Tentative Rulings and Resolution Review Hearings
November 4, 2024
Department 63 (formerly Department 8)

This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court's website (www.shasta.courts.ca.gov) and are available by clicking on the "Tentative Rulings" link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

Per Local Rule 5.13, telephonic appearances through CourtCall (888-882-6878; courtcall.com) are generally permitted on the Law & Motion and Resolution Review calendars and can be made without leave of Court.

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8:30 a.m. – Law & Motion

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ALL AMERICAN EXPRESS, INC. VS. JACKSON, ET AL.
Case Number: 23CV-0202527
Tentative Ruling on Plaintiff's Discovery Motions: Plaintiff All American Express, Inc. has filed: 1) a Motion to Compel Further Interrogatory Responses against Defendant Danyelle Jackson; 2) a Motion to Compel Request for Production Responses against Defendant Danyelle Jackson; 3) a Motion to Compel Further Interrogatory Responses against Defendant Market Express; and 4) a Motion to Compel Request for Production Responses against Defendant Market Express. Despite the titles of the respective motions, each seeks to compel further responses to discovery. A motion to compel further responses requires the parties to meet and confer in good faith prior to the filing of the motion. CCP §§ 2030.300(b)(1) & 2031.310(b)(2). The evidence before the Court is that there was a single attempt to meet and confer on June 19, 2024. The Court finds the evidence insufficient that the parties met and conferred in good faith. Additionally, it appears that portions of the motion may been made moot by Defendants providing further responses. The Court cannot determine which discovery remains at issue. The Court also notes that only 3 of the 4 motions were opposed and that all motions appear to have filed untimely. Finally, the Court notes that the discovery appears unverified which may also justify an order compelling responses. The above issues appear to be resolvable through a further good faith meet and confer process. This matter is continued to **Monday, December 16, 2024, at 8:30 a.m. in Department 63.** The parties are ordered to meet and confer in good faith on the discovery issues. The parties are ordered to submit a joint statement regarding the outstanding discovery issues. The joint statement shall be filed no later than December 9, 2024. **No appearance is necessary on today's calendar.**

ASPIRE GENERAL INSURANCE COMPANY VS. ALLISON
Case Number: 22CVG-00899
Tentative Ruling on Order to Show Cause R: Dismissal: An Order to Show Cause Re: Dismissal issued on August 27, 2024 for failure to timely serve and failure to timely prosecute. This litigation was filed on November 2, 2022. CRC 3.740(d) requires service in collection cases within 180 days of the filing of the complaint. No proof of service has ever been filed. The Court finds that Plaintiff is in violation of CRC 3.740(d). In Plaintiff's Declaration filed August 19, 2024, counsel declared that Defendant was served on September 18, 2023. A Proof of Service of Summons has not been filed in this case and the Court has raised this issue with Plaintiff several times, including imposing monetary sanctions for the failure to serve. Plaintiff did not file a written response to the Order to Show Cause Re: Dismissal and no sufficient excuse has been presented for failure to timely serve and prosecute. **An appearance is necessary on today's calendar. Absent good cause being presented, the**

Court intends to dismiss the case without prejudice pursuant to Gov. Code § § 68608(b).

BELTRAN VS. M.K. & A., LLC
Case Number: 23CV-0203159
Tentative Ruling on Order to Show Cause Re: Sanctions: An Order to Show Cause Re: Sanctions issued to Plaintiff's counsel Travis E. Stroud for failing to appear at the hearing September 16, 2024. Counsel had notice of the hearing as evidenced in the Notice of Entry of Order filed on May 8, 2024 and the Court's Tentative Ruling on August 26, 2024. Additionally, Plaintiff filed a motion that was noticed for September 16, 2024. Counsel did not file a written response to the Order to Show Cause. Instead, a Substitution of Attorney was filed on October 30, 2024 and Plaintiff now has new counsel. With no sufficient excuse for the non-appearance, sanctions are imposed against Travis E. Stroud in the amount of $250. The clerk is directed to prepare a separate Order of Sanctions. **No appearance is necessary at 8:30 a.m., however, the matter will be called at 9:00 a.m. where the Court will expect an appearance by new counsel.**

COLBURN VS. CITY OF REDDING, ET AL.
Case Number: 23CV-0202762
Tentative Ruling on Motion for Summary Judgment: This is a personal injury action, brought by Plaintiff Yvonne Colburn. Plaintiff alleges she tripped and fell on a city sidewalk on July 12, 2022, and sustained injuries. Her Amended Complaint alleges one cause of action: premises liability, for a dangerous condition on public property. Defendant is the City of Redding ("City"). The City has also filed a Cross-Complaint for indemnity and equitable contribution against Linda Olson, as Trustee for the Olson Family Trust. The City moves for summary judgment. Plaintiff opposes the motion.

Request for Judicial Notice: The City's request for judicial notice of the Amended Complaint is granted.

Objections to Evidence: Plaintiff's objections to evidence are overruled. City's objections to evidence numbers 1-7, and 9 are overruled. City's objections to evidence numbers 8 and 10 are sustained.

Standard on Summary Judgment: The party moving for summary judgment bears the initial burden to make a prima facie showing that there are no triable issues of material fact. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. There is a genuine issue of material fact only if the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof. *Id.* at 845. A defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. CCP § 437c(p)(1). The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto. CCP § 437c(p)(2).

In ruling on a motion for summary judgment, the Court must consider not only the direct evidence presented, but also reasonable inferences to be drawn therefrom, and must view the evidence and inferences "in the light most favorable to the opposing party." CCP § 437c(c); *Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at 843. "Because summary judgment is a drastic measure that deprives the losing party of trial on the merits, it may not be invoked unless it is clear from the declarations that there are no triable issues of material fact." *Johnson v. Superior Court* (2006) 143 Cal.App.4th 297, 304.

Premises Liability for a Dangerous Condition of Public Property: "Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was

in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either: (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." Gov. Code § 835.

Defendant bears the burden of making a prima facie showing that there is no triable issue of material fact with respect to one of the elements set forth in Gov. Code § 835. The City now moves for summary judgment on the grounds that there is no triable issue of material fact with respect to: 1) actual notice of the dangerous condition, 2) constructive notice of the dangerous condition, 3) whether a dangerous condition was created by an act or omission of an employee of the City within the scope of employment, 4) whether there was a dangerous condition as a matter of law per the trivial defect doctrine, and 5) whether the condition was open, obvious, and admittedly known to Plaintiff.

Actual or Constructive Notice. Defendant's first and second arguments are that there is no triable issue regarding whether the City had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition. Section 835.2(a) provides that a public entity had actual notice of a dangerous condition within the meaning of subdivision (b) of Section 835 if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character. Here, the City's Separate Statement of Undisputed Material Facts ("UMF") states that the first time a report was made to the City regarding the location where Plaintiff alleged she fell was after the accident, on July 29, 2022. (Decl. Buchanan ¶¶ 11, 13.) The City's evidence further provides that it has never had any reports of other defects, trips, falls, or injuries at the location identified by Plaintiff since the sidewalk had been installed. (Decl. Buchanan ¶ 14.) Plaintiff argues the issue is not whether a report was made, but whether the City had notice of the defect. Plaintiff provides evidence that at least two years prior to Plaintiff's fall, the City knew of the defect and marked it for repair and to warn pedestrians with orange spray paint. (Mattson Decl. ¶5; Colburn Depo. 100:24-101:11.) Plaintiff has established there is a triable issue of material fact as to whether the City had actual notice of the dangerous condition.

