1. HUTCHINSON v. EL DORADO COUNTY HEALTH & HUMAN SERVICES, 24CV2269

(A) Demurrer to Second Amended Petition for Writ of Administrative Mandamus

(B) Second Amended Petition for Writ of Administrative Mandamus

Demurrer to Second Amended Petition

Respondent demurs to petitioner's second amended petition for writ of administrative mandamus ("SAP") on the grounds that (1) there is a misjoinder of parties (Code Civ. Proc., § 430.10, subd. (d)); and (2) the SAP fails to state a claim for relief under Code of Civil Procedure section 1094.5 (Code Civ. Proc., § 430.10, subd. (e)). Respondent also claims the SAP was not properly served and does not include a certification of record from the California Department of Social Services ("CDSS"); however, those are not statutory grounds for a demurrer.

On February 7, 2025, respondent's counsel submitted a declaration stating she met and conferred with petitioner prior to filing the demurrer to petitioner's first amended petition for writ of administrative mandamus. Although respondent did not submit a separate meet and confer declaration regarding the demurrer to the SAP, the court finds that respondent has substantially complied with Code of Civil Procedure section 430.41, subdivision (a).

On March 6, 2025, petitioner filed a pleading entitled, "Basis for Relief and Explanation of Facts."

1. Background

The SAP alleges that petitioner's food stamps were wrongfully reduced from $535 to $193. Attached to the SAP is correspondence and a decision regarding Hearing Number 105002689 issued by the CDSS.

/ / /

/ / /

/ / /

2. Legal Principles

Demurrers are permitted in administrative mandate proceedings. (Code Civ. Proc., §§ 1108, 1109.) A demurrer tests the legal sufficiency of the pleading alone and will be sustained where the pleading is defective on its face.

3. Discussion

Respondent's first contention is that there is a misjoinder of parties in petitioner's SAP. The court agrees. The SAP challenges the CDSS decision from Hearing Number 105002689. Welfare and Institutions Code section 10962 allows a CalFresh recipient to file a petition for writ of review but provides that "[t]he director shall be the sole respondent in such proceedings." (Welf. & Inst. Code, § 10962.) Therefore, the proper respondent in this case is the CDSS director, not the County. The court sustains respondent's demurrer on this ground with leave to amend.

Respondent's second contention is that petitioner's SAP fails to state a claim for relief. In administrative mandamus actions, the trial court reviews the validity of a final order or decision of an administrative agency. (Code Civ. Proc., § 1094.5, subd. (a).) An inquiry into such a case "shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion." (Code Civ. Proc., § 1094.5, subd. (b).) Here, petitioner's SAP fails to articulate any basis for the court to issue a writ of administrative mandamus. The court sustains the demurrer on this ground with leave to amend.

TENTATIVE RULING # 1: THE DEMURRER TO PETITIONER'S SECOND AMENDED PETITION FOR WRIT OF ADMINSTRATIVE MANDAMUS IS SUSTAINED WITH LEAVE TO AMEND. THE HEARING ON PETITIONER'S SECOND AMENDED PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS IS DROPPED FROM THE CALENDAR AS MOOT. PETITIONER SHALL FILE AND SERVE A THIRD AMENDED PETITION FOR WRIT OF

ADMINISTRATIVE MANDAMUS NO LATER THAN MONDAY, APRIL 28, 2025. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

2. CALLAHAN v. POTTS, ET AL., 23CV0236

Petition to Compel Arbitration

Pending is plaintiff's petition to compel arbitration. Defendants oppose the petition, in part, on the ground that plaintiff has waived his right to compel arbitration.[1]

1. Background

This is a breach of contract action arising from a failed attempt to open a cannabis dispensary in South Lake Tahoe, California.

On February 20, 2019, the parties executed a Memorandum of Understanding ("MOU") concerning the business venture. (Compl., Ex. A.) Plaintiff alleges defendants breached the MOU by failing to pursue acquisition of certain real property and a cannabis license. (Compl., ¶ 16.)

Paragraph 7 of the MOU provides, in relevant part, "All disputes arising out of the agreement shall be referred to and resolved by a recognized arbitration and/or mediation, based in the State of California that has jurisdiction over the dispute or in a country acceptable by both parties." (Compl., Ex. A, ¶ 7.)

On January 30, 2023, plaintiff sent defendant Craig Potts a demand for arbitration under the MOU. (Callahan Decl., Ex. A.) The letter states that within seven days after Mr. Potts's receipt of the demand, plaintiff's counsel would be filing for arbitration with JAMS or the American Arbitration Association. (Callahan Decl., Ex. A.) Defendants did not respond. (Callahan Decl., ¶ 2.)

