TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, July 2, 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. – 9. SCV-270527, Jane Doe #1 v. Foppoli: Discovery Motions

Plaintiffs' eight motions to compel and motion for sanctions are **DROPPED as MOOT**. The Court appointed a Discovery Referee on June 6, 2025, who shall handle these nine discovery-related motions. (See Minute Order, dated June 6, 2025, and Proof of Service, dated June 9, 2025.)

10. 25CV01117, Hernandez v. LoanDepot.com, LLC: Motion for Reconsideration

Plaintiff Ismael Hernandez's ("Plaintiff") motion for reconsideration of the Court's ex parte ruling denying the temporary restraining order ("TRO") and order to show cause ("OSC") re preliminary injunction is **DENIED in part** and **DROPPED as MOOT in part** as the Court granted Plaintiff's application for OSC re preliminary injunction. The OSC is set for July 30, 2025, at 3:00 p.m. in Department 18.

Plaintiff filed an ex parte application and order for a TRO and OSC re preliminary injunction, which the Court heard on May 15, 2025. In its Order, the Court denied the TRO but granted the OSC. (See Signed Order, filed May 16, 2025.) Therefore, Plaintiff's request for reconsideration of the OSC is **DROPPED as MOOT**. The Court only addresses reconsideration of the Court's denial of the TRO pursuant to C.C.P. sections 1008 and 473(d) discussed below.

Defendant's Request for Judicial Notice

Judicial notice of official acts is statutorily appropriate. (Evid. Code § 452(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.)

Defendant requests judicial notice of 10 documents in support of its Opposition to Plaintiff's motion for reconsideration, including court documents from the instant matter and related Sonoma County records. Defendant's request is **GRANTED** in full, subject to the evidentiary limitations discussed above.

Reconsideration Pursuant to C.C.P. section 1008

Any affected party may make an application to the same judge or court to reconsider the matter and modify, amend, or revoke the prior order when an application for an order made to a judge or a court is refused in whole or in part, or granted, or granted conditionally, or on terms within 10 days after service upon the party of written notice of entry of the order and **based upon new or different facts, circumstances, or law**. (C.C.P. § 1008(a).) Contentions that the court has made an error of law or refused to consider evidence are not new facts as required for a motion under C.C.P. section 1008. (*Jones v. P.S. Development Co., Inc.* (2008) 166 Cal.App.4th 707, 724.) "New facts" is defined as facts which were not available to the party at the time of the hearing. (*In re Marriage of Herr* (2009) 174 Cal.App.4th 1463, 1468.) To prevail on a motion for reconsideration based on new facts, a party must provide a satisfactory explanation for failing to offer the evidence in the first instance. (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212.) The new facts offered must be accompanied by a showing of strong diligence in discovery and bringing the new facts, and absent a strong showing of diligence, the motion will be denied. (*Forrest v. Department of Corporations* (2007) 150 Cal.App.4th 183, 202.) Failure to show new facts or law is jurisdictional. (*Kerns v. CSE Ins. Group* (2003) 106 Cal.App.4th 368, 380.) Where the motion for reconsideration brings no valid new fact to the merits of the underlying motion, and merely contends a collateral matter, reconsideration will be denied. (*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500.)

Here, Plaintiff presents new evidence of his phone records to show that Defendant did not contact him and a neighbor's affidavit showing that the notices were posted at the wrong address. (Motion for Reconsideration, 9:1–8; Hernandez Declaration, ¶¶ 10–11.) While Plaintiff timely filed his motion for reconsideration with new evidence, the evidence is not, in fact, new. The phone records are from December 2023 through February 2024, which were available to Plaintiff at the time of the ex parte hearing on May 15, 2025. Additionally, the declaration of Maria Lopez attests to events occurring on or about April 29, 2025, which means this evidence was also available to Plaintiff at

the time of the ex parte hearing on May 15, 2025. Plaintiff fails to explain why he did not provide this evidence in the first instance or that the evidence was unavailable despite his best efforts to obtain. Therefore, Plaintiff's motion for reconsideration pursuant to section 1008 is **DENIED**.

