SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 16 / 34
JUDICIAL OFFICER: BENJAMIN REYES / LEONARD E MARQUEZ
HEARING DATE: 02/05/2025

INSTRUCTIONS FOR CONTESTING TENTATIVE RULING IN DEPARTMENT 16/34

The tentative ruling will become the ruling of the Court unless by 4:00PM of the Court day preceding the hearing, notice is given of an intent to argue the matter. Counsel or self-represented parties must email Department 34(Dept34@contracosta.courts.ca.gov) to request argument and must specify, in detail, what provision(s) of the tentative ruling they intend to argue and why. Counsel or self-represented parties requesting argument must advise all other counsel and self-represented parties by no later than 4:00PM of their decision to argue, and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (Pursuant to Local Rule 3.43(2).)

ALL APPEARANCES TO ARGUE WILL BE IN PERSON OR BY ZOOM, PROVIDED THAT PROPER NOTIFICATION IS RECEIVED BY THE DEPARTMENT AS PER ABOVE.
Zoom link-
https://www.zoomgov.com/j/1619504895?pwd=N0V1N3JFRnJ0TEVoSDNrTGRzakF3UT09

ID: 161 950 4895
Password: 812674

Law & Motion

1. 9:00 AM CASE NUMBER: C23-01292
CASE NAME: PATRICIA KUBICHEK VS. MICHAEL YRUETA
HEARING IN RE: JOINDER TO DEFENDANT ACCOR MANAGEMENT US, INC. MOTION TO DISQUALIFY PLAINTIFF'S COUNSEL
FILED BY: YRUETA, MICHAEL
TENTATIVE RULING:

See Line 2.

2. 9:00 AM CASE NUMBER: C23-01292
CASE NAME: PATRICIA KUBICHEK VS. MICHAEL YRUETA
***HEARING ON MOTION IN RE: TO DISQUALIFY PLAINTIFF'S COUNSEL, FULVIO CAJINA AS PLAINTIFF'S COUNSEL, FULVIO CAJINA AS COUNSEL OF RECORD**
FILED BY: ACCOR MANAGEMENT US INC
TENTATIVE RULING:

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 16 / 34
JUDICIAL OFFICER: BENJAMIN REYES / LEONARD E MARQUEZ
HEARING DATE: 02/05/2025

Before the Court is Defendant Accor Management US Inc.'s Motion to Disqualify Plaintiff's Counsel.

General Factual Allegations and Background

This matter pertains to injuries sustained by Plaintiff while on vacation (her honeymoon) in Hawaii. On September 9, 2022, Plaintiff, her husband (Plaintiff Counsel Fulvio Cajina), and two-year-old daughter were staying at the Fairmont Orchid, a hotel run and operated by Defendant Accor. On that date, Plaintiff went snorkeling in a lagoon located on the Property. While Plaintiff was snorkeling, Defendants W.Y. and his younger brother began throwing large lava rocks into the lagoon. Plaintiff was struck in the head by one of the rocks, resulting in a traumatic head injury. Her husband was taking care of their daughter at the time of the incident.

On May 30, 2023, Counsel Cajina filed the Complaint in this matter on behalf of his wife – Plaintiff Particia Kubicheck – alleging claims based on the above incident. Counsel for Defendant Accor filed the instant motion to disqualify on October 11, 2024.

Standard

"A court's authority to disqualify a lawyer in a pending proceeding derives from its inherent power to regulate the conduct of court officers, including attorneys, in furtherance of the sound administration of justice." *City of San Diego v. Superior Court* (2018) 30 Cal.App.5th 457, 469.) Disqualification, however, is "a drastic remedy that should be ordered only where the violation of the privilege or other misconduct has a 'substantial continuing effect on future judicial proceedings.'" (*Id.* at 462 quoting *Gregori v. Bank of America* (1989) 207 Cal.App.3d 291, 309.)

"Ultimately, disqualification motions involve a conflict between the clients' right to their choice and the need to maintain ethical standards of professional responsibility." (*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145.) "The paramount concern must be to preserve public trust in the scrupulous administration of justice and the integrity of the bar. The important right to counsel of one's choice must yield to ethical considerations that affect the fundamental principles of our judicial process." (*Ibid.*)

Defendant Accor argues that Defense Counsel should be disqualified completely from representing Plaintiff in this matter based on California Rules of Professional Conduct, Rule 3.7, the so-called 'advocate-witness rule'. Rule 3.7 states, in pertinent part:

(a) A lawyer shall not act as an advocate in a trial in which the lawyer is likely to be a witness unless:
…
(3) the lawyer has obtained informed written consent from the client. …"

