

Calaveras Superior Court  
Civil Law & Motion Calendar  
Friday, June 4, 2021  
Courtroom 2, Hon. David M. Sanders

9:00 AM 14CV40365 Motion to compel Ptffs' further responses to Defs' Request for Production of Documents, Set One 09/19/2014 08/02/2021 Settlement Conference

Ptff/Pet: Bachelor, Kathi; Richards, David; Sarkis, Lawrence J.; Von Latta, Chuck  
Def/Res: Angels Gun Club; etal

Atty: Berliner Cohen  
Atty: Porter Scott; Levangie Law Group

TENTATIVE RULING: Defendants move for an order compelling Plaintiff Lawrence Sarkis to produce further responses to Defendants' Requests for Documents, Set 1, numbers 70, 87, and 88. The motion is GRANTED. Plaintiffs' request for sanction is DENIED.

**A. General Discussion**

"In the...context of a request to produce documents, a party who seeks to compel production must show 'good cause' for the request (§ 2031, subd. (l)) – but where...there is no privilege issue or claim of attorney work product, that burden is met simply by a fact-specific showing of relevance." (Glenfed Development Corp. v. Super. Ct. (1997) 53 Cal.App.4th 1113, 1117 (Glenfed).) "In the context of discovery, evidence is 'relevant' if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement." (Ibid.) A finding of relevance may be supported by the claims or defenses asserted through the pleadings. ((Kirkland v. Super. Ct. (2002) 95 Cal.App.4th, 92, 98.) Where such showing cannot be established by reference to the pleadings, the burden on the party seeking discovery is to "produce evidence from which the court may determine" that "the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Calcor Space Facility v. Super. Ct. (1997) 53 Cal.App.4th 216, 223, emphasis in original.)

Once good cause is shown, the burden shifts to the party opposing the motion to justify its objection(s). (See Kirkland v. Super. Ct., supra, 95 Cal.App.4th at 98.)

**B. Request Nos. 70 and 87.**

Request number 70 seeks, "ALL DOCUMENTS upon which YOU base YOUR contention that YOU have been damaged by Defendant's alleged breaches and failure to act in good faith, and in a fair and reasonable manner, as alleged in paragraph 19 of the SAC." (See Plaintiffs' Response to Separate Statement at 2:4-10 (Response SS).) Request number 87 seeks, "ALL DOCUMENTS quantifying the damages that YOU claim to have sustained as a result of the acts and omissions that YOU attribute to Defendants, as alleged in the SAC." (See id. at 5:6-12.)

The Court finds that these requests are each relevant to Plaintiffs' allegations that, "[a]s a cause and proximate course of the alleged breaches and the failure to act in good faith and in a fair and reasonable manner, Plaintiffs have been damaged in an amount to be proven at trial." (SAC at ¶ 26; see Glenfed, supra, 53 Cal.App.4th at 1117.)

Plaintiff Sarkis provided no substantive response to either request. (See Response SS at 2:11-23, 5:13-24.). As discussed herein below, Plaintiff failed to comply with the requirements of Code of Civil Procedure sections 2030.210, subdivision (a), and 2030.240, subdivisions (a)-(c). This failure allows significant uncertainty to persist regarding the nature of Plaintiffs' claims for damages and the nature and existence of evidence in support thereof.

Plaintiffs objected that the requests are each overbroad, unduly burdensome, oppressive, compound, vague, ambiguous, and are not reasonably calculated to lead to the discovery of admissible evidence. (See Response SS at 2:11-23, 5:13-24.) Plaintiffs' arguments in support of these objections are abstract and conclusory. (See Id. at 6:10-8:2,

10:20-11:12.) Plaintiffs fail to show good cause in support thereof as to this request. As such, each of the foregoing objections are overruled.

