TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, September 2, 2026 3:00 pm
Courtroom 19 – Covered by Hon. Ellio Daum for Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

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) 521-6602**, 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 19 Hearings
MeetingID: 160-421-7577
Password: 410765
https://sonomacourt-org.zoomgov.com/j/1604217577

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1. 24CV06284, Uhg I LLC v. Baake

Plaintiff UHG I LLC ("Plaintiff") filed the complaint ("Complaint") against defendant Kirsten Bakke ("Defendant"). This matter is on calendar for the motion by Defendant under Code Civ. Proc. ("CCP") § 473.5 to set aside the default.

Defendant was served by substitute service on November 4, 2025. Plaintiff requested a default, which was entered on April 9, 2026. The default judgment was entered on April 27, 2026. Defendant has filed a motion for relief to set aside the default under CCP § 473.5, Civ. Code § 1788.61, CCP § 473 (d), and to quash under CCP § 418.10. on May 26, 2026.

I. Governing Law

A. Set Aside of Default for Lack of Actual Notice

CCP § 473.5 provides:

a) When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered.
b) A notice of motion to set aside a default or default judgment and for leave to defend the action shall designate as the time for making the motion a date prescribed by subdivision (b) of Section 1005, and it shall be accompanied by an affidavit showing under oath that the party's lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect. The party shall serve and file with the notice a copy of the answer, motion, or other pleading proposed to be filed in the action.
c) Upon a finding by the court that the motion was made within the period permitted by subdivision (a) and that his or her lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action.

Code Civ. Proc., § 473.5

"(A) defendant, served by publication of summons, has the right, at any time during the period of one year, upon tendering a proper answer, to apply to the court for an order setting aside the default and to receive such an order as a matter of right, upon such terms and conditions as the court may see fit to impose." *Hiltbrand v. Hiltbrand* (1933) 218 Cal. 321, 323. However, "(a) defendant seeking vacation of a default judgment entered against him must further show that his lack of actual notice in time to defend the action was not caused by his inexcusable neglect or avoidance of service." *Tunis v. Barrow* (1986) 184 Cal.App.3d 1069, 1077–1078. "(A) defendant, who has not been served personally, seeks permission, within a year after the rendition of judgment, to answer to the merits of the action; and the burden is upon him to show that he has not been personally served and that he has a meritorious defense, but the burden is upon plaintiff to show that it is inequitable to permit defendant to answer." *Brockman v. Wagenbach* (1957) 152 Cal.App.2d 603, 615. However, showing on the merits is a limited analysis, and "hearing on the motion is not the occasion to try the merits of the action." *Tunis v. Barrow* (1986) 184 Cal.App.3d 1069, 1080. "The court's inquiry is limited to whether the ... pleading contains a statement of facts sufficient to constitute a meritorious case, and the truth concerning the meritorious defense is not at issue. [Citations.]" *Tunis v. Barrow* (1986) 184 Cal.App.3d 1069, 108, quoting *Ludka v. Memory Magnetics International, supra,* 25 Cal.App.3d 316, 323–324.

Like CCP § 473, the policy that matters should be resolved on their merits also applies to motion to set aside under CCP§ 473.5. *Olvera v. Olvera* (1991) 232 Cal.App.3d 32, 39. Accordingly, concepts like "actual knowledge" are strictly construed. *Ibid*.

B. Failure to Serve

"A judgment is void for lack of jurisdiction of the person where there is no proper service of process on or appearance by a party to the proceedings." *David B. v. Superior Court* (1994) 21 Cal.App.4th 1010, 1016. "In the absence of a voluntary submission to the authority of the court, compliance with the statutes governing service of process is essential to establish th[e] court's personal jurisdiction over a defendant." *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1439; see also, Code Civ. Proc. §410.50 ["the court in which an action is pending has jurisdiction over a party from the time summons is [properly] served on him…"]; *Am. Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 387 ["[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction."]. Thus, without valid service, the court lacks personal jurisdiction over a defendant. Code Civ. Proc. §418.10(a)(1); see also, *Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 808; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2010) § 4:413, p. 4–63.