In this instance, Defense Counsel has a signed written consent to his representation pursuant to Rule 3.7. "[T]he general rule is that an attorney may serve as both advocate and witness … if the client has provided its informed written consent." (*Gerringer v. Blue Rider Finance* (2023) 94 Cal.App.5th 813, 822.) This exception is not absolute, and a court can still limit an attorney's role "to protect the trier

of fact from being misled or the opposing party from being prejudiced." (*Id.* at 821-22.) "The court's discretion to disqualify a likely advocate-witness notwithstanding client consent – the exception to the exception – has been judicially interpreted to be permissible only upon 'a convincing demonstration of detriment to the opponent or injury to the integrity of the judicial process.'" (*Id.* at 822, citation omitted.)

"In exercising its discretion to disqualify counsel under the advocate-witness rule, a court must consider: (1) 'whether counsel's testimony is, in fact, genuinely needed'; (2) 'the possibility [opposing] counsel is using the motion to disqualify for purely tactical reasons'; (3) 'the combined effects of the strong interests parties have in representation by counsel of their choice, and in avoiding the duplicate expense and time-consuming effort involved in replacing counsel already familiar with the case.'" (*Doe v. Yim* (2020) 55 Cal.App.5th 573, 583 quoting *Smith, Smith & Kring v. Superior Court* (1997) 60 Cal.App.4th 573, 580-81.) "[T]rial courts must indicate on the record they have considered the appropriate factors and make specific findings of fact when weighing the conflicting interests in recusal motions.

Argument

As limited discovery has taken place, and no depositions have occurred, Accor maintains that requiring Plaintiff to retain new counsel will not be costly or burdensome. Accor seeks an order disqualifying Mr. Cajina, as well as any employees or associates of his law offices, from representing Plaintiff in this action – not merely from representing her at trial.

Analysis

Whether Defense Counsel's testimony is genuinely needed

Accor contends that Mr. Cajina will be a 'key witness' at trial and that allowing him to also be an advocate for Plaintiff will confuse the trier of fact and will lead to an 'injury to the integrity of the judicial process.' It argues that Mr. Cajina will testify "in Plaintiff's efforts to establish the alleged incident and the nature and extent of Plaintiff's alleged damages." As for the alleged damages, which include claims for mental health injuries and PTSD resulting from the incident, Accor claims that "the documented history of [Plaintiff] being in an abusive relationship with Mr. Cajina, guarantees that Mr. Cajina's testimony regarding Plaintiff's damages, as well as his credibility, will be a central issue at trial."

Mr. Cajina disputes the above. To begin with, he notes that Plaintiff does not plan on calling Mr. Cajina as a witness, nor does he have anything to add regarding the incident at issue since the incident was captured on video and there are other eye witnesses that saw the incident. As for evidence relating to Plaintiff's injuries, medical experts and the Plaintiff herself will provide sufficient evidence to support her claims.

With regard to the claims of domestic abuse, which Accor asserts relate to Mr. Cajina's actions toward Plaintiff, Mr. Cajina denies he has ever abused Plaintiff. It is worth noting that his declaration Mr. Cajina states that he is "not a wife-beater." (Cajina Decl. ¶ 16.) The allegations, however, are not that he is physically abusive to his wife but is verbally and emotionally abusive. These allegations are not addressed in the declaration. Mr. Cajina also cites a single entry in Plaintiff's medical records which indicate that the alleged 'history of abuse' of Plaintiff relates to incidents with her former husband, whom she divorced in 2010. (Cajina Decl. Ex. 6.)

On Reply, Defendant Accor submits portions of Plaintiff's medical records which appear to verify that Plaintiff has had long-standing complaints about verbal and emotional abuse by Mr. Cajina. The dates of the reports, as well as references to the abusive partner, appear to confirm that the person being discussed in Mr. Cajina. Accor also highlights the fact that the portion of the medical records cited in Plaintiff's opposition indicate that they request to have her records updated to reflect that that alleged history of abuse related to her former husband was made during the course of this litigation. Accor contends this "raises suspicion and credibility issues" that will need to be raised. Accor also re-emphasizes that Mr. Cajina has previously confirmed during meet and confer discussions relating to this issue that he "fully expect[s] to be called as a witness in this case." (Velilla Decl. Ex. E.)

