1. CURRIE v. CAMP RICHARDSON RESORT, INC., 23CV2270

Motion to Withdraw as Counsel

To date, there is no proof of service for the notice of hearing in the court's file.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, DECEMBER 20, 2024, IN DEPARTMENT FOUR.

2. CAVALRY SPV I, LLC v. ZUNIGA, 23CV1887

OSC Re: Dismissal

This action was filed on November 1, 2023. On December 6, 2024, plaintiff's counsel submitted a declaration stating that plaintiff is diligently working to serve defendant.

TENTATIVE RULING # 2: THE ORDER TO SHOW CAUSE IS HEREBY VACATED. MATTER IS DROPPED FROM THE CALENDAR.

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

Plaintiff's Motion for Attorney Fees

Pending before the court is plaintiff's motion for attorney fees and costs in connection with taking defendants' default. At the hearing held on October 31, 2024, the court received oral argument and directed the parties to submit supplemental briefing on the matter. Having read and considered the supplemental filings, the court finds and rules as follows.

1. Procedural Background

Plaintiff initiated this action on February 14, 2023. On October 26, 2023, plaintiff filed a proof of service stating defendants were served via substitute service on September 25, 2023 (the process server mailed copies of the summons and complaint on September 13, 2023).

On December 14, 2023, plaintiff submitted Judicial Council Form CIV-100 requesting default and default judgment. Plaintiff also submitted a supporting declaration. 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 pursuant to Code of Civil Procedure section 473.5[1] on the ground that plaintiff failed to properly serve defendants with the summons and complaint. On February 23, 2024, the court denied defendants' motion.

On March 14, 2024, defendants filed a motion to vacate default and default judgment on the ground of attorney mistake pursuant to section 473, subdivision (b). On June 4, 2024, the court granted defendants' motion.

[1] Further undesignated statutory references are to the Code of Civil Procedure.

On June 21, 2024, plaintiff filed a timely motion for reconsideration of the court's June 4, 2024, ruling under section 1008, subdivision (a). On August 16, 2024, the court affirmed its prior ruling.

On September 30, 2024, plaintiff filed the instant motion for attorney fees pursuant to section 473, subdivision (c). Plaintiff seeks compensatory legal fees for 192.45 billable hours, and $4,294.94 in costs (to include filing and service fees, travel expenses, and the cost to obtain a declaration from local counsel regarding their reasonable hourly rate).

2. Discussion

Section 473, subdivision (c)(1) provides that, whenever the court grants relief from a default, default judgment, or dismissal based on any of the provisions of this section, the court may impose a penalty of no greater than $1,000.00 upon an offending attorney or party, and grant other relief as is appropriate (e.g., attorney fees).

Defendants contend the court should not impose any penalty or attorney fees based on the circumstances of this case, including defendants' good-faith (but mistaken) belief that service was improper. Defense counsel points out that part of the reason he mistakenly thought service was improper was due to the fact that plaintiff waited roughly seven months to serve the summons and complaint, despite the fact that (1) Local Court Rule 7.12.06 requires plaintiff to serve the summons and complaint and file a proof of service within 60 days after filing the complaint; and (2) California Rules of Court, Rule 3.110, subdivision (b) requires filing the proof of service for the summons and complaint within 60 days of filing the complaint.

The court finds defendants' argument persuasive and is not inclined to order any fees or costs under section 473, subdivision (c).

Still, the taking of default and default judgment, and the failed motion to set aside under section 473.5 were the result of defense counsel's mistake. Section 473, subdivision (b) provides in relevant part: "The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable

compensatory legal fees and costs to opposing counsel or parties." Thus, the court is required to order reasonable attorney fees and costs under section 473, subdivision (b).

A court assessing attorney fees begins with a lodestar figure, based on the "careful compilation of the time spent and reasonable hourly compensation of each attorney … involved in the presentation of the case." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.) The California Supreme Court has noted that anchoring the calculation of attorney fees to the lodestar adjustment method " 'is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.' " (*Serrano III*, *supra*, 20 Cal.3d at p. 48, fn. 23.)

The party seeking attorney fees has the burden of establishing entitlement to an award. To that end, competent evidence as to the nature and value of the attorney's services must be presented. (*City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 784 [evidence furnished should allow the judge to consider whether the case was overstaffed, how much time the attorney spent on particular claims, and whether the hours were reasonably expended].)