Plaintiffs further object that these requests seek material protected by the attorney-client privilege and/or the work product doctrine. "This request seeks all documents regarding the damages claimed in the second amended complaint for each category of damages, which consists of the attorney's fees and costs Plaintiffs have claimed as potential damages if adjudged the prevailing party." (Response SS at 2:4-10, 5:7-12.)

First, nothing in the language of either request may be read to limit its scope to documents relating to damages in the form of attorneys' fees. The damages allegation of paragraph 26 of the SAC is inherently broad. Defendants are entitled to pursue discovery on the nature and extent of the damages Plaintiffs seek. To the extent that Plaintiffs contend, through the allegations of the SAC, that they have suffered damages in a form other than attorneys' fees, Defendants are entitled to documents on which Plaintiffs base such allegations. Plaintiffs fail to make a showing that any such documents would be subject to the attorney-client privilege and/or the attorney work produce doctrine.

Second, the allegations in the SAC and certain of Plaintiffs' arguments here suggest that Plaintiffs seek attorneys' fees not as damages, but as a form of costs of suit. "Our courts have consistently 'distinguish[ed] between' attorney's fees that are sought as 'the allowance ... to the prevailing party as an incident to the principal cause of action,' and those that are sought as 'part of the cause of action.'" (Monster, LLC v. Super. Ct. (2017) 12 Cal.App.5th 1214, 1228.) "When sought by the 'prevailing party ... as an incident to [the] judgment' (Citation), attorney's fees may be 'properly awarded [as a form of cost] after entry of a ... judgment' (Citation). However, when 'fees are part of the relief sought[, they] must be pleaded and proved at trial.'" (Ibid.)

Plaintiffs allege that, "[i]f Plaintiffs are successful in this action, a substantial benefit will result to Defendant AGC on whose behalf this action is prosecuted and Plaintiffs are entitled to recover their attorney fees incurred and to be incurred in the prosecution of this action against AGC and the other Defendants in an amount to be determined by the court according to proof at the time of the hearing on the matter." (FAC at ¶ 30.) This allegation appears to be one in support of an award of attorneys' fees under the "substantial benefit" rule. "Under the 'substantial benefit' rule, a variant of the common-fund doctrine...the successful plaintiff in a stockholder's derivative action may be awarded attorneys' fees against the corporation if the latter received 'substantial benefits' from the litigation...." (Fletcher v. A.J. Industries, Inc. (1968) 266 Cal.App.2d 313, 320, superseded by statute on other grounds as stated in Brusso v. Running Springs Country Club (1991) 228 Cal.App.3d 92, 103 at fn. 3.) The conclusion that Plaintiffs pray for attorneys' fees pursuant to the "substantial benefit" rule is further supported by Plaintiffs' citation to Johnson v. Tago (1986) 188 Cal.App.3d 507, 518. (See Response SS at 7:5 9.)

Importantly, as Plaintiffs note, "[t]he substantial benefit exception is limited to 'successful' plaintiffs, i.e., plaintiffs who have ultimately prevailed in the litigation. (Citation.)...[n]o award is appropriate until this litigation is terminated. Only then can it be determined whether the Johnsons have been 'successful.'" (Johnson v. Tago, supra, 188 Cal.App.3d at 518.) Because attorneys' fees awarded pursuant to the "substantial benefit" rule are available only after a plaintiff prevails in the litigation, the Court concludes that they are available only as a form of costs of suit and not as a form of damages that must be "pleaded and proved at trial." (Monster, LLC v. Super. Ct., supra, 12 Cal.App.5th at 1228.)

If Plaintiffs seek attorneys' fees only as a form of costs of suit, then their attorney-client privilege and work product doctrine objections to the foregoing interrogatories are misplaced as the requests seek documents relating to Plaintiffs' "contention that [they] have been damaged by Defendant's alleged breaches and failure to act in good faith, and in a fair and reasonable manner," and "damages that YOU claim to have sustained as a result of the acts and omissions that YOU attribute to Defendants, as alleged in the SAC." (See Response SS at 2:4-10, 5:7-11.)

