TENTATIVE RULINGS

DEPARTMENT N17

Judge Craig L. Griffin

Date: May 13, 2024
Time: 2:00 PM

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#	Case Name	Tentative
1	Doe v. Tich	O/C
2	Shewell v. Memorial Care Saddleback, et. al.	The Court will discuss with moving party how the out of state clients' rights will be protected given the attempted withdrawal just ten court days before a complicated medical malpractice trial.
3	Alonso v. JCR Aircraft Deburring	Cont. to 5/24
4	Burkhard Brothers Construction, Inc. v. Burkhart	O/C
5	Centennial Realty Brokerage & Investment Corporation vs. Wolfe	Defendants move to compel the deposition of a third party Arbonne Group Ltd., dba Solstice Real Estate's PMK and monetary sanctions. The motion is denied as set forth below. CRC, Rule 3.1346 mandates personal service of motion papers on a non-party deponent, unless the nonparty agrees to service by mail or e-service. There is no evidence that the nonparty agreed to mail

or e-service of the motion. Thus, personal service of the motion is required.

Personal service on a corporation is governed by CCP § 416.10, which states in part:

A summons may be served on a corporation by delivering a copy of the summons and the complaint by any of the following methods:

(a) To the person designated as agent for service of process as provided by any provision in Section 202, 1502, 2105, or 2107 of the Corporations Code (or Sections 3301 to 3303, inclusive, or Sections 6500 to 6504, inclusive, of the Corporations Code, as in effect on December 31, 1976, with respect to corporations to which they remain applicable).

(b) To the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager, or a person authorized by the corporation to receive service of process.

In lieu of personal service, Defendants submit a proof of service stating that the motion and supporting papers were served via substitute service. CCP § 415.20 governs substitute service and states:

(a) In lieu of personal delivery of a copy of the summons and complaint to the person to be served as specified in Section 416.10, 416.20, 416.30, 416.40, or 416.50, a summons may be served by leaving a copy of the summons and complaint during usual office hours in his or her office or, if no physical address is known, at his or her usual mailing address, other than a United States Postal Service post office box, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. When service is effected by leaving a copy of the summons and complaint at a mailing address, it shall be left with a person at least 18 years of age, who shall be informed of the contents thereof. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

Here, pursuant to the proof of service, the party sub-served was "Person Most Knowledgeable for Arbonne Group Ltd., DBA Solstice Real Estate." (Emphasis added.) Service on an unknown individual for the corporation is improper as it does not comply with CCP § 416.10. There is no indication that the unnamed PMK or the unnamed John Doe is the agent for service of process, the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager, or a person authorized by the corporation to receive service of process.

In sum, the motion does not present any proof of service or other evidence showing personal service on any person authorized under CCP § 416.10 to accept service on behalf of the corporation. It also did not present any evidence that "John Doe" was an officer, director, custodian of records, or agent for service of process of "Person Most Knowledgeable for Arbonne Group Ltd., DBA Solstice Real Estate."

Therefore, service on the corporation was never effectuated and the motion is DENIED.

Even if service was proper, the motion would still be denied.

If a nonparty disobeys a deposition subpoena, the subpoenaing party may seek a court order compelling the nonparty to comply with the subpoena. A motion to compel may be brought under either Code Civ. Proc. § 2025.480 (applicable to depositions generally) or Code Civ. Proc. § 1987.1 (applicable to deposition subpoenas by Code Civ. Proc. § 2020.030).

CCP § 1987.1, which provides that the court, upon noticed motion, may make an order compelling compliance, quashing, or modifying the deposition subpoena.

CCP § 1987.2 provides: "A witness who is not a party to the action but has been subpoenaed to appear for deposition, is subject to the following sanctions for failure to appear: (1) contempt proceedings for disobedience to the subpoena; (2) a civil action for damages; or (3) for orders granting compliance under CCP § 1987.1, the court can award expenses and fees to the prevailing party only if it find the motion was made or opposed in "bad faith" or without "substantial justification," or if one or more of the subpoena requirements was "oppressive."

CCP § 2025.480(a) provides: "If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production."

CCP § 2025.480(b) provides: "This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a meet and confer declaration…."

Here, on July 26, 2023, Solstice was served with a subpoena and notice of deposition. The deposition was scheduled to take place on September 20, 2023, at 10:00 a.m. On September 14 and 19, 2023, defense counsel emailed Solstice a link to the remote deposition on August 2, 2023. No response was received from Solstice and no one from Solstice appeared for the September 20, 2023 deposition or produced unredacted documents pursuant to the accompanying document request. On October 12, 2023, defense counsel sent a meet and confer correspondence via email to inquire about the non-appearance.

