KRPAN, et al v SLIGHT, et al

20CV44854

PLAINTIFF'S MOTION TO ENTER JUDGMENT

This matter involves claims of construction defects brought by Christopher and Julie Krpan as individuals and trustees of the Christopher and Julie Krpan Revocable Living Trust ("Plaintiffs") against a host of Defendants, including Wildwood Properties, Inc. dba Century 21 Sierra Properties ("Wildwood"), Janet Cuslidge ("Cuslidge"), Kimberly Darr ("Darr") (collectively "Wildwood Defendants"), Dave's Plumbing ("Plumbing") and Premier Properties Murphys, Inc. dba Premier Property ("Premier") and Terri Bowman ("Bowman") (collectively "Premier Defendants.")

Now before the Court is Plaintiffs' motion to enter judgment pursuant to Code Civil Procedure section 664.6. The motion is opposed by Wildwood Defendants, Plumbing, and Premier Defendants.

I. Background

On June 2, 2025, the Court held a mandatory settlement conference. The minute order from that conference reflects that a settlement was reached and the following terms were expressly stated:

> Plaintiffs are to be paid $225,000.00 which will be apportioned as follows:
>
> $100,000.00 to be paid by Premier Properties Murphys, Inc.; $75,0000 payable by Wildwood Properties, Inc.; $25,000.00 payable by Core Inspection Services; $25,000.00 payable by Dave's Plumbing. The payment of $225,000.00 shall be made within 30 calendar days. Upon receipt of the payment Plaintiffs will dismiss all parties with prejudice. Each party shall bear their own attorneys' fees and costs. Mr. Miller will prepare the Settlement Agreement.
>
> ***

A court reporter then came in to the courtroom and transcribed further proceedings. All parties were asked and answered in the affirmative that they agreed with the terms of this settlement. Court then adopted the agreement and on the record confirmed the agreement was fully enforceable under Code of Civil Procedure Section 664.6.

After the conference, Mr. Miller circulated a proposed agreement ("Proposed Agreement.") According to Plaintiffs, the Proposed Agreement contained the salient material terms of the agreement reached in Court ("Court Agreement.") However, Plaintiffs contend that the Proposed Agreement also contained numerous other provisions not contained in the Court Settlement Agreement. Plaintiffs assert that some of those added terms, though new, were not objectionable (Paragraphs 5-20.) Plaintiffs take issue, however, with paragraph 21 ("Confidentiality") and paragraph 22 ("Disparagement") which according to Plaintiff added new material terms which were unilaterally inserted into the written draft prepared by Mr. Miller without any prior discussion at the mandatory settlement conference in this case and without Plaintiffs' prior or subsequent agreement." (Mtn p. 5.)

Apparently, the parties have not been able to agree upon a finalized written settlement agreement. The instant motion for judgment on the Court Agreement is now before the Court.

II. Legal Standard

Cal. Civ. Proc. Code § 664.6(a) provides that:

> If parties to pending litigation stipulate, . . . orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If the parties to the settlement agreement or their counsel stipulate in writing or orally before the court, the court may dismiss the case as to the settling parties without prejudice and retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

"On a motion to enforce, the court must determine whether the settlement agreement is valid and binding. The court assesses whether the material terms of the settlement were reasonably well defined and certain, and whether the parties expressly acknowledged that they understood and agreed to be bound by those terms." (*Estate of Jones* (2022) 82 Cal.App.5th 948, 952.) A section 664.6 motion may be used "even when issues relating to the binding nature or terms of the settlement are in dispute, because, in ruling upon the motion, the trial court is empowered to resolve these disputed issues and ultimately determine whether the parties reached a binding mutual accord as to the material terms." (*In re Marriage of Assemi* (1994) 7 Cal.4th 896, 905.)

III. Analysis

At issue herein is whether the Court Agreement reflected all the terms of the settlement and whether the parties, in reaching the Court Agreement, agreed that additional terms might be added during the writing of the final written agreement.

"It is undisputed that a stipulated settlement presented orally by the party litigants or their counsel to a judge, in the course of a settlement conference supervised by that judge, satisfies the 'before the court' requirement of section 664.6."(*Assemi*, supra 7 Cal.4th at 906.) The Court Agreement reflects that the parties reached agreement on the material terms of the settlement, specifically: the amount owed to Plaintiff and the liabilities of each of the settling defendants. The Court specifically asked the parties if they agreed with the settlement and understood it. The record reflects that the parties all agreed.

The opposing Defendants argue that the inclusion in the Minute Order noting that Mr. Miller would prepare the written agreement means that the Court (and all parties) knew that the actual settlement agreement would contain additional terms. While the written agreement to be prepared by Mr. Miller would certainly be expected to contain more language than the Minute Order, there could not have been a reasonable expectation on the settling parties that the final agreement would contain additional *material* terms. If the parties are in continued heated debate about the propriety of including confidentiality and non-disclosure clauses, this suggests that such terms were "material" and should have been addressed at the conference. However, none of the Defendants requested that those material terms be included in the Court's record during the settlement.