Again, Defendants are entitled to pursue discovery relating to Plaintiffs' alleged damages. If, as appears, Plaintiffs seek attorneys' fees as costs of suit, and Plaintiffs do not contend that they have been otherwise damaged (or if Plaintiffs' have no documents supporting any such non-attorneys'-fees-contention) then Defendants are entitled to a statement that no responsive documents exist. (See Code Civ. Proc. §§ 2031.210, subd. (a)(2) and 2031.230.)

If, on the other hand, Plaintiffs do seek an award of attorneys' fees, as damages, then caselaw supports Plaintiffs' arguments that details in attorney billing records, such as

descriptions of tasks completed, may be shielded from discovery based on the attorney-client privilege and/or work product doctrine. (See, e.g., *Los Angeles County Bd. of Supervisors v. Super. Ct.* (2016) 2 Cal. 5th 282, 297.) However, Plaintiffs are still required to provide a substantive response indicating whether these are all of the documents responsive to the request, or whether others exist that are not subject to the objection. (See Code Civ. Proc. §2031.240, subds. (a) and (b).) Plaintiffs are also required to identify the documents subject to such objection, and to “provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log.” (Code Civ. Proc. § 2031.240, subds. (b) and (c)(1).) Plaintiff Sarkis failed to do so.

Finally, Plaintiffs concede that they have produced redacted copies of such documents. (See, e.g. Opposition at 3:16-20.) Neither party, however, provides the Court with copies of these redacted documents.

Ultimately, because Plaintiff Sarkis failed to provide a substantive response to the request pursuant to the requirements of Code of Civil Procedure sections 2031.210-2031.240, the motion is GRANTED as to these requests.

**C. Request Number 88**

Request number 88 requests production of “ALL invoices relating to amounts that YOU have been charged to date as attorney’s fees incurred in connection with bringing and maintaining this derivative action (Superior Court Case No. 14CV40365).” (Response SS at 8:9-14.)

Because the allegations of the Complaint, and Plaintiffs’ arguments in opposing the present motion, suggest that Plaintiffs may be seeking attorneys’ fees as damages (as opposed to costs of suit), the Court finds that the request is relevant to the allegations of the SAC. Defendants have, therefore shown good cause for the request. (See *Glenfed*, supra, 53 Cal.App.4th at 1117.)

Pursuant to the discussion in Section B, herein above, if Plaintiffs seek attorneys’ fees as costs of suit, and not as damages, then the Court finds merit in Plaintiffs’ objection that the request is premature. (See *id.* at 8:24.) However, if Plaintiffs seek attorneys’ fees as damages, then Plaintiffs’ response to this request fails for the reasons articulated in section B herein above. The Court finds that Plaintiffs failed to provide an adequate response to the request pursuant to Code of Civil Procedure sections 2030.210-2030.240. For this reason, Defendants’ motion is GRANTED as to request number 88.

**D. Plaintiffs’ Request for Sanctions**

Based on the foregoing, Plaintiffs did not successfully oppose the present motion. (See Code Civ. Proc. §2031.310, subd. (h).) The Court finds no grounds for granting Plaintiffs’ request for sanctions and the request is therefore DENIED.

**E. Conclusion**

The motion is GRANTED. The clerk shall provide notice of this ruling to the parties forthwith. Defendants to prepare a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.

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<sup>1</sup> The Notice of Motion clearly seeks an order compelling only Plaintiff Lawrence Sarkis to issue further responses. (See Notice of Motion at 2:10-11.) However, the Opposition in the Court’s file is submitted on behalf of Plaintiffs Lawrence J. Sarkis, David Richards, and Kathi Bachelor. (See Opposition at p. 1: Title.) For this reason, the Court refers to the arguments of Plaintiffs, plural.

