> Plaintiff's Motion to Compel Answers to Post-Judgment Discovery and Sanctions

The unopposed motion is **GRANTED** and sanctions are awarded as to the $60.00 cost of filing. Defendants shall provide complete, objection-free verified responses to Plaintiff, produce requested documents, and pay $60.00 in sanctions within 30 days of service of the notice of entry of order.

Plaintiff Gary Looney ("Plaintiff") moves to compel Defendants Y & S USA, Inc. (doing business as Street Corner Urban Market #164) and Yaron Barami (as personal guarantor of MST Hospitality West Valley, Inc.), and Lonnie Moore (as owner) ("Defendants") to provide full and complete responses to Plaintiff's first set of post-judgment interrogatories and Plaintiff's demand for production of documents and tangible things.

Plaintiff served post-judgment interrogatories and demands for production of documents on Defendants on October 14, 2024. (Looney Declaration, ¶ 1.) Defendants did not respond to the discovery requests, did not request any extensions, and did not acknowledge Plaintiff's efforts to meet and confer regarding the discovery. (Looney Declaration, ¶¶ 2–4.) Plaintiff notified Defendants of intent to file this motion to compel. (Looney Declaration, Exhibit B.) Defendants have not been examined by Plaintiff or the judgment creditor or responded to any other discovery within 120 days before the motion was filed. (Looney Declaration, ¶ 5.)

Based on the foregoing, Plaintiff's motion is **GRANTED** and sanctions are awarded in the amount of $60.00 for filing costs. Defendants shall serve complete, objection-free verified responses to Plaintiff and pay $60.00 in sanctions within 30 days of service of the notice of entry of order.

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

3. <u>24CV02736- Hickey v. Cellular World of Sonoma County</u>: Demurrer to Plaintiff's Complaint

Demurrer to Plaintiff's Complaint **CONTINUED** to the law and motion calendar of April 9, 2025 in Department 18 at 3:00pm 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,

The only proof of service for this demurrer is the one filed at the same time as the demurring papers. This is insufficient because it shows only service prior to filing the demurrer and thus prior

to obtaining the hearing date and information. Subsequently, Defendants only filed a proof of service for the notice of informal conference and sanctions. This is insufficient to show proper notice of the hearing on the demurrer. Accordingly, Defendants fail to demonstrate notice to Plaintiff of the hearing on the demurrer, or that they in fact filed a demurrer. The court therefore CONTINUES the demurrer. Defendants must cure the defect by filing timely proof of service in accord with California Rule of Court 3.1300, demonstrating service of notice of the hearing.

4. 24CV03343, Wells Fargo Bank, N.A. v. Patino: Plaintiff's CCP section 438 Motion for Judgment on the Pleadings.

Pursuant to CCP section 438, plaintiff moves for judgment on the pleadings (as to all causes of action) on the grounds that plaintiff's complaint alleges sufficient facts establishing the elements for each cause of action and defendant has admitted the truth of all of those facts and has not asserted any affirmative defenses. Specifically, defendant argues that defendant has admitted that defendant was issued the subject credit card, that defendant used the credit card to make charges, that defendant was to repay the Plaintiff the principal amount charged plus interest and other charges, that defendant received monthly statements for the account for the subject credit card, that defendant never disputed the accuracy of the statements, that defendant has not repaid the balance due of $35,762.03 on the subject credit card, and that defendant does not have any defenses to Plaintiff's complaint. Plaintiff further requests the Court take judicial notice of the complaint and answer. No OPPOSITION has been filed.

The unopposed request that this Court take judicial notice of the Complaint and Answer pursuant to Evidence Code section 452(d) is GRANTED. The Court notes that the alleged written contract is attached to the complaint itself.

Defendant has admitted all facts alleged in the complaint and has not raised any affirmative defenses. Therefore, the motion turns on the issue of whether the facts alleged in the complaint are sufficient to support each element of the alleged causes of action.

This Court finds that sufficient facts are stated to support each element of the six causes of action alleged. Therefore, plaintiff's motion for judgment on the pleadings is GRANTED.

However, the motion is **GRANTED WITH LEAVE TO AMEND**. Defendant may file an amended Answer within 30 days of written notice of entry of this order. CCP section 438(h)(2). If an amended Answer is not filed within the time allowed, judgment shall be entered forthwith in favor of Plaintiff. CCP section 438(h)(4)(C).