A judgment derived from an action which was never properly served on a defendant is not merely voidable, but void. *City of Los Angeles v. Morgan* (1951) 105 Cal.App.2d 726, 730. "(A) judgment shown by evidence to be invalid for want of jurisdiction is a void judgment or at all events has all the attributes of a void judgment." *Id.* at 732–733. Where a defendant establishes that they have not been served as mandated by the statutory scheme, the court never obtained jurisdiction over the defendant and the resulting judgment is void as violating fundamental due process. *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1227. "Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, 'it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.'" *Peralta v. Heights Medical Center, Inc.* (1988) 485 U.S. 80, 86–87, quoting *Coe v. Armour Fertilizer Works* (1915) 237 U.S. 413, 424. A judgment obtained through extrinsic fraud may be set aside either by filing a separate suit or by a motion made within the action in which a default resulting from the fraud is taken. *Munoz v. Lopez* (1969) 275 Cal.App.2d 178, 181. This motion is one made in equity, may be made at any time provided the party acts with diligence upon learning the relevant facts. *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 181.

II. Analysis

While Defendant asserts several bases on which to set aside the default. Under CCP § 473.5 Defendant bears the burden to show lack of actual knowledge, and underlying merit to her defense.

Defendant offers evidence that she was not made aware of the filing of the case until she was searching her name in the Court's records system. Plaintiff has filed no opposition. Defendant is a member of the California Safe at Home Program, with the relevant ability to serve her through the requirements of that statute. All of the evidence shows that Defendant did not live at the addresses where service was attempted, and as such there is no indication that Defendant was even aware that the suit had been filed. Even had that been the case, this is not necessarily fatal to the query of whether actual notice existed. See, e.g., *Olvera v. Olvera* (1991) 232 Cal.App.3d

32. There is not sufficient evidence of awareness in time to appear. There is no evidence Defendant was ever properly served.

Nor does the Court find inexcusable neglect. Defendant avers that she filed the motion timely after

Defendant has offered a proposed verified answer to the Complaint asserting affirmative defenses to the debt. This appears sufficient to show the answer should be considered on its merits. Set aside is required.

Moreover, it is clear that the service that occurred was *never* proper service, given that it occurred at an address at which Defendant never resided. The service that occurred was never legally effective, and accordingly the Court never had jurisdiction over Defendant in this matter. The service must be quashed.

Defendant's motion to set aside the default is GRANTED. The motion to quash is GRANTED.

Defendant 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).

2-3. <u>25CV03690, Golovach v. Kelly</u>

<u>MOTION FOR LEAVE</u>

Plaintiffs' Motion for Leave to Amend is **GRANTED**. Plaintiffs shall file and serve on all Defendants the proposed FAC attached as Exhibit 4 to Svetlana Shirinova's Declaration within <u>ten (10) days</u> of service of notice of entry of the Court's order on this motion.

I. <u>Procedural History</u>

This personal-injury action arises from a June 21, 2023 multi-vehicle collision on northbound U.S. Highway 101 in Sonoma County involving Plaintiffs Nataliya Golovach, Dmitry Golovach, Alice Golovach, and Maksim Golovach (together as "Plaintiffs") and Defendant Katherine R. Kelly ("Defendant"). Plaintiffs filed the original complaint on May 28, 2025, alleging motor vehicle negligence, general negligence, and loss of consortium (the "Complaint").

Plaintiffs move for leave to file a First Amended Complaint adding gross-negligence allegations and a prayer for punitive damages under Civil Code section 3294 (the "Motion"). (FAC, 6:10—28, 8:2—10.) The proposed amendments are based on verified discovery responses served on April 29, 2026, concerning Defendant's diabetes, glucose-monitoring practices, prior use and non-use of a continuous glucose monitor, and the alleged hypoglycemic event preceding the collision. (Shirinova Decl., ¶¶ 4—6.)