On February 14, 2023, plaintiff filed his complaint against defendants for breach of the MOU and requested a court or jury trial. The complaint alleges plaintiff was bringing this suit "in an abundance of caution because of the upcoming expiration of a statute of

[1] While both parties' briefing touch on the issue of whether compliance with the arbitration agreement is a condition precedent to filing suit (the subject of defendants' pending motion for summary judgment), the instant tentative ruling is strictly limited to the issue of whether the court must order the parties to arbitrate the controversy under Code of Civil Procedure section 1281.2.

limitations under California law." (Compl., ¶ 13.) Over seven months later, on September 25, 2023, plaintiff effected substitute service on defendants.

Defendants failed to timely answer the complaint and plaintiff requested entry of default. Default was entered on December 14, 2023, and default judgment was entered on December 18, 2023. On January 16, 2024, defendants moved to set aside default and default judgment. The issue was heavily litigated. On June 4, 2024, the court granted defendants' motion to vacate default and default judgment on the ground of attorney mistake pursuant to Code of Civil Procedure section 473, subdivision (b). Thereafter, plaintiff filed a motion for reconsideration, which was denied, and a motion for attorney fees. On December 30, 2024, the court awarded plaintiff attorney fees in connection with the default proceedings.

On January 28, 2025, defendants filed a motion to stay discovery and a motion for summary judgment. The motion for summary judgment is based on the ground that plaintiff failed to arbitrate the matter and has a hearing date set for April 25, 2024.

In an ex parte email to the court clerk dated February 10, 2025, plaintiff's counsel requested a Case Management Conference "so that we can get a mediation scheduled as soon as possible."

On March 10, 2025, plaintiff filed the instant petition to compel arbitration.

2. Discussion

California law favors arbitration as a relatively quick and cost-effective means to resolve disputes. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9.) But, the right to arbitration is not self-executing and there is a statutory exception where the "right to compel arbitration has been waived" by the moving party. (Code Civ. Proc., § 1281.2, subd. (a).)

Waiver of the right to arbitrate does not require a voluntary relinquishment of a known right. For example, a party may waive the right by an untimely demand even without any intent to forgo the procedure. In this circumstance, waiver is similar to "a

forfeiture arising from the nonperformance of a required act." (*Burton v. Cruise* (2010) 190 Cal.App.4th 939, 944.) "In the arbitration context, '…"waiver has also been used as a shorthand statement for the conclusion that a contractual right to arbitration has been lost.' " (*St. Agnes Medical Center v. PacifiCare of Cal.* (2003) 31 Cal.4th 1187, 1195, fn. 4; see *Roberts v. El Cajon Motors, Inc.* (2011) 200 Cal.App.4th 832, 840.)

The relevant factors establishing waiver include whether the party's actions are inconsistent with the right to arbitrate; whether the litigation machinery has been substantially invoked and the parties were well into preparation of a lawsuit before the party notified the opposing party of an intent to arbitrate; whether a party delayed for a long period before seeking an order to arbitrate; whether important intervening steps (e.g., taking advantage of judicial discovery procedures not available in arbitration) had taken place; and whether the delay affected, misled, or prejudiced the opposing party. (*St. Agnes*, *supra*, 31 Cal.4th at p. 1196; *Wagner Construction Co. v. Pacific Mechanical Corp.* (2007) 41 Cal.4th 19, 30–31.)

The letter from plaintiff's counsel to defendants dated January 30, 2023, clearly shows that plaintiff was aware of the arbitration provision in the MOU prior to filing suit. (See Callahan Decl., Ex. A ["Since I did not hear back from you…, I will have to assume that you are unwilling to settle the breach of contract matter with Colton Callahan and hereby make formal demand for arbitration under the terms of said contract."].) Even if defendants refused or ignored plaintiff's demand to arbitrate, plaintiff was still required to seek an order compelling arbitration within a reasonable time. (*Wagner*, *supra*, 41 Cal.4th at p. 30.)

While plaintiff's counsel indicated he would file for arbitration to enforce the MOU within seven days after defendants' receipt of the arbitration demand, that is not what occurred. Instead, plaintiff filed his complaint in February 2023 and requested a bench or jury trial. In December 2023, plaintiff requested the court to enter default and default judgment, which the court granted. In January 2024, defendants requested the court to