At this stage of the litigation, it does not appear that Mr. Cajina's testimony "is genuinely needed" with respect to causation issues relating to the incident. Accor does not appear to dispute that he is not a sole eyewitness to the incident, nor do they argue that he has any special insight into the actual cause of the incident. Especially considering the representation that the incident was captured on video. As for testimony regarding Plaintiff's injuries, the medical experts and Plaintiff's own testimony may well be enough to support her claims. However, given the requests for "mental suffering and emotional distress" damages, the impact and intermingling of the abuse claims appear likely to come into play during discovery and trial.

While the Parties admit that discovery is still in its early stages, it does appear that Mr. Cajina's testimony will be 'genuinely needed,' at least as to the damages requested by Plaintiff. The scope of the necessity may expand as discovery continues if it appears that he does have more direct knowledge of the incident then is currently discussed.

Tactical reasons for motion to disqualify

Other than indicating that this is one of the factors the Court should examine, Plaintiff does not directly address this issue. The closest argument she appears to make is that "[f]or years now, Defendants have engaged in discovery with Plaintiff's counsel without objection." (Opp. at 4:6-7.)

As noted by Defendant, while there has been some discovery, it has been very limited to date. For example, no depositions have occurred. In addition, there is no trial date set. Additionally, the main argument relating to the alleged abusive relationship between Plaintiff and Mr. Cajina was not discovered until Defendants obtained the medical records of Plaintiff.

Defendant's basis for bringing the instant motion at this time appears to be made in good faith, and not for tactical purposes. If anything, bringing this motion now, while discovery is still in the early stages, and not waiting until the eve of trial weighs against a determination that this motion is bringing this motion "purely for tactical reasons." (*Doe,* supra, 55 Cal.App.5th at 583.)

Choice of representation versus expense and prejudice in finding replacement counsel

Defendant contends that replacing counsel at this juncture would not impose a 'costly burden,' on Plaintiff. It indicates that while the case has been pending for approximately 18 months, discovery is still in the early stages and no depositions have been taken. There is also no trial date. As such, there will not be much duplication of efforts if new counsel is retained.

Plaintiff appears to make two arguments in response to this factor. First, Plaintiff's opposition states that "Ms. Kubichek wants her husband to represent her. She feels less stressed knowing that her husband is involved in this litigation." (Opp. at 10:15-1.) There is no citation to any evidence to support this statement. Tellingly, there is no declaration from Plaintiff discussing this, or any other issue raised by Defendant. "Matters set forth in points and authorities are not evidence." (*Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, 590.) "Evidence appears elsewhere – in deposition testimony, discovery responses, and declarations." (*Ibid.*)

Second, Mr. Cajina indicates that he is "not charging [his] wife anywhere near [his] standard rate for representing her." (Cajina Decl. ¶ 18.) He does not indicate what those rates are, or how costs are being allocated.

Given the above, the Court finds that this factor weighs in favor of Defendant.

Summary and Conclusion

"The court's discretion to disqualify a likely advocate-witness notwithstanding client consent – the exception to the exception – has been judicially interpreted to be permissible only upon 'a convincing demonstration of detriment to the opponent or injury to the integrity of the judicial process.'" (*Gerringer v. Blue Rider Finance* (2023) 94 Cal.App.5th 813, 822.)

Weighing the *Doe* factors as outlined above, the Court finds that there is sufficient basis to limit Mr. Cojina's role in litigating this matter. Merely having a spouse represent you during litigation and at trial is not a sufficient basis to disqualify an attorney. However, in the present situation, where there is evidence to support the claim that Plaintiff's husband/attorney has been verbally and emotionally abusive to her, there are claims for mental suffering and emotional distress, and Plaintiff's husband/attorney readily admits that he "fully expect[s]" to be called at trial, there are sufficient concerns that allowing him to represent Plaintiff 'at trial' will 'injure the integrity of the judicial process.' Especially given that Plaintiff has not presented any declaration on her own behalf explaining her position and/or refuting the arguments made by Defendant.

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 16 / 34
JUDICIAL OFFICER: BENJAMIN REYES / LEONARD E MARQUEZ
HEARING DATE: 02/05/2025

Defendant seeks an order disqualifying Mr. Cajina from continuing to represent Plaintiff in any manner going forward in this matter. Rule 3.7 (a) states that a "lawyer shall not act as an advocate *in a trial* in which the lawyer is likely to be a witness…" (emphasis added.) "Trial" is not limited to representation only at the trial itself. Instead, "to effectuate the rule's purpose of avoiding fact finder confusion, [courts] interpret the rule's use of the term 'trial' to encompass a pretrial evidentiary hearing at which counsel is likely to testify." (*Doe*, supra, 55 Cal.App.5th at 583.) Further, courts "recognize that an attorney who 'intends to testify at trial may not participate in any 'pretrial activities which carry the risk of revealing the attorney's dual role to the jury.'" (*Ibid.* citation omitted.) "In particular, a testifying attorney should not take or defend depositions." (*Ibid.*)

Defendant does not cite any authority wherein a court can completely disqualify an attorney from representing a party based on a determination under Rule 3.7 (a). The Court can, however, restrict an attorney from taking or defending depositions and from representing a party at trial. This is what the Court will do here.

