1. PEOPLE v. CANALES PCL-20190258

Status of Criminal Case and Trial Readiness Hearing.

At the hearing on June 17, 2022 the court was advised that the criminal case jury trial date was vacated. The court continued the trial setting conference to August 26, 2022.

There is no proof of service of the June 17, 2022 minute order continuing the hearing on respondent in the court's file.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 26, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

2. PEOPLE v. BETAMEN 22CV0088

Claim Opposing Forfeiture.

Claimant Betamen filed a claim opposing forfeiture in response to a notice of administrative proceedings to determine that certain funds are forfeited. The verified claim contends the claimant is the owner of all of the currency and requests that the claimed property not be ordered forfeited.

"The following are subject to forfeiture: ¶ * * * (f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first." (Health and Safety Code, § 11470(f).)

"(a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another

provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located. ¶ A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier." (Emphasis added.) (Health and Safety Code, § 11488.4(a).)

"(a)(1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim…" (Health and Safety Code, § 11488.5(a)(1).)

"(j) The Attorney General or the district attorney of the county in which property is subject to forfeiture under Section 11470 may, pursuant to this subdivision, order forfeiture of personal property not exceeding twenty-five thousand dollars ($25,000) in value. The Attorney General

or district attorney shall provide notice of proceedings under this subdivision pursuant to subdivisions (c), (d), (e), and (f), including: ¶ (1) A description of the property. ¶ (2) The appraised value of the property. ¶ (3) The date and place of seizure or location of any property not seized but subject to forfeiture. ¶ (4) The violation of law alleged with respect to forfeiture of the property. ¶ (5) The instructions for filing and serving a claim with the Attorney General or the district attorney pursuant to Section 11488.5 and time limits for filing a claim and claim form. ¶ If no claims are timely filed, the Attorney General or the district attorney shall prepare a written declaration of forfeiture of the subject property to the state and dispose of the property in accordance with Section 11489. A written declaration of forfeiture signed by the Attorney General or district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited property. The prosecuting agency ordering forfeiture pursuant to this subdivision shall provide a copy of the declaration of forfeiture to any person listed in the receipt given at the time of seizure and to any person personally served notice of the forfeiture proceedings. ¶ If a claim is timely filed, then the Attorney General or district attorney shall file a petition of forfeiture pursuant to this section within 30 days of the receipt of the claim. The petition of forfeiture shall then proceed pursuant to other provisions of this chapter, except that no additional notice need be given and no additional claim need be filed." (Emphasis added.) (Health and Safety Code, § 11488.4(j).)

"(c)(1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488. ¶ (2) The hearing shall be by jury, unless waived by consent

of all parties. ¶ (3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter." (Health and Safety Code, § 11488.5(c).)

"(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4. ¶ (2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4." (Health and Safety Code, § 11488.5(d).)

"(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237, and Sections 607 to 630 of the Code of Civil Procedure if trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure, if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall

order the seized property released to the person it determines is entitled thereto. ¶ If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant." (Health and Safety Code, § 11488.5(e).)

"(3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties." (Health and Safety Code, § 11488.4(i)(3).)

"(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial." (Health and Safety Code, § 11488.4(i)(5).)

The people and claimant's counsel appeared at the May 13, 2022 hearing. The People stated that the criminal case was set for a pre-trial conference on June 24, 2022 and requested a continuance of the hearing to August 26, 2022.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 26, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

3. PEOPLE v. ANDERSON PCL-20210122

Claim Opposing Forfeiture.

On February 19, 2021 claimant Anderson filed a verified Judicial Council Form MC-200 claim opposing forfeiture of $4,646.52 in response to a notice of administrative proceedings. The proof of service declares that the endorsed claim opposing forfeiture was served by mail on the El Dorado County District Attorney on March 1, 2021.

"The following are subject to forfeiture: ¶ * * * (f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first." (Health and Safety Code, § 11470(f).)

"(a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another

provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located. ¶ A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier." (Emphasis added.) (Health and Safety Code, § 11488.4(a).)

"(a)(1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim…" (Health and Safety Code, § 11488.5(a)(1).)

"(c)(1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such

a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488. ¶ (2) The hearing shall be by jury, unless waived by consent of all parties. ¶ (3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter." (Emphasis added.) (Health and Safety Code, § 11488.5(c).)

"(d)(1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4. ¶ (2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4." (Health and Safety Code, § 11488.5(d).)

"(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237,

and Sections 607 to 630 of the Code of Civil Procedure if trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure, if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto. ¶ If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant." (Health and Safety Code, § 11488.5(e).)

"(i)(1) With respect to property described in subdivisions (e) and (g) of Section 11470 for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought was used, or intended to be used, to facilitate a violation of one of the offenses enumerated in subdivision (f) or (g) of Section 11470." (Health and Safety Code, § 11488.4(i)(1).)

"(2) In the case of property described in subdivision (f) of Section 11470, except cash, negotiable instruments, or other cash equivalents of a value of not less than twenty-five thousand dollars ($25,000), for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought meets the criteria for forfeiture described in subdivision (f) of Section 11470." (Health and Safety Code, § 11488.4(i)(2).)

"(3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which

offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties." (Health and Safety Code, § 11488.4(i)(3).)

"In the case of property described in subdivision (f) of Section 11470 that is cash or negotiable instruments of a value of not less than twenty-five thousand dollars ($25,000), the state or local governmental entity shall have the burden of proving by clear and convincing evidence that the property for which forfeiture is sought is such as is described in subdivision (f) of Section 11470. There is no requirement for forfeiture thereof that a criminal conviction be obtained in an underlying or related criminal offense." (Emphasis added.) (Health and Safety Code, § 11488.4(i)(4).)

"(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial." (Health and Safety Code, § 11488.4(i)(5).)

On May 10, 2021 the People filed a petition for forfeiture. The proof of service filed on May 14, 2021 declares that claimant's counsel was served the petition for forfeiture by fax on May 11, 2021.

At the July 15, 2022, the court was advised that the criminal matter resolved and the People requested a short continuance. Respondent's counsel was present in court when the hearing was continued to August 26, 2022.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 26, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

4. MATTER OF EVANS 22CV0895

OSC Re: Name Change.

There is no proof of publication in the court's file, which is mandated by Code of Civil Procedure, § 1277(a).

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 26, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

5. MATTER OF GOFMAN 22CV0899

OSC Re: Name Change.

TENTATIVE RULING # 5: THE PETITION IS GRANTED.

6. WESCO INS. CO. v. RINAURO PCL-20170560

Judgement Debtor Examination.

TENTATIVE RULING # 6: THE PERSONAL APPEARANCE OF THE DEBTOR IS REQUIRED AT 8:30 A.M., FRIDAY, AUGUST 26, 2022 IN DEPARTMENT NINE, PROVIDED PROOF OF SERVICE OF THE ORDER TO APPEAR FOR EXAMINATION IS FILED PRIOR TO THE HEARING SHOWING THAT PERSONAL SERVICE ON THE DEBTOR WAS EFFECTED NO LATER THAN TEN DAYS PRIOR TO THE HEARING DATE (CCP, § 708.110(d)). IF THE APPROPRIATE PROOF OF SERVICE IS NOT FILED, NO EXAMINATION WILL TAKE PLACE.

7. CITY OF ROCKLIN v. LEGACY FAMILY ADVENTURES-ROCKLIN PC-20190309

Plaintiff City of Rocklin's Motion to Vacate Trial or Continue Trial.

Trial is currently set to commence on December 13, 2022. Plaintiff City of Rocklin moves for the court to vacate the trial date and all associated deadlines, including an MSC; and to reset the trial date and all associated deadlines, including the discovery cut-off date, once defendants have had a reasonable opportunity to retain new counsel and the 3rd District Court of Appeal rules on defendants' pending appeal, or, in the alternative, to continue the trial to the fall of 2023 and reset all associated deadlines.

Plaintiff asserts that the following amounts to good cause to vacate or continue the trial date: defendants Legacy Family Adventures – Rocklin's and Busch's counsel has filed a motion to withdraw as counsel of record for defendant that is set for hearing on September 2, 2022, which has already impaired plaintiff's ability to prepare for trial and, if withdrawal is granted, it stands to meaningfully impair plaintiff's ability to continue to take and complete discovery until new counsel is retained for defendant; in December 2019 defendants appealed the court's order awarding plaintiff $73,851.96 in fees and costs incurred to defend against defendants' anti-SLAPP motion on the basis that the motion was frivolous, the appeal is fully briefed, remains pending in the Third District, and since defendant have expressly requested the Third District to not only reverse the fee award, but also to make a decision on the merits of the anti-SLAPP motion, then the pleadings are uncertain thereby impairing the City's ability to prepare for trial; and no depositions have been taken by the parties.