vacate the default and default judgment and allow plaintiff to arbitrate the matter. (Defs.' Mtn. to Set Aside, filed Jan. 16, 2024, at 6:15–17.) In his opposition, plaintiff argued that defendants should be estopped from demanding arbitration as a means to respond after their default. (Pltf.'s Opp. to Mtn. to Set Aside, filed Feb. 9, 2024, at 8:2–5.) Ultimately, the court granted defendants' motion to vacate default and default judgment under Code of Civil Procedure section 473, subdivision (b). On June 21, 2024, plaintiff filed a motion for reconsideration, which the court denied. Additionally, plaintiff has propounded written discovery in this case, including requests for admissions. (See Callahan Decl. in support of Reply to Opposition to Mtn. for Sanctions, filed Oct. 24, 2024, ¶ 4 & Ex. C.) In his opposition to defendant's motion to stay discovery, plaintiff argued that he is entitled to discovery to oppose defendants' motion for summary judgment. (Pltf.'s Opp. to Mtn. to Stay, filed Feb. 28, 2025, at 1:20.) All of these actions by plaintiff are wholly inconsistent with his present desire to arbitrate.

Viewing the litigation as a whole, which, at this point, has been over two years since the filing of the complaint, the court finds that plaintiff has unreasonably delayed seeking arbitration and substantially impaired defendants' ability to obtain the cost savings and other benefits provided by arbitration. (*St. Agnes*, *supra*, 31 Cal.4th at pp. 1203-1204; *Adolph v. Coastal Auto Sales, Inc.* (2010) 184 Cal.App.4th 1443, 1451–1452.)

The petition to compel arbitration is denied.

TENTATIVE RULING # 2: PLAINTIFF'S PETITION TO COMPEL ARBITRATION IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEEAR MUST BE MADE

BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

3. COETZEE v. LOMELLI-DIAZ, ET AL., 24CV2028

(A) Defendant Santiago's Demurrer

(B) Defendant Santiago's Motion to Strike

(C) Defendant Lomeli-Diaz's Demurrer

(D) Defendant Lomeli-Diaz's Motion to Strike

TENTATIVE RULING # 3: ON THE COURT'S OWN MOTION, MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, MAY 9, 2025, IN DEPARTMENT FOUR. THE COURT APOLOGIZES TO THE PARTIES FOR ANY INCONVENIENCE.

4. PEOPLE v. FRAGRANICE, INC., 24CV2330

Status Conference

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, APRIL 11, 2025, IN DEPARTMENT FOUR.

5. WAGNER v. FIRSTPV, INC., ET AL., 23CV0893

Plaintiff's Motion to Compel Deposition

Plaintiff moves to compel the deposition testimony of defendant FirstPV, Inc.'s ("defendant") person most qualified for three topics in plaintiff's deposition notice issued February 11, 2025.

Plaintiff identified eight topics in his deposition notice for the person most qualified. Defendant produced Renzo Castillo to testify on March 11, 2025. However, Mr. Castillo testified he did not have any knowledge that would allow him to testify regarding three of the eight topics in the deposition notice, including: (1) design of the photovoltaic system ("PVS"); (2) installation of the PVS; and (3) service, repairs, and maintenance of the PVS. After the deposition, on March 12 and March 13, 2025, plaintiff's counsel emailed defense counsel to inquire about the additional person(s) most qualified; however, plaintiff's counsel claims he received no response.

FirstPV does not contest the need to put forth additional persons most qualified (it estimates that the remaining categories will require two or three witnesses); however, it states it needs more time to coordinate and schedule those depositions.

TENTATIVE RULING # 5: GIVEN DEFENDANT FIRSTPV, INC.'S EXPLANATION REGARDING SCHEDULING THE DEPOSITION(S) OF ITS PERSON MOST QUALIFIED ON THE REMAINING THREE TOPICS IN PLAINTIFF'S DEPOSITION NOTICE ISSUED FEBRUARY 11, 2025, THE COURT ORDERS THE PARTIES TO MEET AND CONFER AND SET DATE(S) FOR SAID DEPOSITION(S). THE COURT SETS A STATUS CONFERENCE ON THIS ISSUE FOR 1:30 P.M., FRIDAY, APRIL 18, 2025, IN DEPARTMENT FOUR.

6. TAHOE ASPHALT, INC. ET AL. v. SOUTHWEST WEAR PARTS CO., INC., 24CV2723

Motion for Attorney Fees, Costs, and Sanctions

Pursuant to Code of Civil Procedure sections 128.5 and 128.7, plaintiffs move for an award of attorney fees and costs, as well as sanctions, against defendant, defendant's attorney Vincent W. Davis, and The Law Offices of Vincent W. Davis and Associates on the grounds that they filed the January 17, 2025, unverified answer frivolously and/or in bad faith.

1. Background

Plaintiff Tahoe Asphalt, Inc. ("Tahoe Asphalt") operates an asphalt supply company at 1104 Industrial Avenue, South Lake Tahoe, California (the "Property"), pursuant to a lease agreement with the owner of the Property, plaintiff Tahoe Asphalt Property Company, LLC ("TAPCO").