While the fee award should be fully compensatory, the trial court's role is not to simply rubber stamp the party's request. (*Ketchum*, *supra*, 24 Cal.4th at p. 1133.; *Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 361.) Rather, the court must ascertain whether the amount sought is reasonable. (*Robertson*, *supra*, 36 Cal.App.4th at p. 361.)

In this case, the court finds that plaintiff should be reimbursed for: (1) taking defendants' default and default judgment; and (2) defending against defendants' section 473.5 motion to set aside. However, plaintiff's fees and costs related to defendants' section 473, subdivision (b) motion to vacate, as well as plaintiff's section 1008,

subdivision (a) motion for reconsideration go beyond the scope of reasonable attorney fees and costs under section 473, subdivision (b).[2]

Further, the court finds it appropriate to adjust the number of billable hours stated in plaintiff's counsel's declaration. With respect to the taking of default and default judgment, plaintiff's counsel declares he spent 18 billable hours. However, as defendants point out, a request for default and default judgment requires little more than a form filing. The court finds that three billable hours is reasonable.

Next, plaintiff's counsel declares he spent 50.2 hours defending against defendants' section 473.5 motion to set aside. The court finds this number excessive; 15 billable hours is reasonable.

Added together, plaintiff is entitled to reimbursement for 18 billable hours.

"The reasonable hourly rate is that prevailing for private attorneys in the community conducting non-contingent litigation of the same type. [Citations.] The prevailing hourly rates apply ' " 'regardless of whether the attorneys claiming fees charge[d] nothing for their services, charge[d] at below-market or discounted rates, represent[ed] the client on a straight contingent fee basis, or are in-house counsel. [Citations.]' [Citation.]" ' [Citations.]" (*Glaviano v. Sacramento City Unified Sch. Dist.* (2018) 22 Cal.App.5th 744, 751.)

Having reviewed the declarations from plaintiff's counsel and local attorneys Michael Johnson, Jennifer Peterson, and Steven Guinn, and based on the court's knowledge – both on the bench and having been an attorney in private practice here – the court finds that

[2] Plaintiff's counsel declares he spent 46 hours defending against defendants' section 473, subdivision (b) motion to vacate. While plaintiff was entitled to oppose defendants' motion, the court ultimately found that relief was proper based on defense counsel's mistake. Defense counsel should not be responsible for plaintiff's attorney fees and costs challenging the motion where defense counsel had clearly admitted his mistake. Similarly, defense counsel is not responsible for plaintiff's attorney fees and costs incurred in his motion for reconsideration. The court affirmed its prior ruling vacating the default and default judgment based on defense counsel's mistake.

$400.00 per hour is within market range for private attorneys doing similar work in the Lake Tahoe area.

Accordingly, plaintiff is entitled to $7,200.00 in attorney fees (18 billable hours x $400.00 per hour).

Turning to the issue of costs, the court finds plaintiff's counsel's alleged travel expenses and $425.00 cost to obtain a declaration from local counsel regarding their reasonable hourly rate to be unreasonable under the circumstances. Plaintiff's counsel declares he incurred hotel and airfare costs to attend the hearings from his home in Washington. However, the court has authorized remote appearances. Additionally, defense counsel should not be responsible for additional costs incurred trying to determine the reasonable hourly rate to be applied in the instant motion.

Lastly, plaintiff claims $1,154.79 in filing and service fees. However, plaintiff does not provide any detailed breakdown or receipts for these alleged costs. The court notes there is no fee to file a request for entry of default or default judgment. (Gov. Code, § 70617, subd. (b)(8).) Nor is there a fee to file an opposition to a motion (unless it is the party's first paper filed in the action, which is not the case here). Therefore, the court does not have sufficient information to award plaintiff the requested filing and service fees.

In sum, the court awards plaintiff $7,200.00 in attorney fees pursuant to section 473, subdivision (b).

TENTATIVE RULING # 3: PLAINTIFF'S MOTION IS GRANTED IN PART. THE COURT AWARDS PLAINTIFF $7,200.00 IN ATTORNEY FEES PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 473, SUBDIVISION (b). 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.

