1. FEDOR v. THE GRAND WALL, INC., SC20180239

Defendant's Motion for Summary Judgment

On the court's own motion, matter is continued to March 24, 2023. The court apologizes for any inconvenience to the parties.

TENTATIVE RULING # 1: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, MARCH 24, 2023, IN DEPARTMENT FOUR.

2. IMPERIUM BLUE TAHOE HOLDINGS v. TAHOE CHATEAU LAND HOLDINGS, 22CV1204

(1) Demurrer

(2) Motion to Strike Portions of Complaint

On the court's own motion, matter is continued to March 17, 2023. The court apologizes for any inconvenience to the parties.

TENTATIVE RULING # 1: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, MARCH 17, 2023, IN DEPARTMENT FOUR.

3. SMITH, ET AL. v. DWYER, ET AL., SC20200113

OSC Re: Plaintiff's Counsel's Failure to Appear

TENTATIVE RULING # 3: THE ORDER TO SHOW CAUSE IS DISCHARGED. NO APPEARANCE IS REQUIRED.

4. WEILAND v. EL DORADO COUNTY ASSESSMENT APPEALS BD., 22CV0341

Petition for Writ of Administrative Mandate

This matter arises from a decision of the El Dorado County Assessment Appeals Board ("AAB") granting applications by Safeway, Inc. for reductions in property tax assessments for five grocery stores it owns in El Dorado County. On March 7, 2022, Petitioner Karl Weiland, in his capacity as the El Dorado County Assessor ("Petitioner" or "Assessor"), filed a Petition for Writ of Administrative Mandate against Respondent AAB. Real Party in Interest Safeway, Inc. ("Safeway" or "RPI") answered the petition on May 12, 2022. An Amended Petition for Writ of Administrative Mandate was filed March 30, 2022.

On July 12, 2022, a Second Amended Petition for Writ of Administrative Mandate ("SAP") was filed, alleging that the AAB abused its discretion by failing to proceed in a manner required by law, the AAB's decision is not supported by the findings, and its findings are not supported by the evidence. (See Code Civ. Proc., § 1094.5; Gov. Code § 65000, et seq.) Petitioner seeks a writ of mandate commanding the AAB to vacate its final determination of September 24, 2021, with regard to application numbers 2019/2020-68, 69, 70, 71, 72, 84, 85, 86, 87, and 88, and to conduct a new equalization hearing of Safeway's assessments in conformity with law and consistent with judicial instruction.

Petitioner's Opening Brief was filed October 11, 2022; Safeway's Response to Petitioner's Opening Brief was filed November 18, 2022; the AAB's Response to Petitioner's Brief and joinder to Safeway's Response was filed November 21, 2022; and Petitioner's Reply was filed December 8, 2022. The Administrative Record ("AR"), including the Reporter's Hearing Transcript ("RT"), was lodged on October 11, 2022. Now pending is the hearing on the SAP.

1. Background

1.1 SAFEWAY'S ASSESSMENT APPEAL APPLICATIONS

Safeway filed 10 Assessment Appeal Applications concerning its grocery stores in Cameron Park, El Dorado Hills, Placerville, Pollock Pines, and South Lake Tahoe for tax years 2018–2019 and 2019–2020. (AR 1–4, 10–13, 19–22, 28–31, 37–40, 47–51, 69–72, 81–84, 92–95, 105–108.) Each application states that Safeway was appealing the Assessor's valuation of all business personal property and fixtures at the five grocery stores. (AR 2, 11, 20, 29, 38, 48, 70, 82, 93, 106.)

The following tables set forth the Petitioner's assessed value versus Safeway's opinion of value for each tax year:

2018

APN	Store	Current Assessed Value	Safeway's Opinion of Value
800-024-903-000	Cameron Park	$ 1,541,007	$ 1,112,393
327-130-076-000	Placerville	$ 2,545,513	$ 1,711,859
800-022-502-000	South Lake Tahoe	$ 2,563,997	$ 1,859,573
800-020-628-000	Pollock Pines	$ 1,994,988	$ 1,574,453
110-130-039-000	El Dorado Hills	$ 4,004,117	$ 2,785,072

2019

APN	Store	Current Assessed Value	Safeway's Opinion of Value
800-024-903-000	Cameron Park	$ 1,720,650	$ 1,096,356
327-130-076-000	Placerville	$ 2,455,590	$ 1,559,582
800-022-502-000	South Lake Tahoe	$ 2,583,400	$ 1,673,588
800-020-628-000	Pollock Pines	$ 1,866,080	$ 1,469,241
110-130-039-000	El Dorado Hills	$ 3,696,930	$ 2,401,758