Defendant claims Tahoe Asphalt owes defendant $217,711.50, together with interest at the rate of 18 percent annum from June 28, 2024, for allegedly providing Tahoe Asphalt labor, materials, service, and equipment.

On August 21, 2024, defendant recorded a mechanic's lien against the Property. Defendant's Proof of Service Affidavit states it served the mechanics lien upon Tahoe Asphalt, not TAPCO, on August 21, 2024, at Post Office Box 95, South Lake Tahoe, California. Plaintiffs claim neither TAPCO nor Tahoe Asphalt have ever been affiliated with this address.

Defendant failed to take any action with respect to the mechanics lien on or before November 19, 2024 – 90 days after the mechanics lien was recorded.

On November 22, 2024, plaintiffs sent defendant written notice of the defective service and the expiration of the 90-day period to enforce the mechanics lien, and demanded that defendant release the mechanics lien. Defendant did not respond.

On December 9, 2024, plaintiffs filed their Verified Complaint for Declaratory and Injunctive Relief and Order Exonerating Surety Bond. On January 9, 2025, defendant

filed its unverified answer. Plaintiffs' counsel met and conferred with defense counsel about plaintiffs' intended motion to strike. Specifically, plaintiffs' counsel informed defense counsel that a verified answer was required (see Code Civ. Proc., § 446, subd. (a)); and that the mechanics lien was unenforceable as a matter of law where defendant sought to serve the wrong party (Tahoe Asphalt) at a non-existent address and defendant failed to timely file a complaint for foreclosure on the mechanics lien. On January 16, 2025, plaintiffs filed their motion to strike defendant's answer.

On January 17, 2025, defendant filed its unverified first amended answer. Plaintiffs' counsel again met and conferred with defense counsel regarding the deficiencies in its filing. On January 27, 2025, plaintiffs filed another motion to strike defendant's amended answer. On February 7, 2025, defendant filed its opposition to plaintiffs' motion to strike. A declaration from Michael Gallagher in support of defendant's opposition states he "inadvertently sent the lien to Tahoe Asphalt, Inc., at P.O. Box 95 South Lake Tahoe 96150, which is an erroneous address." (Gallagher Decl., filed Feb. 7, 2025, ¶ 6.) Defendant claimed, however, that its verified second amended answer filed January 24, 2025, cured the defects in its January 17, 2025, filing.

On February 28, 2025, the court ruled on plaintiffs' motion to strike defendant's January 17, 2025, answer. The court struck the answer in its entirety based on the fact that it was unverified, contrary to Code of Civil Procedure section 446, subdivision (a). The court denied leave to amend because, given Mr. Gallagher's admission that the mechanics lien was improperly served, there did not appear to be a reasonable possibility that the filing could be cured by further amendment.

2. Discussion

Code of Civil Procedure section 128.5, subdivision (a) provides that the "trial court may order a party, the party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended into cause unnecessary delay."

Courts have interpreted "bad faith" in the context of section 128.5 to mean " ' "without subjective good faith or honest belief in the propriety or reasonableness of such actions." ' " (*In re Marriage of Sahafzadeh-Taeb & Taeb* (2019) 39 Cal.App.5th 124, 135.) " 'Frivolous' means totally and completely without merit or for the sole purpose of harassing an opposing party." (Code Civ. Proc., § 128.5, subd. (b)(2).)

In this case, despite plaintiffs' clear explanation to defendant that the mechanics lien was unenforceable as a matter of law (both in plaintiffs' pre-suit letter dated November 22, 2024, and plaintiffs meet and confer efforts prior to defendant's January 17, 2025, unverified amended answer), defendant continued to proceed with denying the merits of plaintiffs' claims in its January 17, 2025, answer. The court finds that attorney Vincent W. Davis and his firm, The Law Offices of Vincent W. Davis and Associates, acted in bad faith. Accordingly, the court finds that a monetary sanction jointly and severally against attorney Davis and his firm of $2,500.00 is appropriate pursuant to Code of Civil Procedure section 128.5, subdivision (a).

