TENTATIVE RULINGS: CIVIL LAW & MOTION

Friday, June 28, 2024 at **8:30 a.m.**
Courtroom 18 –Hon. Bradford DeMeo for Hon. Christopher M. Honigsberg
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

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.

CourtCall is not permitted for this calendar.

If the tentative ruling does not require appearances, and is accepted, no appearance is necessary.

Any party who wishes to be heard in response or opposition to the Court's tentative ruling **MUST NOTIFY** the Court's Judicial Assistant by telephone at **(707) 521-6723** and **MUST NOTIFY all other parties of their intent to appear, the issue(s) to be addressed or argued and whether the appearance will be in person or by Zoom**. Notifications must be completed no later than 4:00 p.m. on the court (business) day immediately before the day of the hearing.

TO JOIN "ZOOM" ONLINE **Department 18 :**
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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. 23CV01775, County of Sonoma v. Charles

County of Sonoma's ("County") request for judicial notice is **GRANTED**. County's motion for default judgment and permanent injunction is **GRANTED.** The Court will sign the proposed order submitted by County on June 20, 2024, with a correction to the amount of the civil penalty as discussed below.

I. Background

Stanley Charles ("Defendant") is the owner of the real property ("Property") underlying this action. On November 28, 2023, County filed a complaint against Defendant for abatement of a public nuisance, abatement of zoning violations, injunctive relief, and costs and civil penalties, all related to his unpermitted use of the Property as a short-term rental facility and bed and breakfast. Defendant was served with the summons and complaint by substituted service on January 8, 2024, following five unsuccessful attempts to serve him in person at his office and home.

On January 11, 2024, County filed an ex parte application for a Temporary Restraining Order ("TRO") and an Order to Show Cause ("OSC") for Preliminary Injunction. The Court granted the TRO on January 11. Defendant appeared in propria persona at the OSC hearing, which was held on January 26. The Court granted the preliminary injunction on January 31. Defendant was served with the order by postal mail, email, and in person. (Apodaca Dec., ¶¶ 15-16.)

Defendant did not answer the complaint. Default was entered against him on March 4, 2024. County's counsel spoke with Defendant by telephone the next day, and "advised [him] that I would stipulate to setting aside the Request for Entry of Default if he agreed to file an Answer." (Apodaca Dec., ¶ 19.) (Counsel may have been unaware that the clerk had entered Defendant's default the previous day, contemporaneously with the filing of the request.) Defendant has made no attempt to file an answer or to move to set aside the default to date. (Apodaca Dec., ¶¶ 20-21.)

By the instant motion, County seeks default judgment and a permanent injunction against Defendant. Defendant was served a copy of the motion, including the motion hearing date, by postal mail to his residence address and to the Property address and by email, on April 29, 2024. Opposition was due on June 14, 2024. (CCP § 1005(b) [nine court days before June 28 hearing; June 17 was a court holiday].) As of June 21, no opposition had been filed.

II. Governing law

If a 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." (CCP § 585(b).) Upon such application, "[t]he 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, . . . as appears by the evidence to be just." (*Ibid*.)

Sonoma County Code § 1-7 allows for the assessment of civil penalties and recovery of costs, including any administrative overhead, salaries and expenses, incurred by any county department or agency.

III. Analysis

The clerk entered Defendant's default on March 4, 2024. The instant motion represents County's application "for the relief demanded in the complaint." (CCP § 585(b).) County's complaint, entry of default, and the instant motion provide a sufficient basis for the Court to enter the judgment and injunction as requested.

On June 20, 2024, County submitted a proposed Order After Hearing. The order specifies that the civil penalties owed by Defendant total $5,500, consisting of one penalty of $1,720 for an "Unpermitted Hosted Rental" violation, and two penalties of $1,890 for two "Unpermitted Hosted Rental and

Unpermitted Bed & Breakfast" violations. However, the complaint lists *two* $1,720 penalties and *one* $1,890 penalty, for a total of $5,300. (Complaint, ¶ 50; see also prayer, ¶7 ["accrued civil penalties . . . in the amount of $5,330 total to date"].) The Court recognizes that County's Notice of Motion and the declaration of Code Enforcement Inspector Andrew Smith both list the violations and penalties as described in the proposed order. (Smith Dec., ¶ 27.) However, the instant motion is brought pursuant to CCP § 585(b), which authorizes plaintiffs to "apply to the court for the relief demanded in the complaint" when a defendant defaults, and authorizes the court to "render judgment in the plaintiff's favor for that relief, *not exceeding the amount stated in the complaint*" (emphasis supplied). Accordingly, the Court will amend County's proposed order to indicate a payment of civil penalties in the amount of $5,330, not $5,500.