1.2 PROCEEDINGS BEFORE THE ASSESSMENT APPEALS BOARD

The hearing before the AAB took place via Zoom on March 24, 2021. At the conclusion of the March 24 hearing, the AAB took the appeals under submission "with the limited exception of requesting additional information from both Parties about local market values for used grocery equipment, and fixed assets reports from Safeway." (AR 1397, ¶ 7; RT 190.) The additional information was due by March 26, 2021, and the AAB scheduled deliberation for April 15, 2021. (AR 1397, ¶ 7; RT 191.) The Assessor timely submitted its additional evidence on March 26, 2021. (AR 1398, ¶ 8.) Safeway did not

submit its additional evidence until April 14, 2021, and then only after the Clerk of the AAB called to ask if the information had been sent. (AR 1398, ¶ 8)

The AAB deliberated on April 15, 2021, April 29, 2021, and May 20, 2021. (AR 1398, ¶ 9.) The AAB announced its proposed decision on September 8, 2021. (AR 1392–1396.) The final decision of the AAB was issued on September 24, 2021. All 10 appeals were granted unanimously and the AAB adopted the values presented by Safeway. (AR 1397–1403.)

2. Standard of Review

The California Constitution specifies that "[t]he county board of supervisors, or ... assessment appeals boards created by the county board of supervisors, shall constitute the county board of equalization" with the duty to "equalize the values of all property on the local assessment roll by adjusting individual assessments." (Cal. Const., art. XIII, § 16.) Thus, "while sitting as a board of equalization, the [assessment appeals board] is a constitutional agency exercising quasi-judicial powers delegated to the agency by the Constitution" (Westlake Farms, Inc. v. County of Kings (1974) 39 Cal.App.3d 179, 185), with "special expertise in property valuation" (Westinghouse Elec. Corp. v. County of Los Angeles (1974) 42 Cal.App.3d 32, 42).

"[I]t is presumed that the Board regularly performed its duty. The burden is on [petitioner] to prove an abuse of discretion by failing to proceed in the manner required by law or making a decision unsupported by substantial evidence." (Young v. Gannon (2002) 97 Cal.App.4th 209, 225.) The court examines all relevant evidence in the entire administrative record in making its determination. (Ibid.)

Given the quasi-judicial status of local boards, "their factual determinations are entitled … to the same deference due a judicial decision, i.e., review under the substantial evidence standard." (Cochran v. Bd. of Supervisors (1978) 85 Cal.App.3d 75, 80.) " '[S]ubstantial evidence has been defined in two ways: first, as evidence of " ' "ponderable legal significance ... reasonable in nature, credible, and of solid value" ' "

[citation]; and second, as " 'relevant evidence that a reasonable mind might accept as adequate to support a conclusion' "[Citation.]' [Citation.]" (Desmond v. County of Contra Costa (1993) 21 Cal.App.4th 330, 335.)

By contrast, "when a board of equalization purports to decide a question of law, the decision is reviewed de novo." (Maples v. Kern County Assessment Appeals Bd. (2002) 96 Cal.App.4th, 1007, 1013.) "[I]nterpretation of statutes and administrative regulations are quintessential issues of law." (Mission Housing Development Co. v. City and County of San Francisco (1997) 59 Cal.App.4th 55, 73.)

3. Preliminary Matters

Petitioner's Request for Judicial Notice (filed Oct. 11, 2022) is granted. (Evid. Code, § 452, subd. (h).)

Safeway's objection to the page length of Petitioner's brief is overruled.

4. Discussion

Petitioner essentially raises two issues in his Opening Brief. First, he objects to a procedural matter relating to the submission of additional evidence by the parties after the hearing before the AAB. Second, Petitioner contends that the AAB erred by not justifying the methodology it adopted and its findings of fact are arbitrary and conclusory.

4.1 RECEIPT OF ADDITIONAL EVIDENCE

Petitioner first asserts that the AAB committed a procedural error which renders its decision invalid. Specifically, Petitioner argues it was an abuse of discretion for the AAB to accept evidence after Safeway's appeal was taken under submission, and for a member of the AAB to question Safeway, post-hearing via the Clerk, regarding Safeway's additional evidence.