4. IMPERIUM BLUE TAHOE HOLDINGS v. TAHOE CHATEAU LAND HOLDING, 22CV1204

Motion to Compel

Before the court is plaintiff's motion to compel defendant Tahoe Chateau Land Holding's ("defendant") further response to Special Interrogatory (Set Two) Numbers 27, 28, and 29, and Request for Production (Set Three) Numbers 37, 38, 41, 42, and 43. Plaintiff also seeks a monetary sanction in the amount of $3,070.00.

Defendant opposes the motion and seeks a monetary sanction in the amount of $6,375.00 incurred in defending against the motion.

1. Meet and Confer Requirement

Defendant claims plaintiff failed to meet and confer in good faith, as required under Code of Civil Procedure section 2016.040. (Code Civ. Proc., §§ 2030.300, subdivision (b)(1) [interrogatories] & 2031.310, subdivision (b)(2) [requests for production)].) Having reviewed plaintiff's meet and confer letters, the court disagrees. (See Sherman Decl., Exs. D & G.)

2. Discussion

2.1. Special Interrogatories

Special Interrogatory Number 27 states: "IDENTIFY all DOCUMENTS that evidence the parking rates YOU charged under Section 7 of the PARKING AGREEMENT between April 1, 2022, up to the date of YOUR response."

In its further response, defendant objects on the grounds that the interrogatory: (1) is not full and complete because it refers to a document not attached to the interrogatories; (2) is argumentative; (3) calls for information protected as a confidential trade secret under Evidence Code section 1060, et seq.; (4) calls for information which would violate the privacy rights afforded by the California Constitution or Civil Code section 3295; and

(5) is compound due to the specially defined term, "IDENTIFY."[3] Defendant did not provide any substantive response.

Section 2030.060, subdivision (d) provides: "Each interrogatory shall be full and complete in and of itself. No preface or instruction shall be included with a set of interrogatories unless it has been approved under Chapter 17 (commencing with Section 2033.710 [form interrogatories approved by the Judicial Council])." Defendant relies upon *Catanese v. Superior Court* (1996) 46 Cal.App.4th 1159, 1164, and upon Weil & Brown, California Practice Guide: Civil Procedure Before Trial (The Rutter Group 2009) paragraph 8:979.5, which provides: "No incorporation of other questions: The requirement that each interrogatory be 'full and complete in and of itself' is violated where resort must necessarily be made to *other materials* in order to answer the question. [Citation.]" (Weil & Brown, supra, at p. 8F-21, citing *Catanese* at p. 1164, italics added.)

In *Catanese*, *supra*, 46 Cal.App.4th 1159, after the plaintiff had been deposed for eight days, she propounded a series of five interrogatories inquiring whether the defendant contended that any of her answers to questions in the deposition were untruthful, and if so, what evidence supported the contention. (*Id.* at pp. 1161–1162.) The appellate court concluded that the interrogatories violated the "rule of 35" and the requirement of "self-containment" codified in the predecessor to the current statute. (*Id.* at pp. 1163–1164.) "This rule was violated here by interrogatories which necessarily incorporate, as part of each interrogatory, each separate question and answer in eight volumes of deposition. An interrogatory is not 'full and complete in and of itself' when resort must necessarily be

[3] The term, "IDENTIFY," is specially defined "to describe specifically the DOCUMENT, including a description of its type (e.g., letter, memorandum, telegram, chart, etc.) and by bates-number, if applicable, and to state its date, author, addressee, title, file identification number or symbol, and to state the present location and the name and address of the present custodian of such document, and if any such document is no longer in YOUR possession or subject to YOUR control, state what disposition was made of it and the date of such disposition."

made to other materials in order to complete the question. [Plaintiff] could have propounded interrogatories which inquire separately regarding each deposition question and answer, but if [she] had inquired separately in self-contained interrogatories, she would have violated the 'rule of 35.' " (*Id.* at p. 1164.)

In this case, Special Interrogatory Number 27 refers to the parties' parking agreement. However, the interrogatory does not necessarily require the responding party to actually resort to the parking agreement to respond. Rather, the interrogatory is asking for all documents that evidence the parking rates charged pursuant to the parties' agreement. The court finds that this is distinguishable from *Catanese*, where the interrogatories asked defendant whether she contended that any of plaintiff's eight-day deposition testimony was untruthful, requiring the defendant to review and respond to the substance of the deposition. The objection is overruled on this ground.

