

TENTATIVE RULINGS: CIVIL LAW & MOTION

Friday, March 28, 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=aW1JTWIL3NBeE9LVHU2NVVpQlVRUT09>

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. 24CV05019, Looney v. 8367, Inc.; A California Corporation: Petitioner’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 8367, Inc. (doing business as Prost) and Seong H. Oh (as personal guarantor of 8367, Inc.) (“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.

Procedural History

Plaintiff served post-judgment interrogatories and demands for production of documents on Defendants on December 4, 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.)

Motion to Compel Post-Judgment Discovery

A judgment creditor may propound interrogatories and requests for documents to a judgment debtor. (Code of Civil Procedure [“C.C.P.”] § 708.010, et seq.) These may be served on the judgment debtor any time while the judgment is enforceable, except not within 120 days after the judgment creditor examined the judgment debtor, or after the judgment debtor responded to an earlier set of such discovery. (C.C.P. §§ 708.010(a), 708.020(b).)

A responding party who fails to serve timely responses to interrogatories waives all objections, including privilege and work-product based objections, and the propounding party may move for an order compelling responses. (C.C.P. § 2030.290(a)–(b); *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404.) Likewise, failure to serve timely responses to requests for production of documents results in waiver of all objections and allows for a motion to compel responses. (C.C.P. § 2031.300(a)–(b).) Additionally, the Court “shall” award sanctions for failure to respond. (C.C.P. § 708.020.)

Here, Plaintiff properly served the discovery requests to Defendants who failed to respond. 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.) Accordingly, the Court will grant the motion.

Conclusion

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. Unless oral argument is requested, the Court will sign the proposed order lodged with the motion.

2. 24CV01706, Contrarian Investors Fund, LLC v. Patoka: Defendant/Cross-Complainant's Motion to Compel Discovery Responses from Sean Lewis

Defendant/Cross-Complainant Kathrina Patoka's (“Defendant” or “Patoka”) motion to compel Cross-Defendant Sean Lewis (“Cross-Defendant” or “Lewis”) to provide responses to Requests for Production of Documents (“RFPDs”), set one is **GRANTED**. Lewis must serve verified, objection-free responses to RFPD, set one within **30 calendar days** from service of notice of entry of this Order.

Patoka's request for attorneys' fees and costs incurred in bringing this motion is **GRANTED** in the amount of \$3,532.50.

Procedural History

This action arises from a dispute between Patoka and her former business with Lewis and Cross-Defendant, Chad Hought, who allegedly defrauded her by using her investment payments to pay themselves and Lewis' business, Custom Care Home Repair. (Memorandum and Points of Authorities

[“MPA”], 2:21–3:3.) After filing her Cross-Complaint on April 18, 2024, Patoka propounded discovery requests on July 16, 2024 on Lewis via his counsel at the time, which consisted of RFPDs, set one. (MPA, 2:6–7, 2:21–23, 3:5–6.) Patoka gave Lewis until August 19, 2024 to serve responses, but Lewis did not serve any responses and has not to this day. (MPA, 3:6–15.) Patoka now motions the Court to compel Lewis to produce responses to RFPDs, set one.

Patoka’s Motion to Compel

Here, Lewis was served via counsel on July 16, 2024. Lewis’ former attorney filed a substitution of attorney with the Court on August 19, 2024 stating Lewis would be representing himself, which is the day discovery responses were due. Thus, Lewis was represented by counsel for the entire period when discovery responses were sought (July 16 to August 19). Lewis’ former counsel was properly served with the RFPDs and Lewis was properly served with this motion, but Lewis still failed to respond. (See Proof of Service, Miller Declaration, Exhibit A; Proof of Service, MPA, pp. 9–10.) All 35 of the RFPDs appear to be related to Patoka’s Cross-Complaint. Therefore, the Court **GRANTS** Patoka’s unopposed motion to compel responses from Sean Lewis to RFPDs, set one. Lewis must serve verified, objection-free responses to RFPDs, set one within 30 calendar days from service of notice entry of this Order.