Defendants Legacy Family Adventures – Rocklin and Busch oppose the motion on the following grounds: plaintiff has not established good cause to vacate or continue the trial date premised upon excused inability to obtain essential evidence despite diligent efforts; plaintiff

has not been diligent in seeking discovery during the 3 ½ years the case has been on file and has not taken a single deposition during that time; the motion for withdrawal as defendants' counsel to be heard a little more than three months before commencement of trial is not grounds for continuance, because the motion may not be granted and the plaintiff should oppose the motion for withdrawal if it prejudices plaintiff's ability to prepare for trial; the grounds asserted for the continuance that a reply brief in the appeal from the anti-SLAPP fee award suggested the appellate court could make a decision on the merits of the motion and the plaintiff City's failure to notice depositions in 3 ½ years prejudices the plaintiff is not good cause to vacate or continue the trial; defendant Busch is 72 years old and is waiting to clear his name; plaintiff has not shown what essential evidence it wants to discover; plaintiff's unsettled pleadings due to the appeal from the anti-SLAPP motion is not good cause; and a delayed trial prejudices defendant Busch.

There was no reply in the court's file at the time this ruling was prepared.

"A party seeking a continuance of the date set for trial, whether contested or uncontested or stipulated to by the parties, must make the request for a continuance by a noticed motion or an ex parte application under the rules in chapter 4 of this division, with supporting declarations. The party must make the motion or application as soon as reasonably practical once the necessity for the continuance is discovered." (Rules of Court, Rule 3.1332(b).)

"Although continuances of trials are disfavored, each request for a continuance must be considered on its own merits. The court may grant a continuance only on an affirmative showing of good cause requiring the continuance. Circumstances that may indicate good cause include: ¶ (1) The unavailability of an essential lay or expert witness because of death, illness, or other excusable circumstances; ¶ (2) The unavailability of a party because of death, illness, or other excusable circumstances; ¶ (3) The unavailability of trial counsel because of

death, illness, or other excusable circumstances; ¶ (4) The substitution of trial counsel, but only where there is an affirmative showing that the substitution is required in the interests of justice; ¶ (5) The addition of a new party if: ¶ (A) The new party has not had a reasonable opportunity to conduct discovery and prepare for trial; or ¶ (B) The other parties have not had a reasonable opportunity to conduct discovery and prepare for trial in regard to the new party's involvement in the case; ¶ (6) A party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts; or ¶ (7) A significant, unanticipated change in the status of the case as a result of which the case is not ready for trial." (Rules of Court, Rule 3.1332(c).)

"In ruling on a motion or application for continuance, the court must consider all the facts and circumstances that are relevant to the determination. These may include: ¶ (1) The proximity of the trial date; ¶ (2) Whether there was any previous continuance, extension of time, or delay of trial due to any party; ¶ (3) The length of the continuance requested; ¶ (4) The availability of alternative means to address the problem that gave rise to the motion or application for a continuance; ¶ (5) The prejudice that parties or witnesses will suffer as a result of the continuance; ¶ (6) If the case is entitled to a preferential trial setting, the reasons for that status and whether the need for a continuance outweighs the need to avoid delay; ¶ (7) The court's calendar and the impact of granting a continuance on other pending trials; ¶ (8) Whether trial counsel is engaged in another trial; ¶ (9) Whether all parties have stipulated to a continuance; ¶ (10) Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance; and ¶ (11) Any other fact or circumstance relevant to the fair determination of the motion or application." (Rules of Court, Rule 3.1332(d).)

"The trial court has discretion in ruling on requests to extend discovery deadlines or continue trial dates. Equally clear are the trial court's statutory obligations to enforce discovery cutoff dates and to set firm trial dates. (Code Civ. Proc., §§ 2024, 2034; Gov.Code § 68607, subd. (e)-(g); Cal. Stds. Jud. Admin., § 9.) Strict adherence to these delay reduction standards has dramatically reduced trial court backlogs and increased the likelihood that matters will be disposed of efficiently, to the benefit of every litigant. (See, e.g., *Estate of Meeker* (1993) 13 Cal.App.4th 1099, 1105, 16 Cal.Rptr.2d 825.) Here, the trial court's orders promote judicial efficiency by maintaining strict time deadlines. ¶ But efficiency is not an end in itself. Delay reduction and calendar management are required for a purpose: to promote the just resolution of cases on their merits. (*Thatcher v. Lucky Stores, Inc.* (2000) 79 Cal.App.4th 1081, 1085, 94 Cal.Rptr.2d 575; Gov.Code, § 68507; Cal. Stds. Jud. Admin., § 2.) Accordingly, decisions about whether to grant a continuance or extend discovery "must be made in an atmosphere of substantial justice. When the two policies collide head-on, the strong public policy favoring disposition on the merits outweighs the competing policy favoring judicial efficiency." (*Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 398–399, 107 Cal.Rptr.2d 270.) What is required is balance. "While it is true that a trial judge must have control of the courtroom and its calendar and must have discretion to deny a request for a continuance when there is no good cause for granting one, it is equally true that, absent [a lack of diligence or other abusive] circumstances which are not present in this case, a request for a continuance supported by a showing of good cause usually ought to be granted." (*Estate of Meeker, supra,* 13 Cal.App.4th at p. 1105, 16 Cal.Rptr.2d 825.)" (Emphasis added.) (Hernandez v. Superior Court (2004) 115 Cal.App.4th 1242, 1246–1247.)

With the above-cited legal authorities in mind, the court will rule on the motion to vacate the trial date or continue the trial date.

Motion to Withdraw as Counsel of Record for Defendants

Defendants invite opposition to defense counsel's motion to be relieved as counsel of record for defendants, which is set for hearing one week after this motion is heard. By claiming this potential loss of defense counsel should be disregarded, because it is not absolutely certain to occur, defendants essentially invites the court to deny current defense counsel's motion for leave to withdraw to be heard on Septembers 2, 2022 on the grounds that there is an impending trial date that defendants vigorously oppose continuing.

"The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows: ¶ 1. Upon the consent of both client and attorney, filed with the clerk, or entered upon the minutes; ¶ 2. Upon the order of the court, upon the application of either client or attorney, after notice from one to the other." (Code of Civil Procedure, § 284.)

Absent undue prejudice to the client, an attorney can be allowed to withdraw as counsel of record. "A lawyer violates his or her ethical mandate by abandoning a client (*Pineda v. State Bar* (1989) 49 Cal.3d 753, 758-759, 263 Cal.Rptr. 377, 781 P.2d 1), or by withdrawing at a critical point and thereby prejudicing the client's case. (Rules of Professional Conduct, rule 3-700(A)(2); *Vann v. Shilleh* (1975) 54 Cal.App.3d 192, 197, 126 Cal.Rptr. 401.) We are, however, aware of no authority preventing an attorney from withdrawing from a case when withdrawal can be accomplished without undue prejudice to the client's interests. Rather, in situations such as the present, the disincentive for withdrawing is the potential loss of any attorney fees. (See *Estate of Falco* (1987) 188 Cal.App.3d 1004, 233 Cal.Rptr. 807 and *Hensel v. Cohen* (1984) 155 Cal.App.3d 563, 202 Cal.Rptr. 85, discussed infra.) Rules of Professional Conduct, rule 3-700 prohibits an attorney from withdrawing from pending matters without court permission, where permission to withdraw is required, or from withdrawing until appropriate

steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. Code of Civil Procedure section 284 provides that an attorney may withdraw from an action, before or after final judgment, upon the consent of both client and attorney, or upon the order of the court. Implicit in these provisions is the conclusion that an attorney is entitled to withdraw, either with the consent of his or her client, or without that consent if withdrawal is approved by the court." (Ramirez v. Sturdevant (1994) 21 Cal.App.4th 904, 915.) "The determination whether to grant or deny a motion to withdraw as counsel lies within the sound discretion of the trial court. (*People v. Brown* (1988) 203 Cal.App.3d 1335, 1340, 250 Cal.Rptr. 762.)" (Manfredi & Levine v. Superior Court (1998) 66 Cal.App.4th 1128, 1133.)