TENTATIVE RULING # 6: PLAINTIFFS' MOTION PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 128.5 IS GRANTED. ATTORNEY DAVIS AND THE LAW OFFICES OF VINCENT W. DAVIS, MUST PAY PLAINTIFFS THE TOTAL SUM OF $2,500.00 NO LATER THAN MAY 9, 2025. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

7. REYES, ET AL. v. STATE OF CALIFORNIA, DEPT. OF TRANSPORTATION, SC20200027

(A) Defendants' Request for Code of Civil Procedure Section 128.5 Sanctions

(B) Plaintiff Reyes's Motion to Disqualify Counsel for Defendants

(C) Plaintiff Gonzalez's Motion to Enforce Local Rule 7.12.11

(D) Plaintiff Gonzalez's Ex Parte Application to Reopen Discovery

Defendants' Request for Code of Civil Procedure Section 128.5 Sanctions

On December 11, 2024, defendants filed an ex parte application (1) to strike portions of plaintiff Maria Reyes's motion to continue trial, (2) for a protective order, and (3) for monetary sanctions pursuant to Code of Civil Procedure sections 128 and 128.5. The application was made on the basis that plaintiff Reyes's motion to continue trial improperly disclosed confidential settlement discussions and information in violation of Evidence Code sections 1119, 1126, and 1128, as well as the parties' Dispute Resolution Conference Confidentiality Agreement.

The ex parte application was heard on December 12. After hearing argument from counsel, the court granted the motion to strike paragraphs 5–6 of the declaration of attorney Nicholas Wagner in support of plaintiff Reyes's motion to continue trial and for a protective order prohibiting the parties and their counsel from disclosing confidential settlement discussions. The court reserved on the issue of monetary sanctions against plaintiff Reyes and attorney Wagner. The court now rules on the request for monetary sanctions.

"Simply stated: 'Neither a mediator nor a party may reveal *communications* made during mediation' or for the purpose of a mediation consultation. [Citation.]" (*Campagnone v. Enjoyable Pools & Spas Service & Repairs*, *Inc*. (2008) 163 Cal.App.4th 566, 571, as modified on denial of reh'g (June 18, 2008) [italics in original], quoting *Foxgate Homeowners' Ass'n*, *Inc. v. Bramalea Cal.*, *Inc*. (2001) 26 Cal.4th 1, 13–14 (*Foxgate*).) "To carry out the purpose of encouraging mediation by ensuring

confidentiality, the statutory scheme … unqualifiedly bars disclosure of communications made during mediation absent an express statutory exception." (*Foxgate*, *supra*, 26 Cal.4th at p. 15.)

Here, in explaining background information in support of his motion to continue trial, attorney Wagner disclosed details of settlement offers and discussions. Those disclosures are clearly improper as there is no express statutory exception that would authorize the disclosures. Further, the parties' Dispute Resolution Conference Agreement provides that all parties "agree that the DRC, and all discussions, conferences, or exchanges of documents or information, however transmitted, are subject to the provisions of California Evidence Code section 1115, et seq." (Declaration of Yuliya M. Gelis, Ex. A, ¶ 2.)

After reviewing an email draft of attorney Wagner's declaration on November 26, 2024, defense counsel sent him an urgent meet and confer letter, reminding him of the DRC's confidentiality agreement and the provisions of Evidence Code sections 1119 and 1126, and they requested that he revise his declaration to delete all references to confidential information. (Gelis Decl., ¶¶ 5–6 & Exs. B, C.) In response to the meet and confer letter, attorney Wagner emailed a draft of his ex parte motion to continue trial and his declaration, which still included the same confidential information. (*Id.*, ¶ 7 & Ex. D.) In a further meet and confer effort, attorney Wagner and defense counsel had a discussion via telephone that same day, November 26. (*Id.*, ¶ 8.) Defense counsel again reminded attorney Wagner that certain information in his declaration was confidential information, in violation of the DRC agreement and Evidence Code section 1115, et seq. They again requested that he revise his declaration to delete all references to the confidential information. (*Ibid.*)

Despite those meet and confer efforts, attorney Wagner filed the ex parte application to continue trial and his declaration the following day, November 27, without deleting the improper references to confidential mediation information. (*Id.*,

¶ 9 & Ex. E.) Absent defendants filing their motion to strike, the confidential information would have remained part of the court's public records.

Code of Civil Procedure section 128.5 provides, in part: "A trial court may order a party, the party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay…." (*Id.*, subd. (a).) Courts have interpreted "bad faith" in the context of section 128.5 to mean " ' "without subjective good faith or honest belief in the propriety or reasonableness of such actions." ' " (*In re Marriage of Sahafzadeh-Taeb & Taeb* (2019) 39 Cal.App.5th 124, 135.) " 'Actions or tactics' include, but are not limited to, the making or opposing of motions or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading…." (Code Civ Proc., § 128.5, subd. (b)(1).) " 'Frivolous' means totally and completely without merit or for the sole purpose of harassing an opposing party." (*Id.*, subd. (b)(2).)