However, the Court is also cognizant of the rationale behind many of the Defendants' agreement to settle, rather than have judgment entered against them. Thus, entering judgment against Defendants rather than enforcing the terms of the agreement would not reflect the goals behind settling.

Accordingly, the Court orders that Mr. Miller prepare a written settlement agreement which reflects the material terms of the settlement as set forth in the Minute Order. Specifically: 1) Plaintiffs are to be paid $225,000.00; 2) Payments are made as follows:

$100,000.00 to be paid by Premier Properties Murphys, Inc.; $75,0000 payable by Wildwood Properties, Inc.; $25,000.00 payable by Core Inspection Services; $25,000.00 payable by Dave's Plumbing; 3) The payment of $225,000.00 shall be made within 30 calendar days; 4) upon receipt of the payment Plaintiffs will dismiss all parties with prejudice; 5) each party shall bear their own attorneys' fees and costs.

Additionally, paragraphs 5-20 in the Proposed Agreement are to also be included in the final written agreement in light of plaintiffs' acknowledgement that these terms were not objectionable. However, the Court finds the added "Confidentiality" and "Disparagement" paragraphs are material and could easily have been raised at the MSC but were not and therefore are NOT to be included in the written settlement agreement.no other disputed terms which were not set forth and agreed to at the conference shall be included.

The Court expects the revised settlement agreement will be signed by all parties and all necessary dismissals will be filed prior to OSC re Dismissal on March 4, 2026, at 1:30 p.m. in Dept. 4. In the event that the agreement remains unsigned and the matter has not been fully dismissed by said date, the Court will re-entertain a refiled Plaintiffs' motion for judgment.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

CASEM, et al v FOUST

24CV47471

DEFENDANT'S MOTIONS TO COMPEL ANSWERS TO SPECIAL INTERROGATORIES

This case involves claims of negligence with regards to electrical work performed on real property and ensuing damages after a fire. Steve Casem and Wanda Casem ("Plaintiffs") bring causes of action for negligence and violation of Civil Code section 1941 against David Foust ("Defendant.") Now before the Court are two motions to compel discovery responses filed by Defendant.

The Motion does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

> 3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence Is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:
>
> **Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the**

> **court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court** [emphasis in original.]
>
> Failure to include this language In the notice may be a basis for the Court to deny the motion.

Accordingly, the motions are **denied without prejudice to refile**.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

LAKES TREATMENT CENTER, INC., et al v LAKE TULLOCH, LLC, et al

21CV45585

DEFENDANT VAN'S MOTIONS TO COMPEL

This case stems from a property dispute between The Lakes Treatment Center, Inc. ("LTC") and Bernadette Cattaneo ("Cattaneo") (collectively, "Plaintiffs"), and The Resort at Lake Tulloch, ("Resort"), Narullah Safdari ("Safdari"), Odell Tristin ("Tristin"), Michael Van ("Van"), Andreas Ambramson ("Ambramson"), and Diamond Dirt LLC ("Diamond") (collectively, "Defendants.")

Now before the Court are three motions to compel brought by Van against co-Defendants Safdari and Tristin. Specifically, Van brings against Tristin two motions: 1) Motion to Compel Verified Responses to Request for Production, Set One ("RFP") and 2) Motion to Compel Compliance with Responses to RFPs. As against Safdari, Van brings a Motion to Compel Verified Responses to Request for Production, Set One ("RFP.")

The motions are unopposed. For convenience, the Court will refer to Safdari and Tristin as "Defendants" unless otherwise specified.

The motions do not comply with California Rules of Court 3.1345 because they do not contain a separate statement. The purpose of the separate statement is so that "no person is required to review any other document in order to determine the full request and the full response." (Cal. Rules of Court 3.1345(c).) Although the court has discretion to deny the motions based on this failure, for expediency the Court considers the motions. (*Sinaiko Healthcare Consulting, Inc.* v. *Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 409 fn. 14.)

I. Procedural History

On June 27, 2025, Van served Defendants with Request for Production, Set One ("RFP"). (Declaration of Michael J. Laino ("Laino Decl.") ¶ 2, Exs. A and B.) Both Defendants failed to provide any timely response, thus Van's attorney sent a meet and confer requesting object-free responses by August 15, 2025 and production of documents by August 22, 2025. (*Id.* ¶¶ 3-4, Ex. C.) No responses were provided. (*Id*. ¶

5.) After subsequent follow up with Defendants' attorney, responses were due by September 8, 2025, but were not provided by that deadline. (*Id*. ¶ 5.) However, on September 9, 2025, responses were provided to the other parties but not to the propounding party – Van. (*Id.* ¶ 6.)