IV. Conclusion

The motion is GRANTED.

2. SCV-273549, Kelly v. Noble

The motion is **GRANTED**. Defendant may file the verified answer attached as Exhibit B to his moving papers within 30 days of the entry of the order on this motion.

I. Background

On February 10, 2020, Defendant's wife Danielle Noble ("Danielle") filed a petition for dissolution of her marriage to Defendant. (Case no. SFL-085300.) Defendant filed a response on January 3, 2022. On December 13, 2022, Defendant recorded a Notice of Pendency of Action ("lis pendens") in that case, which alleged that the dissolution action could affect the real property at 5329 Spain Ave., Santa Rosa (the "Property"), presumably the couple's home.

The instant case was initiated by attorney John Kelly ("Kelly") in his position as the trustee of the Brian A. Noble Irrevocable Trust ("Plaintiff"). The verified complaint filed on June 20, 2023 alleges that Plaintiff owns the Property and alleges a single cause of action to quiet title in the Property. The complaint names only Danielle as a defendant. However, it was amended on August 29, 2023, to substitute Defendant for Doe #1, and again on February 26, 2024 to substitute Megan Doheny for Doe #2. Defendant was served by publication from January 28 through February 18, 2024.

Defendant, a licensed attorney representing himself in the instant case, filed an unverified answer on March 16, 2024. Around an hour later, Kelly sent a letter to Defendant advising him that because the complaint was verified, the answer also needed to be verified. (Kelly Dec., Exh. G; Noble Dec., ¶ 4 [acknowledging receipt of the letter].) The letter notified Defendant that Kelly intended to move to strike the unverified answer if Defendant did not file a verified answer by March 26. On that date, Kelly sent

another letter to Defendant, giving him seven days' notice of Kelly's intent to take Defendant's default if he did not file a verified answer. (Kelly Dec., Exh. H.) Both of Kelly's letters were served on Defendant by OneLegal at the email address listed on Defendant's page on the California State Bar website.

On April 1, 2024, six days after Kelly's March 26 letter, Defendant attempted to file a verified answer. (Kelly Dec., Exh I.) The pleading contained no caption; the first line on its first page is "Defendant BRIAN A. NOBLE ("Defendant") generally and specifically hereby responds to the Verified Complaint ("Complaint") as follows." The purported answer contains a verification block, but it is unsigned. On April 8, a week after Defendant filed the purported answer, the clerks rejected it on the basis that it "Must have proper caption page; not in fileable format."

Plaintiff requested entry of default on April 4, three days after the filing of the purported answer. Default was entered on April 15. Defendant filed the instant motion for relief from default on April 24.

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." (CCP § 473(b).) Trial courts have wide discretion to grant relief under this provision. (*Barnes v. Witt* (1962) 207 Cal.App.2d 441, 447.) "The policy of the law is that controversies should be heard and disposed of on their merits." (*Ibid.*) Therefore, on a motion for relief from default, "doubts must be resolved *in favor of relief,* with an order denying relief scrutinized [on appeal] more carefully than an order granting it." (*Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 134, original emphasis.)

III. Analysis

A. Timeliness of the instant motion

A motion for relief must be filed "within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." (CCP § 473(b).) Defendant filed the instant motion nine days after the default was entered. That was unquestionably a reasonable time.

B. Mistake or excusable neglect

Defendant filed the purported verified answer on the sixth day of the seven-day notice period afforded by Kelly in his March 26 letter. The purported answer was clearly unfileable; the Court disagrees with Defendant's contention that the "reason for rejection by the filing clerk elevates form over function." For one thing, the case number appears nowhere on the document. Defendant, however, argues that after he submitted the purported verified answer for filing on April 1, he reasonably believed that he had done everything he needed to do, and did not realize that the purported answer had been rejected until he received an email notification from OneLegal at 4:58 P.M. on April 8, a week after

attempting to file it. (Noble Dec., ¶ 5 and Exh. A.) The Court's internal filing system confirms that the answer was rejected on that date at that time.