9:00 AM 14CV40365 Motion to compel Ptffs' further Responses to Defs' special Interrogatores, Set One 09/19/2014 08/02/2021 Settlement Conference

Ptff/Pet: Bachelor, Kathi; Richards, David; Sarkis, Lawrence J.; Von Latta, Chuck  
Def/Res: Angels Gun Club; etal

Atty: Berliner Cohen  
Atty: Porter Scott; Levangie Law Group

TENTATIVE RULING: Defendants move for an order compelling Plaintiff Lawrence Sarkis to produce further responses to Defendants' Interrogatories, Set One, numbers 341, 342, 344, 345, and 346. Defendants' motion is DENIED IN PART, as to special interrogatory number 341, and GRANTED IN PART as to special interrogatory numbers 342, 344, 345, and 346. Plaintiffs' request for sanctions is DENIED.

**A. General Discussion**

For interrogatories, the propounding party has the burden of filing a motion to compel if it finds the answers it receives unsatisfactory, but "the burden of justifying any objection and failure to respond remains at all times with the party resisting an interrogatory." (Coy v. Super. Ct. (1962) 58 Cal.2d 210, 220–221.)

**B. Subject Interrogatory Number 341**

This interrogatory seeks documents relating to Plaintiff Sarkis' response to special interrogatory number 339. (See Plaintiffs' Response to Separate Statement at 2:3-8 (Response SS).) However, the Court cannot find a copy of the language of special interrogatory number 339 in the moving papers. As a result, Defendants motion fails to inform the Court of the subject matter of special interrogatory number 341.

For the foregoing reasons, Defendants' motion is DENIED as to special interrogatory number 341.

**C. Special Interrogatory Numbers 342 and 344**

Special Interrogatory number 342 asks Plaintiff Sarkis to "[l]ist the total amount of each category of damages that YOU claim to have sustained as a result of the acts and omissions that YOU attribute to Defendants...." (Response SS at 5:12-18.) Special Interrogatory number 344 asks Plaintiff to "IDENTIFY ALL DOCUMENTS upon which YOU base YOUR response to Special Interrogatory No. 342." (Id. at 8:21-25.)

The Court finds that each of these interrogatories is relevant to Plaintiffs' allegations that, "[a]s a cause and proximate course of the alleged breaches and the failure to act in good faith and in a fair and reasonable manner, Plaintiffs have been damaged in an amount to be proven at trial." (Second Amended Complaint at ¶ 26 (SAC).)

Plaintiff Sarkis served an identical response to each interrogatory consisting exclusively of objections. Plaintiff provided no substantive response to either. (See Response SS at 5:19-6:14, 8:26-9:21.) Plaintiff objected that each interrogatory is: overbroad, unduly burdensome, oppressive, compound and vague; violates Code of Civil Procedure section 2030.060, subdivision (d); and, is not reasonably calculated to lead to the discovery of admissible evidence. (See Ibid.) Plaintiffs' arguments in support of these objections are abstract and conclusory. (See Id. at 6:10-8:2, 10:20-11:12.) In opposing the motion, Plaintiffs fail to justify the objections as to these interrogatories.

Plaintiff Sarkis further objected that these interrogatories seek material protected by the attorney-client privilege and/or the work product doctrine. The Court disagrees.

Caselaw supports Plaintiffs' argument that details in attorney billing records, such as descriptions of tasks completed, may be shielded from discovery based on the attorney-client privilege and/or work product doctrine. (See, e.g., Los Angeles County Bd. of Supervisors v. Super. Ct. (2016) 2 Cal. 5th 282, 297.) Plaintiffs fail, however, to establish that the "total amount" of damages sought, broken down by "category of damages that you claim to have sustained as a result of the acts and omissions that you attribute to

Defendants” is subject to either the privilege or the doctrine. Rather, this is the type of abstract information regarding claims for attorneys’ fees that courts regularly permit to be discovered over objection. (See *Ibid.* [“the amount of money paid for legal services is generally not privileged”].) Plaintiffs fail, therefore, to justify these objections to subject interrogatory number 342.