Section 835.2(b) provides a public entity had constructive notice of a dangerous condition within the meaning of subdivision (b) of Section 835 only if the plaintiff establishes that the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character. On the issue of due care, admissible evidence includes but is not limited to evidence as to: (1) Whether the existence of the condition and its dangerous character would have been discovered by an inspection system that was reasonably adequate (considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise) to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property. (2) Whether the public entity maintained and operated such an inspection system with due care and did not discover the condition. With respect to whether the City's inspection system was reasonably adequate, and was operated with due care, the City presents evidence that in 2022, it had 600 miles of sidewalk, eight full-time maintenance workers and two part-time workers, which would make it virtually impossible and inefficient for the City to inspect and locate every elevated sidewalk panel. (Decl. Webb ¶¶ 4,5; Decl. Buchanan ¶ 2.) The City also provides evidence regarding its system for inspection, which has city workers scanning for sidewalk defects in the course of their usual duties and mark and report these for repair as they are discovered. Citizens can also report concerns through the City's website or by phone. (Decl. Webb ¶¶ 6,8-10; Decl. Buchanan ¶8-9.) Plaintiff disputes the City's evidence with respect to the number of miles of sidewalk and the number of maintenance workers. (Decl. Boyce ¶ 4.) Plaintiff also disputes that the City's system is reasonably adequate, in that, by neglecting to have an inspection system, City workers were not in the

area of the defect even though it existed for years. (Decl. Webb ¶6; Decl. Buchanan ¶ 5, 14, 15.) Plaintiff has established a triable issue of material fact exists as to whether the City maintained and operated a reasonably adequate inspection system.

Dangerous Condition Created by Act or Omission of City Employee. Defendant's third argument is that there is no triable issue of material fact regarding whether a negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition. In support, the City provides evidence that the roots of a tree were the obvious cause of the sidewalk uplift, and the tree is not maintained by the City. (Decl. Buchanan ¶ 20.) Plaintiff does not dispute this fact. There is no triable issue of material fact with respect to this element. This element is an alternative to actual or constructive notice in Gov. Code § 835. It is not required to establish premises liability for a dangerous condition.

Dangerous Condition. Defendant's fourth argument is that there is no triable issue of material fact with respect to whether a dangerous condition existed. Gov. Code § 830 provides that "dangerous condition" means a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used. Gov. Code § 830.2 provides that a condition is not a dangerous condition within the meaning of this chapter if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used. Following *Huckey v. City of Temecula*, 37 Cal.App.5th 1092 (2019), the court's analysis of whether a walkway defect is trivial involves as a matter of law two essential steps. "First, the court reviews evidence regarding type and size of the defect. If that preliminary analysis reveals a trivial defect, the court considers evidence of any additional factors [bearing on whether the defect presented a substantial risk of injury]. If these additional factors do not indicate the defect was sufficiently dangerous to a reasonably careful person, the court should deem the defect trivial as a matter of law ...." *Ibid*. Sidewalk elevations ranging from three-quarters of an inch to one and one-half inches have generally been held trivial as a matter of law. *Id.* at 1107. The City's evidence in support of this argument relies mainly on the Declaration of Chris Carmona, the City's Risk Manager. Carmona measured the sidewalk panel at three points along its edge. He does not specify how he chose those points, or the measurement of their locations along the sidewalk edge. The estimated height in comparison to the next sidewalk panel varied from negative ¼ inch to 2 inches tall, at the points he chose to measure. (Decl. Carmona ¶¶ 6-8, Ex. A-C.) Carmona reviewed Plaintiff's deposition and her mark where she alleges her foot hit the uplifted panel. Using that information, he estimates the size of the defect is approximately 1 7/8 inches – 1 11/16 inches at the point Plaintiff identified. (Decl. Carmona ¶ 9.) Carmona did not measure the maximum height of the defect. (Decl. Carmona Ex. C, D.) Carmona did not actually measure the height of the defect at the point where Plaintiff marked the photo. (Decl. Carmona ¶ 9.) Carmona did not provide any explanation for how he made his estimation of the height of the location where Plaintiff marked. Additionally, the photo Plaintiff marked is Exhibit F to the Decl. of Carmona. Exhibit F does not show the dots Carmona says he used to take measurements. There is a triable issue of material fact with respect to the size of the defect. The City has not carried its burden to make a prima facie showing that the defect was trivial as a matter of law.

Open, Obvious, and Known Condition. Defendant's final argument is that summary judgment is proper because the condition was open, obvious and admittedly known to Plaintiff. "Generally, if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition." (*Krongos v. Pacific Gas & Electric Co*. (1992) 7 Cal.App.4th 387, 393.) In that situation, owners and possessors of land are entitled to assume others will "perceive the obvious" and take action to avoid the dangerous condition. (*Haberlin v. Peninsula Celebration Assn.* (1957) 156 Cal.App.2d 404, 408, 319 P.2d 418.) An exception to this general rule exists when "it is foreseeable that the

danger may cause injury despite the fact that it is obvious (e.g., when necessity requires persons to encounter it)." (*Osborn, supra*, 224 Cal.App.3d at p. 122, 273 Cal.Rptr. 457, italics omitted.) In other words, while the obviousness of the condition and its dangerousness may obviate the landowner's duty to remedy or warn of the condition in some situations, such obviousness will not negate a duty of care when it is foreseeable that, because of necessity or other circumstances, a person may choose to encounter the condition. *Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal. App. 5th 438, 447. Here, the City's Separate Statement of Undisputed Facts and Supporting Evidence states: "All pertinent facts relative to this issue are already stated and referenced above." This is inadequate and does not comply with California Rule of Court Rule 3.1350(d). Nonetheless, to the extent the City is relying on its argument and supporting evidence that Plaintiff was aware of the condition, and did not use due care in failing to navigate around it, the Court finds the City has not met its burden. The City has presented evidence that Plaintiff was familiar with the defect and had previously made a point to avoid it on her walk. (Decl. CPB Ex. 2.) Plaintiff has presented evidence that the sidewalk is the only pedestrian outlet. (Depo Colburn.) The only way to avoid the sidewalk is to cross a street without a crosswalk, walk in the street around cars, or walk on the grass. (Depo. Colburn.) There were multiple defects within steps of one another. (Depo. Colburn.) Here, there are triable issues of material fact with respect to whether the condition created a foreseeable risk, and whether a reasonable person may nevertheless choose to encounter it due to necessity or other circumstances.

Defendant's Motion for Summary Judgment is **DENIED**. Plaintiff has lodged a proposed order which will be executed.

COLBURN VS. CITY OF REDDING, ET AL.
Case Number: 23CV-0202762
Tentative Ruling on Motion for Summary Judgment: This is a personal injury action, brought by Plaintiff Yvonne Colburn. Plaintiff alleges she tripped and fell on a city sidewalk on July 12, 2022, and sustained injuries. Her Amended Complaint alleges one cause of action: premises liability, for a dangerous condition on public property against Defendant the City of Redding ("City"). The City has also filed a Cross-Complaint for indemnity and equitable contribution against Linda Olson, as Trustee for the Olson Family Trust ("Olson"). Olson moves for summary judgment. Plaintiff opposes the motion.