Voidness Pursuant to C.C.P. section 473(d)

C.C.P. Section 473 allows the court to amend pleadings and relieve parties from a judgment or order taken against a party. Pursuant to C.C.P. section 473(d), the court may "correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed." The difference between a clerical error and a judicial error is whether the error was made in rendering the judgment (judicial error) or in recording the judgment (clerical error). (*People v. Karaman* (1992) 4 Cal.4th 335, 345.) To distinguish a clerical error from judicial error, courts consider "whether the challenged portion of the judgment was entered inadvertently (which is clerical error) versus advertently (which might be judicial error but is not clerical error)." (*Tokio Marine & Fire Ins. Cop. V. Western Pacific Roofing Corp.* (1999) 75 Cal.App.4th 110, 117–18.)

Here, Plaintiff argues that the Court's May 16, 2025, Order is void because it was denied without reason, denying Plaintiff of due process. (Motion for Reconsideration, 7:5–18.) Plaintiff provides no legal authority supporting his contention that the Court's denial of the TRO without explanation on its Order is a violation of due process and renders the Court's May 16, 2025, Order void. Plaintiff's motion is **DENIED** pursuant to section 473(d).

Consolidation

Plaintiff presents further arguments as to the Court's denial of consolidation in a different ruling. However, these arguments are outside the scope of the motion for reconsideration of the Court's denial of the TRO and the Court will not address these arguments.

Conclusion

The motion is **DENIED in part** as to reconsideration of the TRO and **DROPPED as MOOT** as to reconsideration of the OSC re preliminary injunction.

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).

11. <u>SCV-269767, Ravioli LLC v. Master Bango:</u> Demurrer

Defendants' demurrer to Plaintiffs' Second Amended Complaint ("SAC") is **OVERRULED**. Plaintiffs' request for judicial notice is **GRANTED**.

Plaintiffs' counsel shall submit a written order consistent with this ruling and in compliance with rule 3.1312.

Defendants demurrer to all nine causes of action of Plaintiffs' SAC. The first cause of action of the SAC for reformation is alleged by Plaintiff Ravioli LLC against Defendant Master Bango, Inc. The second cause of action for breach of contract is alleged by Ravioli LLC against both defendants, with Plaintiffs alleging that Defendant Ronald Ferraro is the alter ego of Defendant Master Bango.

The third cause of action for goods sold and delivered is alleged by Ravioli LLC against both defendants. The fourth through seventh causes of action consist of allegations of breach of contract and goods sold and delivered by each of the remaining individual plaintiffs against both defendants. Finally, the eighth cause of action for unfair competition and the ninth cause of action for promissory fraud are alleged by all plaintiffs against all defendants.

Defendants argue that each of the causes of action alleged by Plaintiffs, except that under the unfair competition law, is based on the alleged contract between the parties. Defendants argue that Plaintiffs are not parties to the contract, so they lack standing to assert those causes of action. Regarding the unfair competition cause of action, Defendants argue that Plaintiffs have failed to allege economic injury.

Plaintiffs argue in opposition that Defendant Master Bango is judicially estopped from arguing that the Plaintiffs are not parties to the contract because Master Bango has admitted the existence of its contract with the individual plaintiffs by filing a Cross-Complaint against them seeking relief under the contract.

The contract referred to by the SAC and attached as exhibit A is labeled "Bulk Flower Purchase Agreement" (hereafter, "Purchase Agreement") and was executed on February 16, 2021, between "Buyer" who is identified as "Master Bango Inc. dba Elyon Cannabis" and "Seller" who is only identified on the signature page as "Pasta Farm." The Purchase Agreement provides that seller agrees to sell and buyer agrees to buy bulk cannabis flower of the types, prices, and quantities specified in Section E. Section E provides a list of the products, quantities, and prices to be purchased from which entities. The entities listed as providers of these products include Fettuccine LLC, Farfalle LLC, Gnocchi LLC, Rigatoni LLC, Linguini LLC, Spaghetti LLC, Tortellini LLC, Penne LLC, and Ravioli LLC.

> Plaintiffs allege in the SAC that,
> The Agreement provided for the sale of product by nine different entities, including Plaintiffs. The nine entities are known collectively as "Pasta Farm," a colloquial shorthand for the group, but each entity is a separately organized LLC, whose true name and license number was accurately and duly set forth in the Agreement in the description of the "Product" being sold. The Agreement used "Pasta Farm" at the parties' signature line to more conveniently designate the nine entities, but the Agreement was entered into between Master Bango and each entity, separately.

(SAC, p. 3 ¶ 2.) Furthermore, there is an inspection log attached to the contract that has the Pasta Farm watermark on it, but which lists each individual entity that would be supplying the product at which price and confirms that the products were found to be satisfactorily within the buyer's specifications and pricing.