The Court acknowledges the possibility that the missing caption and the missing signature on the verification (that is, on the entire reason for filing a second answer) could have been inadvertent clerical errors. Plaintiff disagrees, characterizing Defendant's conduct as deliberate and in bad faith. However, Plaintiff does not suggest what Defendant might have been trying to accomplish by deliberately attempting to file a pleading that he knew the clerk would reject. If his objective was to delay the case, that seems like an unlikely way to accomplish it. It is true that the clerk took over a week to reject the answer, but Defendant cannot conceivably have counted on it taking that long. He filed the defective answer in the late evening of April 1; if it had been rejected first thing in the morning on April 2, as Defendant would have reasonably expected, he would have had ample time to add a caption, sign the verification block, and re-submit it for filing within the seven days Kelly had said he would wait before requesting default. (Kelly Dec., Exh. H.) It is difficult to understand why he would have deliberately set himself up for that.

Plaintiff argues that granting Defendant the relief sought by the instant motion "would prejudice [Plaintiff] by rewarding Noble's deliberate misconduct and further delaying the resolution of the case." Of course, any grant of relief from default will always delay resolution of the case; if that were unacceptable prejudice, CCP § 473(b) would be a nullity. As to the "deliberate conduct," the Court is not persuaded that the conduct was deliberate for the reasons set forth above. Nor is the Court persuaded that it was *not* deliberate; again, neglecting to sign the verification block on an answer being filed specifically to correct the previous filing of an unverified answer seems like an unlikely thing to do inadvertently. However, in line with the policy favoring disposition on the merits, the Court will resolve the question in favor of relief. (*Elston v. City of Turlock* (1985) 30 Cal.3d 227, 235 ["Unless inexcusable neglect is clear, the policy favoring trial on the merits prevails"].)

IV. Fees and costs

In its opposition memorandum, Plaintiff argues that Defendant "should be ordered to pay the trust's reasonable attorneys fees and costs associated with the motion, as estalbished [sic] in the Supplementary Declaration of John A. Kelly." The Court has the discretion to make such an order. (CCP § 473(c)(1)(C) ["Grant other relief as is appropriate"].) However, the Court declines to do so. Plaintiff knew that Defendant attempted to file a verified answer on April 1. (Kelly Dec., ¶ 11 ["electronically served on April 1, 2024"].) While Defendant's characterization of Plaintiff's subsequent conduct as "pure gamesmanship" may be on the hyperbolic side, the Court recognizes that Plaintiff might have been able to resolve the issue presented by this motion by simply contacting Defendant (as he had done before with the March 16 and March 26 letters) and notifying him that the answer was defective, before requesting

default. It is "well-acknowledged that an attorney has an *ethical* obligation to warn opposing counsel that the attorney is about to take an adversary's default." (*Lasalle, supra,* 36 Cal.App.5th at p. 135, original emphasis.) Kelly duly complied with that obligation when he gave Plaintiff a seven-day warning of his intent to take the default if a verified answer was not filed. In the Court's view, however, the obligation was renewed when the electronic service put Kelly on notice that Defendant had attempted to file a verified answer.

V. Conclusion

The motion is GRANTED.

3. SCV-270141, Ford v. Truckmax USA LLC

Plaintiff's motion to enforce the settlement agreement pursuant to CCP § 664.6 is **GRANTED**. Attorney fees and costs are awarded, pursuant to Civ. Code § 1794(d), in the amount of $2,160. The Court will adopt the proposed order submitted with Plaintiff's moving papers.

I. Background

This is a Song-Beverly Act case involving Plaintiff's used 2014 Ford F-150 truck (the "Vehicle"). On February 4, 2022, when the Vehicle's ongoing mechanical issues had resulted in its being in a repair facility for an extended period, Plaintiff filed the instant lawsuit against dealer TruckMax ("TruckMax") and Community First Credit Union ("CFCU"), to whom TruckMax had assigned Plaintiff's Retail Installment Sales Contract.

The three parties entered into a settlement agreement on May 31, 2023 (the "Agreement"). (Hendrickson Dec., Exh. A.) The Agreement provided, in broad terms, that Plaintiff would be compensated for the payments she had already made on the Vehicle, that TruckMax would pay any outstanding loan balance to CFCU, that TruckMax would come to Plaintiff's residence and pick up the Vehicle, and that Plaintiff's attorney's fees and costs would be reimbursed. The amount of fees and costs was to be either agreed upon by the parties or determined by the Court; the latter proved necessary. The fees and costs were to be paid in $1,000 installments at 30-day intervals, beginning within 30 days of service of the Court's order determining the amount. The entire amount of fees and costs became immediately due and payable if any installment payment was more than 30 days overdue. (Hendrickson Dec., Exh. A, ¶ 2(B), p. 3.)