Based on the above, Defendant's motion to disqualify Mr. Cajina from representing Plaintiff is **granted in part**. This order is limited, however, to Mr. Cajina's: (1) taking or defending depositions, (2) acting as counsel at pretrial evidentiary hearing at which he is likely to testify, and (3) at trial. Mr. Cajina may continue to represent Plaintiff in other aspects of this litigation.

3. 9:00 AM CASE NUMBER: C23-02813
CASE NAME: JOSHUA SPECK VS. ANDREW LIMCACO
***HEARING ON MOTION FOR DISCOVERY FOR ORDER DEEMING ADMITTED TRUTH OF FACTS OF PLAINTIFF'S REQUEST FOR ADMISSION (SET TWO)**
FILED BY: SPECK, JOSHUA A.
****TENTATIVE RULING:****

Plaintiffs Tara M. Speck and Joshua A. Speck ("Plaintiffs") filed a Motion for Order Deeming Admitted Truth of Facts to Plaintiff's Requests for Admission (Set Two) on or about November 1, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on February 5, 2025. The motion is unopposed.

Background

Plaintiffs' served Defendant Andrew Limcaco ("Defendant") with a Requests for Admission (Set Two). See Declaration of Kirsten Erath Barranti filed November 1, 2024 ("Supporting Declaration"), ¶¶3-4 and **Exhibit A** thereto (the "RFAs"). The RFAs were served on September 12, 2024 by mail and email. *Id*. at ¶3 and **Exhibit A** [attached Proof of Service dated September 12, 2024 (the "Proof of Service")].

With a five calendar day extension for service of the RFAs by mail, the responses were due to be served on or before October 17, 2024. See *id*. at ¶5. No responses were received by the deadline. See *id*. at ¶6. Despite meet and confer efforts, no responses were received. See *id*. at ¶¶7-11.

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 16 / 34
JUDICIAL OFFICER: BENJAMIN REYES / LEONARD E MARQUEZ
HEARING DATE: 02/05/2025

Analysis

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402.

Where a party to whom requests for admission are directed fails to serve a timely response, the propounding party may seek a court order that the genuineness of any documents and/or the truth of any matters specified in the requests be deemed admitted pursuant to Code of Civil Procedure section 2033.280. See Code Civ. Proc. § 2033.280(b). The propounding party may also seek the imposition of monetary sanctions. *Id*.

Having considered the moving papers and any further pleadings submitted, the Court makes the following findings as to the discovery requests at issue:

1. Defendant was duly served with the subject RFAs.
2. No timely response was made to the RFAs by Defendant.
3. Plaintiffs engaged in meet and confer efforts and Defendant did not respond to those communications and did not provide responses to the RFAs.
4. No opposition or other responsive pleadings by Defendant have been filed with the Court.

Sanctions

1. Defendant's failure to respond to the RFAs even after the deadline to do so had passed and demands for responses were made constitutes failing to respond to an authorized method of discovery, pursuant to Code of Civil Procedure section 2023.010(d).
2. Defendant's failure to respond to meet and confer efforts regarding the RFAs constitutes failing to confer with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, pursuant to Code of Civil Procedure section 2023.010(i).
3. The Court finds that the foregoing conduct by Defendant constituted conduct that was a misuse of the discovery process within the meaning of Code of Civil Procedure section 2023.030 and that such conduct warrants the imposition of monetary sanctions. In failing to timely respond to the RFAs, the Court finds that Defendant did not act with substantial justification.
4. Moreover, monetary sanctions are mandatory pursuant to Code of Civil Procedure section 2033.280. See Code Civ. Proc. § 2033.280(c).

Disposition

The Court further finds and orders as follows:

1. Motion to Deem Admissions is GRANTED.
2. The truth of the facts recited in RFA Nos. 25 through 30 and RFA Nos. 32 through 35 are DEEMED ADMITTED by Defendant.