Given that attorney Wagner persisted in filing his declaration with the confidential information still included, despite the defense's meet and confer efforts and clear statutory authority prohibiting the disclosure, the court finds that attorney Wagner acted in bad faith and his actions were intentional. Further, his actions resulted in the defense incurring attorney fees and costs in bringing the motion. Accordingly, the court finds that an award of reasonable attorney fees and costs is appropriate pursuant to Code of Civil Procedure section 128.5, subdivision (a). Having reviewed attorney Gelis's declaration, the court finds that $1,760.00 is an appropriate sanction (8 hrs. at $220/hr.) against attorney Wagner.

Defendants' request for monetary sanctions pursuant to Code of Civil Procedure section 128.5 is granted. Attorney Wagner must pay defendants $1,760.00 no later than May 9, 2025.

Plaintiff Reyes's Motion to Disqualify Counsel for Defendants

Under California law, every court has the authority "[t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto." (Code Civ. Proc., § 128.5, subd. (a)(5).) The court's power to disqualify an attorney derives from that authority. (*People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145 (*SpeeDee Oil*).)

"Disqualification motions implicate several important interests, among them are the clients' right to counsel of their choice, the attorney's interest in representing a client, the financial burden of replacing a disqualified attorney, and tactical abuse that may underlie the motion. [Citation.] The 'paramount' concern in determining whether counsel should be disqualified is 'the preservation of public trust in the scrupulous administration of justice and the integrity of the bar.' " (*Roush v. Seagate Technology, LLC* (2007) 150 Cal.App.4th 210, 218–219.) Disqualification motions are uniquely " 'prone to tactical abuse because disqualification imposes heavy burdens on both the clients and courts; clients are deprived of their chosen counsel, litigation costs inevitably increase and delays inevitably occur. As a result, these motions must be examined "carefully to ensure that literalism does not deny the parties substantial justice." ' " (*Sharp v. Next Entertainment, Inc.* (2008) 163 Cal.App.4th 410, 424–425.) " '[S]peculative contentions of conflict of interest cannot justify disqualification of counsel.' " (*In re Jasmine S.* (2007) 153 Cal.App.4th 835, 845.)

Plaintiff Reyes claims that defense counsel, who currently represent both defendants in this case, should be disqualified because (1) there is a direct conflict of interest between the two defendants and representing both defendants constitutes a "serious breach" of Rule 1.7 (former Rule 3–310) of the Rules of Professional Conduct of the State Bar of California; and (2) there is a personal conflict of interest for defense

counsel, who are all employees of defendant California Department of Transportation, to represent their employer while also representing another defendant (Hudspeth).

A conflict of interest during simultaneous representation arises when "an attorney seeks to represent in a single action multiple parties with potentially adverse interests." (*In re Charlisse C.* (2008) 45 Cal.4th 145, 159.) "Attorneys have a duty to maintain undivided loyalty to their clients to avoid undermining public confidence in the legal profession and the judicial process." (*SpeeDee Oil*, *supra*, 20 Cal.4th at p. 1146.) The California State Bar Rules of Professional Conduct provide that, absent informed written consent, a lawyer "shall not … represent a client if the representation is directly adverse to another client in the same or a separate matter" and "shall not … represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, … or by the lawyer's own interests." (Rules Prof. Conduct, rule 1.7, subds. (a), (b).)

Plaintiff Reyes alleges that on March 28, 2025, plaintiffs presented the following settlement offer to defense counsel: in exchange for defendant Hudspeth's admission that he was negligent at the time of the alleged incident, plaintiffs would dismiss the action with prejudice as to defendant Hudspeth only.

Reyes claims, "[d]efense counsel has either not presented the aforementioned settlement offer to Hudspeth or the settlement offer has been rejected by Caltrans." The evidence shows otherwise. In an email dated March 28, 2025, defense counsel responded to plaintiffs' settlement offer stating, "Is defendant Hudspeth admitting negligence for the collision? *Hudspeth* does not agree to your proposed stipulation." (Trent Decl., filed Apr. 7, 2025, Ex. C [italics added].)

Further, the court finds Reyes's claim that defendants have adverse interests entirely speculative. Even if the defendants *did* have an adverse interest in this case, Reyes has not demonstrated, or even alleged, that defendants have not provided informed written consent for the dual representation.

Additionally, Reyes provides no legal authority or factual analysis for the argument that defense counsel have a personal conflict of interest representing both their employer and Hudspeth in this case.

The motion to disqualify defense counsel is denied.

Plaintiff Gonzalez's Motion to Enforce Local Rule 7.12.11

Plaintiff Gonzalez moves to enforce Local Rule 7.12.11.

Local Rule 7.12.11 states: "Counsel, the parties, and all persons attending the [Mandatory Settlement Conference], shall participate fully and in good faith. The court may impose sanctions on any person required to attend who fails to attend, to participate fully and in good faith, or to file the required documents as set forth in Local Rule 7.12.13. In addition to such sanctions, the court may vacate the trial date." (Super. Ct. El Dorado County, Local Rules, rule 7.12.11.E.)