Petitioner explains that the "fundamental error" by the AAB was its purported desire to hear the matter in as short a time as possible. Safeway submitted about 1,200 pages of exhibits in support of its appeals. Petitioner states that the exhibits were not marked by the Clerk for the AAB, and Safeway did not identify the exhibits or provide the

AAB or Petitioner with a table of contents. The Clerk for the AAB did not make hard copies of Safeway's exhibits. In Petitioner's view, the alleged push to complete the hearing as fast as possible influenced the AAB's decision to request additional evidence from the parties, but without also continuing the hearing to a later date so that the evidence could be properly examined.

In support of his contentions that the AAB violated Petitioner's procedural due process rights, Petitioner cites the following from the Assessment Appeals Manual:

> All decisions rendered by an appeals board must be based on the evidence taken at the hearing. [Fn.] A board should not accept or consider evidence from either the assessor or the applicant at any time outside of the hearing. Even if the evidence offered prior to the hearing is later introduced during the hearing, the party providing the evidence may have created an unfair advantage for his or her viewpoint.
>
> If an appeals board concludes the evidentiary portion of a hearing and chooses to deliberate in private, the board will not accept evidence subsequent to the hearing. A board may not change an assessment without evidence, nor may its action in denying an application for a reduction be based upon evidence taken subsequent to the hearing and out of the presence of one of the parties. [Fn.]

(Assessment Appeals Manual (CSBE May 2003), p. 102.)

In addition, Petitioner cites Property Tax Rule 313, which states in part:

> The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons

> are accustomed to rely in the conduct of serious affairs. Failure to enter timely objection to evidence constitutes a waiver of the objection. The board may act only upon the basis of proper evidence admitted into the record. Board members or hearing officers may not act or decide an application based upon consideration of prior knowledge of the subject property, information presented outside of the hearing, or personal research. A full and fair hearing shall be accorded the application. There shall be reasonable opportunity for the presentation of evidence, for cross-examination of all witnesses and materials proffered as evidence, for argument and for rebuttal. The party having the burden of proof shall have the right to open and close the argument.

(Id., subd. (e).)

Petitioner further contends that Safeway's additional evidence was procured inappropriately. As stated earlier, the deadline for submitting the evidence was March 26, 2021. When Safeway had not submitted its evidence by the deadline a member of the AAB asked the Clerk to contact Safeway's agent for the evidence. (AR, "AAB Email Correspondence," pp. 11 of 73 to 22 of 73.) Subsequently, Petitioner objected to Safeway's late submission of its additional evidence. (Id., pp. 14 of 73, 16 of 73.)

In opposition, Safeway first argues that Petitioner's objection to the submission of additional evidence is waived because he did not object when the AAB requested the evidence. Safeway further argues that even if there was an irregularity in the submission of evidence, Petitioner has not established he was prejudiced by such submission. "No judgment shall be set aside … in any cause, on the ground of … the improper admission or rejection of evidence, … or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion

that the error complained of has resulted in a miscarriage of justice." (Cal. Const., art. VI, § 13.) "Under this standard, the appellant bears the burden to show it is reasonably probable he or she would have received a more favorable result at trial had the error not occurred." (Citizens for Open Government v. City of Lodi (2012) 205 Cal.App.4th 296, 308, citing People v. Watson (1956) 46 Cal.2d 818, 836.) Safeway asserts that even if there were procedural due process violations, the violations amounted to harmless error, citing Hinrichs v. County of Orange (2004) 125 Cal.App.4th 921, 928.

Additionally, Safeway argues that petitioner is estopped from complaining about the purported error in the admission of evidence on the basis of the invited error doctrine. " 'The "doctrine of invited error" is an "application of the estoppel principle": "Where a party by his conduct induces the commission of error, he is estopped from asserting it as a ground for reversal" on appeal. [Citation.]' [Citation.]" (Geffcken v. D'Andrea (2006) 137 Cal.App.4th 1298, 1312.) Safeway claims that Petitioner invited error by not objecting to the submission of additional evidence at the time the AAB requested it. Instead, according to Safeway, Petitioner submitted his own additional evidence, and what Petitioner objects to now is that Safeway did not submit its evidence by the deadline.

In its opposition, the AAB joins in Safeway's brief and provides further context about the hearing. Importantly, the AAB notes that it took Safeway's appeals under submission with the exception that the parties could submit additional information by the deadline provided. (RT 190:4–17.) The AAB explains that the supplemental, clarifying information it requested from each party was based on specific questions raised, and the information requested was not on identical issues for each party. Further, there was no indication that either party wanted the opportunity to be heard, in writing or orally, about the additional evidence. Neither party indicated the request for additional evidence was procedurally improper. Moreover, at the hearing Petitioner had his legal counsel present while Safeway was represented by a tax representative. Petitioner's counsel objected to various

issues during the hearing, but she did not object to the AAB's request for additional evidence.