Standing: In the Reply, Olson raises the issue of Plaintiff's standing to oppose the Motion. Olson suggests that the Motion is supposed to be understood as against the City's Cross-Complaint for indemnity. The Court, and apparently also the Plaintiff and the City, did not understand the Motion to be directed to the City's Cross-Complaint. The City has not filed an opposition. The Motion does not address either of the City's Causes of Action against Olson. The Motion is fully directed to Plaintiff's claims for premises liability. The scope of Defendants' initial burden is defined by the pleadings. *See 580 Folsom Assocs. v. Prometheus Dev. Co.* (1990) 223 Cal.App.3d 1, 18. Here, Olson addresses only the Cause of Action of Plaintiff's Amended Complaint. Further, under summary judgment law, any party to an action, whether plaintiff or defendant, may move the court for summary judgment in his favor on a cause of action (i.e., claim) or defense. Likewise, any adverse party may oppose the motion, and, where appropriate, must present evidence including affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice must or may be taken. An adverse party who chooses to oppose the motion must be allowed a reasonable opportunity to do so. *Aguilar v. Atl. Richfield Co.* (2001) 25 Cal. 4th 826, 843 (internal citations omitted). Therefore, the Court finds Plaintiff has standing to oppose the Motion and will proceed to the merits.

Request for Judicial Notice: Olson requests the Court take judicial notice of the Amended Complaint, and the Cross Complaint, pursuant to Evidence Code §§ 451-453. The request is granted.

Objections to Evidence: Plaintiff's objections to evidence are overruled. Olson's objections to evidence numbers 1-7, and 9 are overruled. Olson's objections to evidence numbers 8 and 10 are sustained.

Additionally, the Court notes that Olson has filed a Supplemental Declaration and new evidence with the Reply brief, specifically excerpts from a deposition. Generally, new evidence may not be submitted with a Reply brief. "The due process aspect of the separate statement requirement is self-evident—to inform the opposing party of the evidence to be disputed to defeat the motion. (*United Community Church, supra*, 231 Cal.App.3d at p. 337, 282) Here, the evidence not only was omitted from the separate statement, it also was not filed until after assignee had responded to the issues raised in the separate statement. In considering this evidence, the court violated assignee's due process rights. Assignee was not informed what issues it was to meet in order to oppose the motion. Where a remedy as drastic as summary judgment is involved, due process requires a party be fully advised of the issues to be addressed and be given adequate notice of what facts it must rebut in order to prevail. (Cf. *Carabini v. Superior Court* (1994) 26 Cal.App.4th 239, 244, 31 Cal.Rptr.2d 520.)" *San Diego Watercrafts, Inc. v. Wells Fargo Bank*, N.A. (2002) 102 Cal. App. 4th 308, 316. The Court will not consider this new evidence, as doing so would violate Plaintiff's due process rights.

Merits of Motion: The party moving for summary judgment bears the initial burden to make a prima facie showing that there are no triable issues of material fact. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. There is a genuine issue of material fact only if the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof. *Id.* at 845. A defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. CCP § 437c(p)(1). The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto. CCP § 437c(p)(2).

In ruling on a motion for summary judgment, the Court must consider not only the direct evidence presented, but also reasonable inferences to be drawn therefrom, and must view the evidence and inferences "in the light most favorable to the opposing party." CCP § 437c(c); *Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at 843. "Because summary judgment is a drastic measure that deprives the losing party of trial on the merits, it may not be invoked unless it is clear from the declarations that there are no triable issues of material fact." *Johnson v. Superior Court* (2006) 143 Cal.App.4th 297, 304.

Premises Liability for a Dangerous Condition of Public Property: "Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either: (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." Gov. Code § 835.

Defendant bears the burden of making a prima facie showing that there is no triable issue of material fact with respect to one of the elements set forth in Gov. Code § 835. Olson now moves for summary judgment on the grounds that: 1) the condition was open, obvious, and known to Plaintiff, and 2) the condition was trivial as a matter of law.

Open, Obvious, and Known Condition. Olson's first argument is that summary judgment is proper because the condition was open, obvious and admittedly known to Plaintiff. "Generally, if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no

further duty to remedy or warn of the condition." (*Krongos v. Pacific Gas & Electric Co*. (1992) 7 Cal.App.4th 387, 393.) In that situation, owners and possessors of land are entitled to assume others will "perceive the obvious" and take action to avoid the dangerous condition. (*Haberlin v. Peninsula Celebration Assn.* (1957) 156 Cal.App.2d 404, 408, 319 P.2d 418.) An exception to this general rule exists when "it is foreseeable that the danger may cause injury despite the fact that it is obvious (e.g., when necessity requires persons to encounter it)." (*Osborn, supra*, 224 Cal.App.3d at p. 122, 273 Cal.Rptr. 457, italics omitted.) In other words, while the obviousness of the condition and its dangerousness may obviate the landowner's duty to remedy or warn of the condition in some situations, such obviousness will not negate a duty of care when it is foreseeable that, because of necessity or other circumstances, a person may choose to encounter the condition. *Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal. App. 5th 438, 447. Here, Olson submits evidence that Chris Carmona measured the defect and found that it ranged from 2 inches at the left-most point he measured, down to negative ¼ inches at the right right-most point. (Decl. Carmona ¶¶ 4-8, Ex. B-F.) Plaintiff counters that the left point measured by the City was 3-4 inches away from the true left point of the defect, and that Mr. Carmona did not measure its maximum height, which exceeds 2 inches. (Decl. Carmona Ex. D, C.) Olson submits evidence that Plaintiff had already navigated around the subject condition on several occasions previously. (Decl. Kloeppel, Ex. A.) This fact is undisputed. Plaintiff provides evidence that Plaintiff was not used to the area, as she was startled by a dog and when her foot caught the defect. (Depo. Colburn.) Plaintiff also provides evidence that multiple other people have previously tripped over this defect. (Decl. Mattson ¶¶ 2, 4-5; Depo. Colburn.) Plaintiff provides additional evidence that this walkway was the only pedestrian outlet for the area and that there were multiple defects within steps of one another. (Colburn Depo.) Plaintiff here has established that there are triable issues of material fact with respect to whether a dangerous condition existed and whether it was foreseeable that, because of necessity or other circumstances, a person may choose to encounter the condition.

Trivial Defect Doctrine. Olson's second argument is that there is no triable issue of material fact with respect to whether a dangerous condition existed, because the defect was trivial as a matter of law. Gov. Code § 830 provides that "dangerous condition" means a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used. Gov. Code § 830.2 provides that a condition is not a dangerous condition within the meaning of this chapter if the trial or appellate court, viewing the evidence most favorably to the plaintiff, determines as a matter of law that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used. Following *Huckey v. City of Temecula*, 37 Cal.App.5th 1092 (2019), the court's analysis of whether a walkway defect is trivial involves as a matter of law two essential steps. "First, the court reviews evidence regarding type and size of the defect. If that preliminary analysis reveals a trivial defect, the court considers evidence of any additional factors [bearing on whether the defect presented a substantial risk of injury]. If these additional factors do not indicate the defect was sufficiently dangerous to a reasonably careful person, the court should deem the defect trivial as a matter of law ...." *Ibid*. Sidewalk elevations ranging from three-quarters of an inch to one and one-half inches have generally been held trivial as a matter of law. *Id.* at 1107. Regarding the type and size of the defect, Olson relies on the Declaration of Christian Carmona. Carmona measured the sidewalk panel at three points along its edge. He does not specify how he chose those points, or the measurement of their locations along the sidewalk edge. The estimated height in comparison to the next sidewalk panel varied from negative ¼ inch to 2 inches tall, at the points he chose to measure. (Decl. Carmona ¶¶ 6-8, Ex. A-C.) Carmona reviewed Plaintiff's deposition and her mark where she alleges her foot hit the uplifted panel. Using that information, he estimates the size of the defect is approximately 1 7/8 inches – 1 11/16 inches at the point Plaintiff identified. (Decl. Carmona ¶ 9.) Carmona did not measure the maximum height of the defect. (Decl. Carmona Ex. C, D.) Carmona did not actually measure the height of the defect at the point where Plaintiff marked the photo. (Decl. Carmona ¶ 9.) Carmona did not provide any explanation for how he made his estimation of the height of the location where Plaintiff marked. Additionally, the photo Plaintiff marked is Exhibit F to the Decl. of Carmona. Exhibit F does not show the dots

Carmona says he used to take measurements. There is a triable issue of material fact with respect to the size of the defect. Cross-Defendant has not carried her burden to make a prima facie showing that the defect was trivial as a matter of law.