Monetary Sanctions

Patoka requests \$3,532.50 in sanctions for the following work: (1) Joshua Bailey– 0.4 hours at \$330 per hour and 5.1 hours at \$365 per hour; (2) John Gutierrez– 4.4 hours at \$285 per hour; (3) Eric Miller– 0.5 hours at \$450 per hour; and (4) \$60 for the filing fee. (Miller Declaration, ¶¶ 18, 20; Bailey Declaration, ¶¶ 11–16.) The fees appear to be actual and reasonable. As Lewis’ lack of response necessitated Patoka’s motion, the Court shall impose monetary sanctions. Thus, the Court **GRANTS** \$3,532.50 in sanctions imposed against Lewis.

Conclusion

Patoka’s motion to compel is **GRANTED** and sanctions are awarded to Patoka in the amount of \$3,532.50 for attorneys’ fees and costs. Lewis shall serve verified, objection-free responses to Plaintiff and pay \$3,532.50 in sanctions within 30 days of service of notice of entry of order. Patoka 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. 24CV04952, County of Sonoma v. Kovacs: Plaintiff’s Motion for Default Judgment and Permanent Injunction against Defendant Adam Kovacs

Plaintiff County of Sonoma’s (“Plaintiff” or “County”) unopposed motion for default judgment and permanent injunction only against Defendant Adam Kovacs (“Defendant”) is **GRANTED** pursuant to Code of Civil Procedure (“C.C.P.”) section 585(b). Pursuant to section 580(a), relief on a default judgment is limited to what is prayed for in the complaint. Thus, relief is granted only for the total amount of **\$45,371.75** as prayed for in the County’s Complaint.

Procedural History and Factual Background

The County issued several Sonoma County Building Code violations on Defendant’s real property located at 17350 Vailetti Drive, Sonoma, California (also known as SonomaFit – Sonoma Oasis) on January 5, 2023. (Memorandum and Points of Authorities [“MPA”], 1:19–2:22.) A Permit Sonoma

inspector observed construction work that was unpermitted and subsequently issued and posted two “Stop Work Orders” on the Property. (MPA, 2:18–24.) The Inspector also posted a Notice and Order for this violation on the Property, stating that Defendants had 30 days to remove the violations and that it was a final notice unless Defendants appealed within 10 days. (MPA, 2:23–3:5.) Defendant called Permit Sonoma on January 5, 2023 inquiring about the required permits but did not return the Inspector’s voice message and did not appeal the Notice. (MPA, 3:9–13.) Even though Defendants submitted a building permit on March 10, 2023, they restarted construction on the Property before the permit was approved, in violation of the Stop Work Order as observed by Permit Sonoma on April 25, 2023. (MPA, 3:14–4:5.) Permit Sonoma contacted Defendant on April 26, 2023, June 1, 2023, and June 13, 2023 to advise him that the permit had not been issued because Defendant failed to render payment for the permit. (MPA, 4:6–8.) Defendant paid for the building permit on June 13, 2023, which expired on August 31, 2023. (MPA, 4:14–18.)

Defendant continued construction into December of 2023 by which time Defendant had not completed the work that was required to be completed pursuant to the terms of the permit, had completed other work not covered by the terms of the permit, and violated the third Stop Work Order issued on September 28, 2023. (MPA, 4:26–5:18.) On December 27, 2023, Permit Sonoma sent a Civil Penalties letter which Defendants did not appeal, finalizing the daily civil penalty. (MPA, 5:19–27.) On February 20, 2024, a Notice of Abatement Proceedings was recorded against the Property and at this point, Defendants had not completed the revised permit or scheduled the final inspection for the work allowed under the permit. (MPA, 5:28–6:5.) On June 5, 2024, Defendants submitted a permit revision application to cover the work that exceed the scope of the permit and Permit Sonoma subsequently referred the matter to Sonoma County Counsel on June 11, 2024. (MPA, 6:10–15.) The County filed its Complaint to Abate Public Nuisances, to Abate Building Code Violations, for Injunctive Relief, and for Money Judgment for Costs, Fees, and Penalties on August 23, 2024. (MPA, 6:17–18.) Defendant was personally served with the Summons and Complaint on September 30, 2024. (MPA, 6:18–20.) On November 12, 2024, the County filed a Request for Entry of Default against Defendant, which was entered on November 25, 2024. (MPA, 6:21–23.)