It is unclear whether Van's counsel was ever actually served with the responses, or whether he obtained the responses from the other parties. However, at some point some responses were provided. However, the responses were unverified. (Laino Decl. ¶ 7.) Additionally, counsel for Defendants stated that Tristin would not provide any of the requested "communications" unless Van provided a vendor to collect them. (*Id*. ¶ 8.) Additionally, the responses "strategically omitted RFP No. 6." (*Ibid*.) Van's counsel avers as follows:

> Although Defendants purported to include a response to RFP No. 6, Defendants intentionally misnumbered their response to RFP No. 7 in an effort to avoid responding to RFP No. 6. For clarity, Van's actual RFP No. 6 requested "All agreements between YOU and PLAINTIFFS, including any drafts of such agreements." (See Ex. A.) In response, Defendants omitted their response to Van's actual RFP No. 6, and instead misnumbered their response to Van's RFP No. 7 as their purported response to RFP No. 6. (Laino Decl. ¶ 7, Exs. E and F.)

Throughout September and October 2025, Van's attorneys made repeated attempts to obtain the requested documents from Defendants' attorney. (Laino Decl. ¶¶ 8-12.) By October 29, 2025, only two responsive emails had been provided, and despite repeated requests for a time for Van to pay for the data collection, no dates were provided for this to occur. (*Id*. ¶ 13.)

As of the date of the motions, Defendants have continued to refuse to provide any response to RFP No. 6, and have refused to provide verifications for their responses to RFP Nos. 1-5 and 7. Tristin has also refused to provide a date and time at which Van may have the vendor collect the agreed-upon communications.

Defendants have also failed to file any opposition which the Court notes may be "deemed a consent to the granting of the motion." (Cal. Rules of Court, 8.54(c).)

II. LEGAL STANDARD

Pursuant to Code Civ. Proc. section 2031.300, if a party to whom requests for production of documents fails to serve a timely response then:

> (a) The party to whom the demand for inspection, copying, testing, or sampling is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> (1) The party has subsequently served a response that is in substantial compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240 and 2031.280.
>
> (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

On receipt of a response to a Request for Production of Documents, the demanding party may move for an order compelling further responses to the demand if the demanding party deems that (1) a statement of compliance with the demand is incomplete, (2) a representation of inability to comply is inadequate, incomplete, or evasive, or (3) an objection in the response is without merit or too general. (CCP § 2031.310(a).)

Motions to compel further responses to RPDs must set forth specific facts showing good cause justifying the discovery sought by the request. (CCP § 2031.310(b).) To establish good cause, a discovery proponent must identify a disputed fact that is of consequence in the action and explain how the discovery sought will tend in reason to prove or disprove that fact or lead to other evidence that will tend to prove or disprove the fact. (*Digital Music News LLC v. Superior Court* (2014) 226 Cal.App.4th 216, 224, disapproved on other grounds by *Williams v. Superior Court* (2017) 3 Cal.5th 531; *see also Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98 [characterizing good cause as “a fact-specific showing of relevance”].) If good cause is shown by the moving party, the burden shifts to the responding party to justify any objections made to disclosure of the documents. (*Kirkland, supra*, 95 Cal.App.4th at 98.)

III. DISCUSSION

Defendants were properly served with the RFPs. They have both failed to provide verified responses and have failed to respond to RFP No. 6 at all. They have not filed any opposition which would explain their failures.

Defendants are therefore ordered to provide verified, objection-free responses to RFP No. 6 within fifteen (15) days of this order.

Defendants are therefore ordered to provide verified, objection-free responses to RFP Nos. 1-5 and 7 within fifteen (15) days of this order.

Finally, Tristin has failed to provide the documents which he had promised repeatedly to provide in his responses. Tristin's counsel refused to provide the requested documents and communications unless Van agreed to pay for the extraction of those communications via vendor. (Laino Decl. ¶ 8.) Thereafter, Van agreed to pay for that cost and provide a vendor but for months Tristin's attorney has failed to allow this to proceed. (*Id*. ¶¶ 9-13.) Accordingly, within fifteen (15) days of this order, Tristin is ordered to provide a date and time within the next 30 days in which the vendor may proceed to extract the requested communications, or produce the documents at his own initiative and expense.

Sanctions

Van seeks sanctions as a result of the Defendants' failure to participate in the discovery process.

The Court must impose sanctions in the amount of $1,000 (in addition to other reasonable sanctions) for the failure to provide responses to RPDs. (Code Civ. Proc. § 2023.050(a).) The Court may also impose sanctions for the failure to respond to discovery requests as a misuse of the discovery process. (Code Civ. Proc. § Section 2023.030(a).) The Court may impose sanctions even where, as here, there has been no opposition filed. (Cal. Rule of Court 3.1348.)