The Court issued its order on Plaintiff's motion for attorney's fees and costs on January 29, 2024. Plaintiff served the order on TruckMax and CFCU, who shared the same counsel at that time, on February 6, 2024. (Hendrickson Dec., ¶ 6 and Exh. C.) Plaintiff filed the instant motion on April 24, 2024, after receiving no payments on the attorney's fees and costs.

II. Opposition

Opposition to this motion was due on June 14. (CCP § 1005(b) [nine court days before June 28 hearing; June 19 was a court holiday].) As of June 20, TruckMax had filed no opposition.

On June 20, six days late, CFCU filed an opposition memorandum, accompanied by the declaration of Rick Herbert, CFCU's Chief Risk Officer, and by a Substitution of Attorney form stating that CFCU's former counsel, Gregory Sabo of the Chapman Glucksman firm, had been replaced by Adam Khan of the Lewis Brisbois firm. CFCU had attempted to file the opposition memorandum three days previously, on June 17, but the filing was rejected by the clerk because Mr. Khan was not attorney of record at that time. Mr. Sabo continues to be attorney of record for TruckMax.

Plaintiff filed a reply memorandum on June 21. In it, Plaintiff objects to the late filing of CFCU's opposition. The objection is overruled. In light of the change of counsel, the Court will exercise its discretion to consider the late-filed opposition papers. (*Rancho Mirage Country Club HOA v. Hazelbaker* (2016) 2 Cal.App.5th 252, 262; Cal. Rules of Court, rule 3.1300(d).)

III. Governing law

CCP § 664.6 "permits the trial court judge to enter judgment on a settlement agreement without the need for a new lawsuit." (*Osuni v. Sutton* (2007) 151 Cal.App.4th 1335, 1360.) "Section 664.6's express authorization for trial courts to determine whether a settlement has occurred is an implicit authorization for the trial court to interpret the terms and conditions to settlement." (*Fiore v. Alvord* (1985) 182 Cal.App.3d 561, 566.) However, the court's function is restricted to "deciding what terms *the parties themselves* have previously agreed upon." (*Weddington Productions v. Flick* (1998) 60 Cal.App.4th 793, 810, original emphasis.) "[N]othing in section 664.6 authorizes a judge to *create* the material terms of a settlement." (*Ibid.,* original emphasis.)

IV. Analysis

In the Agreement, Plaintiff agrees to release all claims against Defendants in exchange for reimbursement to Plaintiff of her payments on the Vehicle, payoff of her outstanding loan balance to CFCU, pickup of the Vehicle at Plaintiff's residence, and payment of Plaintiff's attorney's fees and costs. (Hendrickson Dec., Exh. A, § 2, pp. 2-3.) The attorney's fee provision is the only one at issue in the instant motion; there is no suggestion of any failure to comply with the other provisions.

A. The entire amount of attorney's fees and costs is presently due and payable.

The attorney's fee provision requires payment "by or on behalf of Dealer" to Plaintiff's counsel's trust account in $1,000 installments at 30-day intervals. (Hendrickson Dec., Exh. A, ¶ 2(B), p. 3.) The total amount of fees and costs is to be "agreed upon by Plaintiff and Dealer or, if the Parties cannot agree, . . . to be determined by the Court by way of a noticed motion." (*Id.,* § 7, p. 5.) The first installment was due "within thirty (30) days of service of notice of entry of order" if the parties did not agree on an amount. (*Id.,*

¶ 2(B).) The provision contains an acceleration clause: "In the event any payment is overdue by 30 or more days, the entire balance becomes immediately due and payable." (*Ibid.*)

It appears that Plaintiff and TruckMax did not agree on an amount, because Plaintiff filed a motion for attorney's fees on August 23, 2023. On January 29, 2024, the Court granted the motion and awarded Plaintiff $44,722.38 in attorney's fees and $1,118.80 in costs, for a total amount of $45,841.18. Plaintiff's counsel served a Notice of Entry of Order on February 6, 2024. (Hendrickson Dec., ¶ 6 and Exh. C.) Thus, the first installment was due 30 days later on March 7, 2024.

No payment has ever been made. (Hendrickson Dec., ¶ 11.) Plaintiff's counsel has emailed TruckMax's counsel about this three times, on March 21, April 1, and April 15, 2024. (Hendrickson Dec., ¶¶ 8-10, Exhs. D-F.) In the April 1 email, counsel noted that "TruckMax USA is very close to defaulting on the settlement agreement and triggering the acceleration clause." (*Id.*, Exh. E.) In the final email, counsel wrote "We will file a motion to enforce if I do not have a response by Friday, April 19, 2024." (*Id.*, Exh. F.) Plaintiff filed the instant motion on April 24.