3. The genuineness of the document attached as Exhibit A, pursuant to RFA No. 31, is DEEMED ADMITTED by Defendant.
4. Defendant shall pay monetary sanctions to Plaintiffs in the amount of $591.25 (the "Monetary Sanctions"). The Court finds that the Monetary Sanctions are reasonable expenses, including attorneys' fees, incurred by Plaintiffs as a result of the foregoing conduct by Defendant. In fixing said amount, the Court has considered all evidence in the record before the Court, including the Supporting Declaration. The Monetary Sanctions shall be paid within thirty (30) days from notice of entry of this order.

4. 9:00 AM CASE NUMBER: C24-00406
CASE NAME: MATTHEW THREDE VS. J.T.J., INC.
***HEARING ON MOTION IN RE: FOR PROTECTIVE ORDER**
FILED BY: THREDE, MATTHEW
****TENTATIVE RULING:****

Off calendar per moving party's request filed January 30, 2025.

5. 9:00 AM CASE NUMBER: C24-01213
CASE NAME: PAUL THATCHER VS. REAL COMMERCIAL PROPERTY, INC.
***HEARING ON MOTION IN RE: TO EXTEND TIME TO ANSWER**
FILED BY: REAL COMMERCIAL PROPERTY, INC.
****TENTATIVE RULING:****

Off calendar per Notice of Settlement of Entire Case filed January 28, 2025.

6. 9:00 AM CASE NUMBER: C24-02389
CASE NAME: SHMUEL LEVI VS. OSNAT FAHIMA
HEARING ON DEMURRER TO: AND MOTION TO STRIKE PORTIONS OF PLAINTIFF'S COMPLAINT FILED 9/5/24
FILED BY: FAHIMA, OSNAT
****TENTATIVE RULING:****

Defendant Osnat Fahima ("Defendant") filed a Demurrer on or about November 20, 2024 to the Complaint filed by Plaintiff September 5, 2024 (the "Demurrer"). The Demurrer was set for hearing on February 5, 2025.

Background

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 16 / 34
JUDICIAL OFFICER: BENJAMIN REYES / LEONARD E MARQUEZ
HEARING DATE: 02/05/2025

Defendant's Demurrer contends that the third, fourth, fifth and sixth causes of action fail to state facts sufficient to constitute causes of action. Defendant also demurs and moves to strike certain other portions of the Complaint, including, but not limited to, based on statute of limitations grounds.

Analysis

The Demurrer is unopposed. The requests for judicial notice submitted by the moving party in support of the Demurrer are GRANTED.

Disposition

The Court finds and orders as follows:

1. The Demurrer is SUSTAINED.
2. Leave to amend is DENIED. In addition, to the grounds addressed in the moving papers, the Court concludes that any claims regarding alleged fraudulent/wrongful conduct as between the named parties during the course of their marriage are more appropriately raised in the pending dissolution proceedings before the Court (Case No. MSD22-04461).
3. Moving party to submit proposed form of order.

7. 9:00 AM CASE NUMBER: L22-05519
CASE NAME: WELLS FARGO BANK, N.A. VS. CHARLES BRAVO
***HEARING ON MOTION IN RE: MOTION TO VACATE JUDGMENT FILED 9/12/24 BY PLN**
FILED BY: WELLS FARGO BANK, N.A.
****TENTATIVE RULING:****

It has come to the attention of Department 34 (Judge Marquez) that this judicial officer may be disqualified from hearing this matter. A judge is disqualified where the judge owns a legal or equitable interest in a party of a fair market value in excess of $1,500, which includes publicly traded stocks. Code Civ. Proc. § 170.5(b). Judge Marquez presently holds stocks in Principal Financial Group which may be a related entity and/or a basis for disqualification. Out of an abundance of caution, this matter is continued for hearing by Department 16 (Judge Reyes) on March 19, 2025, 9:00 am.

8. 9:00 AM CASE NUMBER: L23-00467
CASE NAME: LENDMARK FINANCIAL SERVICES, LLC, A LIMITED LIABILITY COMPANY VS. PATRICK MILLET
***HEARING ON MOTION IN RE: MOTION TO SET ASIDE THE DISMISSAL TO ENTER JUDGMENT PURSUANT TO STIPULATION FILED BY PLN ON 9/13/24**
FILED BY: LENDMARK FINANCIAL SERVICES, LLC, A LIMITED LIABILITY COMPANY
****TENTATIVE RULING:****

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 16 / 34
JUDICIAL OFFICER: BENJAMIN REYES / LEONARD E MARQUEZ
HEARING DATE: 02/05/2025

Plaintiff Lendmark Financial Services, LLC ("Plaintiff") filed a Motion to Set Aside the Dismissal to Enter Judgment Pursuant to Stipulation ("Motion to Enter Stipulated Judgment after Default") on September 13, 2024. The Motion to Enter Stipulated Judgment after Default was set for hearing on February 5, 2025. The motion is unopposed.