Van's attorney states that he has incurred fees related to this discovery dispute as follows:

1. Tristin's refusal to produce the documents as agreed: $4,833.00 in fees and $60 in costs. This is based on counsel's statement that he

spent 11.1 hours at $430 per hour to prepare the motion to compel compliance.

The Court finds that $430 is excessive in this area and reduces counsel's hourly rate to $300. Thus, for the motion to compel compliance, **Tristin is ordered to pay $3,300.00 in sanctions and $60 in filing fees for a total of $3360.00**.

2. Defendants' refusal to respond to RFP No. 6 and to provide verifications to RFP Nos. 1-5, and 7: $3775.00 for both motions plus $120 in filing fees. This is based on counsel's statement that he spent 8.5 hours. At the Court's reduced rate of $300 per hour, this totals $2,550.00.

   On the motions to compel production and verified responses, Tristin is ordered to pay $1,275.00 in attorney's fees plus $60 in filing fees for a total of $1,335.00.

   On the motions to compel production and verified responses, Safdari is ordered to pay $1,275.00 in attorney's fees plus $60 in filing fees for a total of $1,335.00.

Accordingly, Van's motion for sanctions is granted as follows:

Tristin is ordered to pay $5,195.00 in sanctions and costs ($4695.00 in attorney's fees sanctions plus $500 of the mandatory $1,000 sanction).

Safdari is ordered to pay $1835 in sanctions and costs ($1335.00 plus $500 of the mandatory $1,000 sanction).

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the submitted (Proposed) Orders..

ANDREWS v ANDERSON

23CV46644

PLAINTIFF'S MOTION TO SET ASIDE DISMISSAL; DEFENDANT'S MOTION TO ENFORCE SETTLEMENT

This case involves a breach of contract dispute Meg Andrews ("Plaintiff") and David Anderson ("Anderson,") Anderson Construction ("Construction") and Heather Ugale ("Ugale") (collectively "Defendants.")

Now before the Court are two competing motions: Defendants move to enforce a settlement agreement ("Agreement") between the parties, while Plaintiff moves to set aside the dismissals entered pursuant to the Agreement and to set the matter for trial. As the motions relate, the Court will consider them together herein.

I. Background

On March 17, 2023, Plaintiff, by and through her then-counsel Lawrence Niermeyer ("Niermeyer") filed the present action against Defendants alleging: 1) breach of contract, 2) fraud, 3) conspiracy, 4) accounting, and 5) elder abuse. Plaintiff alleged that Defendants orally contracted to construct a family home for her, were paid for those services, and yet Defendants failed to do the required work. After subsequent demurrers, Plaintiff filed a third amended complaint on October 25, 2023, alleging breach of contract, fraud and elder abuse. After another demurrer, the remaining allegations allowed by Plaintiff were for breach of contract and fraud.

The parties proceeded with discovery and discovery disputes throughout 2024, with Plaintiff continuing to be represented by attorney Niermeyer. On January 13, 2025, the Court held a mandatory settlement conference, at which Plaintiff was present with her counsel Niermeyer. The parties did not reach a settlement, and the matter was set for trial on August 6, 2025.

On July 23, 2025, Niermeyer filed a notice of settlement of the entire action. The notice stated that the settlement was conditional upon certain items and that dismissal would be undertaken before January 15, 2026. On that same date, Niermeyer filed a notice of dismissal for both Construction and Ugale. The court trial scheduled for August 6, 2025, was vacated.

Purportedly on November 20, 2025, Plaintiff terminated her relationship with Niermeyer and on December 4, 2025 attorney Alan Hamilton ("Hamilton") filed notice of change of Plaintiff's counsel. Hamilton filed the instant motion to vacate dismissals on November 26, 2025. However, from the Court's formal procedural perspective, the change in attorney was not effected until January 7, 2026, when the formal Substitution of Attorney was filed.

On December 5, 2025, Defendants filed their motion to enforce the Agreement.

II. Legal Standard

Code of Civil Procedure § 473(b) provides:

> The court may, upon any terms as may be just, relieve a party or the party's legal representative from a judgment, dismissal, order, or other proceeding taken against the party through the party's mistake, inadvertence, surprise, or excusable neglect.

Pursuant to Code Civ. Procedure section 664.6:

> If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

A judge hearing a section 664.6 motion may receive evidence, determine disputed facts, and enter the terms of a settlement agreement as a judgment. (*Weddington Productions, Inc. v. Flick* (1997) 60 Cal.App.4th 793, 809.)

III. Discussion

Plaintiff's motion to vacate is premised on her position that she did not sign or agree to the Agreement and therefore the dismissals should never have been entered. Accordingly, the Court examines the Agreement and the procedure set forth in Code Civil Procedure section 664.6.

"Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit." (*Weddington Productions, Inc. v. Flick* (1997) 60 Cal.App.4th 793, 809.) However, "in order to be enforceable pursuant to the summary procedures of section 664.6, a settlement agreement must either be entered into orally before a court or must be in writing and signed by the parties. (*Ibid*.) A "writing is signed by a party" if it is signed by: 1) the party, 2) the attorney who represents the party, or 3) an insurer or insurer's agent. (Code Civ. Proc. §664.6(b)(1)-(3).) After section 664.6 was amended effective January 1, 2021, it is clear that 664.6 expressly "allow[s] an attorney for a represented party to sign a writing settling pending litigation on her or her client's behalf.' (*Greisman v. FCA UC, LLC* (2024) 103 Cal.App.5th 1310, 1324.)

Here, Plaintiff and Niermeyer both agree that she did not personally sign the settlement agreement, though Niermeyer avers under oath that he signed Plaintiff's name with her authorization. (Declaration of Lawrence T. Niermeyer ("Niermeyer Decl.") ¶ 20.) At this juncture, the Court does not weigh in on the propriety of an attorney signing for his client. Again, whether Plaintiff herself signed the Agreement is of no import because pursuant to Code of Civil Procedure section 664.6(b)(2), a settlement agreement, in writing, is "signed by the party" when it is signed by either the party or the party's attorney. (See, *Ford Motor Credit Co. LLC v. Melgar*, 2025 Cal.Super.LEXIS 55601.) Here, Niermeyer was actively representing Plaintiff at the time he signed the Agreement and the Agreement is enforceable pursuant to section 664.6.

The Court recognizes that Plaintiff also asserts that she did not agree to the terms of the Agreement. However, upon review of the evidence provided, the Court finds it more likely than not that Plaintiff was not only fully aware of the terms but agreed to them.

Defendants submit declarations of Niermeyer and his legal assistant Christopher Citi. According to Niermeyer's sworn declaration:

> Upon receipt of Defendant's increased offer, I telephoned Meg Andrews and
>
> discussed the proposed amount of fifteen thousand dollars ($15,000.00) together with the monthly payment terms. During this conversation Ms. Andrews and I discussed the amount of Defendant's bond, the validity of her claims against Defendant Heather Ugale[1], the lack of any insurance coverage for Defendants David Anderson and Anderson Construction, the anticipated fees and costs that she would incur proceeding to trial, how she would collect any judgment that she might be awarded following trial, the discussions that she heard between

[1] Ugale is Construction's secretary and according to Defendants, Plaintiff admitted in discovery that she knew Ugale was a secretary, not an owner of Construction, and not a party to the contract.

> Attorney Fluetsch and I before her deposition regarding Defendant's continued payment of his attorney fees, and a potential filing for Bankruptcy should she prevail at trial. (Niermeyer Decl. ¶ 9.)

According to Niermeyer, Plaintiff informed him that she was unhappy with the amount offered but that she would accept if he could not get the Defendants to pay anymore. (*Id*. ¶ 10.) Niermeyer thereafter attempted to secure additional settlement funds but Defendants' maximum offer remained $15,000.00. (*Id.* ¶ 11.) Thereafter, Niermeyer avers that he had another phone call with Plaintiff:

> I then telephoned Meg Andrews and told her that the fifteen thousand dollars ($15,000.00) was the final offer as Defendants were not willing to pay any additional amount. In response, Meg Andrews told me again that she would agree to the fifteen thousand dollars ($15,000.00) as, "getting something is better than getting nothing at all." (Niermeyer Decl. ¶ 12.)

Niermeyer avers that Fleutsch was informed of Plaintiff's acquiescence and prepared the Agreement. (Niermeyer Decl. ¶ 13.) Upon receipt of the Agreement, Niermeyer attempted to fax the Agreement to Plaintiff for review (she did not have email) and instead Plaintiff asked Niermeyer to read the Agreement to her over the telephone. (*Id*. ¶ 14.) Niermeyer asked his legal assistant Christopher Citi to sit in during that phone conversation, during which Plaintiff asked multiple questions about the Agreement. (*Id*. ¶ 15.) Niermeyer recalls that Plaintiff's questions included concerns about what would happen if the payments were late, why did the parties need to stipulate to judgment, and how Defendants' bankruptcy might affect her ability to collect her money. (*Ibid*.) Niermeyer avers that the Agreement was then altered to include protection for Plaintiff in the event of any bankruptcy. (*Ibid.*) Niermeyer avers that after he read each paragraph of the Agreement to Plaintiff, he "specifically asked if she had any questions regarding that paragraph." (*Id*. ¶ 16.) Niermeyer further avers that "I did not proceed to the next paragraph until Ms. Andrews that she understood and acknowledged agreed to the terms, conditions, and/or requirements of each paragraph." (*Ibid*.) After some back and forth on the Agreement's language to protect Plaintiff in the event of bankruptcy, Niermeyer informed Plaintiff again of the terms and asked her to come to the office to sign the Agreement, or to receive it by email or fax. Plaintiff refused those options, but orally advised Niermeyer that he could place her signature on the Agreement. (*Id.* ¶ 20.)