Pursuant to CRC 3.1312, Plaintiff shall prepare a proposed order for signature consistent with this ruling.

5. & 6. SCV-268721, Russell v. Russell: (1) Defendant's Motion to Set Aside Default; (2) Motion to Correct Clerical Error

The Court previously continued the hearings on these motions pending the appeal of the judgments. The appeal is not yet resolved. As such, the hearings on these motions are again CONTINUED to June 18, 2025 at 3:00 pm in Department 18. Moving party to provide notice of continued hearings.

7. <u>SCV-271383 Pershing v. CSAA Insurance Exchange</u>: Compel Further Responses to Plaintiff's Second Set of Requests for Production

Motion to Compel Further Responses to Plaintiff's Second Set of Requests for Production **GRANTED** solely as to the request to compel further responses. The motion is **DENIED** without prejudice as to the request to compel production because, absent a response agreeing to produce the requested documents, Plaintiff is not yet entitled to such relief.

Plaintiff presents the history of the discovery at issue in the instant motion in two declarations of attorney Stacy M. Tucker (collectively, the "Tucker Declarations"), which are largely similar, even duplicative, but are not the same and differ in some details. According to these, at ¶¶14-17 of both, on August 22, 2024, Plaintiff served AAA with her Second Set of Requests for Production ("RFPs"); AAA served responses on November 6, 2024; and AAA attached to the responses the purported licensing agreement between AAA and a third party, Verisk. These declarations, at ¶¶3-4 and 11-13, explain that in its document production in this litigation, AAA also produced underwriting and agent files, a "360Value" manual with definitions of quality grades for insuring; and 360Value estimates for the Property. Plaintiff also indicates in these declarations, at ¶15, that her attorney contacted Verisk and learned from Verisk that the latter is unable to produce historical versions of the 360Value database, which is updated monthly without ongoing backups of older data.

In her Motion to Compel Further Responses to Plaintiff's Second Set of Requests for Production, Plaintiff moves the court to compel Defendant AAA to provide further document production and responses to Plaintiff's RFPs. Defendant AAA opposes the motion and Plaintiff replies.

Plaintiff requests judicial notice of California Code of Regulations Title 10, section 2695.183 ("10 CCR 2695.183") and the December 3, 2018 Department of Insurance Published Report of the Targeted Market Condict Examination of the CSAA Insurance Exchange (NAIC #15539) and of the CSAA Fire and Casualty Insurance Company (NAIC #10921). These are judicially noticeable. The court GRANTS the request.

A request for production pursuant to CCP section 2031.010 may be served on, and seek production of documents and things from, any party. However, a party seeking to obtain the records or items of a non-party must serve that non-party with a subpoena pursuant to CCP section 2025.280. CCP section 2031.010 expressly states that the RFP mechanism may be used to obtain the documents, items, or information, "in the possession, custody, or control of any other party to the action." Emphasis added.

According to Plaintiff's separate statement of items in dispute, she seeks further responses and further document production for RFPs 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75. These request 360Value cost estimates for replacing the loss on the Property using specified characteristics which Plaintiff asserts are the same characteristics on which Defendants based the January 2018 replacement-cost estimate exact for a change to one criterion in each RFP. Plaintiff asserts that the estimates are needed to compare the difference between what she claims are the correct and incorrect data inputs for each characteristic in order to determine the insurance estimate which she would have received had each data input been correct. She further explains that,

based on the information already obtained from Verisk, this is necessary because of the constant updating to the Verisk database preventing comparison using data for prior years. She also asserts that the contact which Defendant CSAA has with Verisk allows CSAA's agent, AAA to "provide estimated replacement cost values to the homeowners for which the value was produced."

AAA responded to all of these with the same response. In this response, AAA objects that discovery cannot be used to require it to create a new document and adds that it had previously produced all estimates generated pertaining to the Property while Verisk has indicated its position that generating estimates for the discovery purposes exceeds the license granted to AAA.

AAA in part raises arguments over the validity of subpoenas which Plaintiff served on Verisk and the proprietary nature of the 360Value system. This information has no impact on the validity of this motion because AAA did not raise these points in its objections. Moreover, as Plaintiff argues, despite proprietary nature of the 360Value system and the limitations of the contract between Verisk and Defendants, that contract expressly allows Defendants to obtain cost estimates for the insured homeowners, such as Plaintiff.