Having reviewed and considered the Administrative Record, including the Reporter's Hearing Transcript and the Safeway email correspondence, as well as the parties' memoranda, the court finds that Petitioner did not meet his burden of demonstrating error on the part of the AAB. The court agrees with Safeway and the AAB that Petitioner has not established prejudice due to Safeway's submission of additional evidence and that such submission was late. Petitioner makes general and conclusory assertions of prejudice, but without discussing the evidence submitted by Safeway and explaining how the AAB's consideration of such evidence prejudiced him. Further, even assuming it was a procedural violation for the AAB to accept additional evidence, Petitioner has not established that the outcome would have been more favorable to him absent the violation. The record also establishes that Petitioner did not object to the submission of additional evidence. Rather, he objected to the AAB considering Safeway's evidence even though it was not timely submitted. Again, even assuming it was procedurally improper for the AAB to consider the late evidence, Petitioner failed to present sufficient credible evidence demonstrating that he was prejudiced by the alleged violation.

Accordingly, the Assessor's writ petition as to Section II of the SAP is denied.

4.2 METHODOLOGY AND FINDINGS OF FACT

Petitioner next contends that the AAB erred by issuing inadequate findings and that the AAB's values are arbitrary and not based upon substantial evidence.

Regarding methodology, Safeway suggested two approaches for assessing its property; the Comparative Sales Approach and the Marshall & Swift, or Cost, Approach. Safeway argued that the Assessor's methodology, using the published list of economic lives for equipment, is simply a recommendation and not a mandated methodology.

Moreover, the recommended 12-year average service life approach is not supported by any market information or economic life studies of grocery store equipment.

Safeway further argued that the recommended 12-year economic life does not account for the rapid advance of grocery store technology. For example, "[c]heckout stands are being replaced by technology that tracks a shopper's purchases by cameras and sends the bill later. May consumers are no longer buying groceries in person, as they have opted to buy online. Government regulations are constantly changing the efficiency standards of commercial refrigeration, which has led to increased competition among equipment manufacturers. Each of these factors has caused some form of obsolescence in the type of equipment used in Safeway stores." (AR 153.)

After Safeway's presentation, Petitioner explained at the hearing that "[t]he Assessor's Office adheres to the State Board of Equalization's recommended use of the CAA, California Assessors' Association, published list of economic lives for equipment by category. The CAA clearly recommends the use of a 12-year economic life for grocery shopping equipment." (RT 173.) The personal property at issue "includes refrigeration equipment, display cases and tables, deli cases, shelving, bakery equipment, and other such equipment used within the stores." (Ibid.) Petitioner further explained that "[t]he SBE's index factors for 2018 were then applied to 2018 costs to arrive at replacement costs new. Then SBE's percent good factors were applied to arrive at the fair market value of the assets for 2018. The same procedure was used for the 2019 assessments. This is the SBE's prescribed method." (RT 174.)

" '[W]here the taxpayer attacks the validity of the valuation method itself, the issue becomes a question of law subject to de novo review.' [Citation.] The question for the trial court is then 'whether the challenged method of valuation is arbitrary, in excess of discretion, or in violation of the standards prescribed by law.' [Citation.]" (HGST, Inc. v. County of Santa Clara (2020) 45 Cal.App.5th 934, 939.)

"A taxpayer may also claim that although the appeals board chose a valid method of valuation, the board *misapplied* the chosen method. In that case, the trial court applies a substantial evidence standard based on a review of the administrative record, without taking new evidence. 'Where the taxpayer claims a valid valuation method was improperly applied, the trial court is limited to reviewing the administrative record. [Citation.] The court may overturn the assessment appeals board's decision only if there is no substantial evidence in the administrative record to support it.' [Citation.] However, '[w]hether a taxpayer is challenging 'method' or 'application' is not always easy to ascertain.' [Citation.]" (Ibid. [italics in original].)

Here, Petitioner argues that the valuation method adopted by the AAB was arbitrary because the AAB did not justify its conclusion that Safeway's comparable sales approach was more compelling than the Assessor's approach.