Here, plaintiff Gonzalez's motion requests permission to discuss with the court prior offers made in settlement discussions so that the court can determine whether defendants violated Local Rule 7.12.11.

"The legislative intent underlying the mediation confidentiality provisions of the Evidence Code is clear. The parties and all amici curiae recognize the purpose of confidentiality is to promote 'a candid and informal exchange regarding events in the past .... This frank exchange is achieved only if the participants know that what is said in the mediation will not be used to their detriment through later court proceedings and other adjudicatory processes.' [Citation and parenthetical.]" (*Foxgate Homeowners' Ass'n, Inc. v. Bramalea Cal., Inc.* (2001) 26 Cal.4th 1, 14 (*Foxgate*).) "To carry out the purpose of encouraging mediation by ensuring confidentiality, the statutory scheme … unqualifiedly bars disclosure of communications made during mediation absent an express statutory exception." (*Id.* at p. 15.)

"Although a party may report obstructive *conduct* to the court, none of the confidentiality statutes currently makes an exception for reporting bad faith conduct or for imposition of sanctions under that section when doing so would require disclosure of *communications* or a mediator's assessment of a party's conduct ...." (*Id.* at p. 17 [italics added]; see also *Campagnone v. Enjoyable Pools & Spas Service & Repairs*, *Inc.* (2008) 163 Cal.App.4th 566.)

The California Supreme Court has "repeatedly resisted attempts to narrow the scope of mediation confidentiality" by way of judicially created exceptions, even in circumstances where the result appears unjust. (*Wimsatt v. Superior Court* (2007) 152 Cal.App.4th 137, 152.) For example, "cases have shielded evidence of sanctionable conduct [citation], criminal conduct [citation], and statements that purportedly were inconsistent with those made in a mediation [citation]. Cases have rejected a good cause exception [citation], refused to find implied waivers to mediation confidentiality [citation], and acknowledged that in doing so, the mediation participants accused of misconduct might be protected. Even though in each of these cases strong reasons existed to permit the introduction of the evidence, the results were dictated by the comprehensive statutory scheme devised by the Legislature." (*Id.* at p. 162.)

Thus, while a party may report obstructive conduct, e.g., failing to appear for mediation, there is no express statutory exception that would authorize the parties in this case to disclose to the court any mediation discussions or settlement offers made. Because a hearing on plaintiff Gonzalez's motion to enforce the Local Rule would necessarily entail the disclosure of confidential information, the court cannot consider the merits of the motion.

Plaintiff Gonzalez's motion to enforce Local Rule 7.12.11 is denied.

Plaintiff Gonzalez's Ex Parte Application to Reopen Discovery

On April 7, 2025, plaintiff Gonzalez filed an ex parte application to reopen discovery.

This action commenced in February 2020. The matter was initially set for a jury trial on November 1, 2021. That date was later vacated and the trial was continued to August 8, 2022. All discovery and law and motion deadlines were to run from the new trial date.

The August 2022 trial date was subsequently vacated and the trial was continued to November 6, 2023. All discovery and law and motion deadlines were to run from the new trial date.

In October 2023, plaintiff Gonzalez moved to continue the trial date on the basis that it would interfere with his back surgery, which had been delayed due to the Covid-19 public health emergency. The court granted the request and vacated the November 2023 trial date. At a Case Management Conference in April 2024, the trial was rescheduled for January 13, 2025. Notably, the court's minute order for the CMC states, "Discovery is closed."

In December 2024, plaintiff Reyes moved on shortened time to continue trial again, which request was joined by plaintiff Gonzalez. The court granted the request, primarily due to a serious medical event counsel for plaintiff Gonzalez was experiencing. The trial was continued to February 24, 2025. The court did not reset any deadlines based on the new trial date, and therefore discovery remained closed.

On January 2, 2025, defendants moved on shortened time to continue the trial due to witness unavailability. The court granted the request and vacated the February 2025 trial date, and the matter was set for a hearing on January 17, 2025, to reschedule court dates. At the January 17 hearing, the trial was rescheduled for April 28, 2025, which is the current trial date. The court did not reset any deadlines based on the new trial date, and therefore discovery remained closed.

At the Issues Conference on April 1, 2025, counsel for plaintiff Gonzalez made an oral request to reopen discovery in relation to plaintiff's medical records regarding his back surgery. The court informed counsel that discovery closed in October 2023 and

that he either needed to obtain a stipulation from the other parties to reopen discovery or file a motion to reopen discovery. Plaintiff Gonzalez's ex parte motion on shortened time to reopen discovery was filed April 7, 2025.