Cross-Defendant's Motion for Summary Judgment is **DENIED**. Plaintiff has lodged a proposed order which will be executed.

IN RE: CRENSHAW
Case Number: 24CV-0205679
Tentative Ruling on Petition for Change of Name: Petitioner Donald Cresswell Crenshaw seeks to change his name to Donald Cresswell Shearer III. No proof of publication has been submitted. The Court requires a Certificate of Publication from the publishing newspaper before the Petition may be granted. If the Certificate of Publication is provided, the Court intends to grant the Petition, vacate all future dates, and close the file.

FAUST VS. SUNFLOWER MANAGEMENT & OPERATIONS, LLC
Case Number: 24CV-0204258
Tentative Ruling on Motion to Be Relieved as Counsel: Adam Rose of Frontier Law Center moves to be relieved as counsel for Audrey Faust, individually and on behalf of all similarly situated individuals. The Court notes that while the class claims have been dismissed, there is still a cause of action brought under the Private Attorney Generals Act.

CRC Rule 3.1362 provides the procedural requirements for a motion to be relieved as counsel. In particular, CRC 3.1362 requires the use of specific mandatory Judicial Council forms for the Notice and Motion (MC-051) and Supporting Declaration (MC-052). Both forms and the proposed Order (MC-053) must be served on the client and all parties who have appeared in the case at either the current address or the last known address that has been confirmed within thirty days. CRC 3.1362(d). In this matter, Plaintiff Audrey Faust was served at her last known address. Counsel was not able to confirm the validity of this address within the last 30 days. To obtain a current address, counsel mailed the motion return receipt requested, called Plaintiff's last known phone number, and emailed Plaintiff. There is no evidence that any other efforts have been made. There is no evidence of the contents of the phone or email communications. The Proof of Service filed on October 7, 2024 only reflects service by mail and it appears that the motion was not emailed to Plaintiff.

As to the merits, a declaration must be filed that states in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under CCP § 284(2) is brought instead of filing a consent under CCP § 284(1). Counsel represents that, "Audrey Faust has now stopped communicating with Frontier Law Center altogether, making further representation infeasible." This would constitute a valid reason for counsel moving to withdraw.

Due to the lack of proper notice to Plaintiff and insufficient efforts to determine a current address, the motion is **DENIED** without prejudice. A proposed Order was provided but it cannot be modified to reflect the Court's ruling. Plaintiff's counsel is to prepare the Order.

The Court notes that default was entered against Defendant on September 25, 2024. The Mandatory Settlement Conference on December 16, 2024 and the Trial on January 7, 2025 are hereby **VACATED**. The matter will be on calendar on **Monday, December 23, 2024 at 9:00 a.m. in Department 63** for review regarding status of the case and status of counsel.

FRINK VS. MANKA
Case Number: 23CV-0201842
Tentative Ruling on Motion to Compel Further Discovery Responses and to Respond to Demand for Production of Documents: The present motion is unopposed. Plaintiff Samuel Frink moves for an order compelling Defendant Paul Manka to provide further responses to Form Interrogatories, Set One and to compel a response to the Demand for Production of Documents, Set One. Plaintiff has submitted a "declaration" in support of his motion, but it was not signed under penalty of perjury. See CCP § 2015.5. It therefore has no evidentiary value and cannot establish the facts necessary to issue any discovery orders.

The motion is **DENIED** without prejudice due to lack of evidence. No proposed order was lodged with the Court as required by Local Rule 5.17(D). Plaintiff shall prepare the order.

GALLEGOS VS. BENEFICIAL INSECTARY, INC
Case Number: 24CV-0205779
Tentative Ruling on Motion to Compel Arbitration: Defendant Beneficial Insectary, Inc. moves for an order compelling Plaintiff Andrew Gallegos into arbitration, dismissing the putative class claims, and staying the matter during the pendency of the arbitration. The matter is stayed. On October 22, 2024, Plaintiff filed a Non-Opposition to Defendant's Motion to Compel Arbitration and Stay Proceedings. On October 24, 2024, the Court issued an Order to the parties that noted the Non-Opposition and invited a Stipulation and Order as issuing a ruling on the merits of a non-opposed motion is not an efficient use of the judicial resources. The parties have taken no action since. Hearing on the motion is continued to **Monday, December 23, 2024 at 8:30 a.m. in Department 63**. The parties are **ORDERED** to meet and confer regarding whether this motion can be resolved by Stipulation and Order. If a ruling on the merits is necessary, the Court **ORDERS** that the parties file a joint statement outlining the disputed issues no later than December 13, 2024. **No appearance is necessary on today's calendar.**

JONES, ET AL. VS. DIETRICK
Case Number: 23CV-0203841
Tentative Ruling on Order to Show Cause Re: Sanctions: An Order to Show Cause Re: Sanctions issued to Plaintiffs Tiffany Jones, Christopher Beisel and Raeven Jones-Beisel and counsel Wilshire Law Firm on August 28, 2024 for failure to timely serve pleadings on Defendant pursuant to CRC 3.110(b). The Complaint was filed on December 8, 2023. "The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint." CRC 3.110(b). A written response was filed that provides sufficient excuse for the delay. The Order to Show Cause is **DISCHARGED**. The matter will be on calendar on **Monday, December 23, 2024 at 9:00 a.m. in Department 63** for review regarding status of service. Plaintiffs are **ORDERED** to either effect proper service or seek authority to serve by publication prior to the next hearing. **No appearance is necessary on today's calendar.**

JPMORGAN CHASE BANK, N.A. VS. WOULFE
Case Number: 24CVG-00093
Tentative Ruling on Motion for Order that Matters in Request for Admission of Truth of Facts be Deemed Admitted: Plaintiff JPMorgan Chase Bank, N.A. seeks an order deeming the truth of matters specified in Plaintiff's Requests for Admission, Set One. Despite being timely served, Defendant Dillon E Woulfe did not file an Opposition.

When a party fails to respond to a Requests for Admission, the requesting party may move for an order deeming the genuineness of documents and the truth of matters specified in the requests admitted. CCP § 2033.280(b). Failure to respond also waives any objections to the discovery propounded. CCP § 2033.280(a). Plaintiff's moving papers sufficiently demonstrate that Defendant has failed to respond to Request for Admissions, Set One within the required time frame.

Unlike a motion to compel *further* responses, a motion to compel responses when no responses have been provided does not require the propounding party to demonstrate good cause or that it satisfied a meet-and-confer requirement. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal. App. 4th 390. Despite not being required to meet and confer, Plaintiff mailed Defendant meet and confer correspondence on April 24, 2024.