Finally, on October 11, 2022, Master Bango filed a Cross-Complaint against Plaintiffs Ravioli, LLC, Spaghetti, LLC, and Tortellini, LLC alleging breach of contract based on the exact agreement attached to Plaintiffs' SAC. Master Bango alleges "Cross-Defendants entered into an agreement wherein Cross-Complainant agreed to purchase, and Cross-Defendants agreed to sell bulk flower cannabis." The "agreement" referred to is attached as Exhibit A to the Cross-Complaint and is the same "Bulk Flower Purchase Agreement" relied upon by Plaintiffs.

Plaintiffs' Agreement-Based Claims

All of Plaintiffs causes of action, with the exception of that for unfair competition, are based on the agreement alleged to exist between the parties. Therefore, Plaintiffs' standing to raise them shall be analyzed collectively.

As stated above, Plaintiffs argue that Defendants are judicially estopped from asserting that Plaintiffs are not members to the contract. The doctrine of judicial estopped should apply when: "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." (*Jackson v. Cnty. of Los Angeles* (1997) 60 Cal.App.4th 171, 183.)

The Court does not agree with Plaintiffs that Defendants are judicially estopped from making their arguments. While they have taken an inconsistent position in their Cross-Complaint, they have not yet been successful in asserting that position. Thus, the doctrine of judicial estoppel does not apply.

However, the Court also does not agree with Defendants that Plaintiffs do not have standing to raise the claims that are based on the Purchase Agreement. The entities who were to provide the bulk cannabis product are listed in the agreement and include the Plaintiffs in this matter. The agreement identifies the product each plaintiff is required to deliver, the amount of product each plaintiff is required to deliver, the price per pound, and the total price. Plaintiffs' allegation in paragraph 2 of page 3 of the SAC that "Pasta Farm" in the signature line was used as a colloquial term that referred to the individual entities is sufficient to survive demurrer. The language of the entire contract, the inspection letter attached in Exhibit A to the SAC, and the allegation that "Pasta Farm" was used as a colloquial term sufficiently show that Plaintiffs were members to the Purchase Agreement and thus have standing to assert their claims. Defendants' own Cross-Complaint against Plaintiffs alleging breach of contract under the very same Bulk Purchase Agreement demonstrates that Defendants understood that they were contracting with the individual entities and that "Pasta Farm" was used as a colloquial term referring to them all.

Defendants cite *Performance Plastering v. Richmond American Homes of CA, Inc.* (2007) 153 Cal.App.4th 659, to support their argument. In *Performance Plastering*, the subject agreement identified the parties to the contract to be "Performance Plastering" and "Richmond" and "Nowhere in the settlement agreement was CalFarm even mentioned." (*Id.* at 667.) Therefore, the *Performance Plastering* Court found that CalFarm was not a party to that contract. The *Performance Plastering* case is distinguished from the one at bar because, unlike the contract referred to in that case, the contract in this case does specifically refer to the individual entities and defines their contractual obligations.

For purposes of a demurrer, the allegations of the SAC are sufficient to allege that Plaintiffs are members to the Bulk Purchasing Agreement. Therefore, Defendants' demurrer to the first, second, third, fourth, fifth, sixth, seventh, and ninth causes of action is overruled.

Plaintiffs' Unfair Competition Claim

Defendants renew the same argument regarding this cause of action that was previously raised by

them in their demurrer to Plaintiffs' First Amended Complaint, which was overruled. Defendants argue that Plaintiffs have not supported their allegations of economic injury with sufficient factual specificity.

A party may bring a section 17200 claim only if he or she shows that he or she "suffered injury in fact and has lost money or property as a result of the unfair competition." (Bus. & Prof. Code § 17204.) To have standing, a plaintiff must sufficiently allege that (1) he has "lost 'money or property' sufficient to constitute an 'injury in fact' under Article III of the Constitution" and (2) there is a "causal connection" between the defendant's alleged UCL Violation and the plaintiff s injury in fact. (See, *Rubia v. Capital One Bank* (9th Cir. 2010) 613 F.3d 1195, 1203-1204.) "(T)he phrase 'as a result of" in the UCL imposes a causation requirement; that is, the alleged unfair competition must have caused the plaintiff to lose money or property." (*Hall v. Time Inc.* (2008) 158 Cal.App.4th 847, 849.) To satisfy the pleading requirement, a plaintiff need only plead economic injury, and allege fact to support causation of that injury based on unfair competition. (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 327.