Discovery deadlines are set by statute. Parties must complete discovery no later than 30 days before the date initially set for the trial of the action. (Code Civ. Proc., § 2024.020, subd. (a).) "Except as provided in [Code of Civil Procedure] Section 2024.050, a continuance or postponement of the trial date does not operate to reopen discovery proceedings." (Code Civ. Proc., § 2024.020, subd. (b).)

The court has discretion to relieve a party of these statutory deadlines. The court may reopen discovery within 30 days of trial. (Code Civ. Proc., § 2024.050, subd. (a).) In exercising its discretion to grant relief, the court must consider several specified factors. (Code Civ. Proc., § 2024.050, subd. (b).)

Section 2024.050, subdivision (b) states that in deciding whether to grant or deny a motion to reopen discovery, the court must consider four factors: "(1) The necessity and the reasons for the discovery. [¶] (2) The diligence or lack of diligence of the party seeking the discovery ... and the reasons that the discovery was not completed ... earlier. [¶] (3) Any likelihood that permitting the discovery ... will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party. [¶] (4) The length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action." (See *McCoy v. Gustafson* (2009) 180 Cal.App.4th 56, 97 ["Discovery can be reopened on motion by any party for good reasons when it is necessary, the party seeking further discovery has been diligent, and there will be neither prejudice to the opponent nor impact on the scheduled trial date"].)

Plaintiff Gonzalez states that the evidence at issue concerns his back surgery, which occurred after discovery closed on October 7, 2023. He contends that defendants are not prejudiced because they were aware of the surgery because it was the basis for his

request to continue trial, filed on October 10, 2023. Moreover, plaintiff states that he already provided defense counsel with the medical records relating to the back surgery.

In opposition, defendants argue that plaintiff Gonzalez was not diligent in seeking an order to reopen discovery as he had about 18 months to file a regularly noticed motion and failed to do so until three weeks before trial. Defendants contend that the issue is not simply for a few pages of records to be admitted into evidence. Rather, defendants state they would need to obtain certified copies of the records, and they will need to issue further subpoenas since the few pages received from plaintiff are incomplete. Defendants also state they will need to depose at least one individual, in addition to deposing plaintiff Gonzalez again. They argue this amounts to unfair prejudice given that trial is scheduled to commence on April 28.

The court finds that the first factor weighs in favor of plaintiff Gonzalez. He contends that the vehicle collision injured, inter alia, his back, which relates to the discovery at issue. Thus, the discovery is vital for plaintiff to prove causation and damages.

The second factor weighs against plaintiff's request. Counsel for plaintiff Gonzalez knew or should have known that discovery closed on or about October 7, 2023. Plaintiff Gonzalez moved to continue the trial shortly after that deadline because he was about to have back surgery. Thus, the issue of plaintiff's back injury has been known since October 2023, about 18 months ago. It should not have come as a surprise to plaintiff's counsel at the April 1, 2025, Issues Conference that discovery was closed or that the court could not consider an oral request to reopen discovery. Although counsel, in the alternative, requests relief pursuant to Code of Civil Procedure section 473, subdivision (b), the court does not find that any mistake, surprise, or neglect are excusable under these circumstances.

As to the third factor, based on the defense's representation that they would need to conduct further document production and depositions, it is likely that permitting the

discovery would prevent the case from going to trial on the date set and would prejudice defendants. Thus, this factor weighs against plaintiff.

Lastly, the fourth factor weighs against reopening discovery. This case has been pending for over five years. The trial date has been continued five times, for various reasons. The five-year deadline for bringing the matter to trial, which includes the tolling period due to Covid-19, expires in August 2025, only four months from now.

Having considered the factors set forth in Code of Civil Procedure section 2024.050, subdivision (b), the court will deny plaintiff Gonzalez's motion to reopen discovery, without prejudice. The court is open to reconsidering the matter in the event the April 28 trial date is vacated due to a promised appeal by attorney Wagner from the court's denial of his motion to disqualify defense counsel.

TENTATIVE RULING # 7: DEFENDANTS' REQUEST FOR SANCTIONS PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 128.5 IS GRANTED. ATTORNEY WAGNER MUST PAY DEFENDANTS $1,760.00 NO LATER THAN MAY 9, 2025.

PLAINTIFF REYES'S MOTION TO DISQUALIFY DEFENSE COUNSEL IS DENIED.

PLAINTIFF GONZALEZ'S MOTION TO ENFORCE LOCAL RULE 7.12.11 IS DENIED.

PLAINTIFF GONAZALEZ'S EX PARTE APPLICATION TO REOPEN DISCOVERY IS DENIED WITHOUT PREJUDICE.

NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.