The County now the moves for a default judgment against Defendant. Defendant did not move to set aside the default. Despite proper service of the motion, no opposition or reply was filed with the Court.

Plaintiff’s Request for Judicial Notice

Judicial notice of official acts and regulations and legislative enactments by any public entity in the U.S. is statutorily appropriate. (Evid. Code § 452(b)–(c).) The court may take judicial notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code § 452(h).) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under Evidence Code section 452. (Evid. Code § 453.) Courts may take notice of public records, but not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Plaintiff requests judicial notice of three categories of documents in support of its motion for Default Judgment: (1) three filings in this matter *County of Sonoma v. Kovacs* (24CV04952), (2) various sections of the Sonoma County Code, and (3) various recorded deeds related to the Property. (Plaintiff’s Request for Judicial Notice, filed January 17, 2025.)

The Court **GRANTS** Plaintiff's request for judicial notice subject to the evidentiary limitations above.

Default Judgment and Permanent Injunction

Generally, C.C.P. section 585(b) allows for default where defendant has been served, other than by publication, and has neither responded nor appeared. Plaintiff can, after the requesting for an entry of default and the Court entering default, apply for the relief demanded in the complaint. (C.C.P. § 585(b).) When the court enters a default judgment per C.C.P. section 585, the relief granted that must not exceed the amount prayed for in the complaint, in the statement required by 425.11 or 425.115, or as appears by the evidence to be just. (C.C.P. §§ 580(a), 585(b), 585(c).) Furthermore, "courts have consistently held section 580 is an unqualified limit on the jurisdiction of courts entering default judgments. As a general rule, a default judgment is limited to the damages of which the defendant had notice. Further, the courts have reaffirmed the language of section 580 is mandatory. Therefore, 'in all default judgments the demand sets a ceiling on recovery.'" (*Finney v. Gomez* (2003) 111 Cal.App.4th 527, 534, footnotes omitted.)

Here, the County moves for default judgment against Defendants per section 585(b) and requests a permanent injunction against Defendant and persons acting on his behalf for the unpermitted work and code violations on the property. The County seeks an increased amount to be entered in default judgment for costs, fees, and civil penalties and abatement costs against Defendant for the total amount of \$59,320.75 plus additional daily civil penalties continuing to accrue at \$62 per day if Defendant does not abate the violations within the time specified. (MPA, 8:23–9:15; Apodaca Declaration, ¶¶ 19–20, 39–40.)

The Court will grant the County's unopposed motion and enter a default judgment against Defendant Adam Kovacs only as to the **\$45,371.75** prayed for in the Complaint. Per C.C.P. sections 580(a) and 585(b), the Court may not grant relief that exceeds the amounts prayed for in the County's Complaint, so the Court will not grant the additional costs sought by the County in this motion in excess of what was prayed for in the Complaint.

Conclusion

Based on the foregoing, the County's unopposed motion is **GRANTED** in its entirety with relief granted in the amount of **\$45,371.75** as requested in the Complaint. The County 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).