Background

The parties entered into that certain settlement agreement in or about April 21, 2023 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor ("Defendant") in the amount of $8,887.35, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Declaration in Support of Motion to Set Aside Dismissal to Enter Judgment Pursuant to Stipulation filed September 13, 2024 ("Supporting Declaration") ¶4 and **Exhibit A** thereto. The parties entered into a stipulation for entry of judgement in the event of a default. *Id*. at ¶5 and **Exhibit B** thereto. Defendant defaulted on the Payment Terms and Conditions. *Id*. at ¶7. Defendant failed to cure after notice. *Id*. at ¶8 and **Exhibit C** thereto. After credit for amounts paid, there remains $3,703.01 due and owing, plus costs of $374.90. *Id*. at ¶¶9-10.

Analysis

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. Defendant is in default of the Settlement Agreement.
2. Plaintiff shall have judgment against Defendant in the principal amount of $3,703.01, plus costs of $374.90.
3. Plaintiff's submitted form of money judgment against Defendant will be entered by the Court. Any prior dismissal entered herein against the Defendant is hereby set aside in connection with entry of such judgment.

9. 9:00 AM CASE NUMBER: L24-01865
CASE NAME: CREDITORS ADJUSTMENT BUREAU, INC. VS. RALPH OROQUITA
***HEARING ON MOTION IN RE: MOTION TO COMPEL RESP TO REQ FOR PROD OF DOCS, REQ FOR SANCT FILED BY PLN ON 9/11/24**
FILED BY: CREDITORS ADJUSTMENT BUREAU, INC.
****TENTATIVE RULING:****

On September 11, 2024, plaintiff Creditors Adjustment Bureau, Inc. ("Plaintiff") filed motions to compel responses to certain discovery requests propounded by Plaintiff to defendant Ralph Richard

Oroquita ("Defendant") (collectively, the "Motions to Compel"). The Motions to Compel were set for hearing on February 5, 2025.

Background

The Motions to Compel relate to two separate discovery requests. Plaintiff served Defendant with a First Demand for Identification, Production, and Inspection of Documents ("RPD"). See Declaration of Kenneth J. Freed filed September 11, 2024 ("Freed Decl. re RPD"), ¶2 and **Exhibit 1** thereto. The RPD was served by mail on July 5, 2024. *Id*., **Exhibit 1** (Proof of Service dated July 5, 2024). Plaintiff also served Defendant with a set of Special Interrogatories. See Declaration of Kenneth J. Freed filed September 11, 2024 ("Freed Decl. re Special Interrogatories"), ¶2 and **Exhibit 1** thereto. The Special Interrogatories were served by mail on July 5, 2024. *Id*., **Exhibit 1** (Proof of Service dated July 5, 2024). Collectively, the RPD and the Special Interrogatories are referred to herein as the "Discovery Requests."

With a five calendar day extension for service of the Discovery Requests by mail, the responses were due to be served on or before August 9, 2024. No responses were received before the deadline. Freed Decl. re RPD, ¶¶2-3; Freed Decl. re Special Interrogatories, ¶¶2-3. Despite meet and confer efforts, no responses have been received since. See *id*.

Analysis

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402.

Where a party to whom a discovery request is propounded fails to serve a timely response, the propounding party may move for an order compelling a response. See Code Civ. Proc. § 2030.290 (as to interrogatories); Code Civ. Proc. § 2031.300 (as to demand for inspection of documents). The propounding party may also seek the imposition of monetary sanctions. *Id*.

Having considered the moving papers and any further pleadings submitted, the Court makes the following findings as to the Discovery Requests at issue:

1. Defendant was duly served with the subject Discovery Requests.
2. No timely response was made to the Discovery Requests by Defendant.
3. Plaintiff engaged in meet and confer efforts and Defendant did not respond to those communications and did not provide responses to the Discovery Requests.
4. No opposition or other responsive pleadings by Defendant have been filed with the Court.

Sanctions

Defendant's failure to respond to the Discovery Requests even after the deadline to do so had passed and demands for responses were made constitutes failing to respond to an authorized method of discovery, pursuant to Code of Civil Procedure section 2023.010(d).

Defendant's failure to respond to meet and confer efforts regarding the Discovery Requests constitutes failing to confer with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, pursuant to Code of Civil Procedure section 2023.010(i).