As previously explained by the Court, it is clear that Plaintiff's UCL claim is derivative of Plaintiffs' other causes of action. Plaintiffs clearly allege economic damages for the other causes of action. Plaintiffs also allege that as a result of the unlawful, unfair, or fraudulent conduct that underlies their other causes of action, Plaintiff suffered pecuniary loss. Accordingly, Plaintiffs sufficiently allege that economic damages were suffered as a result of the unfair competition.

12. **25CV00076, County of Sonoma v. Yokota:** Motion for Default Judgment and Permanent Injunction

County of Sonoma ("the County")'s unopposed Motion for a Default Judgment and Permanent Injunction is **GRANTED**. The County's request for judicial notice is **GRANTED**.

The Court will sign the proposed default judgment and permanent injunction lodged on June 20, 2025. The County has not submitted a proposed order on this motion. The County shall do so, and it shall be consistent with this ruling; however, compliance with Rule 3.1312 is excused due to the lack of opposition.

Defendant owns the subject property as his sole and separate property. The property has been the focus of code enforcement actions by the County's Permit and Resources Management Department ("Permit Sonoma") since August of 2023 when Permit Sonoma received a citizen complaint regarding dangerous conditions on the property. Upon inspection, Permit Sonoma observed that the parcel contained a residence that appeared to be abandoned, the exterior stairwell and stairs had deteriorated and fallen down, there was damaged and exposed electrical wiring, and a propane tank was connected to the residence. The building was posted with a "Dangerous Building" placard and Notice and Orders to abate the observed violations were posted on the front door area of the structure for a dangerous building violation and a substandard housing or premises violation. Notice and Orders were mailed to Defendant via Certified Mail. Defendant was required to remove the violations within 30 days and obtain a verification inspection. Defendant signed for the certified mail, indicating he received them. Defendant did not file a timely appeal to the Notice and Orders, and the determination became final.

On October 12, 2023, Permit Sonoma sent Defendant a letter notifying him that due to the failure to abate the code violations, a Notice of Abatement Proceedings was being recorded against the Property. Permit Sonoma also informed Defendant of the assessment of abatement costs and civil penalties of $30 per day, per violation, that would continue to accrue daily until the violations were abated. On October 24, 2023, a Notice of Abatement Proceedings was recorded against the Property. No appeal to the determination was made. On April 3, 2024, a complainant advised Permit Sonoma that there still had been no one at the Property and the violations had not been corrected.

The County filed the complaint in this action against Defendant on January 3, 2025. Defendant did not file an answer. The County requested default be entered against Defendant on April 28, 2025. To date, Defendant has not moved to set aside the entry of default. The County now seeks the entry of default judgment and permanent injunction against Defendant. The County represents that, as of the filing of this motion, the violations have not been abated.

The County moves for default judgment against Defendant under CCP § 585 and requests that the Court issue a permanent injunction enjoining violations of the Sonoma County Code. The County also requests an order requiring Defendant to pay abatement costs, civil penalties and attorneys' fees and costs. The County requests $2,083.25 for abatement costs, $40,080.00 for accrued civil penalties, and $4,759.50 for the County's attorney's fees and costs. The County represents that these penalties and fees will continue to accrue through the final satisfaction of the case.

The Code provides that if the defendant has been served, other than by publication, and no response has been filed, "the clerk, upon written application of the plaintiff, shall enter the default of the defendant" and "[t]he plaintiff thereafter may apply to the court for the relief demanded in the complaint." (CCP § 585(b).) "The court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff's favor for that relief, not exceeding the amount stated in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115, as appears by the evidence to be just." (*Ibid*.) Additionally, Sonoma County Code section 1-7 allows for the assessment of civil penalties and recovery of costs, including any administrative overhead, salaries and expenses incurred any county department or agency.

Through the County's Complaint, the entry of default, and the evidence submitted in support of this motion, the County has made a sufficient showing under CCP § 585(b). The declarations submitted in support of the motion provide sufficient foundation for the penalties, costs, and fees sought. The Court finds that the attorney's fees and costs requested are reasonable. The Court also finds that a permanent injunction is appropriate. (*People v. Wheeler* (1973) 30 Cal.App.3d 282, 294.)

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