The Third District Court of Appeal has held: "Generally, an attorney has a right to end the attorney-client relationship, but when litigation remains pending, the court has control over such termination, in part to ensure that the client is not harmed—for example, by abandonment of counsel on the eve of trial. An attorney cannot end the relationship simply by "ceas[ing] to act" as counsel (§ 286). (See 1 Witkin, Cal. Procedure (5th ed. 2008) Attorneys, §§ 68-70, pp. 103-106; § 284, subd. 2 [attorney may be changed "Upon the order of the court, upon the application of either client or attorney, after notice from one to the other"]; *De Recat Corp. v. Dunn* (1926) 197 Cal. 787, 791, 242 P. 936 [absent mutual consent of the parties, the relationship must be terminated by the court].) In ruling on a motion to withdraw, a trial court exercises discretion. (See, e.g., *Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1133, 1136, 78 Cal.Rptr.2d 494; *Linn v. Superior Court* (1926) 79 Cal.App. 721, 725-726, 250 P. 880.) This stems from the court's "solemn duty to maintain professionalism and ethics." (*Manfredi*, at p. 1132, 78 Cal.Rptr.2d 494; see *Mandell v. Superior Court* (1977) 67 Cal.App.3d 1, 4, 136 Cal.Rptr. 354.)" (Flake v. Neumiller & Beardslee (2017) 9 Cal.App.5th 223, 230.)

It is very possible, if not probable, that defense counsel's motion to withdraw as counsel of record for defendants will be granted, provided the trial date is continued to allow the individual defendant and corporate defendant a reasonable opportunity to retain replacement counsel, a reasonable time to complete discovery, and a reasonable time for new counsel to become familiar enough with the case to competently defend them a trial.

There is evidence that while the parties have engaged in written discovery and exchanged documents, no depositions have been taken by the parties; and when plaintiff's counsel recently attempted to schedule depositions with defense counsel on August 1, 2022, plaintiff's counsel was told by defense counsel that due to the impending hearing on the motion for leave to withdraw as defense counsel depositions could not be set (Declaration of Sean Filippini in Support of Motion, paragraphs 7-9.)

Plaintiff has already lost nearly one month of time to schedule depositions due to the pending motion for leave to withdraw as counsel for defendants. If defense counsel withdraws a little more than three months before trial, those two defendants and plaintiff will be prejudiced. Plaintiff will be unable to coordinate deposition schedules and timely complete discovery prior to the current discovery cut-off date.

The pending motion for leave to withdraw as defense counsel is a substantial factor that weighs in favor of finding good cause to vacate or continue the trial date and all associated deadlines.

Pending Appeal from Anti-SLAPP Motion

Defendants' argument that the pending appeal can not have any effect whatsoever on the matter to be tried is disingenuous at best. Citing Code of Civil Procedure, § 906, defendants expressly requested in their reply brief on the appeal that the Third District reach the second prong of the anti-SLAPP analysis to decide the merits of the motion, or, remand it to the

Superior Court with instructions to reach the second prong and (either way) grant the SLAPP motion. (Plaintiff's Exhibit B – Defendants' Appellate Reply Brief, pages 77-78.) Defendant also cited Collier v. Harris (2015) 240 Cal.App.4th 41, 58; and Simmons v. Allstate Ins. Co. (2001) 92 Cal.App.4th 1068, 1073 in support of that request

"Based on its ruling Collier's claims did not arise from protected activity, the trial court did not undertake the second-prong analysis to determine whether Collier met her burden to establish a probability of prevailing on her claims. We therefore remand for the trial court to conduct that analysis. (*Navellier, supra,* 29 Cal.4th at p. 95, 124 Cal.Rptr.2d 530, 52 P.3d 703; **[*58]** *Tuszynska v. Cunningham* (2011) 199 Cal.App.4th 257, 271, 131 Cal.Rptr.3d 63 (*Tuszynska*); *DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 568, 92 Cal.Rptr.2d 755 (*DuPont*).) ¶ Korpi contends we should decide the question because the trial court ruled on the parties' evidentiary objections and therefore whether Collier established a probability of prevailing is a legal question we may decide in the first instance. According to Korpi, deciding the question now would serve the anti-SLAPP statute's purpose by expeditiously disposing of Collier's allegedly unmeritorious claims. Although we have discretion to decide the second prong because we independently review the question whether Collier established a probability of prevailing (*Schwarzburd v. Kensington Police Protection & Community Services Dist. Bd.* (2014) 225 Cal.App.4th 1345, 1355, 170 Cal.Rptr.3d 899 (*Schwarzburd*); *Wallace v. McCubbin* (2011) 196 Cal.App.4th 1169, 1195, 128 Cal.Rptr.3d 205 (*Wallace*)), we decline Korpi's invitation to do so in this case. ¶ A few appellate courts have decided the matter when a quick decision was necessary. (See, e.g., *Schwarzburd, supra,* 225 Cal.App.4th at p. 1355, 170 Cal.Rptr.3d 899 [appellate court decided second prong in first instance because contract at issue was set to expire]; *Wallace, supra,* 196 Cal.App.4th at p. 1195, 128 Cal.Rptr.3d 205 [appellate court decided second prong because parties

disagreed on how prong should be applied]; *Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 656, 24 Cal.Rptr.3d 619; *Roberts v. Los Angeles County Bar Assn.* (2003) 105 Cal.App.4th 604, 615, 129 Cal.Rptr.2d 546.) The majority of appellate courts, however, have declined to do so either because contested evidentiary issues existed or simply because it was appropriate for the trial court to decide the issue first. (See, e.g., *Navellier, supra,* 29 Cal.4th at p. 95, 124 Cal.Rptr.2d 530, 52 P.3d 703; *Hunter, supra,* 221 Cal.App.4th at pp. 1527–1528, 165 Cal.Rptr.3d 123; *Tuszynska, supra,* 199 Cal.App.4th at p. 271, 131 Cal.Rptr.3d 63; *Cross v. Cooper* (2011) 197 Cal.App.4th 357, 391–392, 127 Cal.Rptr.3d 903; *Birkner v. Lam* (2007) 156 Cal.App.4th 275, 286, 67 Cal.Rptr.3d 190; *Hall v. Time Warner, Inc.* (2007) 153 Cal.App.4th 1337, 1347–1348, 63 Cal.Rptr.3d 798; *DuPont, supra,* 78 Cal.App.4th at p. 568, 92 Cal.Rptr.2d 755.) ¶ Here, Korpi has not established any reason why we should not allow the trial court to decide the second prong in the ordinary course. The Board election underlying the conduct at issue occurred more than two years ago, Korpi stopped redirecting Internet traffic and abandoned the domain names after only a few weeks and well before Collier filed this lawsuit, and Korpi died while this appeal was pending. Moreover, when we decide a matter in the first instance, we deprive the parties of a layer of independent review available to them when the matter is decided initially by the trial court. We think it best that the able and experienced trial judge decide the issue." (Collier v. Harris (2015) 240 Cal.App.4th 41, 57–58.)

In opposition to the motion to vacate or continue the trial defendants argue the exact opposite position that the appeal was just directed at the fees award, the request for a decision on the merits was improperly raised by them in the reply and could not be considered by the Third District (People v. Mickel (2016) 2 Cal.5th 181, 197, ["Ordinarily, we do not consider arguments raised for the first time in a reply brief."].), and, as a matter of law, Code of Civil

Procedure, § 425.17(e), where the trial court finds the cause of action is exempt from the anti-SLAPP motion under Section 425.17(c), the decision is not appealable.

"(c) Section 425.16 does not apply to any cause of action brought against a person primarily engaged in the business of selling or leasing goods or services, including, but not limited to, insurance, securities, or financial instruments, arising from any statement or conduct by that person if both of the following conditions exist: ¶ (1) The statement or conduct consists of representations of fact about that person's or a business competitor's business operations, goods, or services, that is made for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services, or the statement or conduct was made in the course of delivering the person's goods or services. ¶ (2) The intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential buyer or customer, or the statement or conduct arose out of or within the context of a regulatory approval process, proceeding, or investigation, except where the statement or conduct was made by a telephone corporation in the course of a proceeding before the California Public Utilities Commission and is the subject of a lawsuit brought by a competitor, notwithstanding that the conduct or statement concerns an important public issue." (Code of Civil Procedure, § 425.17(c).)

"(e) If any trial court denies a special motion to strike on the grounds that the action or cause of action is exempt pursuant to this section, the appeal provisions in subdivision (i) of Section 425.16 and paragraph (13) of subdivision (a) of Section 904.1 do not apply to that action or cause of action." (Code of Civil Procedure, § 425.17(e).)