The Court finds that the foregoing conduct by Defendant constituted conduct that was a misuse of the discovery process within the meaning of Code of Civil Procedure section 2023.030 and that such conduct warrants the imposition of monetary sanctions. In failing to timely respond to the Discovery Requests, the Court finds that Defendant did not act with substantial justification. Furthermore, the Court does not find any other circumstances that would make the imposition of monetary sanctions unjust.

Disposition

The Court finds and orders as follows:

1. The Motions to Compel are GRANTED.
2. **Defendant shall serve verified responses to the Discovery Requests within thirty (30) calendar days of notice of entry of this order.** The Court finds that any objections to such Discovery Requests have been waived to the fullest extent permitted by applicable law. See Code Civ. Proc. §§ 2030.290 and 2031.300.
3. Such responses shall be served on the propounding party via overnight mail to propounding party's attorney's office or other means providing tracking of delivery. Defendant shall thereafter prepare and execute a proof of service of such responses, signed under penalty of perjury.
4. Defendant shall pay monetary sanctions to Plaintiff in the amount of **$1,320.00** (the "Monetary Sanctions"). The Court finds that the Monetary Sanctions are reasonable expenses, including attorneys' fees, incurred by Plaintiff as a result of the foregoing conduct by Defendant. In fixing said amount, the Court has considered all evidence in the record before the Court on the RFO, including the supporting declarations of the moving party. **The Monetary Sanctions shall be paid by Defendant within thirty (30) calendar days of notice of entry of this order.**

10. 9:00 AM CASE NUMBER: L24-01865
CASE NAME: CREDITORS ADJUSTMENT BUREAU, INC. VS. RALPH OROQUITA
***HEARING ON MOTION IN RE: MOTION TO COMPEL RES TO SPECIAL INTERG, REQ FOR SANCTIONS FILED BY PLN ON 9/11/24**

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 16 / 34
JUDICIAL OFFICER: BENJAMIN REYES / LEONARD E MARQUEZ
HEARING DATE: 02/05/2025

FILED BY: CREDITORS ADJUSTMENT BUREAU, INC.
TENTATIVE RULING:

SEE LINE 9 ABOVE.

11. 9:00 AM CASE NUMBER: MSC19-02405
CASE NAME: AQUINDE VS PERFORMANCE SETTLEMENT LLC
***HEARING ON MOTION IN RE: FOR ATTORNEYS FEES AND COSTS**
FILED BY: AQUINDE, THERESA
TENTATIVE RULING:

Plaintiff Theresa Aquinde ("Plaintiff") filed a Motion for Attorneys' Fees and Costs on November 5, 2024 (the "Motion for Fees and Costs"). The Motion for Fees and Costs was set for hearing on February 5, 2025.

Background

A money judgment after bench trial was entered against defendants Daniel Crenshaw and Performance Settlement, LLC in the principal amount of $9,605.07. See Judgment after Bench Trial entered November 12, 2024 (the "Judgment"). The Judgment provides for an award of attorneys' fees and costs, subject to determination upon motion. *Id*. at ¶3.

The Motion for Fees and Costs is supported by the Declaration of Juliana Fredman in Support of Plaintiff's Motion for Attorney's Fees and Costs filed on November 5, 2024 (the "Supporting Declaration").

The Supporting Declaration includes a summary of the legal services rendered and expenses incurred in the litigation of the matter. See Supporting Declaration, ¶¶10-11 and **Exhibit 1** thereto. It is noted that the amount sought is a "substantial reduction from the more than 850 hours of attorney and staff time logged in this case." See *id*. at ¶12. Other reductions have been made as well. See *id*. at ¶14. The fees sought total $222,917.50. See *id*. at ¶15 and **Exhibit 1** thereto. The costs sought total $5,817.07. See *id*. at ¶15 and **Exhibit 1** thereto.

Analysis

No opposition has been filed.

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 16 / 34
JUDICIAL OFFICER: BENJAMIN REYES / LEONARD E MARQUEZ
HEARING DATE: 02/05/2025

The Court finds that the pre-trial legal work and trial preparation reflected was reasonable given the nature and scope of the issues in the case. See Supporting Declaration, **Exhibit 1**. The Court also notes that the trial of this matter resulted in a 14 page written decision by the Court.