The declaration of Niermeyer's legal assistant, Christopher Citi, confirms Niermeyer's recollection of events. Mr. Citi avers that he was in the room when Niermeyer was on the phone with Plaintiff to read her the Agreement. (Declaration of Christopher Citi ("Citi Decl.") ¶ ¶ 4-5.) Citi avers that Niermeyer read the Agreement to Plaintiff, stopping after each paragraph to ask if she had questions and understood the terms. (*Id.* ¶ ¶ 6-7.) Citi avers that after reading the entire Agreement to Plaintiff, Niermeyer asked if Plaintiff

understood and agreed to the terms and she stated that she did. (*Id.* ¶ 8.) Citi further avers that he recalls Plaintiff's concern about the potential impact of any bankruptcy and that Niermeyer resolved to have those concerns addressed in the Agreement. (*Id*. ¶ 6.)

According to Citi, in that same week, Plaintiff called the office and he had a "detailed discussion regarding the settlement with her." (*Id*. ¶ 13.) Citi avers:

> During that conversation, Ms. Andrews asked questions regarding the time frame in which all the documents would be submitted to the Court, so the case would be concluded, and never mentioned that she was not in agreement with the terms of the Settlement Agreement. (*Id*. ¶ 13.)

The Court therefore finds that the parties stipulated in a writing signed by the parties for settlement of the case. The Court further finds that Defendants have complied with the terms of the Agreement by paying Plaintiff $15,000.00. Plaintiff has failed to comply with the Agreement because she has refused to request dismissal of Anderson with prejudice.

Accordingly, the **motion to enforce settlement agreement is granted. Plaintiff is ordered to dismiss Anderson, with prejudice, within ten (10) days of this Order**.

Because the Court has determined that the settlement agreement was valid and enforceable, the **motion for relief sought by Plaintiff is denied**.

The clerk shall provide notice of this ruling to the parties forthwith. Defendants to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.

COMPREHENSIVE CONSTRUCTION SERVICES v TAL

25CV48174

PLAINTIFF'S MOTION FOR ATTORNEY'S FEES

This matter involves a contract dispute between Comprehensive Construction Services ("Plaintiff") and Ladybug Ventures ("Ladybug.") Now before the Court is Plaintiff's post-trial motion for attorney's fees and costs. The motion is unopposed.

I. BACKGROUND

On October 10, 2024, Plaintiff filed this action against Johnathon Tal ("Tal") alleging causes of action for breach of oral contract, goods sold and delivered, account stated and open account. (During trial, Ladybug was substituted for Tal by stipulation.)

The matter was tried by the Court on November 5, 2025, with a resulting judgment signed on November 24, 2025. On Plaintiff's complaint, the Court found that Plaintiff was entitled to $17,791.61 from Ladybug on its causes of action for breach of oral contract, for goods sold and delivered, and for open account. The judgment also stated that Plaintiff "is the prevailing party in this matter" and that Plaintiff could seek attorney's fees pursuant to motion.

II. LEGAL STANDARD

Pursuant to Civil Code section 1717(a):

> In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

The statute awards attorney's fees to the prevailing party "whenever that party would have been liable under the contract for attorney fees had the other party prevailed." (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 871.)

III. DISCUSSION

Pursuant to Article 4, Paragraph 10 of the contract between the parties:

> In the event of any dispute arising from any aspect of the performance of this agreement by any party hereto, if any action is required to be taken, either judicial or extrajudicial, to enforce any provision of this agreement, the party shall be entitled to an award of reasonable attorney fees and costs.
>
> (Declaration of William J. Braun ("Braun Decl.") ¶ 4, Ex. A.)

Thus, the contract provides for an award of attorney's fees to the party prevailing on an action to enforce the contract, falling squarely within Civil Code section 1717 and the Court has already determined that Plaintiff is the prevailing party.

Plaintiff seeks $17,791.61 in attorney's fees and costs. Plaintiff's attorney states that his usual rate is $450 per hour, but accepts the Court's expression that the usual maximum hourly rate in this legal community is $300.00. (Braun Decl. ¶ 6.)