Defendants' own contradictory positions in the appeal and in opposition to this motion injects uncertainty that could reasonably impair the City' ability to prepare for trial

Claimed Prejudice - Age of Defendant Busch

Defendant Busch claims he will be prejudiced by a delayed trial, because he is 72 years old and he has waited a long time to clear his name, yet he has not moved for a trial preference, faces a very real possibility he will be left without legal representation or a newly retained counsel unfamiliar with the case in the three short months leading up to trial, he faces the need to complete his own discovery, perhaps without the benefit of counsel, or his new counsel will need additional time to get acquainted with the case. It would appear that defendant Busch would face more prejudice from a court order denying a continuance of the trial under such circumstances than if the court granted this motion and vacated or continued the trial and discovery cut-off dates.

Plaintiff's motion to vacate or continue the trial date is granted.

TENTATIVE RULING # 7: PLAINTIFF'S MOTION TO VACATE OR CONTINUE THE TRIAL DATE IS GRANTED. THE TRIAL DATE AND ASSOCIATED DATES ARE VACATED. THE COURT SETS A TRIAL SETTING CONFERENCE FOR 11:00 A.M. ON MONDAY, FEBRUARY 13, 2023 IN DEPARTMENT NINE. THE COURT ORDERS THAT ALL ASSOCIATED DEADLINES, INCLUDING THE DISCOVERY CUT-OFF DATE, SHALL BE SET BY THE NEW TRIAL DATE SET AT THAT CONFERENCE. 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) 621-6551 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. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED

AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, AUGUST 26, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

8. DISCOVER BANK v. PANCHO PCL-20200638

Plaintiff's Motion to Vacate Judgment and Enter Dismissal.

A default judgment was entered against defendant on February 25, 2021. Plaintiff moves to vacate the default judgment entered in its favor and to dismiss the case without prejudice on the ground that plaintiff has since discovered that defendant filed for bankruptcy protection prior to the judgment being entered.

The proof of service declares that notice of the hearing and the moving papers were served by mail on defendant on June 10, 2022. There was no opposition in the court's file on the date that this ruling was prepared.

Plaintiff's counsel declares plaintiff has since discovered that defendant filed for bankruptcy protection prior to the judgment being entered. Attached to counsel's declaration is Exhibit A, a copy of the case summary of the bankruptcy case apparently obtained from the court's PACER service center on June 8, 2022. The case summary states that the Chapter 7 bankruptcy was filed by the defendant on February 8, 2021 and defendant's debts were discharged on May 24, 2021.

"The six-month outside time limit for granting relief is jurisdictional and the court may not consider any motion made after that period has elapsed. (*Smith v. Pelton Water Wheel Co.* (1907) 151 Cal. 394, 397, 90 P. 934; *Schwartz v. Smookler* (1962) 202 Cal.App.2d 76, 81, 20 Cal.Rptr. 507.) The sole exception arises where it is clear from the face of the appellate record that the default should not have been entered. In such case, the subsequent judgment is void and relief from the default on which it rests may be sought at any time. (*Nagel v. P & M Distributors, Inc.* (1969) 273 Cal.App.2d 176, 179, 180, 78 Cal.Rptr. 65; *Batte v. Bandy* (1958)

165 Cal.App.2d 527, 537, 332 P.2d 439.)" (Stevenson v. Turner (1979) 94 Cal.App.3d 315, 318.)

Code of Civil Procedure, § 473(d) provides that the court may set aside any void judgment or order. Defendant contends that the default and default judgment are void, because of the operation of the automatic bankruptcy stay. "There is no time limit for an independent equitable action to set aside a judgment valid on its face but void for lack of jurisdiction. (See infra, §224.)" (8 Witkin, California Procedure (5th ed. 2008) Attack on Judgment in Trial Court, § 209, page 814.)

"With some exceptions, all proceedings against the debtor and the debtor's property are stayed during the pendency of the bankruptcy. (11 U.S.C. § 362(a)(1) & (2).) The automatic stay is self-executing and is effective upon filing the bankruptcy petition. (See 11 U.S.C. § 362(a).) Any action, including any judicial proceeding, taken in violation of the automatic stay is void. (*In re Gruntz* (9th Cir.2000) 202 F.3d 1074, 1082.)" (In re Marriage of Sprague & Spiegel-Sprague (2003) 105 Cal.App.4th 215, 219.)

It appears appropriate under the circumstances presented to grant the motion.

TENTATIVE RULING # 8: PLAINTIFF'S MOTION TO VACATE JUDGMENT AND ENTER DISMISSAL IS GRANTED. THE FEBRUARY 25, 2021 DEFAULT JUDGMENT IS ORDERED VACATED AND THE COURT ENTERS A DISMISSAL OF THE CASE 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) 621-6551 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. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, AUGUST 26, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

9. FENNESSY v. ALTOONIAN PC-20160016

Defendant Altoonian's Motion for Attorney Fees and Costs.

TENTATIVE RUING # 9: THE PARTIES HAVING STIPULATED TO CONTINUE THE HEARING ON THIS MOTION, THE HEARING ON THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, OCTOBER 14, 2022 IN DEPARTMENT NINE.

10. VIDETTO v. DIMITROPOULOS PCU-20170264

Motion for Assignment Order.

A default judgment was entered in this unlawful detainer action on July 5, 2018 for monetary damages in the amount of $13,896.30

A writ of execution was issued on July 13, 2022 for the total amount due of $19,266.38, which includes accrued interest and the fee for issuance of the writ.

The assignee of the judgment debt/judgment creditor moves for an order directing that judgment debtor Nicholas Dimitropoulous' income payable to him from any real estate broker or company as an independent real estate broker be assigned to the judgment creditor. In addition, the judgment creditor seeks issuance of a restraining order that restrains judgment debtor Nicholas Dimitropoulous from assigning or otherwise disposing of his right to the payments sought.

"Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 7 (commencing with Section 708.610) all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments, including but not limited to the following types of payments: ¶ (1) Wages due from the federal government that are not subject to withholding under an earnings withholding order. ¶ (2) Rents. ¶ (3) Commissions. ¶ (4) Royalties. ¶ (5) Payments due from a patent or copyright. ¶ (6) Insurance policy loan value." (Code of Civil Procedure, § 708.510(a).)

"The notice of the motion shall be served on the judgment debtor. Service shall be made personally or by mail." (Code of Civil Procedure, § 708.510(b).)

The proof of service declares that on July 20, 2022 the notice of hearing and moving papers were served by mail on the judgment debtors.

There was no opposition or claim of exemption filed by judgment debtor Nicholas Dimitropoulous in the court's file at the time this ruling was prepared.

"Subject to subdivisions (d), (e), and (f), in determining whether to order an assignment or the amount of an assignment pursuant to subdivision (a), the court may take into consideration all relevant factors, including the following: ¶ (1) The reasonable requirements of a judgment debtor who is a natural person and of persons supported in whole or in part by the judgment debtor. ¶ (2) Payments the judgment debtor is required to make or that are deducted in satisfaction of other judgments and wage assignments, including earnings assignment orders for support. ¶ (3) The amount remaining due on the money judgment. ¶ (4) The amount being or to be received in satisfaction of the right to payment that may be assigned." (Code of Civil Procedure, § 708.510(c).)

"A right to payment may be assigned pursuant to this article only to the extent necessary to satisfy the money judgment." (Code of Civil Procedure, § 708.510(d).) "Where a specific amount of the payment or payments to be assigned is exempt by another statutory provision, the amount of the payment or payments to be assigned pursuant to subdivision (a) shall not exceed the amount by which the payment or payments exceed the exempt amount." (Code of Civil Procedure, § 708.510(e).)

"The judgment debtor may claim that all or a portion of the right to payment is exempt from enforcement of a money judgment by application to the court on noticed motion filed not later than three days before the date set for the hearing on the judgment creditor's application for an assignment order. The judgment debtor shall execute an affidavit in support of the application that includes all of the matters set forth in subdivision (b) of Section 703.520. Failure of the

judgment debtor to make a claim of exemption is a waiver of the exemption." (Code of Civil Procedure, § 708.550(a).) "The court shall determine any claim of exemption made pursuant to this section at the hearing on issuance of the assignment order." (Code of Civil Procedure, § 708.550(c).)

"The rights of an obligor are not affected by an order assigning the right to payment until notice of the order is received by the obligor. For the purpose of this section, "obligor" means the person who is obligated to make payments to the judgment debtor or who may become obligated to make payments to the judgment debtor depending upon future developments." (Code of Civil Procedure, § 708.540.)

Judgment creditor's manager declares in support of the motion: the judgment remains unsatisfied and unpaid in the amount of $19,226.38, including accrued interest and costs from the date of judgment to the date of the declaration; judgment debtor Nicholas Dimitropoulous is an independent real estate broker authorized and licensed by California, as reflected in the printout of the debtor's license information on the California Department of Real Estate website, which is attached as Exhibit A; as such, the judgment debtor earns income from any rea estate company or broker doing business in California and this income can be reached to satisfy the judgment; and he is informed and believes that rights to payment are now due or will become due to the judgment debtor from any real estate company or broker doing business in California.