Turning to special interrogatory number 344, Plaintiffs fail to articulate how the act of identifying any document relating to Plaintiffs’ attorneys’ fees invades the attorney client privilege or calls for production of information protected by the attorney work product doctrine. Rather, Plaintiffs’ concession that they have produced redacted copies of such documents undermines any such claim. (See, e.g. Opposition at 3:16-20.)

Moreover, by their plain language, neither interrogatory is limited in scope to seeking information relating only to “damages in the form of attorneys’ fees.” The damages allegation of paragraph 26 of the SAC is inherently broad. Defendants are entitled to pursue discovery on the nature and extent of the damages Plaintiffs seek. If Plaintiffs’ alleged damages are in fact limited to their attorneys’ fees, then Defendants are entitled to a verified response that so indicates. Plaintiff Sarkis has not provided such response.

Finally, the allegations in the SAC and certain of Plaintiffs’ arguments here suggest that Plaintiffs seek attorneys’ fees not as damages, but as a form of costs of suit. “Our courts have consistently ‘distinguish[ed] between’ attorney’s fees that are sought as ‘the allowance ... to the prevailing party as an incident to the principal cause of action,’ and those that are sought as ‘part of the cause of action.’” (*Monster, LLC v. Super. Ct.* (2017) 12 Cal.App.5th 1214, 1228.) “When sought by the ‘prevailing party ... as an incident to [the] judgment’ (Citation), attorney’s fees may be ‘properly awarded [as a form of cost] after entry of a ... judgment’ (Citation). However, when ‘fees are part of the relief sought[, they] must be pleaded and proved at trial.’” (*Ibid.*)

Plaintiffs allege that, “[i]f Plaintiffs are successful in this action, a substantial benefit will result to Defendant AGC on whose behalf this action is prosecuted and Plaintiffs are entitled to recover their attorney fees incurred and to be incurred in the prosecution of this action against AGC and the other Defendants in an amount to be determined by the court according to proof at the time of the hearing on the matter.” (FAC at ¶ 30.) This allegation appears to be one in support of an award of attorneys’ fees under the “substantial benefit” rule. “Under the ‘substantial benefit’ rule, a variant of the common-fund doctrine...the successful plaintiff in a stockholder’s derivative action may be awarded attorneys’ fees against the corporation if the latter received ‘substantial benefits’ from the litigation....” (*Fletcher v. A.J. Industries, Inc.* (1968) 266 Cal.App.2d 313, 320, superseded by statute on other grounds as stated in *Brusso v. Running Springs Country Club* (1991) 228 Cal.App.3d 92, 103 at fn. 3.) The conclusion that Plaintiffs pray for attorneys’ fees pursuant to the “substantial benefit” rule is further supported by Plaintiffs’ citation to *Johnson v. Tago* (1986) 188 Cal.App.3d 507, 518. (See Response SS at 7:5 9.)

Importantly, as Plaintiffs note, “[t]he substantial benefit exception is limited to ‘successful’ plaintiffs, i.e., plaintiffs who have ultimately prevailed in the litigation. (Citation.)...[n]o award is appropriate until this litigation is terminated. Only then can it be determined whether the [Plaintiffs] have been ‘successful.’” (*Johnson v. Tago, supra*, 188 Cal.App.3d at 518.) Because attorneys’ fees awarded pursuant to the “substantial benefit” rule are available only after a plaintiff prevails in the litigation, the Court concludes that they are available only as a form of costs of suit and not as a form of damages that must be “pleaded and proved at trial.” (*Monster, LLC v. Super. Ct., supra*, 12 Cal.App.5th at 1228.)

If Plaintiffs seek attorneys’ fees only as a form of costs of suit, then their attorney-client privilege and work product doctrine objections to the foregoing interrogatories are misplaced as these interrogatories seek information relating to “damages that YOU claim to have sustained as a result of the acts and omissions that YOU attribute to Defendants.”