4. 24CV07036, Evans v. Singleton: Defendants' Demurrer to Plaintiffs' Complaint

Defendants Kelly Singleton and Power West Properties, Inc.'s ("Defendants") demurrer to Plaintiffs Alexander Evans, Kevin Evans, and Jessica Garcia's ("Plaintiffs") Complaint is **DROPPED as MOOT** because Plaintiffs filed a First Amended Complaint. While Plaintiffs timely served their First Amended Complaint upon Defendants, Plaintiffs filed its First Amended Complaint with the Court one day after the filing of an opposition to the demurrer was due. However, the Court accepts Plaintiffs' filing of the First Amended Complaint absent any objections raised by Defendants. Such objections must be raised at the hearing upon request for oral argument.

5. 24CV00705, Anthony v. Whitmire: Defendant Robert Whitmire's Motion for Terminating Sanctions or Issue/Evidence Preclusion Sanctions

Moving Defendant Robert Whitmire's ("Defendant") motion for terminating sanctions is **DENIED**. Defendant's motion for monetary sanctions and evidence preclusion is **GRANTED**. Plaintiff Michael Anthony ("Plaintiff") has **10 days** from entry of this Order to pay a total of \$6,679.70 in sanctions and provide verified, objection-free responses to Defendant or else the Court will order evidence preclusion as the issues stated below.

Procedural History

On April 8, 2024, Defendant Robert Whitmire served Plaintiff with Form Interrogatories, Set One and Request for Production of Documents, Set One. (Declaration of Stella Erlach, ¶ 6.) Defendant then moved to compel further responses to Form Interrogatories, Set One and RFPD, Set One on June 25, 2024. (See Defendant's Motions to Compel Further Responses, filed June 25, 2024.) After a hearing for Defendant's motions to compel further responses on October 2, 2024 where no Parties appeared, on October 8, 2024, the Court granted Defendant's motion to compel further responses and sanctions, compelling Plaintiff to provide objection-free responses to Form Interrogatories, Set One and RFPD, Set One and to pay \$3,000 in sanctions both within 30 days of service of the Order. (See Court's Order Granting Motion to Compel, filed October 8, 2024.) Defendant served the October 8, 2024, Order on Plaintiff on October 12, 2024. (Declaration of Stella Erlach, ¶ 5, Exhibit 1.) After receiving no response from Plaintiff, Defendant's counsel sent Plaintiff a letter on November 20, 2024 extending Plaintiff's compliance with the discovery requests until November 30, 2024 and that if Plaintiff did not respond, Defendant would request additional sanctions. (Declaration of Stella Erlach Regarding Meet and Confer, ¶¶ 4–5, Exhibit 1.) Plaintiff has not produced any responses to the discovery requests to date. (Declaration of Stella Erlach Regarding Meet and Confer, ¶ 6.) Defendant contends that Plaintiff's refusal to comply with the Court's October 8, 2024, Order is an abuse of the discovery process and requests terminating sanctions or monetary sanctions with issue preclusion or evidence preclusion sanctions in the alternative. The Court continued this matter from March 21, 2025 to March 28, 2025 to allow Plaintiff to review the tentative ruling and for the Court to review Plaintiff's Opposition.

Governing Law

Regarding evidentiary and issue sanctions, once a party or witness has been ordered to attend a deposition, or to answer discovery, or to produce documents, more severe sanctions are available for continued refusal to make discovery. (Code of Civil Procedure ["C.C.P."] §§ 2023.010, 2031.310(i).) Such sanctions include issue sanctions (C.C.P. section 2023.030(b)) and evidentiary sanctions (C.C.P. sections 2023.030(b)–(c)). "The penalty should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery. Where a motion to compel has previously been granted, the sanction should not operate in such a fashion as to put the prevailing party in a better position than he would have had if he had obtained the discovery sought and it had been completely favorable to his cause." (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 793.) The purpose of discovery sanctions is not to punish an offending party for discovery abuses, but rather to undo the harm imposed by misuse of discovery. (*McGinty v. Superior Court* (1994) 26 Cal.App.4th 204, 210.)