Defendant opposes this Motion based on undue delay, prejudice, and futility. (Opposition, 3:4—9.) Defendant contends Plaintiff already knew Defendant had diabetes, low blood sugar, and an apparent seizure on the accident date. (Opposition, 4:15—20.) Defendant further argues that amendment would increase costs, affect trial strategy and potential insurance coverage, and require additional discovery. (Opposition, 6:5—12; Stenson Decl., ¶¶ 8—11.) Plaintiffs filed a reply and declaration responding thereto.

Plaintiffs Motion for Leave to Amend is set for hearing on September 2, 2026 in Department 19. Trial remains set for February 26, 2027.

II. Governing Law

The Code of Civil Procedure provides that a court "may in the furtherance of justice, and on any terms as may be proper" allow a party to amend any pleading to correct a mistake. (C.C.P. § 473(a)(1).) Likewise, the Court may, "in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars". (C.C.P § 473(a)(1).) "The policy favoring amendment is so strong that it is a rare case in which denial of leave to amend can be justified." (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428.) The "policy of great liberality" applies to amendments "at any stage of the proceedings, up to and including trial." (*Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 487.) However, leave to amend may be properly denied if there is an unwarranted delay in seeking the relief and where the opposing party demonstrates that it will incur prejudice as a result. (*Atkinson v. Elk Corp*. (2003) 109 Cal.App.4th 739, 761.)

Delay alone is not ordinarily sufficient to deny leave to amend unless accompanied by a showing of prejudice, bad faith, or circumstances showing that the amendment would unfairly impair the opposing party's ability to litigate the case. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 563.) "[I]t is irrelevant that new legal theories are introduced as long as the proposed amendments relate to the same general set of facts." (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048 [internal citations omitted].)

It is within the court's discretion to deny leave to amend where the amendment has been pursued in a dilatory manner, and that delay has prejudiced other parties. Prejudice exists where the amendment would result in the delay of trial, where there has been a critical loss of evidence, where amendment would add substantially to the costs of preparation, or where it would substantially increase the burdens of discovery. (*Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488; see *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345; *Fisher v. Larsen* (1982) 138 Cal.App.3d 627, 649.)

In evaluating a motion for leave to amend, the Court generally does not decide disputed factual issues or adjudicate whether the moving party will ultimately prevail on newly plead allegations. The underlying merits of the proposed cause of action amendments are not relevant to determining whether amendment is appropriate, so long as they relate to the same general set of facts, as the amended pleadings may be attacked by demurrer, motion for judgment on the pleadings, or other similar proceedings. (*Kittredge Sports Co., supra,* 213 Cal.App.3d 1045 at 1048.) Denying leave to amend due to failure to sufficiently plead a cause of action would be most appropriate where the defect cannot be cured by further amendment. (*California Casualty Gen. Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 280–281; disapproved of on different grounds by *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390.)

III. Analysis

Plaintiffs have shown sufficient grounds for amendment at this stage. Although delay may support denial when it is unexplained or prejudicial, the record does not show that circumstance here. (*Higgins*, 123 Cal.App.3d 558 at 564 ["Where no prejudice is shown to the adverse party, the liberal rule of allowance [to amend a pleading in the furtherance of justice] prevails."].) Plaintiffs moved for leave to amend 28 days after Defendant's April 29, 2026 verified discovery responses, and trial remains set for February 26, 2027.

The proposed amendment arises from the same collision, the same Defendant, and the same alleged diabetic incapacitation already at issue. It does not add parties, assert an unrelated transaction, or open an entire new field of inquiry. The case is therefore unlike authorities denying amendment on the eve of trial where new theories would require delay trial or materially alter trial preparation. (See *Magpali*, *supra*, 48 Cal.App.4th 471 at 486.)