The next basis for the objection is that Special Interrogatory Number 27 is argumentative. "An argumentative question is a speech to the jury masquerading as a question. The questioner is not seeking to elicit relevant testimony. Often it is apparent that the questioner does not even expect an answer. The question may, indeed, be unanswerable…. An argumentative question that essentially talks past the witness, and makes an argument to the jury, is improper because it does not seek to elicit relevant, competent testimony, or often any testimony at all." (*People v. Chatman* (2006) 38 Cal.4th 344, 384.)

In this case, the question is obviously aimed at ascertaining facts related to the parking rates defendant charged. Thus, the question is not argumentative.

Defendant also contends that the question is argumentative because it requires defendant to assume a fact not in evidence (i.e., that defendant charged parking rates under the parking agreement). However, that is not a valid objection to a written interrogatory. (See *West Pico Furniture Co. of Los Angeles v. Superior Court* (1961) 56 Cal.2d 407, 421 ["[O]bjections such as here [i.e., assumes facts not in evidence] raised to

the form of the question are for the protection of a witness on oral examination. When, as here, the answer is to be made in writing, after due time for deliberation and consultation with counsel, an answer may be framed which avoids the pitfalls, if any, inherent in the form of the question."].) If defendant disputes that it actually charged parking rates under the parking agreement, it could easily so state in its response.

The next basis for the objection is that the interrogatory calls for a protected trade secret under Evidence Code section 1060, et seq. The court disagrees. Evidence Code section 1061, subdivision (a)(1) provides that a "trade secret" means "trade secret," as defined under Civil Code section 3426.1, subdivision (d) or Penal Code section 499c, subdivision (a)(9).[4] Defendant's parking rates do not qualify as a trade secret under either of these definitions.

The next basis for the objection is that the interrogatory calls for information which would violate the privacy rights afforded by the California Constitution or Civil Code section 3295. Corporations, however, do not have a right of privacy that is protected by the California Constitution; California Constitution Article I, Section 1 protects the privacy rights of people only. (*SCC Acquisitions, Inc. v. Superior Court* (2015) 243 Cal.App.4th 741, 755.) As it relates to Civil Code section 3295, subdivision (a), that section provides: "The court may, for good cause, grant any defendant a protective order requiring the plaintiff to produce evidence of a prima facie case of liability for damages pursuant to Section 3294 [punitive damages], prior to the introduction of: [¶] (1) The profits the defendant has gained by virtue of the wrongful course of conduct of the nature and type shown by the evidence. [¶] (2) The financial condition of the defendant." However, the operative

[4] Civil Code section 3426.1, subdivision (d) and Penal Code section 499c, subdivision (a)(9) are substantively identical and provide: " 'Trade secret' means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

complaint does not seek punitive damages. The second cause of action is for breach of the parking agreement. Section 7 of the parking agreement provides in relevant part: "Subsequent to Close of Escrow, Buyer shall have the right to charge [Chateau Retail] tenants and their customers for Retail Parking…at commercially reasonable rates." Special Interrogatory Number 27 asks for all documents that evidence the parking rates defendant charged under this section of the parking agreement. This would establish whether defendant breached the parking agreement. Therefore, the rates charged are not protected by Civil Code section 3294.

Although defendant states it can and will move the court for a protective order, the court notes that, to date, no such motion is in the court's file.

The last basis for the objection is that the interrogatory is compound as a result of the specially defined term, "IDENTIFY." Defendant's objection is not well taken. "In referring to the prohibition of 'compound, conjunctive, or disjunctive' questions ([Code Civ. Proc.,] § 2030.060, subd. (f)), Weil & Brown point out that the 'purpose again is to prevent questions worded so as to require more information than could be obtained by 35 separate questions. [¶] How strictly this rule will be applied remains to be seen. Arguably, any question containing an "and" or "or" is compound and conjunctive!' (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial [(The Rutter Group 2009)] ¶ 8:978.1, p. 8F-21.) They comment that '[t]he rule should probably apply only where *more than a single subject* is covered by the question. Questions regarding the same subject should be allowed although they include an "and" or "or." For example: "State your first name, middle name and last name, and your current address and telephone number." Since only one subject is involved—identification of responding party—the question should not be objectionable because of the "ands" used.' (*Id.*, ¶ 8:979, p. 8F-21.)" (*Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1291.) Here, Special Interrogatory Number 27 asks defendant to identify all documents that evidence the parking rates defendant charged. It is clear that the interrogatory does not raise the type of concern that Code of Civil

Procedure section 2030.060, subdivision (f) was intended to address. The objection is overruled on this ground.