The court questions how the court can order an assignment of commissions/real estate broker income when the order will not direct the assignment of a payment obligation owed to the judgment debtor by a specific real estate company or broker. It would appear that the assignment order would have to name the payment obligor and the assignment order be served on each payment obligor.

- Restraining Order after or at time Assignment Order Issued

"When an application is made pursuant to Section 708.510 or thereafter, the judgment creditor may apply to the court for an order restraining the judgment debtor from assigning or otherwise disposing of the right to payment that is sought to be assigned. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, it may be made ex parte." (Code of Civil Procedure, § 708.520(a).)

"The court may issue an order pursuant to this section upon a showing of need for the order. The court, in its discretion, may require the judgment creditor to provide an undertaking." (Code of Civil Procedure, § 708.520(b).)

"The order shall be personally served upon the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court." (Code of Civil Procedure, § 708.520(d).)

Should an assignment order issue, absent objection or opposition, it appears that issuance of a restraining order directed at the judgment debtor would be appropriate.

TENTATIVE RULING # 10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, AUGUST 26, 2022 IN DEPARTMENT NINE. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

11. SNOWBALL v. FIRST LIGHT FITNESS CORP. PC-20210344

Defendant's Motion to Compel Responses to Form Interrogatories.

Defense counsel declares: on May 6, 2022 form interrogatories were served on plaintiff; and despite an emailed request for responses, plaintiff failed to provide any responses to the discovery propounded. Defendant moves to compel answers without objections and further requests an award of monetary sanctions in the amount of $1,110.

The proof of service in the court's file declares that on May 26, 2022 notice of the hearing and copies of the moving papers were served by mail to plaintiff's address of record. There was no opposition to the motion in the court's file at the time this ruling was prepared.

The party to whom interrogatories have been served must serve responses upon the propounding party within 30 days after service or any other later date the propounding party stipulates to. (Code of Civil Procedure, §§ 2030.260 and 2030.270.) The failure to timely respond waives all objections to the interrogatories and the propounding party may move to compel answers to interrogatories. (Code of Civil Procedure, §§ 2030.290 and 2031.300.)

Absent opposition, it appears appropriate under the circumstances to grant the motion to compel answers without objections.

Sanctions

Failure to respond to interrogatories is a sanctionable misuse of the discovery process. (Code of Civil Procedure, §§ 2023.010(d), 2023.030, and 2030.290(c).) The court may award sanctions under the Discovery Act in favor of the moving party even though no opposition to the motion to compel was filed, or the opposition was withdrawn, or the requested discovery was provided to the moving party after the motion was filed. (Rules of Court, Rule 3.1348(a).)

It appears appropriate under the circumstances presented to order plaintiff to pay defendant the sum of $922.50 in monetary sanctions.

TENTATIVE RULING # 11: DEFENDANT'S MOTION TO COMPEL RESPONSES TO FORM INTERROGATORIES IS GRANTED. PLAINTIFF IS ORDERED TO ANSWER FORM INTERROGATORIES, SET ONE WITHOUT OBJECTIONS WITHIN TEN DAYS. PLAINTIFF IS FURTHER ORDERED TO PAY DEFENDANT MONETARY SANCTIONS IN THE AMOUNT OF $922.50 WITHIN TEN DAYS. 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) 621-6551 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. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN

WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, AUGUST 26, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

12. BUNYAN-NAULTY v. WAGENHALS 22CV0044

Defendant Enterprise Rent-A-Car Co. of San Francisco, LLC's Demurrer to Complaint.

Defendant Enterprise Rent-A-Car Co. of San Francisco, LLC filed a demurrer to the complaint on July 10, 2022. On August 15, 2022 the court entered the voluntary dismissal of defendant Enterprise Rent-A-Car Co. of San Francisco, LLC from the case with prejudice at plaintiff's request.

TENTATIVE RULING # 12: DEFENDANT ENTERPRISE RENT-A-CAR CO. OF SAN FRANCISCO, LLC HAVING BEEN VOLUNTARILY DISMISSED WITH PREJUDICE ON AUGUST 15, 2022, THIS MATTER IS DROPPED FROM THE CALENDAR.

13. BROWN v. JOHNSON PC-20200320

Plaintiff's Motion to Strike or Tax Costs.

On July 1, 2020 plaintiff filed an action against defendant for negligence and motor vehicle negligence related to injuries allegedly sustained in a motor vehicle accident

On May 3, 2021 defendant offered to compromise the action brought against him by payment of $20,000 with each party to bear their own costs and attorney fees. On May 5, 2022 defendant offered to compromise the action brought against him by payment of $50,000 with each party to bear their own costs and attorney fees.

On July 7, 2022 the court entered judgment on the jury's verdict finding defendant liable to plaintiff for past economic damages in the amount of $6,550 and past non-economic damages in the amount of $5,040. The jury found that defendant was not liable for any future economic or non-economic damages. The total amount awarded plaintiff was $11,590.

On July 22, 2022 defendant filed a memorandum of costs seeking an award of $91,097.00 for jury fees, deposition costs, service of process costs, witness fees, court reporter fees and electronic service or filing fees.

On July 27, 2022 plaintiff filed a memorandum of costs seeking an award of $24,067.25 in costs.

Plaintiff moves to strike the costs requested on the following grounds; the Code of Civil Procedure, § 998 offers were not reasonable in amount; the Section 998 offers to compromise were uncertain and do not conform to the requirements of Section 998, because the offers were not sufficiently described or revealed and did not set forth the provisions of an entire settlement agreement; the court should exercise its discretion and refuse to impose an award of expert witness fees incurred by defendant; defendant is not entitled to recovery of expert

witness fees incurred prior to the offers to compromise; the amount of $6,000 claimed as expert fee costs for a videotaped deposition that was not videotaped should be taxed; to the extent that Dr. Winters' videotaped deposition fees are claimed, plaintiff paid for Dr. Winter's deposition and that amount could not be recovered by defendant as an expert witness fee; the May 13, 2021 and November 5, 2021 invoices for Dr. Winter's expert fees, each in the amount of $1,700, should be taxed, because at the time those fees were incurred, the purportedly invalid $20,000 offer was in effect and the amount of final judgment awarded to plaintiff, plus costs and fees plaintiff was entitled to recover as the prevailing party exceeded $20,000; all of the $34,925 in expert fees charged by Dr. Winters should be stricken as unreasonable, unnecessary, and not provided for by statute and it is unclear if defendant is billing for deposition time already paid by plaintiff to Dr. Winters; $9,540 of the $18,360 in expert witness fees for Sean Shimada, PhD. should be stricken as fees incurred prior to the issuance of the first offer to compromise and the amount of final judgment awarded to plaintiff, plus costs and fees plaintiffs entitled to recover as the prevailing party exceeds the $20,000 offer; defendant has not offered any evidence that Dr. Shimada's costs and witness fees were reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to preparation and that the claimed costs are reasonable in amount; defendant chose to withdraw Dr. Shimada as a witness after previously indicating his intent to call that witness, indicating Dr. Shimada's testimony was merely convenient to preparation of the case; and all expert fees should be taxed as the second Section 998 offer to compromise is flawed.

Defendant opposes the motion on the following grounds: the two Section 998 offers to compromise were reasonable in amount and there was a reasonable prospect that they would be accepted based upon the evidence known to the parties at the time the offers were made; while plaintiff claims a knee injury purportedly caused by the accident required a total knee

replacement, the defense IME was complete, plaintiff was in possession of the report, and the report disputed plaintiff's claimed injuries and clearly indicated the claimed knee injury was degenerative in nature and not related to the accident; the two offers were reasonable as the jury returned a verdict in an amount considerably less than the two amounts offered; the two offers were sufficiently specific as to the parties and terms of the offers; and the invoices attached to the memorandum of costs establish that with the exception of the withdrawn invoice of Dr. Shimada's in the amount of $9,540, the invoiced services occurred after the first offer served on May 3, 2021, and the fees were reasonable in amount and were reasonably necessary to the conduct of the litigation as Dr. Winter was the defense medical expert and Dr. Shimada conducted a thorough biomechanical analysis.

Defendant requests that the court deny the motion and award defendant $75,557 in costs.

There was no reply in the court's file at the time this ruling was prepared.