For the foregoing reasons, Defendants’ motion is GRANTED as to special interrogatory numbers 342 and 344.

#### **D. Special Interrogatory Numbers 345 and 346**

Special Interrogatory number 345 asks Plaintiff Sarkis to “[s]tate the total dollar amount of attorneys’ fees that YOU have incurred to date, in connection with bringing and maintaining this derivative action (Superior Court Case No. 14CV40365). Special Interrogatory number 346 asks Plaintiffs to, “IDENTIFY ALL DOCUMENTS upon which YOU base

YOUR response to Special Interrogatory No. 345.”

The Court finds that a determination of whether these interrogatories seek information that is relevant to Plaintiffs’ causes of action turns on whether Plaintiffs seek attorneys’ fees as damages or as a form of costs of suit. If the former, then Defendants are entitled to discovery on the issue of attorneys’ fees, the subject interrogatories are relevant to the issue of damages, and Plaintiffs fail to justify Plaintiff Sarkis’ objections for the reasons set forth in detail, in the context of special interrogatory numbers 342 and 344, herein above. If the latter, then the Court agrees with Plaintiff’s objection that, “[a]ttorneys’ fees are not at issue until the court rules upon the second amended complaint’s substantive allegations.” (Response SS at 12:24-26, 15:28-16:4.)

Plaintiff Sarkis’ responses to the subject interrogatories are vague and ambiguous on this issue.

For the forgoing reasons, Defendants’ motion is GRANTED as to special interrogatory numbers 345 and 346.

**E. Plaintiffs’ Request for Sanctions**

Based on the foregoing, Plaintiffs did not successfully oppose the present motion. (See Code Civ. Proc. §2030.300, subd. (d).) The Court finds no grounds for granting Plaintiffs’ request for sanctions, and the request is therefore DENIED.

**F. Conclusion**

The Motion is Granted in Part. The clerk shall provide notice of this ruling to the parties forthwith. Defendants to prepare a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.

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<sup>1</sup> The Notice of Motion clearly seeks an order compelling only Plaintiff Lawrence Sarkis to issue further responses. (See Notice of Motion at 2:10-11.) However, the Opposition in the Court’s file is submitted on behalf of Plaintiffs Lawrence J. Sarkis, David Richards, and Kathi Bachelor. (See Opposition at p. 1: Title.) For this reason, the Court refers to the arguments of Plaintiffs, plural.

<sup>2</sup> Plaintiffs all but concede the point through their Response SS. “This interrogatory seeks the total amount of damages claimed in the second amended complaint for each category of damages, which consists of the attorney’s fees and costs Plaintiffs have claimed as potential damages if adjudged the prevailing party.” (Response SS at 5:12-18.) Plaintiff Sarkis made no such statement, however, in his responses to the subject interrogatories.

9:00 AM 19CV44187 Motion to File First Amended Complaint 07/10/2019 06/22/2021; 06/23/2021 Trial Confirmation Conferen

Ptff/Pet: Alberts, Ole; Dyken, Silas

Atty: Foley, Kenneth M.

Def/Res: Hurst, John C.; JTN Holdings Llc; NTJ Management Llc

Atty: Pro Se

TENTATIVE RULING: Plaintiffs Ole Alberts and Silas Dyken request leave to file a First Amended Complaint (FAC) to add a cause of action for intentional fraud based on the same set of operative facts alleged in the original Complaint. No opposition appears in the Court's file.

Motions for leave to amend are directed to the discretion of the court. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading..." (Code of Civ. Proc. § 473, subd. (a)(1).) The court's discretion is typically exercised liberally to permit amendment to the pleadings. (Nestle v. Santa Monica (1972) 6 Cal.3d 920, 939.) However, the Court has discretion to deny leave to amend when it would not be in accordance with the spirit of the law and the ends of justice. (Dunzweiler v. Sup. Ct. of Alameda Cty. (1968) 267 Cal.App.2d 569.)