There is no question that the attorney-fee payments are overdue. Therefore, the acceleration clause is triggered and the entire amount is now due.

The Court will accordingly grant the instant motion.

B. Defendants are jointly and severally liable for the outstanding attorney's fees.

In its opposition memorandum, CFCU argues that Plaintiff is improperly attempting to expand the "by or on behalf of Dealer" language in the attorney's-fee provision of the Agreement "to require CFCU to make payments toward her attorney's fees and costs." The Court disagrees. The Agreement is executed by, among others, Monika Besancon, who identified herself in the signature block as CFCU's Chief Operating Officer. (Hendrickson Dec., Exh. A, second p. 8.) It is therefore an agreement between three parties: Plaintiff, TruckMax, and CFCU. "On behalf of Dealer" plainly means "by someone other than Dealer." Given that the context is payments to Plaintiff, it makes no sense to suppose that that someone is Plaintiff. The only other possibility is CFCU. Therefore, "by or on behalf of Dealer" means "by either Dealer or CFCU." The Court does not regard this interpretation as an expansion.

CFCU further points out that it has an agreement with TruckMax that includes a defense and indemnity provision. A copy of the agreement, entitled "CU Direct Corporation Dealer Agreement," is attached to the declaration of CFCU's Chief Risk Officer. (Herbert Dec., Exh. A.) Paragraph 15 of that agreement is indeed an agreement by "Dealer," in this case TruckMax, to defend and indemnify CFCU from any claim "however relating in any way to the vehicle." CFCU argues that because it has this agreement with TruckMax, the Court must "tailor its Order on Plaintiff's Motion [to require] that all outstanding amounts owed to Plaintiff under the Settlement Agreement be paid by the Dealer," rather than by CFCU.

Without so holding, the Court agrees that paragraph 15 of the CU Direct Corporation Dealer Agreement appears to empower CFCU to recover from TruckMax any money it is obliged to disburse under the settlement agreement at issue here, to which, again, it is a signatory. CFCU suggests that enforcing that provision might require additional litigation, and that could well be right. Regrettable though that may be, the fact remains that the Court has no basis to reform the Agreement to eliminate CFCU as a party, which is fundamentally what CFCU's opposition asks the Court to do. The motion before the Court is to enforce the provisions of the Agreement entered into by CFCU, TruckMax, and Plaintiff on May 31, 2023. The Court declines to base its ruling on CFCU's interpretation of one provision of a completely different agreement, to which Plaintiff is not a signatory, and upon which no other party has had an opportunity to be heard.

C. Additional attorney's fees

Plaintiff requests additional attorney's fees and costs in the amount of $2,160 to cover the expense of bringing the instant motion. Plaintiff argues that the Agreement "contemplated that the Court would have the authority to enforce the terms of the agreement, and order payment of attorney's fees and costs associated with enforcing the settlement to the prevailing party." (MPA, p. 3.) In support of that assertion, Plaintiff cites to "Hendrickson Declaration, Ex. A, § 14." Exhibit A is the Agreement, and paragraph 14 is headed "Continuing Jurisdiction." The meaning of paragraph 14 is less than clear due to the fact that its second sentence is missing a verb, but it does not appear to say, or even attempt to say, anything about ordering payment of attorney's fees and costs.

However, this is a Song-Beverly Act case, and that law contains an attorney's-fee provision: Civ. Code § 1794(d) provides that a buyer who prevails in a Song-Beverly action may recover "attorney's fees . . . reasonably incurred by the buyer in connection with the commencement and prosecution of such action." The Court acknowledges that enforcing the settlement agreement reached in a Song-Beverly action is "in connection with . . . prosecution of such action." Therefore, the Court will award Plaintiff attorney's fees and costs in connection with the instant motion.

Plaintiff claims fees in the amount of $2,100, representing 3.5 hours of attorney time at $600 per hour. The 3.5-hour figure is reasonable. In its January 29, 2024 ruling on Plaintiff's motion for attorney's fees, the Court awarded fees on the basis of a $550/hour billing rate, with a 1.1 multiplier. That formula yields a result of $2,117.50. Accordingly, the $2,100 requested by Plaintiff is also reasonable. The Court will award Plaintiff $60 to cover the filing fee for the instant motion, for a total award of $2,160.

V. Conclusion

The motion is GRANTED.