Monetary sanctions are mandatory per CCP § 2033.280(c), however, Plaintiff did not seek monetary sanctions and provided no evidence regarding attorney's fees or other costs associated with bringing the motion. Sanctions should only be imposed for "reasonable" expenses. CCP § 2023.030. The Court does not have information upon which to make a finding that any amount of sanctions were for reasonable expenses and will not impose sanctions.

The motion is **GRANTED**. Defendant is deemed to have admitted as true each of the items contained in Plaintiff's Request for Admissions, Set One. Objections are waived. Plaintiff provided a proposed Order that will be executed by the Court. The Court confirms the trial date of March 24, 2025.

JPMORGAN CHASE BANK, N.A. VS. STENE
Case Number: 24CVG-00317
Tentative Ruling on Motion for Order that Matters in Request for Admission of Truth of Facts Deemed be Admitted: Plaintiff JPMorgan Chase Bank, N.A. seeks an order deeming the truth of matters specified in Plaintiff's Requests for Admission, Set One. Despite being timely served, Defendant Andy L Stene did not file an Opposition.

When a party fails to respond to a Requests for Admission, the requesting party may move for an order deeming the genuineness of documents and the truth of matters specified in the requests admitted. CCP § 2033.280(b). Failure to respond also waives any objections to the discovery propounded. CCP § 2033.280(a). Plaintiff's moving papers sufficiently demonstrate that Defendant has failed to respond to Request for Admissions, Set One within the required time frame.

Unlike a motion to compel *further* responses, a motion to compel responses when no responses have been provided does not require the propounding party to demonstrate good cause or that it satisfied a meet-and-confer requirement. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal. App. 4th 390.

Monetary sanctions are mandatory per CCP § 2033.280(c), however, Plaintiff did not seek monetary sanctions and provided no evidence regarding attorney's fees or other costs associated with bringing the motion. Sanctions should only be imposed for "reasonable" expenses. CCP § 2023.030. The Court does not have information upon which to make a finding that any amount of sanctions were for reasonable expenses and will not impose sanctions.

The motion is **GRANTED**. Defendant is deemed to have admitted as true each of the items contained in Plaintiff's Request for Admissions, Set One. Objections are waived. Plaintiff provided a proposed Order that will be executed by the Court. The Court confirms the trial date of May 12, 2025.

MCCOLM VS. SHAW, DDS, ET AL.
Case Number: 24CV-0204406
Tentative Ruling on Motion for Order Quashing Subpoena Duces Tecum: Plaintiff Patricia McColm moves to quash subpoenas issued to UCSF School of Dentistry by Defendants Daniel Shaw, D.D.S. and Dana Park Dental. The motion is opposed by Defendants.
A Reply was filed by Plaintiff on October 31, 2024. The Reply should have been filed and served no later than

October 28, 2024. CCP § 1005(b). When the Reply was filed, the Court had already reviewed the matter and drafted the tentative ruling for this matter. Although the Court could refuse to consider the Reply given the late filing, the Court is exercising its discretion to consider the late Reply on the merits. All objections, whether properly or improperly made, in the Reply are overruled. The tentative ruling originally drafted by the Court remains unchanged and is as follows:

Defendant issued a Deposition Subpoena to USCF School of Dentistry on August 20, 2024 for production of records on September 6, 2024. The parties met and conferred regarding the subpoena and Defendants agreed to remove the word "medical" from the subpoena but did not agree with the balance of the issues raised by Plaintiff. Defendants then issued a second Deposition Subpoena on September 5, 2024 for production of records on October 2, 2024. Based on the second subpoena, the August 5, 2024 subpoena is considered withdrawn and the only subpoena at issue is the subpoena issued on September 5, 2024.

Plaintiff raises procedural and substantive issues. As for the procedural issues, Plaintiff argues that because she is a self-represented litigant and Plaintiff's records are sought, Plaintiff must be personally served with the subpoena. Plaintiff cites Civil Procedure Before Trial, section 8.590 for this argument. Section 8.590 reads:

> **How served**: If the "consumer" is already a party to the action, service may be made upon his or her attorney of record. [CCP § 1985.3(b)(1)] (For parties in pro per, see CCP § 1011(b).)
>
> Otherwise, the documents must be served on the "consumer" either:
>
> • personally;
> • "or at his or her last known address," suggesting they can be left with someone else [but the matter is unclear];
> • "or in accordance with [CCP § 1010 et seq.]," which includes service by mail (CCP § 1012). [CCP § 1985.3(b)(1) (emphasis added)]
>
> (Special rules apply where the "consumer" is a minor; see CCP § 1985.3(b)(1).)
> *The Rutter Group California Practice Guide: Civil Procedure Before Trial, § 8.590*

Plaintiff failed to include any text after "personally." While The Rutter Guide is instructive, the law is found in the Code of Civil Procedure.

> Prior to the date called for in the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve or cause to be served on the consumer whose records are being sought a copy of the subpoena duces tecum, of the affidavit supporting the issuance of the subpoena, if any, and of the notice described in subdivision (e), and proof of service as indicated in paragraph (1) of subdivision (c). This service shall be made as follows:
> (1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the consumer is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is at least 12 years of age.
> (2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.
> (3) At least five days prior to service upon the custodian of the records, plus the additional time provided by Section 1013 if service is by mail.

CCP § 1985.3(b).

CCP §§ 1012 and 1013, both of which are in Chapter 5, describe service by mail. Defendants' service of the subpoenas by mail was appropriate.

As to the content of the subpoena, Defendants the main issues appear to be whether the subpoena should be limited as to time. Defendants have presented a declaration by Mark A. Crane, D.D.S., M.D. who has been a licensed dentist since 1992. Dr. Crane also has a medical degree and an Oral & Maxillofacial Surgery Certificate and is Board certified in maxillofacial surgery. Dr. Crane opines that based on the allegations made by Plaintiff in the Complaint, Plaintiff's full dental history is relevant as TMJ symptoms are frequently caused by long-standing, chronic, degenerative conditions and Plaintiff claims she suffered injury to her temporomandibular joints (TMJ). Dr. Crane further opines that because Plaintiff is 78 years old, the full dental records are more important to obtain.

Plaintiff makes a number of other objections including but not limited to overly broad, vague, ambiguous, unjustly burdensome, oppressive, unintelligible, not reasonably calculated to lead to discovery of admissible evidence, and lack of good cause. The Court has reviewed Attachment 3 to the subpoena issued on September 5, 2024 and overrules each objection. The records sought are specifically and clearly listed and appear to be relevant to the case. There is no indication that UCSF producing such records will burden Plaintiff in any way. There is good cause for the records sought.

The Motion for Order Quashing Subpoena Duces Tecum is **DENIED**. Plaintiff did not provide a proposed Order as required by Local Rule of Court 5.17(D). Plaintiff is to prepare the Order.

MORENO VS. RIDDLE, ET AL.
Case Number: 24CV-0204521
Tentative Ruling on Motion to Further Responses to Special Interrogatory No. 24: Defendants Barbara Jean Riddle and Carol Ann Lowe request that Plaintiff Nekelish Dawn Moreno be compelled to provide a further response to Special Interrogatory No. 24. Plaintiff opposes the motion.

Meet and Confer. Defendants were required to meet and confer with Plaintiff prior to filing the motion. Defendants have provided evidence of good faith meet and confer efforts.

Merits. "Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." CCP § 2017.010.

Special Interrogatory No. 24 reads:

> If your answer to the proceeding interrogatory is yes, for each such cell phone, please state the phone number (including area code), the cell phone provider and the name under which the cell phone is registered, and the name of the person/entity who contracted with the provider for the cell phone service.