The court disagrees. The AAB's decision summarizes the evidence presented by both parties. (AR 1400–1402.) The decision clearly explains that the AAB was persuaded by Safeway's presentation concerning changes in grocery store operations and that there is increased rate of both economic and external obsolescence, which makes the Assessor's sole use of the 12-year economic life method inappropriate in assessing the value of Safeway's grocery store equipment. The AAB further explained that the appropriate standard for deciding value for property tax assessment is determining market value, not value in use. As such, the AAB did not find the Assessor's testimony about the length of use of equipment in the five Safeway stores to be relevant in determining value. (AR 1402–1403.)

Given the AAB's explanation for its adoption of Safeway's valuation method and that the Assessor's method was a guideline and recommended by the CAA and not prescribed, the court does not find that the AAB's decision was arbitrary, in excess of discretion, or in violation of the standards prescribed by law.

Lastly, Petitioner argues that the AAB's findings of fact are conclusory and arbitrary. In support of his assertion, Petitioner cites Next Century Associates, LLC v. County of Los Angeles (2018) 29 Cal.App.5th 713, regarding the AAB's duty to explain its findings:

> Clearly, the Board has the power to disregard a valuation analysis it determines for good reason is unpersuasive, and to reject expert testimony that is speculative, unsupported, or otherwise unpersuasive. But it must tell the parties, and reviewing courts, *why* it rejects the evidence in other than conclusory terms. The orderly process of judicial review requires that administrative agencies must "set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." [Citations.] This requirement applies with equal force to local Assessment Appeals Boards. [Citation.]
>
> "Among other functions, [the] findings requirement serves to conduce the administrative body to draw legally relevant subconclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions. [Citations.] In addition, findings enable the reviewing court to trace and examine the agency's mode of analysis. [Citations.] Absent such roadsigns, a reviewing court would be forced into unguided and resource-consuming explorations; it would have to grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision of the agency." [Citation.]

(Next Century Associates, supra, 29 Cal.App.5th at pp. 723–724 [italics in original].)

The facts in Next Century are readily distinguishable from the facts in this case. In Next Century, the applicant purchased its hotel on the eve of the start of the Great Recession. The appellate court noted that "the housing and stock markets had imploded and the economy had entered a recession. Business activity, including business travel had declined" precipitously. (Id. at p. 722–723.) In rejecting the applicant's case, the Board simply found that the hotel's income growth rates did not justify the decline in value argued by the applicant. Even though the Assessor's analysis of value contained an error— which, if corrected, would result in a significantly lower valuation—the Board still adopted the Assessor's valuation.

The appellate court reversed and ordered a new hearing before the Board, concluding "that the Board's rejection of Next Century's valuation, without sufficient explanation, and with knowledge that the Assessor's valuation analysis—if corrected—would result in a valuation significantly lower than the enrolled value, was arbitrary, as was the decision to leave in place an enrolled value that had been repudiated by the Assessor and was unsupported by any evidence." (Id. at p. 716–717.)

Here, the AAB did not reject the Assessor's case in conclusory terms. The AAB summarized the parties' evidence. The AAB explained that it found persuasive Safeway's valuation method given the changes in grocery store operations. Because the AAB found that the appropriate standard for deciding value for property tax assessment is determining market value, not value in use, it therefore found that the Assessor's 12-year economic life analysis was not relevant in determining market value. Although the AAB's decision is not extensive, it provides a roadmap between the evidence and the AAB's findings, the decision is reasoned, and the decision is supported by substantial evidence.

Accordingly, the Assessor's writ petition as to Sections III and IV of the SAP is denied.

TENTATIVE RULING # 4: ASSESSOR KARL WEILAND'S SECOND AMENDED PETITION FOR WRIT OF ADMINISTRATIVE MANDATE IS DENIED.

5. REYES, ET AL. v. CAL. DEPARTMENT OF TRANSPORTATION, SC20200027

(1) Plaintiff Fernando Gonzalez's Motion for Relief From Orders

(2) Defendants' Motion to Compel Compliance With Order to Produce Vehicle

(3) Defendants' Motion to Compel Compliance With Order to Serve Verification and Verified Responses to Discovery Requests

Plaintiff's Motion for Relief From Orders

Plaintiff Fernando Gonzalez ("plaintiff") moves for an order granting relief from orders entered on September 15, 2022 (court date August 26, 2022) and October 18, 2022 (court date September 30, 2022).