Based on the above, the objections are overruled and plaintiff's motion to compel is granted.

Special Interrogatory Number 28 provides: "State the aggregate total of the construction budget YOU agreed to in YOUR construction agreement with DL Propriis Construction Inc. for the sixteen condominium units and related improvements above the Chateau Retail at the Chateau at the Village located at 4139 Lake Tahoe Blvd, South Lake Tahoe, CA."

Defendant objects on the grounds that the interrogatory: (1) is argumentative in that it assumes facts not in evidence; (2) calls for information protected as a confidential trade secret under Evidence Code section 1060, et seq.; (3) calls for information which would violate the privacy rights afforded by the California Constitution or Civil Code section 3295; (4) is vague and ambiguous as to the term, "Chateau Retail;" and (5) is not relevant to this action. Defendant did not provide any substantive response.

For the same reasons as previously discussed, the court overrules defendant's objection on the first three grounds (i.e., argumentative, trade secret, and privacy).

Defendant argues that the term "Chateau Retail" is vague and ambiguous because "[t]he address to which [plaintiff] refers hosts several shops and restaurants, so it is not clear if [plaintiff] meant all of these business [sic], some of them, or something else altogether." It is clear to the court that the term Chateau Retail refers to all of the businesses at the listed address. The objection is overruled on this ground.

Lastly, defendant objects on the ground that the interrogatory is not relevant to this action. Generally speaking, "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action." (Code Civ. Proc., § 2017.010.) Plaintiff argues that the interrogatory is relevant to the subject matter and seeks information that is likely to lead to the discovery of admissible evidence.

The operative complaint asserts breach of contract, negligence, and nuisance claims against defendant. Plaintiff explains, "if [defendant] underbudgeted the construction work it may evidence that [defendant] did not allocate sufficient resources to mitigate or avoid unreasonably interfering with [plaintiff's] business operations or causing unreasonable construction delays. The construction budget may also demonstrate [defendant's] negligence, including the water infiltration, flooding and other intrusions into [plaintiff's] Chateau Retail space." (Pltf.'s Separate Stmt. at 6:21–27.) The court agrees with plaintiff.

Therefore, defendant's objections are overruled and the motion to compel is granted.

Special Interrogatory Number 29 states: "IDENTIFY all DOCUMENTS that evidence the aggregate total of the construction budget YOU agreed to in YOUR construction agreement with DL Propriis Construction Inc. for the sixteen condominium units and related improvements above the Chateau Retail at the Chateau at the Village located at 4139 Lake Tahoe Blvd, South Lake Tahoe, CA."

In its further response, defendant objects on the grounds that the interrogatory: (1) is argumentative in that it assumes facts not in evidence; (2) calls for information protected as a confidential trade secret under Evidence Code section 1060, et seq.; (3) calls for information which would violate the privacy rights afforded by the California Constitution or Civil Code section 3295; (4) is vague and ambiguous as to the term, "Chateau Retail;" (5) is not relevant to this action; and (6) is compound due to the specially defined term, "IDENTIFY."

For the reasons previously discussed, defendant's objections are overruled and the motion to compel is granted.

2.2. Request for Production

Request for Production Number 37 requests: "All DOCUMENTS YOU identified or described in YOUR response to Interrogatory No. 27 of Special Interrogatories, Set Two."

In its further response, defendant objected on the grounds that this request calls for the production of materials which would violate: (1) the privacy rights afforded by the California Constitution or Civil Code section 3295; and (2) the attorney-client privilege. Defendant did not produce any documents.

For the reasons previously discussed, defendant's objection on the grounds of privacy is overruled.

As it relates to the claim of attorney-client privilege, defendant alleges that the document subject to this objection is an email between defendant *Propriis* and its attorney of record. However, the attorney-client privilege is held by the client. (Evid. Code, § 953, subd. (a); *Fiduciary Trust Int'l of Cal. V. Klein* (2017) 9 Cal.App.5th 1184, 1195.) Defendant has the burden of making a prima facie showing that it is the holder of the privilege, and here, defendant has not met that burden.

Therefore, the objections are overruled and the motion to compel is granted.

Request for Production Number 38 requests: "All DOCUMENTS YOU identified or described in YOUR response to Interrogatory No. 29 of Special Interrogatories, Set Two."