Plaintiff's counsel avers that his firm uses a computerized billing system which shows that through the end of October 2025, counsel expended 23.5 hours of attorney time. (*Id*. ¶ 7, Ex. B.) Plaintiff's counsel avers that there are an additional 17.1 hours of work which have not yet been billed for the month of November 2025, which includes trial preparation, trial, preparing the instant motion and hearing on the motion. (*Id*. ¶ 8.) Thus, Plaintiff seeks compensation for 41 hours of work. Plaintiff argues that the amount of work was necessitated in large part by the fact that Tal/Ladybug– despite agreeing that Plaintiff was owed money – required engaging in excess legal work. (*Id.* ¶ 3.) Ladybug cannot, therefore, be surprised that Plaintiff incurred substantial legal fees. (*Ketchum v.* Moses (2001) 24 Cal.4th 1122, 1141 [a party that litigates tenaciously cannot be surprised that the other side incurred attorney's fees in response].)

The Court finds that 41 hours of legal work in this matter is reasonable. Accordingly, the **Court awards $12,300.00 in attorney's fees and costs to Plaintiff**.[2]

[2] The Court removes the anticipated hours for responding to the opposition, as no opposition was filed.

Defendant is to pay $12,300.00 to Plaintiff within fifteen (15) days of this Order.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.

KNIGHT v BOGAARD, et al

24CV47322

DEFENDANT'S COUNSEL'S MOTION TO BE RELIEVED

This matter arises from allegations of fraud brought by Penny Knight ("Plaintiff") against Byron Bogaard ("Bogaard"), Nathan Tremble ("Tremble") and MaxKing Holdings, LLC ("LLC") (collectively "Defendants.")

Now before the Court is a motion to be relieved as counsel filed by attorney David S. Kahn ("Kahn") of the law firm of Gavrilov & Brooks ("Gavrilov.") Khan seeks to withdraw as counsel for Defendants.

Bogaard and Tremble do not oppose the motion as to themselves. However, they oppose the motion to withdraw as to the LLC on the grounds that the LLC cannot represent itself pro per and will be prejudiced if Kahn is allowed to immediately withdraw.

I. BACKGROUND

Plaintiff filed her complaint against Defendants on April 16, 2024. On May 29, 2024, Defendants filed their answers and a cross-complaint against Plaintiff. Those documents reflect that Defendants were, at the time, represented by Gavrilov, and the documents signed by an attorney named Kalle Mikkola.

According to Defendants, their assigned attorney at Gavrilov departed without providing them with any notice. Defendants assert that as a result of this departure, they were left without adequate representation by Gavrilov which resulted in the foreclosure of real property which was purportedly LLC's sole material asset. This foreclosure happened in April of 2025.

At some point Kahn became the attorney primarily in charge of this matter. A settlement conference was held on November 3, 2025. The parties did not reach a settlement and the matter was set for trial on March 4, 2026.

The instant motion to withdraw was filed on November 24, 2025. The declaration accompanying the motion states that it is based upon a "fundamental disagreement"

with the client and a breakdown in the attorney-client relationship. (Declaration of David S. Kahn.)

Defendants assert that motion to withdraw came after they engaged in discussions with Kahn/Gavrilov about the attorney transition and path moving forward.

II. LEGAL STANDARD AND ANALYSIS

Code of Civil Procedure section 284 provides that an attorney in an action may be changed at any time before judgment either upon the consent of the client and attorney or upon order of the Court. California Rule of Court 3.1362(a) requires that the "notice of motion and motion to be relieved as counsel under Code of Civil Procedure section 284(2) must be directed to the client and must be made on the Notice of Motion and Motion to Be Relieved as Counsel-Civil (Form MC-051)."

The determination whether to grant or deny a motion to withdraw as counsel lies within the sound discretion of the trial court. (*Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1133.) Further, the right to withdraw is not absolute, and the Court must take into account the potentially prejudicial impact upon the withdrawing-attorney's client. (*Vann v. Shilleh* (1975) 54 Cal.App.3d 192, 197.)

Here, the Court is concerned about the timing of the motion as to the LLC given pending depositions and trial date. Accordingly, the motion to withdraw is **GRANTED as to Bogaard and Tremble individually** but the parties are ordered to appear at the hearing for further discussion to determine the motion as to the LLC.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the submitted (Proposed) Order once the issue of LLC representation is resolved..

GREENROOT v WEBSTER

25CV48032

DEFENDANT'S MOTION FOR TERMINATING SANCTIONS/ DEFENDANT'S MOTION TO EXPUNGE LIS PENDENS

This case involves a contract dispute concerning real property brought by Lorna Greenroot ("Plaintiff") against Pennelope Webster ("Webster.") Now before the Court are two separate motions filed by Defendant: 1) Motion for Terminating Sanctions and 2) Motion to Expunge Lis Pendens. As the motions regard the same set of facts and procedural history, the Court will consider all both herein.

The motions are unopposed, which the Court notes may be "deemed a consent to the granting of the motion." (Cal. Rules of Court, 8.54(c).)