Plaintiff seeks relief from the subject orders pursuant to Code of Civil Procedure section 473(b). He claims his failure to oppose the motions and request oral argument on the tentative rulings was the result of mistake, inadvertence, and/or excusable neglect. According to plaintiff, his attorney stopped communicating with him and failed to request oral argument for the hearing on August 26th, which resulted in the September 15th order. His attorney has since withdrawn from the case leaving him unrepresented, though he states he did not receive notice of the hearing on the motion to be relieved either. At the time of the September 30th hearing, which resulted in the October 18th order, plaintiff asserts he had no knowledge of the tentative ruling procedures. He further argues that the failure to verify discovery responses was the fault of Mr. Wagner, not his own. In the event the court declines to vacate the subject orders, plaintiff requests the court stay the imposition of sanctions awarded in the October 18th order until such time as the parties have reached settlement or a judgment has been rendered.

Defendants ask the court to deny the motion, first and foremost, due to its failure to comply with the procedural requirements of Code of Civil Procedure section 473(b), which requires such a motion to be accompanied by a copy of the answer or other pleading proposed to be filed. Here, two of the orders sought to be overturned are

regarding missing discovery verifications. Defendants point to the fact that the verifications were not attached to the motion, nor have they been provided to defendants separate from the motion. Likewise, plaintiff has not complied with contacting defense counsel to arrange an inspection of his van as he was so ordered. Lastly, according to defendants, the only argument plaintiff makes regarding his mistake is with the filing of his motion for relief, not a mistake regarding his underlying non-compliance with discovery procedures which were the basis of the orders against him. Defendants ask for the motion to be denied in full or, alternatively, it should be denied as to the portions of the orders directing plaintiff to produce his van for inspection, produce verifications to Caltrans's Demand for Supplemental Discovery, and produce verified responses to discovery propounded by Noah Hudspeth, all of which should remain in full force and effect.

Code of Civil Procedure section 473(b) governs the circumstances in which a party may be relieved of the terms of a court order in instances of mistake, inadvertence, or excusable neglect. The statute addresses two sets of circumstances; one where relief is mandatory and the other where relief is discretionary. The mandatory provisions of section 473(b) require an attorney's sworn affidavit. In all other cases, relief is discretionary. (Garcia v. Hejmadi (1997) 58 Cal.App.4th 674, 681.) Thus, the court turns to the discretionary relief requirements of section 473(b).

Generally speaking, "the discretionary relief provision of Section 473 only permits relief from attorney error 'fairly imputable to the client, i.e., mistakes anyone could have made.' [Citations.] 'Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore excusable. To hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice.' [Citation]." (Zamora v. Clayborn Contracting Group, Inc. (2002) 28 Cal.4th 249, 258, citing Garcia, supra, 58 Cal.App.4th at p. 682.) Numerous cases have found that an attorney's conduct

falling below the professional standard of care is not grounds to vacate a resulting judgment or order under section 473(b). (E.g., Carroll v. Abbott Laboratories, Inc. (1982) 32 Cal.3d 892 [conduct falling below the professional standard of care is generally considered inexcusable]; Garcia, supra, 58 Cal.App.4th at p. 682 ["[t]he Legislature did not intend to eliminate attorney malpractice claims by providing an opportunity to correct all the professional mistakes an attorney might make in the course of litigating a case"].) However, "[a]n exception to this rule allows relief where the attorney's neglect, although inexcusable, was so extreme as to constitute misconduct effectively ending the attorney-client relationship. 'Abandonment' may afford a basis for relief, at least where the client is relatively free of fault, but performance which is merely inadequate will not." (Garcia, supra, 58 Cal.App.4th at p. 682.) "For the exception to apply, the attorney's misconduct must be sufficiently gross to effectively abrogate the attorney-client relationship, thereby leaving the client essentially unrepresented at a critical juncture in the litigation." (Id. at pp. 682–683.)

Here, the crux of plaintiff's argument appears to be his prior attorney's (Mr. Wagner) failure to communicate with him regarding discovery verifications, the inspection of his van, and ultimately Mr. Wagner's withdrawal as his attorney of record. Thus, in order to determine if relief is warranted under section 473(b), the court must decide if the conduct of plaintiff's prior attorney constituted total abandonment or simply ineffective representation.

Plaintiff maintains that Mr. Wagner did not respond when he called for assistance during the vehicle inspection. He states that Mr. Wagner did not request oral argument regarding the August 25th tentative ruling which issued sanctions against him for failure to comply with the vehicle inspection. Likewise, he states it was Mr. Wagner who failed to obtain discovery verifications from himself and his wife. He claims he had no knowledge of Mr. Wagner's request to withdrawal as his attorney until after it was granted, thereby leaving him unrepresented for the September 30th hearing which

resulted in the order compelling verifications as well as additional sanctions. Despite plaintiff's assertions, Mr. Wagner, in his motion to be relieved as counsel, cited the fact that it was plaintiff who was not responding to Mr. Wagner.