Disposition

The Court finds and orders as follows:

1. The Motion for Fees and Costs is GRANTED.
2. The Court shall enter the submitted form of proposed order.

12. 9:00 AM CASE NUMBER: MSC20-01785
CASE NAME: LU VS. AZUARA
***HEARING ON MOTION IN RE: UNDER CCP 473 AND 576 TO VACATE DISMISSAL OF TEZZY AZUARA, FERNANDO AZUARA, BI SZ YE AND PIK KEI YIP**
FILED BY:
****TENTATIVE RULING:****

Plaintiff Shun Lu ("Plaintiff") filed a Motion under CCP § 473 and 576 to Vacate Dismissal of Tessy Azaura And Fernando Azuara (the "Motion to Vacate Dismissals") on September 30, 2025. The Motion to Vacate Dismissal was initially set for hearing on November 27, 2024. Thereafter, by the Court's order November 27, 2024 (the "Prior Order") the matter was continued for hearing to February 5, 2025 with directions regarding proper service on all defendants.

Background

The Motion to Vacate Dismissals seeks to vacate the dismissals previously entered in this case as to Tessy Azuara, Fernando Azuara, Bi Sz Ye and Pik Kei Yip.

After the Court's Prior Order, Plaintiff filed the Declaration of George Holland, Sr. on December 23, 2024 (the "12/23/24 Holland Decl.") (a second copy appears to have been filed on the Court's docket with a filing date of January 6, 2025). This declaration indicates that Bi Sz Ye and Pik Kei Yip were never served. See 12/23/24 Holland Decl., ¶2. The declaration also indicates that the defaults of Tessy Azuara and Fernando Azuara were previously taken and they are the only remaining parties. *Id*. at ¶4.

Plaintiff also filed a Notice of Continuance on December 23, 2024. This filing reflects notice of the continued hearing date on the Motion to Vacate Dismissals was given via mail to Tessy Azuara and Fernando Azuara.

Thereafter, a Declaration – Supplemental was filed by counsel George Holland on January 6, 2025 (the "Supplemental Holland Decl."). This declaration makes reference to "The Proof of Service of the Notice of Motion and Motion to Vacate Dismissal was served on 10/25/2024 and filed with this Court on 11/01/2024 with the date of the hearing." *Id*.

The Proof of Service filed November 1, 2025 appears to reflect service of the Motion to Vacate Dismissals ONLY on Tessy Azura.

Analysis

Disposition

The Court finds and orders as follows:

1. PARTIES TO APPEAR.

13. 9:00 AM CASE NUMBER: MSL16-01919
CASE NAME: PORTFOLIO V WILLIAMS
***HEARING ON MOTION IN RE: MOTION TO VACATE DISMISSAL/ENTER JUDGMENT UNDER STIP SETTLEMENT FILED BY PLN ON 8/14/24**
FILED BY: PORTFOLIO RECOVERYASSOCIATES,LLC
****TENTATIVE RULING:****

Plaintiff Portfolio Recovery Associates, LLC ("Plaintiff") filed a Motion to Vacate Dismissal and Enter Judgment under Terms of Stipulated Settlement ("Motion to Enter Stipulated Judgment after Default") on August 14, 2024. The Motion to Enter Stipulated Judgment after Default was set for hearing on February 5, 2025. The motion is unopposed.

Background

The parties entered into that certain settlement agreement in or about September 7, 2016 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor ("Defendant") in the amount of $1,149.03, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Supporting Declaration, Motion to Enter Stipulated Judgment after Default ("Supporting Declaration") ¶2 and **Exhibit B** thereto. The parties entered into a stipulation for entry of judgement in the event of a default. *Id*. at ¶6 and **Exhibit A** thereto. Defendant defaulted on the Payment Terms and Conditions. *Id*. at ¶5. Defendant failed to cure after notice. *Id*. at ¶8. After credit for amounts paid, there remains $949.03, plus costs of $569.00. *Id*.

Analysis

The motion is unopposed.

Disposition

The Court finds and orders as follows:

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 16 / 34
JUDICIAL OFFICER: BENJAMIN REYES / LEONARD E MARQUEZ
HEARING DATE: 02/05/2025

1. Defendant is in default of the Settlement Agreement.
2. Plaintiff shall have judgment against Defendant in the principal amount of $949.03, plus costs of $569.00.
3. Plaintiff's submitted form of money judgment against Defendant will be entered by the Court. Any prior dismissal entered herein against the Defendant is hereby set aside in connection with entry of such judgment.

14. 9:00 AM CASE NUMBER: N24-0935
CASE NAME: PETITION OF:ALBERT SEENO
HEARING ON DEMURRER TO: PETITION FOR WRIT OF ADMINISTRATIVE MANDATE
FILED BY:
TENTATIVE RULING:

Pursuant to the stipulation of the parties, this matter has been continued to February 26, 2025, 9:00 am.