In its further response, defendant objected on the grounds that this request calls for the production of materials which would violate the privacy rights afforded by the California Constitution or Civil Code section 3295. Defendant did not produce any documents.

For the reasons previously discussed, defendant's objection on privacy grounds is overruled. The motion to compel is granted.

Request for Production Number 41 requests: "All DOCUMENTS comprising the complete and unredacted construction agreement dated June 20, 2022, between YOU and DL Propriis Construction Inc. for the construction of sixteen condominium units and related improvements at the Chateau at the Village located at 4139 Lake Tahoe Blvd, South Lake Tahoe, CA 96150."

In its further response, defendant objected on the grounds that this request: (1) calls for the production of materials which are protected as a confidential trade secret under Evidence Code section 1060, et seq.; (2) calls for the production of materials which would violate the privacy rights afforded by the California Constitution or Civil Code section 3295; (3) is overbroad; and (4) is not reasonably calculated to lead to the discovery of admissible evidence. Defendant did not produce any documents.

For the reasons previously discussed, the court overrules defendant's objection on privacy grounds. The court also finds that the construction agreement is not a trade secret.

Defendant further objects that the request is overbroad in that it asks for information that is not relevant to the subject matter of this action, and the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Plaintiff points out that, under the parties' M&E Agreement, defendant agreed that in its use of the temporary construction easement that it would not unreasonably interfere with plaintiff or its tenants' use or the operation of their businesses, and that defendant would repair any damage and indemnify plaintiff for any damages arising from defendant's use of the temporary construction easement. The court finds that the terms of the construction agreement are relevant to the subject matter.

Therefore, the objections are overruled and the motion to compel is granted.

Request for Production Number 42 requests: "All DOCUMENTS comprising the complete and unredacted developer agreement dated June 1, 2022, between YOU and Propriis LLC for the real property located at 4139 Lake Tahoe Blvd, South Lake Tahoe, CA."

In its further response, defendant objected on the grounds that this request: (1) calls for the production of materials which are protected as a confidential trade secret under Evidence Code section 1060, et seq.; (2) calls for the production of materials which would violate the privacy rights afforded by the California Constitution or Civil Code

section 3295; (3) is overbroad; and (4) is not reasonably calculated to lead to the discovery of admissible evidence. Defendant did not produce any documents.

Defendant does not articulate how the requested material is protected as a confidential trade secret under Evidence Code section 1060, et seq. Without information substantiating this claim, the objection is overruled.

For the reasons previously discussed, the court overrules defendant's objection on privacy grounds. Lastly, the court finds that the request is not overbroad and is relevant to the subject matter.

The objections are overruled and the motion to compel is granted.

Request for Production Number 43 requests: "All DOCUMENTS evidencing COMMUNICATIONS between YOU and Propriis, LLC relating to the Chateau at the Village between January 1, 2019, and up to the date of YOUR response."

In its further response, defendant objected on the grounds that this request: (1) calls for the production of materials that are protected by the attorney-client privilege and/or work product doctrine; (2) calls for the production of materials which are protected as a confidential trade secret under Evidence Code section 1060, et seq.; (3) calls for the production of materials which would violate the privacy rights afforded by the California Constitution or Civil Code section 3295; (4) is overbroad in both time and scope; and (5) is not reasonably calculated to lead to the discovery of admissible evidence. Defendant did not produce any documents. Defendant did not produce any documents.

The court sustains defendant's objection on the ground that the request is overbroad in scope. The motion to compel is granted in part and overruled in part. Defendant is ordered to produce all documents evidencing communications between defendant Tahoe Chateau and defendant Propriis, LLC relating to construction performed under the M&E Agreement at the Chateau at the Village between January 1, 2019, and up to the date of defendant's response.

3. Monetary Sanction

Having reviewed the motion papers, including the declaration from plaintiff's counsel, the court finds that $3,070.00 is a reasonable sanction under the Civil Discovery Act.

TENTATIVE RULING # 4: THE MOTION TO COMPEL IS GRANTED IN PART AND DENIED IN PART. REFER TO THE FULL TEXT. FOR THOSE DISCOVERY REQUESTS WHERE THE COURT GRANTED THE MOTION TO COMPEL, DEFENDANT TAHOE CHATEAU LAND HOLDING, LLC, IS ORDERED TO SERVE VERIFIED, FURTHER RESPONSES AND PAY PLAINTIFF $3,070.00 IN SANCTIONS NO LATER THAN 30 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. 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.