AAA provides a declaration of one Patricia Hopkinson, an employe of a subsidiary of Verisk who claims to be head of 360Value. She provides information regarding the ownership of 360Value system, how it works, and the meaning of the information and estimates which it generates. She also describes the history of the agreement with Defendants. This information may affect the final implications of the discovery sought and whether it will in fact support Plaintiff's claims, but none of this information is material to this motion, which is limited to determining whether Plaintiff has a right to obtain the information to use in litigation.

Plaintiff is persuasive that she is not improperly requesting Defendants, or Verisk, to create a new document. She is merely asking for a document generated from a constantly changing, dynamic database using the information already in that database. As she explains, noted above, Defendants and Verisk have responded to her previously that it is not possible to create estimates using data for prior years because that information no longer exists in the database. The parties cite and discuss a range of authorities on this issue, mostly from outside the California courts, and although they disagree on the application, they basically agree that courts have repeatedly found those responding to RFPs or subpoenas to have the obligation to generate reports from dynamic databases, or to retrieve data in order to prepare and provide usable, disclosable records.

AAA distinguishes this authority by arguing that in this case it is Verisk, not AAA, which has the database and generate the records and by arguing that producing the requested records would violate Verisk's trade secrets and copyright. AAA's arguments here are unpersuasive.

As noted, AAA made no objection based on copyright, trade secrets, or the assertion that a separate entity possessed the database and generated the documents, or that asking Verisk to generate the requested documents was beyond the scope of the contract with Verisk. Since AAA did not in any way raise such objections, they are waived and immaterial to this motion.

The court, moreover, is not persuaded that there would be any infringement of copyright or trade secrets. According to Verisk's contract with Defendants, and as both Defendants and Verisk have themselves indicated, Verisk was to provide Defendants with exactly the type of estimates here requested, and these were to be provided to Plaintiff for Plaintiff's insurance needs. AAA itself notes that the contract "grants AAA use of the 360Value software" for purposes of selling or

renewing insurance products, the purposes which are at issue in this lawsuit. It argues that it has no authority to create derivative works from Verisk's product and that this request it to create such derivative works. AAA is incorrect. The request simply requires Verisk to create the very type of estimates which the contract allows and requires, and related to the very purpose set forth in the contract. The discovery does not ask AAA to produce anything derivative of Verisks's product or to obtain or reveal Verisk's secrets in any manner. Verisk and Defendants also have apparently indicated that the reason that they cannot provide ones using the data for the years in question is not because of the concern over trade secrets or copyright but because the data for those years no longer exists. Simply generating new ones for comparison using current data is no different. Plaintiff also notes in her reply that there is a protective order in place in this action.

AAA's argument that Plaintiff is improperly asking it to obtain and provide the estimates from another entity is likewise unavailing. As with the argument over copyright and trade secrets, AAA did not object that Plaintiff is asking the wrong entity for the documents but only that AAA has no obligation to generate new documents. It has waived any possible objection that Plaintiff cannot ask it to provide estimates which it must obtain from Verisk. Moreover, Plaintiff is simply asking Defendants to obtain and provide the types of documents which they provided through their interactions with Plaintiff anyway, and based on a contract by which Defendants have a right to obtain those estimates for the purpose at issue here and in this lawsuit. Although a party may not ordinarily seek documents of a non-party by serving a discovery request on a party who does not possess those documents, the contract, context, and nature of the information and documents at issue here does not make the request in this instance improper.

AAA also argues that there is no good cause for production because the requested documents only generate estimates and Plaintiff is able to hire an expert to create estimates in order to determine damages. While AAA's argument that Plaintiff could hire an expert to obtain actual cost estimates and thus damages is valid, this does not mean that there is no good cause for the requested documents. The requested documents go not to the actual costs of replacement but to the differences between the estimates which Defendants and Versik provided and those which they would have provided using the different data. This is material to determining whether, and by how much, Defendants' estimates and provided coverage would have differed. Plaintiff also needs this because Verisk cannot provides ones using the data for the time since it claims that information no longer exists.

Finally, as indicated above, at this time the proper remedy which Plaintiff may obtain is an order compelling new responses, not production. AAA has not yet agreed to produce anything so Plaintiff may not obtain an order that AAA produce anything until it provides a response stating that it will produce the requested documents.

The court **GRANTS** the motion solely as to the request to compel further responses. The motion is **DENIED** without prejudice as to the request to compel production because, absent a response agreeing to produce the requested documents, Plaintiff is not yet entitled to such relief.

The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

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