Motion to Tax or Strike Costs General Principles

"If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that were not reasonable or necessary. On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs. (*Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 624, 134 Cal.Rptr. 602; *Oak Grove School Dist. v. City Title Ins. Co.* (1963) 217 Cal.App.2d 678, 698-699, 32 Cal.Rptr. 288.)" (Ladas v. California State Auto. Assn. (1993) 19 Cal.App.4th 761, 774.) "[T]he mere filing of a motion to tax costs may be a "proper objection" to an item, the necessity of which appears doubtful, or which does not appear to be proper on its face. (See *Oak Grove School Dist. v. City Title Ins. Co.* (1963) 217 Cal.App.2d 678, 698-699, 32 Cal.Rptr. 288.) However, "[i]f the items appear to be proper charges, the verified memorandum is prima facie evidence that the costs, expenses and services therein listed were necessarily incurred by the defendant

[citations], and the burden of showing that an item is not properly chargeable or is unreasonable is upon the [objecting party]." (Id., at p. 699, 32 Cal.Rptr. 288; see also, Miller v. Highland Ditch Co. (1891) 91 Cal. 103, 105-106, 27 P. 536.)" (Nelson v. Anderson (1999) 72 Cal.App.4th 111, 131.)

"Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation" (Code of Civil Procedure, § 1033.5(c)(2).) and "Allowable costs shall be reasonable in amount" (Code of Civil Procedure, § 1033.5(c)(3).). In other words, "To recover a cost, it must be reasonably necessary to the litigation and reasonable in amount. (*Perko's Enterprises, Inc. v. RRNS Enterprises* (1992) 4 Cal.App.4th 238, 244, 5 Cal.Rptr.2d 470.)" (Thon v. Thompson (1994) 29 Cal.App.4th 1546, 1548.)

"…[T]he intent and effect of section 1033.5, subdivision (c)(2) is to authorize a trial court to disallow recovery of costs, including filing fees, when it determines the costs were incurred unnecessarily." (Perko's Enterprises, Inc. v. RRNS Enterprises (1992) 4 Cal.App.4th 238, 245.)

With the above legal principles in mind, the court will rule on plaintiff's motion to tax or strike the costs claimed in defendant's memorandum of costs.

Defendant's Withdrawal of Claim for Dr. Winter's Invoice for Video Deposition Fee and Dr. Shimada's Pre-Offer Invoice for $9,540

Defendant withdraws the claim for $6,000 invoiced as Dr. Winter's fee for a videotaped deposition.

Defense counsel declares: the trial attorney was out of the office when the memorandum of costs became due for filing; counsel prepared the memorandum of costs based upon the documents in the file; the inclusion of Dr. Winter's invoice for the videotaped deposition was inadvertently included due to counsel's lack of familiarity with the details of the case; and

defendant did not intend to improperly inflate the cost bill or punish plaintiff. (Declaration of Rebekah Morrisey in Opposition to Motion, paragraph 7.)

Defendant also withdraws the claim in the amount of $9,540 representing expert fees invoiced by Dr. Shimada for services from March 22, 2021 to April 29, 201, which were incurred prior to the May 3, 2021 offer to compromise.

Sufficiency of the Section 98 Offers to Compromise

"The purpose of section 998 is to 'encourage settlement by providing a strong financial disincentive to a party--whether it be a plaintiff or a defendant--who fails to achieve a better result than that party could have achieved by accepting his or her opponent's settlement offer.' (*Bank of San Pedro v. Superior Court* (1992) 3 Cal.4th 797, 804, 12 Cal.Rptr.2d 696, 838 P.2d 218.)" (Mesa Forest Products, Inc. v. St. Paul Mercury Ins. Co. (1999) 73 Cal.App.4th 324, 330.)

"(b) Not less than 10 days prior to commencement of trial or arbitration (as provided in Section 1281 or 1295) of a dispute to be resolved by arbitration, any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time. The written offer shall include a statement of the offer, containing the terms and conditions of the judgment or award, and a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted. Any acceptance of the offer, whether made on the document containing the offer or on a separate document of acceptance, shall be in writing and shall be signed by counsel for the accepting party or, if not represented by counsel, by the accepting party. ¶ (1) If the offer is accepted, the offer with proof of acceptance shall be filed and the clerk or the judge shall enter judgment accordingly. In the case of an arbitration, the offer with proof of acceptance shall be filed with the arbitrator or arbitrators who shall promptly

render an award accordingly. ¶ (2) If the offer is not accepted prior to trial or arbitration or within 30 days after it is made, whichever occurs first, it shall be deemed withdrawn, and cannot be given in evidence upon the trial or arbitration. ¶ (3) For purposes of this subdivision, a trial or arbitration shall be deemed to be actually commenced at the beginning of the opening statement of the plaintiff or counsel, or, if there is no opening statement, at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence." (Code of Civil Procedure, § 998(b).)

Plaintiff argues that the Section 998 offers to compromise were uncertain and do not conform to the requirements of Section 998, because the offers were not sufficiently described or revealed and did not set forth the provisions of an entire settlement agreement.

"The offer must be sufficiently specific to allow the recipient to meaningfully evaluate it and make a reasoned decision whether to accept it. (*Taing v. Johnson Scaffolding Co.* (1992) 9 Cal.App.4th 579, 585, 11 Cal.Rptr.2d 820 (*Taing*).) Further, the offeree must be able to clearly evaluate the worth of the offer. (See *Barella*, at p. 801, 101 Cal.Rptr.2d 167.)" (Duff v. Jaguar Land Rover North America, LLC (2022) 74 Cal.App.5th 491, 499.)

The Third District Court of Appeal has recently held: "As explained in *Berg*, where a section 998 offer sets out certain settlement terms but fails to specify whether acceptance would result in judgment, an award, or dismissal, "the offer, by virtue of default to the statutory language, is simply intended as one to 'allow judgment to be taken' in exchange for the specified amount of funds." (*Berg, supra*, 120 Cal.App.4th at p. 728, 15 Cal.Rptr.3d 829.) As the *Berg* court explained, under section 998, entry of judgment is "the expected and standard procedural result unless specific terms and conditions stated in the offer provide otherwise." (*Id*. at p. 730, 15 Cal.Rptr.3d 829.) ¶ As the drafter, BMW had the duty to make clear in its section 998 offer any intention to stray from the usual path under section 998 of entry of judgment. (See *Taing v.*

Johnson Scaffolding Co. (1992) 9 Cal.App.4th 579, 585, 11 Cal.Rptr.2d 820 [the offeror bears the burden of assuring the offer is drafted with sufficient precision to permit the recipient to meaningfully evaluate it and make a reasoned decision whether to accept it].) If BMW had wished to deviate from the standard procedural result of section 998, it could have proposed a general release coupled with a dismissal or otherwise stated clearly in the offer that dismissal was required. As courts have explained, "[t]he true, subjective, but unexpressed intent of a party is immaterial and irrelevant." (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 690, 22 Cal.Rptr.2d 807 [finding a party had no right to recover attorney fees when he failed to reserve this right in the agreement].) ¶ Given that appellants unconditionally accepted the section 998 offer as written, we are not persuaded that BMW's e-mailed "clarifications" should alter the result. [Footnote omitted.] (See *Ignacio v. Caracciolo* (2016) 2 Cal.App.5th 81, 86, 206 Cal.Rptr.3d 76 [a section 998 offer "must be strictly construed in favor of the party sought to be bound by it"]; *Pazderka v. Caballeros Dimas Alang, Inc., supra*, 62 Cal.App.4th at pp. 671-672, 73 Cal.Rptr.2d 242 [reversing trial court's order to set aside a judgment where counsel had mistakenly failed to include attorney fees and **[*750]** costs in the section 998 offer to compromise]; see also *Poster v. Southern Cal. Rapid Transit Dist.* (1990) 52 Cal.3d 266, 272, 276 Cal.Rptr. 321, 801 P.2d 1072 [favoring "bright line" rule in interpreting section 998].) ¶ In finding that the section 998 offer did not contemplate judgment, the trial court abused its discretion and modified the offer's terms. We therefore will reverse the trial court's order." (Emphasis added.) (Arriagarazo v. BMW of North America, LLC (2021) 64 Cal.App.5th 742, 749–750.)

Plaintiff's counsel declares: plaintiff has incurred medical expenses in excess of $24,000 and loss of earnings in excess of $30,000; plaintiff also had a recommendation for a total knee replacement in the future; and the custom and habit of defense counsel from this firm is to

submit this type of Section 998 offer and when considered for acceptance, the defense firm would offer a settlement agreement and release of all claims in lieu of execution of the 998 offer. (Declaration of Joseph Weinberger in Support of Motion, paragraphs 4 and 5.)