Special Interrogatory No. 23 reads "At the time of the SUBJECT INCIDENT, did you have in your possession any cell phone?" Plaintiff made objected and responded, "Yes." to No. 23. Plaintiff's response to No. 24 is "Objection. This interrogatory is irrelevant and not reasonably likely to lead the discovery of admissible evidence. In addition, this interrogatory invades Plaintiff's constitutional right to privacy, and is overbroad, burdensome, and oppressive."

Plaintiff has provided no basis for the burdensome or oppressive objections. The information sought is relevant to the case and is likely to lead to admissible discovery. The request is not overbroad as it merely seeks the phone number and subscriber information for any cell phones that were in Plaintiff's possession (which the Court opines to mean inside the vehicle) at the time of the collision in this matter. These objections are overruled.

As to the privacy objection, while it is true that actual cell phone records themselves may not end up being discoverable depending on what is eventually sought, No. 24 seeks the phone number, the service provider, and the name of the person(s) to whom the phone is registered and contracted for services. This is not particularly sensitive information. The potential privacy interests are far outweighed by Defendant's interest in obtaining such records as they may lead to evidence on the issue of contributory negligence or potential witnesses.

Sanctions. The Court shall impose a monetary sanction against a party who unsuccessfully makes or opposes a motion to compel further responses unless it finds that one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. CCP § 2030.300(d). The Court does not find that Plaintiff acted with substantial justification or that other circumstances make the imposition of the sanction unjust. Defendants seek $1,260 in monetary sanctions which is comprised of four hours of attorney time at $300 per hour plus the $60 filing fee. The Court finds this to be a reasonable request and will impose sanctions as requested. Plaintiff's request for sanctions is denied.

The motion is **GRANTED**. Plaintiff shall provide a verified response to No. 24 within ten days of the Notice of Entry of Order. Sanctions are imposed against Plaintiff and counsel in the amount of $1,260. Defendants provided a proposed Order that will be modified to reflect the Court's ruling.

MYERS VS. QUALITYCARE HOMES
Case Number: CVCV21-0198789
Tentative Ruling on Applications for Judgment Debtor Examinations: Plaintiff Brenda Myers seeks examination of Defendants Quality Care Home, Inc. and Gurmeel Singh. CCP § 708.110 requires personal service be made on the judgment debtor at least thirty calendar days prior to the examination. There are no proofs of service on file. Without service on the judgment debtors, the matter is dropped from calendar.

IN RE: REED
Case Number: 24CV-0205385
Tentative Ruling on Petition for Change of Name: Petitioner seeks to change the last name of her minor daughter. The Court notes that a Certificate of Publication was filed and accepted on September 30, 2024. When a petition to change the name of a minor is brought by one parent only, the nonconsenting parent must be personally served with the notice of hearing or order to show cause at least 30 days before the hearing date. See CCP § 1277(a)(4). Petitioner filed a Proof of Service on October 11, 2024. Service is defective because the father was served on September 25, 2024 for a hearing on September 30, 2024. However, the father filed a Written Objection to the Change of Name by Father on October 10, 2024. There is no proof of service for the Objection. The father is deemed to be served. The parties are reminded that they must serve the other parent with a copy of any documents they file with the Court.

The father requests a continuance of the hearing to allow time for him to file a memorandum with the Court. This is a reasonable request and it will be granted. Due to the objection, the Court will set this matter for hearing at a time and date convenient for the parties. The father is reminded that appearances through CourtCall are permitted on the Law & Motion Calendar without leave of Court. **An appearance is necessary on today's hearing to select a hearing date.**

REYNOLDS VS. QUALITY CARE HOME, INC., ET AL.
Case Number: 22CV-0200604
Tentative Ruling on Motion for Reconsideration of Sanctions and Motion for Issue and Evidentiary Sanctions and Attorney Fees: Plaintiff Lisa Reynolds moves for reconsideration of the ruling the Court made on Plaintiff's Motion for an Order Compelling a Site Inspection of Quality Care Home, Inc. Located at 935 Hallmark Drive, Redding, CA 96001. The motion was filed on June 25, 2024 and the hearing was on July 22, 2024. Plaintiff only seeks reconsideration of the amount of the monetary sanctions imposed. In addition to seeking reconsideration, Plaintiff also seeks issue and evidentiary sanctions as well as monetary sanctions based on the removal of security cameras at 935 Hallmark Drive ("Hallmark House"). The specific issue sanctions sought are:

1. Gurmeel Singh and Reema Singh observed Plaintiff complain to Jerry Kirouac, the local ombudsman, regarding QCH's insufficient food supply, via a security camera feed, on or about September 27, 2021.
2. The security cameras recorded and broadcasted "sound and video."

The specific evidentiary sanction sought is that Defendants Quality Care Home, Inc, Gurmeel Singh, Reema Singh, and Dawn Parra be precluded from introducing evidence regarding the security cameras. Plaintiff also seeks monetary sanctions. The motion is opposed by Defendants.

Objections Regarding Timeliness. The Court overruled the objections made regarding untimely filings in its Ruling dated October 21, 2024. The Court has reviewed all documents filed in support or opposition of this motion, including the Declaration of Adam Reisner filed on October 24, 2024.

Merits of Motion for Reconsideration. Plaintiff moves pursuant to CCP § 1008(b) that the Court reconsider the sanctions awarded to Plaintiff in Plaintiff's Motion for Order Compelling Site Inspection that was granted on July 22, 2024. In that motion, Plaintiff requested monetary sanctions for twelve hours of attorney time at $550 per hour plus $60 for the filing fee. No basis for the $550 hourly rate was provided and the Court set the reasonable hourly rate at $300. While the Tentative Ruling was to impose $3,660 in sanctions, the Court reduced this to $1,860 based on Defense counsel's arguments, which the Court recalls were largely based on how Defendants had complied with discovery to date and were genuinely trying to protect the privacy of the residents at the Hallmark House.

The new information that would permit the Court to reconsider the $1,860 sanctions award is that at the time of the hearing, the Hallmark House was no longer operating as a residential care facility. This makes the arguments regarding patient privacy moot. Plaintiff learned of this after the motion was granted and the parties were scheduling the site inspection. Plaintiff has met their burden of showing new information and the Court will reconsider the amount of the previous sanctions.

Defendants argue that providing false information to the Court was a genuine mistake and that Gurmeel Singh, the owner of Quality Care Home, Inc. was under the mistaken belief that Plaintiff wanted to inspect all of his residences, not just the Hallmark House. The Inspection Demand is titled "Notice of Site Inspection of Defendant Quality Care Home, Inc. Located at 935 Hallmark Drive, Redding, CA 96001." The body of the Demand only lists 935 Hallmark Drive and no other properties. While Defendants have argued that the miscommunication occurred on a phone conversation between defense counsel Mark Vegh and Defendant Gurmeel Singh, no declaration was provided by Mark Vegh.