I. Background

On September 8, 2025, the Court granted an Order (1) compelling Plaintiff to serve verified responses, without objection, to Special Interrogatories Set One, (2) compelling her to serve verified responses, without objection, to the Request for Production of Documents Set One, and produce all responsive documents, and (3) ordering her to pay sanctions in the amount of $820. Plaintiff was to serve the responses and pay the sanctions by September 19, 2025. Plaintiff did not comply with this Order of the Court and has failed to provide either set of responses or pay sanctions. (Declaration of Michael Fluetsch ("Fluetsch Decl.") ¶ 5.)

On September 25, 2025, the Court granted another Order (1) compelling Plaintiff to serve code-compliant responses to the Request for Production of Documents Set Two, and (2) ordering her to pay additional sanctions in the amount of $660. Production and payment of sanctions were due by October 3, 2025. Plaintiff did not comply with this Order of the Court and has failed to provide the responses or pay sanctions. (Declaration of Michael Fluetsch ("Fluetsch Decl.") ¶ 7.)

Plaintiff also has refused to sit for her deposition. On October 10, 2025, defense counsel served a "Notice of Taking Deposition of Plaintiff Lorna Greenroot and Request for Documents." (Fluetsch Decl. ¶ 8, Ex. C.) Plaintiff failed to appear for her noticed deposition or produce the documents. (*Ibid*.) Defendant's attorney sent a meet and

confer letter on October 29, 2025, asking her to comply with the Court's previous orders and inquiring about her failure to appear for the noticed deposition. (*Id.* ¶ 9, Ex. D.) Plaintiff did not respond to that letter. (*Id.* ¶ 10.)

II. Legal Standard and Discussion

It is a misuse of the discovery process to fail "to respond or to submit to an authorized method of discovery," (Code Civ. Proc. § 2023.010(d)) or to disobey "a court order to provide discovery." (Code Civ. Proc. § 2023.010(g).)

Under CCP § 2023.030, courts have the authority to issue monetary sanctions, evidentiary sanctions, or terminating sanctions after giving parties proper notice and the opportunity to be heard. Termination may be imposed as a sanction only after (1) a court order has been issued, compelling the party to comply with a discovery request; (2) the party has disobeyed the order; and (3) the party has been given an opportunity to be heard regarding the order. (*J.W. v. Watchtower Bible & Tract Society of New York, Inc.* (2018) 29 Cal. App. 5th 1142, 1167.) A terminating sanction is appropriate only when a party's failure to obey a court order prejudiced the opposing party. (*Morgan v. Ransom* (1979) 95 Cal. App. 3rd 664, 669.)

Failure to respond to discovery and to comply with a judge's court orders compelling discovery are sufficient to impose a terminating sanction. (*Jerry's Shell v. Equilon Enterprises, LLC* (2005) 134 Cal. App. 4th, 1058, 1069.) Further, if the party has committed severe discovery abuses, a judge's denial of terminating sanctions may be an abuse of discretion. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal. App. 4th 967, 992.)

This court issued an order granting Defendant's motion to compel responses to written discovery requests on September 8, 2025. Plaintiff has disobeyed that order. Plaintiff did not request a hearing on the tentative ruling granting the motion to compel. Plaintiff has neither provided any responses nor sought any kind of additional extension.

Plaintiff repeated her discovery misconduct after the Court's September 25, 2025, Order compelling her to respond to additional discovery and pay sanctions. Once again, plaintiff disobeyed the order. Plaintiff did not request a hearing on the tentative ruling granting the motion to compel, and has neither provided any responses nor has she sought any kind of additional extension.

Plaintiff has also failed to appear for a properly noticed deposition or to respond to defense counsel's inquiries about the same.

Plaintiff has had ample time to respond to the discovery requests and to comply with this Court's Orders or seek relief therefrom. Plaintiff's failure to respond and to comply with this Court's Orders, and to appear for deposition, has prejudiced Defendant who is unable to move forward with this case without Plaintiff's participation. Nor has Plaintiff filed any opposition to the instant motion setting forth any reasons for her continued disobedience of Court Orders or her willful failure to engage in the discovery process. The Court views these actions in tot as willful disregard of her discovery obligations and willful disregard for this Court's Orders.

In light of the above, the **Court GRANTS Defendant's motion. The Court orders that Plaintiff's Third Amended Complaint be dismissed**.

B. MOTION TO EXPUNGE

"At any time after notice of pendency of action has been recorded, any party, or any nonparty with an interest in the real property affected thereby, may apply to the court in which the action is pending to expunge the notice." (Code Civ. Proc. § 405.30.) The Court shall order the notice expunged if it "finds that the pleading on which the notice is based does not contain a real property claim." (Code Civ. Proc. § 405.31.)

The Court has granted the motion for terminating sanctions and ordered Plaintiff's TAC to be dismissed. Accordingly, there is no pleading containing a real property claim upon which the notice is based.

The motion to expunge lis pendens is **GRANTED**.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant to submit formal Orders complying with Rule 3.1312 in conformity with this Ruling.