Defense counsel declares: on May 13, 2021 defendant served a Section 998 offer to compromise for the amount of $20,000, which was not accepted and expired; at the time the offer was made defendant had completed written discovery, obtained plaintiff's medical records, deposed plaintiff and conducted an IME; plaintiff had a history of neck pain and had regular injections prior to the subject accident; Dr. Winter's IME report found it improbable that a meniscus tear was caused by the subject accident, because there was no axial load or twisting injury; Dr. Winter pointed out that the loss of cartilage near the meniscus tear indicated a large degree of chronicity that would take years to reach; the IME report is attached as Exhibit B; on May 5, 2022 defendant served a second Section 998 offer to compromise for the amount of $50,000, which was not accepted and expired; and the depositions of Dr. Wong and Dr. Winter were completed prior to serving the second offer. (Declaration of Rebekah Morrisey in Opposition to Motion, paragraphs 3-5.)

The first Section 998 offer stated that defendant "offers to settle this matter with Plaintiff BRIANNA BROWN, pursuant to Section 998 of the California Code of Civil Procedure for the sum of $20,000, to be paid by draft issued to Brianna Brown and Weinberger Law Firm, in exchange for a dismissal with prejudice of the complaint against offering defendant, each party to bear their own costs and attorney fees." (Plaintiff's Exhibit 1.)

The second Section 998 offer to compromise stated that defendant ""offers to settle this matter with Plaintiff BRIANNA BROWN, pursuant to Section 998 of the California Code of Civil Procedure for the sum of $50,000, to be paid by draft issued to Brianna Brown and Weinberger

Law Firm, in exchange for a dismissal with prejudice of the complaint against offering defendant, each party to bear their own costs and attorney fees." (Plaintiff's Exhibit 2.)

Each offer included a place for plaintiff's counsel to execute an acceptance of the offer.

The identity of the parties to the settlement agreement, plaintiff and defendant, and the terms of the agreement, payment of a specified amount in exchange for dismissal of the action and each party to bear their own costs and fees, were sufficiently specific to allow the recipient to meaningfully evaluate it and make a reasoned decision whether to accept it.

If plaintiff unconditionally accepted the section 998 offer as written, strictly construing the settlement offer accepted as the agreement settling the case in favor of the party sought to be bound by it, any attempt by defendant to vary or add to the terms of the agreed settlement by offering a settlement agreement and release of all claims in lieu of execution of the 998 offer, the settlement agreement and release of all claims in lieu of execution of the 998 offer would not be the settlement agreement, unless plaintiff later agreed to amend the previous, binding settlement agreement set forth in the four corners of the section 998 offer to compromise that had been accepted unconditionally. (See Arriagarazo v. BMW of North America, LLC (2021) 64 Cal.App.5th 742, 749–750.)

In addition, the appellate court in Oakes v. Progressive Transportation Services, Inc. (2021) 71 Cal.App.5th 486 expressly held that a very similar offer to compromise was sufficiently definite and certain. The appellate court held: "Defendants' section 998 offer was sufficiently certain and capable of valuation. It contained no vague or nonmonetary terms. The offer stated that defendants "hereby offer to allow judgment to be taken against them in the total sum of TWO HUNDRED THOUSAND DOLLARS ($200,000.00), with all parties bearing their own fees and costs." (Oakes v. Progressive Transportation Services, Inc. (2021) 71 Cal.App.5th 486, 497.)

The Section 998 offers to compromise were certain and conformed to the requirements of Section 998, because the offers were sufficiently described and set forth the provisions of an entire settlement agreement. The offers were to pay a specific sum of money by draft issued to plaintiff and her counsel in exchange for a dismissal of the action against defendant with prejudice and that each party bears their own costs and attorney fees. That is the totality of the agreement and if plaintiff unconditionally accepted the offer, those and only those terms would be binding and enforceable. Plaintiff did not accept.

The court rejects the argument that the Section 998 offers were invalid as they were uncertain and did not conform to the requirements of Section 998.

Good Faith Offer

"There is no dispute that "a good faith requirement must be read into section 998 in order to effectuate the purpose of the statute." (*Adams v. Ford Motor Co.* (2011) 199 Cal.App.4th 1475, 1483 [132 Cal.Rptr.3d 424], citing *Wear v. Calderon* (1981) 121 Cal.App.3d 818, 821 [175 Cal. Rptr. 566].) "Good faith ... requires that the settlement offer be 'realistically reasonable under the circumstances of the particular case.' " (199 Cal.App.4th at p. 1483, 132 Cal.Rptr.3d 424.) "The offer must therefore, 'carry with it some reasonable prospect of acceptance. [Citation.]' " (*Ibid.,* quoting *Elrod v. Oregon Cummins Diesel, Inc.* (1987) 195 Cal.App.3d 692, 698 [241 Cal.Rptr. 108].) "[A] party having no expectation that his offer will be accepted 'will not be allowed to benefit from a no-risk offer made for the sole purpose of later recovering large expert witness fees.' " (199 Cal.App.4th at p. 1483, 132 Cal.Rptr.3d 424, quoting *Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1263, [74 Cal.Rptr.2d 607].) ¶ "Even a modest or 'token' offer may be reasonable if an action is completely lacking in merit." (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 134 [84 Cal.Rptr.2d 753].) "When a defendant perceives himself to be fault free and has concluded that he has a very significant likelihood of prevailing at trial, it

is consistent with the legislative purpose of section 998 for the defendant to make a modest settlement offer. If the offer is refused, it is also consistent with the legislative intent for the defendant to engage the services of experts to assist him in establishing that he is not liable to the plaintiff. It is also consistent with the legislative purpose under such circumstances to require the plaintiff to reimburse the defendant for the costs thus incurred." (*Culbertson v. R.D. Werner Co., Inc.* (1987) 190 Cal.App.3d 704, 710–711 [235 Cal.Rptr. 510].) ¶ Where the defendant obtains a judgment more favorable than its offer, " 'the judgment constitutes prima facie evidence showing the offer was reasonable....' " (*Santantonio v. Westinghouse Broadcasting Co.* (1994) 25 Cal.App.4th 102, 117 [30 Cal.Rptr.2d 486].) It is the plaintiff's burden to show otherwise. (*Nelson v. Anderson, supra*, 72 Cal.App.4th at p. 134, 84 Cal.Rptr.2d 753.) "The reasonableness of a defendant's section 998 settlement offer is evaluated in light of 'what the offeree knows or does not know at the time the offer is made.' " (*Adams v. Ford Motor Co., supra,* 199 Cal.App.4th at p. 1485, 132 Cal.Rptr.3d 424, quoting *Santantonio v. Westinghouse Broadcasting Co., supra,* at p. 119, 30 Cal.Rptr.2d 486.) ¶ "Whether a section 998 offer was reasonable and made in good faith is left to 'the sound discretion of the trial court.' " (*Adams v. Ford Motor Co., supra,* 199 Cal.App.4th at p. 1484, 132 Cal.Rptr.3d 424, quoting *Elrod v. Oregon Cummins Diesel, Inc., supra,* 195 Cal.App.3d at p. 700, 241 Cal.Rptr. 108.) We review the trial court's award of costs under section 998 for abuse of discretion. (*Jones v. Dumrichob, supra,* 63 Cal.App.4th at p. 1262, 74 Cal.Rptr.2d 607.) We will reverse the trial court's determination only if we find that "in light of all the evidence viewed most favorably in support of the trial court, no judge could have reasonably reached a similar result." (199 Cal.App.4th at p. 1484, 132 Cal.Rptr.3d 424.)" (Bates v. Presbyterian Intercommunity Hospital, Inc. (2012) 204 Cal.App.4th 210, 220–221.)

"' "In reviewing an award of costs and fees under Code of Civil Procedure section 998, the appellate court will examine the circumstances of the case to determine if the trial court abused its discretion in evaluating the reasonableness of the offer or its refusal." [Citation.] " '["]The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power." [Citations.]' " [Citation.]' " (*Najah, supra,* 230 Cal.App.4th at pp. 143–144, 178 Cal.Rptr.3d 400; *Bates v. Presbyterian Intercommunity Hospital, Inc.* (2012) 204 Cal.App.4th 210, 220, 138 Cal.Rptr.3d 680 (*Bates*).)" (Emphasis added.) (Melendrez v. Ameron International Corporation (2015) 240 Cal.App.4th 632, 647.)

Plaintiff asserts that due to the medical expenses incurred by plaintiff in the amount of $34,000 and loss of earnings of $30,000, acceptance of the offers would have resulted in a net loss to plaintiff if either offer was accepted, therefore, the amounts offered were token amounts that defendant could not have reasonably believed plaintiff would have accepted and the offers were invalid.