5. NUSS v. BARTON MEM'L HOSP., ET AL., 23CV0236

Motion for Summary Judgment

Before the court is defendant Sandra Taylor, M.D.'s ("defendant") motion for summary judgment under Code of Civil Procedure section 437c.[5] Plaintiff filed an opposition and defendant filed a reply. Additionally, on December 16, 2024, plaintiff filed a "response" to defendant's reply. However, section 437c does not authorize an additional response to a motion for summary judgment, and therefore, the court does not consider plaintiff's supplemental filing.

1. Background

This is a medical malpractice action arising from an appendectomy.

On June 16, 2019, plaintiff presented to defendant Barton Memorial Hospital with complaints of right lower quadrant abdominal pain that started the previous night. (Mtn., Def.'s Stmt. of Undisputed Material Facts ("UMF") No. 1.) Plaintiff was diagnosed with appendicitis. (UMF No. 2.) It was determined that plaintiff would undergo a laparoscopic appendectomy. (UMF No. 2.) Defendant discussed the care with plaintiff and received informed consent to operate. (UMF No. 2.) Defendant performed the appendectomy and discharged plaintiff from the hospital later that day. (UMF No. 3.)

Over three years later, on August 10, 2022, plaintiff presented to West Hills Hospital and Medical Center complaining of abdominal and back pain, with some nausea and vomiting. (UMF No. 4.) Plaintiff's admitting evaluation report referred to "possible stump appendicitis." (UMF No. 5.) Plaintiff was admitted to the hospital and given antibiotics. (UMF No. 6.) Plaintiff was discharged on August 12, 2022, prescribed oral antibiotics, and told to follow up with a general surgeon in one week. (UMF No. 7.)

On August 18, 2022, plaintiff presented to Providence St. John's Hospital with "atypical abdominal pain, possible stump appendicitis." (UMF No. 8.) A CT scan revealed

[5] Further undesignated statutory references are to the Code of Civil Procedure.

mildly enlarged right lower quadrant mesenteric nodes. (UMF No. 9.) Plaintiff consulted with a general surgeon, who offered the choice of antibiotics or surgery. (UMF No. 9.)

Plaintiff chose to undergo surgery. (UMF No. 10.) 2.8 centimeters of the appendiceal stump were removed. (UMF No. 10.) The surgical report stated, "Acute appendicitis, focal in a short (2.8 cm) segment appendix." (UMF No. 10.)

In support of the instant motion, defendant offered an expert opinion from Eric Morse, M.D. regarding the standard of care provided by defendant. (UMF No. 11.) Dr. Morse opined that defendant's treatment of plaintiff – including defendant's pre-operative evaluation, explanation of the risks and benefits, performance of the surgery, and defendant's post-operative care – was within the applicable standard of care. (UMF Nos. 12, 13.) Dr. Morse reasoned that a stump left behind in connection with an appendectomy does not mean or imply that the surgeon was negligent, or that the operation was performed below the standard of care; care must be taken to remove as much of the appendix as can be identified and is possible to remove, but anatomical anomalies can result in a stump being left behind. (UMF No. 14.)

2. Evidentiary Objections

Defendant objects to plaintiff's citations to the following medical journals on hearsay grounds: (1) Stump Appendicitis: A Rare Clinical Entity; (2) Stump Appendicitis is a Rare Delayed Complication of Appendectomy: A Case Report; and (3) Stump Appendicitis: A Surgeon's Dilemma. The objections are sustained.

The court also sustains defendant's objections to plaintiff's evidence offered in opposition to the motion for summary judgment (defendant's objections are listed in her reply to separate statement of undisputed facts).

3. Legal Standard

A motion for summary judgment shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law. (§ 437c.) A defendant moving for summary judgment need

only show that one or more elements of the cause of action cannot be established. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) This can be done in one of two ways, either by affirmatively presenting evidence that would require a trier of fact not to find any underlying material fact more likely than not; or by simply pointing out "that the plaintiff does not possess and cannot reasonably obtain, evidence that would allow such a trier of fact to find any underlying material fact more likely than not." (*Id.* at p. 845; *Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1601.) Because of the drastic nature of a motion for summary judgment, the moving party's evidence is to be strictly construed, while the opposing party's evidence is to be liberally construed. (*A-H Plating, Inc. v. American Nat'l Fire Ins. Co.* (1997) 57 Cal.App.4th 427, 433–434.)