The Court finds that the FAC is based on the same set of operative facts alleged in the Complaint. The FAC appears, from the Court's review, identical to the Complaint except for the addition of a cause of action for intentional fraud. (See FAC at 4:12-5:4.)

Based on the foregoing, the motion is GRANTED. Plaintiffs are given 10 days' leave to file the FAC in the form attached as Exhibit A to the present motion.

The Clerk will provide notice of this Ruling to the parties. No further formal Order is required.

9:00 AM 19CV44187 Motion for Continuance of Trial 07/10/2019 06/22/2021; 06/23/2021 Trial Confirmation Conferen

Ptff/Pet: Alberts, Ole; Dyken, Silas

Atty: Foley, Kenneth M.

Def/Res: Hurst, John C.; Jtn Holdings Llc; Ntj Management Llc

Atty: Pro Se

TENTATIVE RULING: Plaintiffs Ole Alberts and Silas Dyken move for an order continuing the trial, currently set for June 23, 2021, to a new date to be determined by the Court, "if the granting of a Motion to Amend the Complaint so requires." (See Notice of Motion at 1:20-25.) No opposition appears in the Court's file. As the Court granted the Motion for Leave to File First Amended Complaint, Plaintiffs' Motion to Continue Trial is GRANTED. The Trial is continued to September 22, 2021, at 8:30 a.m. in Department 2, and remains scheduled as a one-day non-jury trial.

The Clerk will provide notice of this Ruling to the parties. No further formal Order is required.

9:00 AM 20CV44905 Motion to Set Aside Entry of Default of Walter F. Peters III 08/28/2020 09/01/2021 Case Management Conference

Ptff/Pet: Bruns, Alicia  
Def/Res: Depner, Cathy

Atty: Abbott, John Anthony  
Atty: Pro Se

TENTATIVE RULING: Defendant Walter F. Peters III, both as an individual and in his capacity as Trustee of the Walter F. Peters III 2017 Trust (Mr. Peters), moves, pursuant to Code of Civil Procedure section 473, for an order setting aside the default entered against him on November 4, 2020. Mr. Peters so moves on the grounds that the default was entered as a result of his mistake of fact and/or excusable neglect. No opposition appears in the Court's file.

The Court finds from the evidence presented that Mr. Peters was under a good faith belief that he had timely filed a pleading in response to the Complaint. (See Peters' Declaration at ¶¶ 5-6.) The Court had ordered this pleading stricken, as to Mr. Peters only, based on Mr. Peters' failure to pay a filing fee. (See Minute Order of November 3, 2020.) Default was entered against Mr. Peters on November 4, 2020. (See Entry of Default, Clerk's Judgment.) The Court is satisfied that, at the time Plaintiff obtained the default judgment, Mr. Peters was under the mistaken understanding that he had filed a responsive pleading.

Mr. Peters' application for relief from default is accompanied by a copy of the answer. (See Support Memorandum at Exh. E.)

The Court further notes that in her answer co-defendant Catherine Depner affirmatively alleges that, "Finn and Hannah belong solely to Ms. Depner, Mr. Peters does not or ever will own the dogs." (Answer at 1:22.) Based on the Court's reading of the Complaint, Plaintiff alleges that Mr. Peters is liable based on his ownership and management of the dogs Finn and Hannah. Thus, defendant Depner alleges facts through her answer, filed prior to the entry of default, which, if proven, would establish the nonliability of Mr. Peters. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2020) ¶ 5:263, p. 5-70: "A default judgment may be improper against one of several codefendants if the other has raised defenses which, if proven, would establish the nonliability of the defaulting defendant". [Emphasis in original.]) The Court finds that the interests of justice are served by granting the motion. (See Code Civ. Proc. §473, subd. (b).)

Based on the foregoing, the Court finds good cause for setting aside the default judgment and Defendant Peters' motion is GRANTED and the proposed answer will be filed

The Clerk will provide notice of this ruling to the parties. No further formal Order is required.