Terminating sanctions for discovery abuses are to be used sparingly because of the drastic effect of their application and are generally the last resort. (*Lopez v. Watchtower Bible & Tract Soc'y of New York, Inc.*

(2016) 246 Cal.App.4th 566, 604 [internal citations omitted].) The discovery statutes outline an incremental approach to sanctions that starts with monetary sanctions and ends with the ultimate sanction of termination. (*Ibid.*) A terminating sanction should not generally be imposed until the court has “attempted less severe alternatives and found them to be unsuccessful and/or the record clearly shows lesser sanctions would be ineffective.” (*Ibid.*) A trial court “must be cautious when imposing a terminating sanction because the sanction eliminates a party's fundamental right to a trial, thus implicating due process rights.” (*Ibid.*)

Terminating Sanctions

Here, terminating sanctions are not appropriate. While Plaintiff has not responded to Defendant’s discovery requests or complied with the Court’s October 8, 2024 Order, the Court has not exhausted less severe alternatives. Plaintiff filed other motions in this case as of October 2, 2024 and filed an untimely Opposition to this motion. Furthermore, Defendant has only communicated with Plaintiff once via written letter attempting to obtain these discovery responses after the Court’s October 8, 2024 Order. Therefore, Defendant’s request for terminating sanctions is **DENIED**.

Monetary Sanctions with Evidence Preclusion

However, due to Plaintiff’s noncompliance with Defendant’s discovery requests propounded on April 4, 2024 and the Court’s October 8, 2024 Order, monetary sanctions with evidence preclusion is warranted. Pursuant to California Rules of Court, Rule 3.1300(d), the Court may refuse to consider late filed papers. Plaintiff filed his Opposition labeled as an “answer” 9 days late, but the Court will consider Plaintiff’s untimely Opposition. However, Plaintiff does not raise any articulable argument in opposition to Defendant’s motion for terminating/evidentiary sanctions or provide any explanation as to Plaintiff’s failure to respond the discovery and lack of compliance with the Court’s October 8, 2024 Order. Thus, monetary sanctions with evidence preclusion is appropriate.

Defendant requests \$4,017.10 in sanctions in connection with this motion for the following: 5.5 hours of legal work at \$600 per hour (\$3,300), \$79.70 for Court e-filing charges, 1.0 hour for drafting a reply brief and appearing at the hearing, and an additional \$37.40 for e-filing charges. (Declaration of Stella Erlach, ¶ 23.)

Defendant attended the hearing but did not file a reply brief and thus did not incur additional e-filing charges. The Court will deduct \$337.40 for these anticipatory fees from the requested amount. As Plaintiff’s non-compliance necessitated this motion, the Court **GRANTS** sanctions against Plaintiff for \$3,679.70 in connection with this motion.

Plaintiff has **10 days** from entry of this Order to provide verified, objection-free responses to Defendant’s discovery requests and to pay \$6,679.70 in sanctions (\$3,000 now past-due from the October 8, 2024 Order and \$3,679.40 for this motion). If Plaintiff fails to provide verified, objection-free responses and pay \$6,679.70 within 10 days, the Court precludes evidence as to the following issues as requested by Defendant:

1. Plaintiff’s claims of personal injury, emotional distress, health deterioration, and depression;
2. Plaintiff’s claims of damages and loss from thefts of vehicles, parts, and equipment;
3. Plaintiff’s claims of loss of income from his used parts business; and,
4. Plaintiff’s claims Defendant Robert Whitmire is responsible for his adult son’s thefts.

Plaintiff will file a Notice of Compliance upon serving discovery responses and paying the required sanctions.

Thus, Defendant's motion for evidentiary preclusion is **GRANTED**.

Conclusion

Defendant's motion for terminating sanctions is **DENIED**.

Defendant's motion for monetary sanctions and evidence preclusion is **GRANTED**. Plaintiff has **10 days** from entry of Order to comply with the previous orders regarding compelling discovery before the Court orders evidence preclusion as outlined above. Defendant 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).

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