The Demand was served on May 8, 2024. According to Mr. Singh, the conversation between Mark Vegh and Gurmeel Singh took place in early July 2024. However, also according to Mr. Singh, he made the decision to stop operating the Hallmark House as a residential care facility in May of 2024 and arranged for it to be a private residence in June 2024 with an individual tenant stating in July of 2024. According to the timeline provided by

Mr. Singh, it appears very unlikely that an inspection demand was made to one specific house and while that specific house was no longer operational when Mr. Singh was informed of and spoke to counsel about the demand, Mr. Singh did not inform counsel of the change in status of the Hallmark House. Alternatively, Mr. Singh did inform counsel and it was not conveyed to co-counsel, or both counsel knew and knowingly provide false arguments to the Court. Based on the evidence provided, it is not possible for the Court to determine where the breakdown occurred or whether a breakdown actually occurred. However, the Court need not make such finding given the fee shifting nature of discovery statutes. The bottom line is that due the conduct of Defendant Gurmeel Singh and/or defense counsel, whether based on a genuine mistaken belief or intentional efforts to mislead the Court, Plaintiff had to file a motion to obtain an order to inspect the Hallmark House and Plaintiff should be compensated for the attorney time spent on the issue created by Defendants and counsel.

As the Court now has evidence of Mr. Candiotti's qualifications and experience, the Court finds $350 to be a reasonable hourly rate. The Court will note that the Court generally does not award higher than $350 per hour as that is a reasonable hourly rate in Shasta County. The exception would be when specialized counsel is unavailable in the area, however, there are several civil attorneys locally and in the Sacramento area who are able to handle employment law matters. $350 per hour for twelve hours is $4,200 plus the $60 motion fee for a total of $4,260. The Court **GRANTS** the Motion for Reconsideration and replaces the $1,860 sanctions amount with sanctions against Defendants in the amount of $4,260.

Merits of Spoliation Motion. CCP § 2023.030 allows a party to seek monetary, issue, evidentiary, or terminating sanctions for an opposing party's misuses of the discovery process. CCP § 2023.010 provides the methods that one can misuse the discovery process. Disobeying a court order to provide discovery is specifically enumerated in CCP § 2023.010(g). Spoliation of evidence is not one of the listed methods one can misuse the discovery process. However "[d]estroying evidence in response to a discovery request after litigation has commenced would surely be a misuse within the meaning of section 2023 (now 2023.010) as would such destruction in anticipation of a discovery request." *Cedars-Sinai Med. Ctr. v. Superior Court* (1998) 18 Cal. 4th 1, 12. "The general rule…is that if it is sufficiently egregious, misconduct committed in connection with the failure to produce evidence in discovery may justify the imposition of nonmonetary sanctions even absent a prior order compelling discovery or its equivalent." *New Albertsons, Inc. v. Superior Court* (2008) 168 Cal. App. 4th 1403, 1426.

Spoliation of evidence means the destruction or significant alteration of evidence or the failure to preserve evidence for another's use in pending or future litigation. *Willard v. Caterpillar, Inc.* (1995) 40 Cal. App. 4th 892, overruled on other grounds in *Cedars-Sinai Med. Ctr. v. Superior Court* (1998) 18 Cal. 4th 1. "A party moving for discovery sanctions based on the spoliation of evidence must make an initial prima face showing that the responding party in fact destroyed evidence that had a substantial probability of damaging the moving party's ability to establish an essential element of his claim or defense." *Williams v. Russ* (2008) 167 Cal. App. 4th 1215, 1227.

In this matter, security cameras were removed from the walls in the Hallmark House, which is Plaintiff's former place of employment and the location of a numbers of the incidents alleged to have occurred in this case. The cameras are specifically relevant to what was visible by various individuals within the home, including an Ombudsman to whom Plaintiff alleges she made complaints and what Defendants themselves observed.

On December 1, 2022, Plaintiff sent a letter to Defendants Quality Care Homes, Inc. Gurmeel Singh, and Reema Singh detailing the claims Plaintiff intended to pursue. On page 5 of that letter, Section C is titled "Notice to Preserve Evidence." Defendants were noticed "to preserve all documents and electronically stored files which relate in any way to Ms. Reynold and/or her employment." Specifically listed are "computer systems, videotapes, removeable electronic media and other locations." Video cameras are not specifically listed. In the Notice of Site Inspection served May 8, 2024, Plaintiff wrote, "Plaintiff shall also inspect and copy Defendant Quality Care Home's security area where security monitors/equipment are kept, the location and rooms where all cameras,

video, and recording equipment/devices are kept, and any and all time keeping systems, including electronic and hard copy systems and videotapes on premises." The Notice goes on to read, "Demand is also made for Defendant to take all steps to prevent any destruction or alteration of the above-refenced premises until such time that the inspection can be made."

When Plaintiff inspected the premises in August of 2024, Plaintiff and her counsel learned that the cameras themselves were gone. Cords from the cameras were still attached to the walls. Regarding the cameras, Mr. Singh declared:

> The two security cameras in Hallmark House had been removed back in early June. They weren't even working. I left them there as a deterrent, but they didn't record anything and haven't recorded anything since they were initially installed. I left the camera wires on the walls because Hallmark House may still be used to operate a facility in the future. The rest of the house is left almost exactly the same as before for the same reason.

Decl. Gurmeel Singh, ¶ 6

The evidence provided supports the conclusion that the cameras were intentionally removed from the walls while a Demand for Inspection was pending. The Demand issued on May 8, 2024, and the cameras were removed in early June. "[I]ntentional spoliation of evidence by a party to the litigation to which it is relevant is an unqualified wrong." *Cedars-Sinai Med. Ctr. v. Superior Court* (1998) 18 Cal. 4th 1, 17. This is a violation of the discovery process warranting sanctions.

The issue then turns to the various types of sanctions available and what are appropriate in this case. The trial court has broad discretion in selecting the appropriate sanction. *Los Defensores, Inc. v. Gomez* (2014) 223 Cal. App. 4th 377, 390. Trial courts should select sanctions tailored to the harm caused by the misuse of the discovery process. *Department of Forestry and Fire Protection v. Howell* (2017) 18 Cal. App. 5th 154. "The intentional destruction of evidence is a grave affront to the cause of justice and deserves our unqualified condemnation." *Cedars-Sinai Med. Ctr. v. Superior Court* (1998) 18 Cal. 4th 1, 4.

Issue Sanctions. "The court may impose an issue sanction ordering that designated facts shall be taken as established in the action in accordance with the claim of the party adversely affected by the misuse of the discovery process. The court may also impose an issue sanction by an order prohibiting any party engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses." CCP § 2023.030(b).

As to the first issue sanction requested, this appears to go far beyond what Plaintiff would have been able to observe had the cameras not been removed. A discovery sanction is not meant to place a party in a better position than they would have been in had the violation not occurred. This request is **DENIED.**

As to the second issue sanction requested, Defendants' removal of the cameras did prevent Plaintiff from obtaining evidence that the cameras broadcast sound and video. The Court notes that Mr. Singh did not say in his declaration that the cameras never broadcasted sound and video, only that they haven't recorded anything since they were initially installed. It appears that Defendants are in the best position to know whether video and sound were broadcasted and did not dispute that fact. Plaintiff testified in her deposition on April 21, 2023, that "There was cameras with sound and video." *Plaintiff deposition,* p. 75, lns. 3-4. This was over a year before the cameras were removed. This request is **GRANTED**.

Evidence Sanctions. "The court may impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in evidence." CCP § 2023.030(c). Precluding Defendants from introducing evidence regarding the security cameras is a difficult decision at this

point in the case because the request is broad and it is unclear what evidence regarding the cameras will be introduced by Plaintiff at trial. The Court will therefore **DEFER** this request to the jury trial.

Monetary Sanctions. "The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. The court may also impose this sanction on one unsuccessfully asserting that another has engaged in the misuse of the discovery process, or on any attorney who advised that assertion, or on both. If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." CCP § 2023.030(a).