It appears that at the times the offers to settle the case for $20,000 and later $50,000 there was a hotly contested issue concerning the extent of injuries plaintiff sustained as a result of the subject accident and plaintiff knew that the defense IME conclusions conflicted with plaintiff's claims concerning the type and extent of injuries suffered in the subject accident. The defense view of the case and the injuries and damages sustained by plaintiff as a result of the accident was proven correct by the jury's verdict that awarded considerably less than the amounts plaintiff claimed for economic and non-economic damages attributed to the accident and considerably less than the amounts offered in each of the Section 998 offers to compromise. "" 'the judgment constitutes prima facie evidence showing the offer was

reasonable....' " "" (Bates v. Presbyterian Intercommunity Hospital, Inc. (2012) 204 Cal.App.4th 210, 221.)

The court finds that the offers were not merely token offers and were, in fact, made in good faith as they were realistically reasonable in amount under the circumstances of the case and under the circumstances had some reasonable prospect of acceptance. Both offers were valid.

Payment of Exert Witness Fees After Rejection of Section 998 Offer to Compromise

"If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her postoffer costs and shall pay the defendant's costs from the time of the offer. In addition, in any action or proceeding other than an eminent domain action, the court or arbitrator, in its discretion, may require the plaintiff to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the defendant." (Code of Civil Procedure, § 998(c)(1).)

"(2)(A) In determining whether the plaintiff obtains a more favorable judgment, the court or arbitrator shall exclude the postoffer costs." (Code of Civil Procedure, § 998(c)(2)(A)

Plaintiff argues that in deciding if expert fees should be paid by the plaintiff, the court must add costs and fees to the court judgment award in order to determine if the amount plaintiff recovered was less than the amount of the compromise offered; and the plaintiff's verdict plus plaintiff's claimed costs and fees exceed the amount of the first Section 998 offer of $20,000, thereby making the judgment more favorable than the first offer. (See Plaintiff's Memorandum of Points and Authorities in Support of Motion, page 10, lines 20-24.)

Plaintiff further argues that two invoices from Dr. Winter for $1,700 each should be taxed as those invoices represent expert fees incurred in May and November 2021 when the defendant

was not eligible under Section 998(c)(1) to recover those exert fees as the plaintiff obtained a more favorable judgment or award than the first offer.

Plaintiff has offered no evidence as to the amount of pre-offer costs and court, jury, and court reporter fees incurred by plaintiff, which would be added to the judgment award to determine if the judgment was more favorable than the first offer. Post-Offer costs and fees are excluded and attorney fees do not appear to be recoverable by plaintiff in this motor vehicle accident case. The judgment entered was for $11,590. On the face of the judgment and absent proof of the pre-offer costs and fees, the facts and circumstances before the court establish that plaintiff obtained a less favorable judgment or award than the May 3, 2021 Section 998 offer to compromise the action by payment of $20,000 to plaintiff. Therefore, defendant is entitled to recover his costs from the time of the May 3, 2021 offer and the court exercises its discretion to allow him to recover his post-offer expert fee costs.

Dr. Winter's Fee for Defense Expert Deposition Taken by Plaintiff

Plaintiff argues that all expert fees claimed for Dr. Winter's services should be stricken/taxed, because it is unclear if defendant is billing for deposition time already paid by plaintiff to Dr. Winters. The invoices for Dr. Winter's expert fees claimed by defendant attached to defendant's memorandum of costs are itemized. Time for deposition preparation is claimed, which is not a fee payable by plaintiff for attendance at a deposition noticed by the plaintiff. With the exception of the $6,000 invoice for the videotaped deposition, which has been withdrawn, there are no invoices that itemizes fees charged for attendance at a deposition. The court rejects plaintiff's argument that it is unclear if defendant is billing expert fees for deposition time already paid by plaintiff to Dr. Winters.

Reasonably Necessary Expert Witness Costs

“"[i]f the items appear to be proper charges, the verified memorandum is prima facie evidence that the costs, expenses and services therein listed were necessarily incurred by the defendant [citations], and the burden of showing that an item is not properly chargeable or is unreasonable is upon the [objecting party]." (Id., at p. 699, 32 Cal.Rptr. 288; see also, Miller v. Highland Ditch Co. (1891) 91 Cal. 103, 105-106, 27 P. 536.)” (Nelson v. Anderson (1999) 72 Cal.App.4th 111, 131.)

“Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation” (Code of Civil Procedure, § 1033.5(c)(2).) and “Allowable costs shall be reasonable in amount” (Code of Civil Procedure, § 1033.5(c)(3).). In other words, “To recover a cost, it must be reasonably necessary to the litigation and reasonable in amount. (*Perko's Enterprises, Inc. v. RRNS Enterprises* (1992) 4 Cal.App.4th 238, 244, 5 Cal.Rptr.2d 470.)” (Thon v. Thompson (1994) 29 Cal.App.4th 1546, 1548.)

“…[T]he intent and effect of section 1033.5, subdivision (c)(2) is to authorize a trial court to disallow recovery of costs, including filing fees, when it determines the costs were incurred unnecessarily.” (Perko's Enterprises, Inc. v. RRNS Enterprises (1992) 4 Cal.App.4th 238, 245.)

Dr. Winter was the defense medical expert and Dr. Shimada conducted a thorough biomechanical analysis and evaluation for defendant. The invoices for these expert services are attached to defendant’s memorandum of costs, which itemize the expert services provided related to this litigation. This action involved a motor vehicle accident and the issues of what damages and extent of injuries that were caused by the subject accident were hotly contested.

The court finds that the costs claimed for Dr. Winter’s services in the invoices, with the exception of the videotaped deposition invoice that was withdrawn, were reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation and reasonable in amount.

The court also finds that despite Dr. Shimada not being called to testify at trial, under the circumstances of this action, the costs claimed for his expert biomechanical analysis and evaluation for defendant concerning the subject accident were reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation and reasonable in amount. The fact that defendant eventually decided not to call Dr. Shimada to testify does not establish this expert's work and analysis was not reasonably necessary to the conduct of the litigation.

"In *Evers v. Cornelson, supra,* 163 Cal.App.3d 310, 317, 209 Cal.Rptr. 497, the court expressly held that section 998 does indeed cover trial preparation by an expert. ¶ "It appears reasonable to expect an expert witness who is going to testify at trial to prepare to be able to assist the jury on difficult issues. The more prepared the expert witness is, the more help he will be. The question is really whether the amount of time spent by [the expert] in preparing for trial was reasonable. The trial court found that this preparation was reasonably necessary and that the total cost was a reasonable amount. Again, absent a showing by defendant of an abuse of discretion, the trial court's findings will not be disturbed on appeal. [Citations.]" (*Ibid.*) ¶ The court in *Evers* went on to further hold that section 998 also covers the cost of experts who aid in the preparation of the case for trial, even if they do not actually testify. (*Id.,* at p. 317, 209 Cal.Rptr. 497.) The court observed: "Since the statute does not specify precisely the services for which costs are recoverable, the determination of allowable costs is largely within the trial court's discretion." (*Id.,* at pp. 317–318, 209 Cal.Rptr. 497.)" (Emphasis added.) (Santantonio v. Westinghouse Broadcasting Co. (1994) 25 Cal.App.4th 102, 123-124.)

Defendant having withdrawn its claim of costs in the amount of $6,000 for one invoice from Dr. Winters and in the amount of $9,540 invoiced by Dr. Shimada, the amount of costs

remaining at issue in this motion is $75,557. The plaintiff's motion to strike or tax portions of the remaining amount at issue is denied.

TENTATIVE RULING 13: DEFENDANT HAVING WITHDRAWN ITS CLAIM OF COSTS IN THE AMOUNT OF $6,000 FOR ONE INVOICE FROM DR. WINTERS AND IN THE AMOUNT OF $9,540 INVOICED BY DR. SHIMADA, THE AMOUNT OF COSTS REMAINING AT ISSUE IN THIS MOTION IS $75,557. THE PLAINTIFF'S MOTION TO STRIKE OR TAX PORTIONS OF THE REMAINING AMOUNT AT ISSUE 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) 621-6551 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. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT", WHICH MUST BE SCHEDULED AND PAID THROUGH THE COURT WEBSITE AT www.eldorado.courts.ca.gov/online-

services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, AUGUST 26, 2022 EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

14. KATZAKIAN V. SUN RIDGE RANCH HOA PC-20190048

Motion for Summary Judgment.

TENTATIVE RULING # 14: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, OCTOBER 7, 2022 IN DEPARTMENT NINE.