The Court has considered Plaintiffs' reliance on *King v. Kaplan* (1951) 94 Cal.App.2d 697. King does not establish heightened liability merely because a driver has diabetes, and this ruling does not adopt such a position. The case is relevant only in the limited sense that a driver's knowledge of a medical condition and alleged conduct in light of that knowledge may bear on the pleaded theory of culpability. Plaintiffs' proposed amendment is based on alleged facts concerning Defendant's diabetes management, insulin use, glucose monitoring, prior use and non-use of a continuous glucose monitor, and alleged knowledge of the risk of incapacitation, *not* diabetes alone. (Shirinova, Decl. ¶¶ 4, 5.)

Furthermore, the Court will not examine the merits of the FAC in a motion for leave to amend the Complaint. (*Kittredge Sports Co*., *supra*, 213 Cal.App.3d 1045 at 1048; *Ruiz v. Santa Barbara Gas & Elec. Co.* (1912) 164 Cal.188, 196 [reasoning that the sufficiency of an amended complaint is to be tested in other ways, not in a motion for leave to amend.].) Defendant remains free to challenge the legal sufficiency and evidentiary support for new allegations by demurrer, motion to strike, summary adjudication, evidentiary motion, trial motion, or other appropriate procedure.

IV. Conclusion

Plaintiffs' Motion for Leave to Amend is **GRANTED**.

Plaintiffs 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).

<u>MOTION TO COMPEL</u>

Plaintiffs' Motion to Compel Further Responses is **MOOT** as to the substantive discovery requests. Plaintiffs' Request for Sanctions is **GRANTED**.

Defendant Katherine R. Kelly and her counsel of record shall pay to Plaintiffs monetary sanctions in the amount of **$2,560.00**, jointly and severally, within 30 days of this order.

Defendant's request for monetary sanctions is **DENIED**.

Plaintiffs 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).

4-5. <u>SCV-271482, John Doe 7036 v. Thorpe</u>

Plaintiff John Doe 7036 ("Plaintiff"), filed complaint in this action against The Church of Jesus Christ of Latter-Day Saints ("Church Defendants", also sued as Church of Jesus Christ of Latter-Day Saints San Rafael Stake, and Church of Jesus Christ of Latter-Day Saints Rohnert Park Ward), and Kevin Thorpe ("Thorpe", all together, "Defendants"), and Does 5-100, with causes arising out an alleged injury sustained during the course of employment (the "Complaint").

This matter is on calendar for the Church Defendant's motion to seal portions of the motion to lift stay, and the motion to partially lift bankruptcy stay. The motion to lift stay has been rendered moot by the Court's August 19, 2026 ruling, on which a formal order is forthcoming. The motion to seal is GRANTED.

I. Motion To Seal

The Rules of Court state: "Unless confidentiality is required by law, court records are presumed to be open." Cal. R. Ct. 2.550(c). The Rules also provide: "The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." Cal. R. Ct. 2.550(d).) "(1) An order sealing the record must: (A) Specifically state the facts that support the findings; and (B) Direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal." Cal. R. Ct. 2.550(e). "All other portions of each document or page must be included in the public file." *Ibid*. This rule recognizes and balances a litigant's right to privacy against the public's Constitutional right of public access. *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1212 ["in general, the First Amendment provides a right of access to ordinary civil trials and proceedings."]. *NBC Subsidiary* provides examples of various interests that courts have acknowledged may constitute "overriding interests." *See Id*. at 1222, fn. 46. Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute "overriding interests."

II. Analysis

Church Defendants have moved the Court to seal portions of their motion to lift bankruptcy stay. Church Defendants have filed the redacted version, and an unredacted version.

In assessing the necessity of sealing a document, the Court's analysis turns on the basis for confidentiality versus the public interest in the information sought to be sealed. This matter relates to allegations of childhood sexual assault. Plaintiff has been allowed to proceed under a Doe designation. The matters here are of a sufficiently serious nature that even the discussion of the allegations may be deleterious to parties. The specific matters requested to be sealed are narrow, sealing only Plaintiff's Proof of Claim from the bankruptcy case, and portions of the memorandum referencing matters therein.

Sealing the requested documents appears appropriate. The motion to seal is GRANTED. Church Defendant's counsel 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).

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