Plaintiff requests monetary sanctions in the amount of $16,667.99. This is comprised of eight hours that Troy Candiotti spent on the motion at the rate of $550 per hour,[1] the $60 filing fee, 12.5 hours spent by Adam Reisner on the motion and site inspection at the rate of $950 per hour, and the cost of Mr. Reisner's flight to and from Redding for the site inspection. As discussed above, the Court will set the reasonably hourly rate at $350. The time spent by Adam Reisner attending the site inspection is not warranted as the Court finds it unlikely that the site inspection would have been cancelled had Plaintiff known about the cameras being removed. That leaves eight hours for Mr. Candiotti and .5 hours for Mr. Reisner at the rate of $350 for a total of $2,975 plus $60 for the filing fee. Sanctions will be imposed against Defendants in the amount of $3,035. The Court notes that Defendants also requested monetary sanctions. Based on this ruling, the Court will not impose any monetary sanctions against Plaintiff.

The motion is **GRANTED** in part and **DENIED** in part. As stated above, the Court has reconsidered its ruling from July 22, 2024. The ruling remains unchanged other than the increased amount of the sanctions imposed against Defendants of $4,260. The motion for issue sanction: "Gurmeel Singh and Reema Singh observed Plaintiff complain to Jerry Kirouac, the local ombudsman, regarding QCH's insufficient food supply, via a security camera feed, on or about September 27, 2021." is **DENIED**. The motion for issue sanction "The security cameras recorded and broadcasted 'sound and video.'" is **GRANTED**. The evidentiary sanction that Defendants Quality Care Home, Inc, Gurmeel Singh, Reema Singh, and Dawn Parra be precluded from introducing evidence regarding the security cameras is **DEFERRED** until trial in this matter. Monetary sanctions are imposed against Defendants in the amount of $3,035. The Court makes no ruling regarding whether CACI 204 will be an appropriate jury instruction and this ruling should not be considered to affect ether party's ability to request or oppose such instruction at trial. Plaintiff provided a proposed Order that will be modified to reflect the Court's ruling.

IN RE PEREZ
Case Number: 24PB-0032657
Tentative Ruling on Petition to Approve Minor's Compromise: This Petition for Approval of Compromise of Claim for Minor is a settlement of minor Mauricio Zepeda Perez's claims from an automobile collision on August 2, 2023. The Petition was filed by the minor's parent, Imelda Perez. Probate Code § 3500 permits a parent to settle a claim for a minor so long as the claim is not against the parent and the petitioner is (1) Either parent if the parents of the minor are not living separate and apart or (2) The parent having the care, custody, or control of the minor if the parents of the minor are living separate and apart. Evidence in this regard was not submitted but can be provided in voir dire.

As for the Petition itself, California Rule of Court, Rule 7.950 states that a petition for court approval of a minor's

[1] The Court notes that the moving papers include that this includes Mr. Candiotti's time attending the site inspection, however, ¶ 10 of the Declaration of Troy Candiotti, which is the evidence of time spent by Mr. Candiotti, does not include Mr. Candiotti attending the site inspection.

compromise must contain a full disclosure of all information that has any bearing upon the reasonableness of the compromise. The Petition contains the necessary information. The Court notes this is not an expedited petition brought on Judicial Council Form MC-350EX. See CRC Rule 7.950.5. Hearing is thus needed on the Petition before it can be approved. The person seeking approval of the settlement on behalf of the minor and the minor are required to appear at hearing, unless good cause is presented for their non-appearance. CRC Rule 7.952. The Court finds good cause to excuse the attendance of the minor. The Court will ask counsel to voir dire Petitioner regarding the following: the authority to act under Prob. Code § 3500(a); the terms of the settlement; and whether the Petitioner understands that once approved, the settlement is final and binding on the minor. Once satisfied, the Court intends to grant the Petition. If granted, the Court will execute the Order and schedule a hearing for review regarding confirmation of purchase of annuity. **An appearance by the Petitioner is necessary on today's calendar.**

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9:00 a.m. – Review Hearings

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ASPIRE GENERAL INSURANCE COMPANY VS. ALLISON
Case Number: 22CVG-00899
This matter is on calendar for review regarding status of service. As an Order to Show Cause Re: Dismissal is on today's Law & Motion calendar, the Court intends to call the review hearing at 8:30 a.m. **An appearance is necessary at 8:30 a.m.**

BEARD VS. PRIME HEALTHCARE SERVICES-SHASTA, LLC
Case Number: 23CV-0202354
This matter is on calendar for review regarding status of arbitration and status of the stay. Neither party filed a status statement informing the Court of the status of arbitration. **An appearance is necessary on today's calendar.**

BELTRAN VS. M.K. & A., LLC
Case Number: 23CV-0203159
This matter is on calendar for review regarding status of the case. The Court notes that a Substitution of Attorney was filed on October 30, 2024 and Plaintiff has new counsel. The further Court notes that the litigation is at issue and intends to set a trial date. The Court designates this matter as a Plan III case and intends to set the matter for trial no later than August 26, 2025. Neither party has posted jury fees. The parties are granted 10 days leave to post jury fees. A failure to post jury fees in that time will be deemed a waiver of the right to a jury. The parties are ordered to meet and confer prior to the hearing regarding proposed dates for trial. **An appearance is necessary on today's calendar.**

CITY OF ANDERSON VS. KRUMINS, ET AL.
Case Number: 23CV-0203032
This matter is on calendar for review regarding status of the receivership/property. The Twelfth report of Receiver was filed on October 31, 2024. **An appearance is necessary on today's calendar to discuss the bankruptcy discharge and the Receiver's plan moving forward.**

GALLEGOS VS. BENEFICIAL INSECTARY, INC
Case Number: 24CV-0205779
This matter is on calendar regarding status of stay. The Court intends to call the review hearing at on today's Law & Motion calendar. **An appearance is necessary at 8:30 a.m.**

HERITAGE 21, LLC VS. BRAMBLE, ET AL.
Case Number: 22CV-0200645
This matter is on calendar for review regarding settlement. Defendants filed a Case Management Statement indicating that settlement terms are still being finalized and a Cross-Complaint may be needed. **An appearance is necessary on today's calendar.**

KING, ET AL. VS. TYNER, ET AL.
Case Number: 23CV-0202922
This matter is on calendar for review regarding status of arbitration. On September 3, 2024, counsel informed the Court that the parties were awaiting the Arbitrator's report. No Status Report was field. **An appearance is necessary on today's calendar to provide the Court with a status of the arbitration.**

PONCIANO, ET AL. VS. MARX, ET AL.
Case Number: CVCV20-0194371

This matter is on calendar for further status following a jury verdict. All issues triable to a jury have been resolved. However, both parties have requested declaratory relief from the Court. While the Court has heard all of the evidence in the case, the Court intends on requiring additional briefing from the parties to address the equitable issues remaining to be decided. **An appearance is necessary on today's calendar to discuss status and a briefing schedule.**

WALLACE VS. WINCO FOODS, LLC, ET AL.
Case Number: 23CV-0203366
This matter is on calendar for trial setting. The matter is at issue. The Court designates this matter as a Plan II case and intends to set the matter for trial no later than April 2, 2025. Defendant has posted jury fees but Plaintiff has not. Plaintiff is granted 10 days leave to post jury fees. A failure to post jury fees in that time will be deemed a waiver of the right to a jury. The parties are ordered to meet and confer prior to the hearing regarding proposed dates for trial. **An appearance is necessary on today's calendar.**