It does not appear that Mr. Wagner's actions amount to abandonment, especially where he remains counsel of record for co-plaintiff Maria Reyes, and he declared under penalty of perjury of his efforts to contact plaintiff. There does not appear to be grounds to set aside the court orders in this regard. Moreover, the court notes plaintiff's failure to establish his readiness and willingness to proceed as he has not provided defendants with discovery verifications, nor has he contacted them regarding the inspection of his vehicle. Both of which he is required to do not only pursuant to the court order, but as mandated by the Civil Discovery Act, as well.

In light of the foregoing, plaintiff's Motion for Relief from Default/"Unchallenged Tentative Rulings" is denied. However, the court does find good cause to stay the sanctions in both orders until the case has concluded, at which time sanctions are to be paid either from a judgment rendered in plaintiffs' favor or from any settlement agreement, or, if defendants prevail, the amount shall be added to any judgment in favor of defendants.

Defendants' Motion to Compel Compliance With Order to Produce Vehicle

Pending is defendants' motion to compel plaintiff Fernando Gonzalez's ("plaintiff") compliance with the court's September 15, 2022, order directing him and co-plaintiff Maria Reyes to produce their vehicle for inspection. Defendants also request an additional $1,238.00 in sanctions.

By way of background, on August 26, 2022, the court ordered plaintiffs to produce for inspection the van they were in at the time of accident. The court also awarded defendants $6,629 for fees and costs incurred due to plaintiffs' failure to produce the van on the scheduled date. (Mot., Trent Decl., ¶ 3 & Ex. A.)

On September 29, 2022, defense counsel sent plaintiff and his prior attorney a copy of the court's order compelling inspection. (Id., ¶ 4 & Ex. B.) The notice of entry of order was served on October 12th. (Id., ¶ 5 & Ex. C.) On October 19th, October 31st, and November 15th, defense counsel sent correspondence to plaintiff—along with copies of the court's order and letters in Spanish and in English—inviting cooperation in scheduling the van inspection. (Id., ¶¶ 6–8 & Exs. D–F.) Plaintiff admits in his declaration in support of his Motion for Relief from Default/"Unchallenged Tentative Rulings" that he was aware of the van inspection and the court's order compelling inspection. (Pl. Mot. For Relief, Gonzalez Decl., ¶¶ 3, 4.) Caltrans's Spanish speaking staff have called plaintiff on multiple occasions and left messages. Plaintiff returned one of those calls on December 21, 2022. But, plaintiff has not spoken with any member of Caltrans's Spanish speaking staff since December 21st. (Mot., Trent Decl., ¶ 10.) As of the signing date of the motion, January 11, 2023, plaintiff has not responded to any of defense counsel's meet and confer letters and no documents have been received. (Id., ¶ 11.)

Plaintiff did not file an opposition to defendants' motion.

Good cause appearing, defendants' motion is granted. Having reviewed and considered defense counsel's declaration, the court finds that $374.00 (1.7 hrs. x $220/hr.) is a reasonable sanction under the Discovery Act. The sanction may be paid by plaintiff at the end of this case, either from a judgment rendered in plaintiff's favor or from any settlement agreement, or, if defendants prevail, the amount will be included in any judgment in favor of defendants.

Defendants' Motion to Compel Compliance With Order to Serve Verification and Verified Responses to Discovery Requests

Pending is defendants' motion to compel plaintiff Fernando Gonzalez's ("plaintiff") compliance with the court's October 18, 2022, order to serve a verification to supplemental discovery responses and to serve verified responses, without objections, to discovery requests. Defendants also request an additional $1,238.00 in sanctions

By way of background, on October 18, 2022, the court ordered plaintiff to serve defendants with (1) his verification to defendant Caltrans's Demand for Supplemental Discovery (Set Two), and (2) verified responses, without objections, to defendant Nicholas Hudspeth's Form Interrogatories (Set One), Special Interrogatories (Set One), Request for Production of Documents (Set One), and Request for Admissions (Set One). Plaintiff, along with co-plaintiff Maria Reyes, was also ordered to pay defendants $3,456 as a sanction pursuant to the Discovery Act. The court directed plaintiff to serve the verification, the verified responses, and pay sanctions no later than 30 days from the date of service of the notice of entry of order. The Notice of Entry of Order was served on November 1, 2022. (Mot., Decl. of David M. Trent, ¶ 4 & Ex. B.)