The party moving for summary judgment must show that it is entitled to judgment as a matter of law on any theory of liability reasonably embraced within the allegations of the complaint. (*Doe v. Good Samaritan Hosp.* (2018) 23 Cal.App.5th 653, 661.) Given the moving party's burden of proof, even a motion for summary judgment which is left unopposed may still be denied if the moving party fails to meet this burden. (*Harman v. Mono General Hosp.* (1982) 131 Cal.App.3d 607, 613.) Nevertheless, where the defendant makes the required showing, the burden shifts to plaintiff to make a prima facie showing that there exists a triable issue of material fact. (*Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 805.)

A party moving for summary judgment may rely on the affidavit of that party's expert if the expert's testimony would be admissible at trial. (*Fernandez v. Alexander* (2019) 31 Cal.App.5th 770, 779.) "When the moving party produces a competent expert declaration showing there is no triable issue of fact on an essential element of the opposing party's claims, the opposing party's burden is to produce a competent expert declaration to the contrary. [Citations.]" (*Ibid.*) However, the "moving party's burden…cannot be satisfied by an expert declaration consisting of ultimate facts and conclusions that are unsupported

by factual detail and reasoned explanation, even if it is admitted unopposed." (*Doe*, *supra*, 23 Cal.App.5th at p. 661.)

4. Discussion

Medical providers must exercise that degree of skill, knowledge, and care ordinarily possessed and exercised by members of their profession under similar circumstances. (*Barris v. County of Los Angeles* (1999) 20 Cal.4th 101, 108, fn. 1.) Thus, in " 'any medical malpractice action, the plaintiff must establish: "(1) the duty of the professional to use such skill, prudence, and diligence as other members of his [or her] profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence." [Citation.]' " (*Hanson v. Grode* (1999) 76 Cal.App.4th 601, 606.)

Here, defendant moves for summary judgment on the ground that plaintiff cannot establish defendant breached her duty of care. (Mtn. at 2:11–13.) In support of her motion, defendant submitted an expert declaration from Dr. Morse, who opined that defendant did not breach her duty of care. Dr. Morse's declaration includes a reasoned explanation of why the underlying facts lead to that ultimate conclusion. (See *McAlpine v. Norman* (2020) 51 Cal.App.5th 933, 939.)

Accordingly, the court finds that defendant has satisfied her initial burden of production on the issue of whether she breached her duty of care. Thus, the burden shifts to plaintiff to raise a triable issue of material fact. However, plaintiff has not produced any admissible evidence in opposition to the motion. Therefore, the court finds that defendant is entitled to summary judgment.

TENTATIVE RULING # 5: THE MOTION FOR SUMMARY JUDGMENT IS GRANTED. 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.

6. NATSUM INVESTMENTS, LLC v. O'BRIEN, ET AL., 24CV2561

OSC Re: Preliminary Injunction

On November 19, 2024, the court granted plaintiff's request for a temporary restraining order ("TRO"), which is currently in effect.

The court notes that plaintiff added new argument for the first time in its reply brief. On the court's own motion, the matter is continued to January 17, 2025, to allow defendants an opportunity to respond.

TENTATIVE RULING # 6: THE MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, JANUARY 17, 2025, IN DEPARTMENT FOUR. DEFENDANTS SHALL HAVE UNTIL JANUARY 6, 2025, TO FILE ANY SUPPLEMENTAL OPPOSITION, AND PLAINTIFF SHALL HAVE UNTIL JANUARY 10, 2025, TO FILE ANY SUPPLEMENTAL REPLY. THE TEMPORARY RESTRAINING ORDER SHALL REMAIN IN EFFECT UNTIL THE CONTINUED HEARING ON JANUARY 17, 2025.

7. PEOPLE v. $144,568.00 UNITED STATES CURRENCY, 24CV2416

Petition for Forfeiture

On October 16, 2024, the People filed a Health and Safety Code section 11488.4, subdivision (a) petition for civil forfeiture against $144,568.00 in United States Currency. To date, there is no proof of publication, as required by Health and Safety Code section 11488.4, subdivision (e), in the court's file.

TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, DECEMBER 20, 2024, IN DEPARTMENT FOUR.