On November 16th defense counsel sent a reminder letter, in Spanish and in English, to plaintiff about the upcoming deadline to respond and informed plaintiff of defendants' intent to move to compel if timely responses were not received. (Id., ¶ 5 & Ex. C.) On December 14th, having received no documents, defense counsel sent a final meet and confer letter to plaintiff, in Spanish and in English. (Id., ¶ 7 & Ex. D.) As of the signing date of the motion, January 10, 2023, no response was received from plaintiff to the meet and confer letters and no documents were received. (Id., ¶ 8.)

Plaintiff did not file an opposition to defendants' motion.

Good cause appearing, defendants' motion is granted. Having reviewed and considered defense counsel's declaration, the court finds that $374.00 is a reasonable sanction under the Discovery Act. The sanction may be paid by plaintiff at the end of this case, either from a judgment rendered in plaintiff's favor or from any settlement agreement, or, if defendants prevail, the amount will be included in any judgment in favor of defendants.

TENTATIVE RULING # 5: THE PARTIES ARE REFERRED TO THE FULL TEXT OF THE TENTATIVE RULING. 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. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

6. MATTER OF DUNN, 22CV1640

OSC Re: Name Change

This matter was continued from January 27, 2023.

To date, there is no Proof of Publication in the court's file.

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MARCH 10, 2023, IN DEPARTMENT FOUR.

7. DUO v. VAIL RESORTS, INC., ET AL., 22CV0091

(1) Motion to Compel Plaintiff to Appear and Testify at Deposition

(2) Motion to be Relieved as Counsel of Record

Motion to Compel Plaintiff to Appear and Testify at Deposition

Pending is defendant Heavenly Valley LP's motion to compel plaintiff Oscar Duo to appear and testify at a deposition. On January 5, 2023, plaintiff was served with a notice of remote deposition. (Mot., Kashefipour Decl., ¶ 16 & Ex. C.) The deposition was noticed for January 19, 2023. (Ibid.) Plaintiff did not object to the deposition notice or respond in any manner. (Id., ¶ 17.) In a meet and confer phone call on January 18, 2023, plaintiff's counsel informed defense counsel that plaintiff was somewhere in Argentina and did not have sufficient internet access to appear for his remote deposition. (Id., ¶¶ 18–19 & Ex. D.) On January 19, 2023, defense counsel took the certificate of non-appearance of plaintiff. (Id., ¶¶ 20, 21 & Ex. E.)

"An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice." (Code Civ. Proc., § 2025.270(a).) If a party served with a deposition notice objects to it, that party must serve a written objection on the party seeking to take the deposition at least 3 days before the date on which the deposition is scheduled. (Code Civ. Proc., § 2025.410(a), (b).) Failure to serve a timely objection waives the right to object. (Code Civ. Proc., § 2025.410(a).)

Here, service of the deposition notice was timely. Plaintiff did not object to the notice or respond in any manner. Plaintiff failed to appear for his deposition. Good cause appearing, defendant's motion is granted. Having reviewed and considered defense counsel's declaration concerning fees and costs incurred, the court finds that $2,051.95 is a reasonable sanction under the Discovery Act. (Code Civ. Proc., §§ 2023.030(a), 2025.450(g)(1).)

Motion to be Relieved as Counsel of Record

Good cause appearing, the motion is granted. Withdrawal will be effective as of the date of filing proof of service of the formal signed order upon the client.

TENTATIVE RULING # 7: DEFENDANT'S MOTION TO COMPEL PLAINTIFF TO APPEAR AND TESTIFY AT DEPOSITION IS GRANTED. PLAINTIFF SHALL APPEAR AND TESTIFY AT DEPOSITION BY NO LATER THAN APRIL 24, 2023. MONETARY SANCTIONS ARE IMPOSED AGAINST PLAINTIFF IN THE SUM OF $2,051.95. AFSHIN EFTEKHARI'S MOTION TO BE RELIEVED AS COUNSEL OF RECORD FOR PLAINTIFF IS GRANTED. WITHDRAWAL WILL BE EFFECTIVE AS OF THE DATE OF FILING PROOF OF SERVICE OF THE FORMAL SIGNED ORDER UPON THE CLIENT. 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. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.