		But Solstice specifically revoked email service and specified that Solstice did not check emails on a regular basis on July 27, 2023. On July 27, 2023, Solstice emailed counsel stating, "If you need to send another summons, mail it to us," and that they "do not check emails on a regular basis." (See, Declarations of David Luu and Michale Haggblad, Ex. 3, email from Solstice Real Estate Group sent Thursday, July 27 8:51 A.M.) Despite these statements, counsel for defendants continued to email Solstice in September, October and November 2023 with the zoom links, meet and confer correspondence and this instant motion. Service of these documents was defective. Therefore, Defendants have failed to comply with CCP § 2025.480, by failing to properly serve the motion and to meet and confer. Accordingly, the motion is DENIED. Moving Party to give notice to third party deponent and all parties to this action.
6	Nabard v. Americor Funding, Inc.	O/C
7	Mathieson v. BMW of North America, LLC	The motion by Plaintiff Christina Mathieson for an award of attorney's fees and costs against BMW of North America, LLC ("BMW") is GRANTED in part, as set forth herein. This action arises from plaintiff's purchase of a used BMW. After purchase of the vehicle, plaintiff became dissatisfied with the vehicle as a result of mechanical and cosmetic issues and she sought repurchase. (Exh. 4) Plaintiff subsequently filed a complaint under the Song-Beverly Act. CCP §1974(d) says a prevailing buyer "shall recover . . . attorney's fees and costs based on the actual time expended, *determined by the court to have been reasonably incurred* by the buyer in connection with the commencement and prosecution of such action." [Emphasis added] However, CCP §1794(d) does not say the Court has to give Plaintiff's counsel everything they ask for. For claims under the Song-Beverly Act claims, a prevailing buyer has the burden of showing that the fees were allowable, were reasonably necessary to the conduct of the litigation, and were reasonable in amount. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 998.) Here, the parties reached a settlement on 10/13/23 whereby the plaintiff would receive $18,000 and would be allowed to obtain reimbursement of fees and costs pursuant to motion. The motion is supported plaintiff's counsels' declarations and multiple exhibits, including a 12/21/23 invoice. The Court has also reviewed its file and is familiar with the activity that has taken place. Further, the Court is quite familiar with litigation under the Song-Beverly Act. It is appropriate for the Court to rely on its own experience in awarding attorney's fees. "The courts repeatedly have stated that the trial court is in the best position to value the services rendered by the attorneys in his or her courtroom." (*569 East County*

Boulevard LLC v. Backcountry Against the Dump, Inc. (2016) 6 Cal.App.5th 426, 437)

There are two aspects to the fees request. The first is the reasonableness of the billing entries. The second is the reasonableness of the hourly rates requested.

With regard to the billing, the billing records reflect that an entry on 7/27/21 for "draft representation agreement and send to client." Prior to preparation of the representation agreement counsel did work for which they seek compensation. The hours billed prior to 7/27/21 are 17.2 hrs by O'Connor, .6 hrs by Wagner and 4 hrs. by Womack. This time is not recoverable as it is only the "buyer" who is entitled to recover attorney's fees. (CC §1794(d).) A written contingency fee contract is required before the client can become liable for any fees/costs. (B&P §6147) Until such time as the contract was signed, the "buyer" did not incur any fees or costs. It is axiomatic that the buyer cannot recover fees which he has not incurred because he had not yet hired the lawyers. Time or money spent by lawyers doing work to obtain new cases, generate business or otherwise marketing their firm before being hired by a client are not attorney's fees chargeable to a client who has not yet retained the lawyer. Accordingly, the Court DENIES the request for fees prior to 7/27/21.

As to the remaining billing, there appears to be a duplication of efforts, excessive billing and billing for administrative tasks. The Court has discretion to reduce the fee award where fees were not reasonably incurred. (*See Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 [" '[P]adding' in the form of inefficient or duplicative efforts is not subject to compensation."]; *Gorman v. Tassajara Dev. Corp*. (2009) 178 Cal.App.4th 44, 101 ["A reduced [attorneys' fees] award might be fully justified by a general observation that an attorney overlitigated a case or submitted a padded bill or that the opposing party has stated valid objections."].) Based on the Court's review of the records submitted, and the Court's review of its own file, the Court will make downward adjustment in the total hours billed in the amount of 17%.

With regard to the billing rates, factors to be considered in determining the reasonableness of attorney fees include, "the nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney's efforts, his learning, his age, and his experience in the particular type of work demanded (citation); the intricacies and importance of the litigation, the labor and the necessity for skilled legal training and ability in trying the cause, and the time consumed." (*Clejan v. Reisman* (1970) 5 Cal.App.3d 224, 241.) Based on the Court's assessment, the Court will award attorney's fees, following 7/27/21, at the rates and amounts as follows:

	Hours Billed (post retention)	Allowed Rate	Percent of Hours Allowed (17% reduction)	$ Fees Allowed (Hours x allowed rate Rate x % allowed)
O'Connor	23.2	$500	.83	$9,628
Wagner	51.3	$300	.83	$12,773.70
Castruita	58.1	$300	.83	$14,466.90
Goethals	150	$300	.83	$37,350
Arndt	65	$125	.83	$6,743.75
Womack	18.2	$125	.83	$1,888.25
				$82,850.60

Lodestar Multiplier

With regard to the application of a multiplier, plaintiff requests a multiplier of 1.5 to 2 times the fees billed because the attorneys obtained an "excellent outcome." (Motion at 6:18) Defendant, on the other hand, requests a negative multiplier of -.2 because of the small amount of the settlement. Both parties' requests for a multiplier are DENIED.

Recovery of Costs

On 12/8/23, plaintiff filed a Memorandum of Costs showing costs of $30,371.66. (ROA 212; Exh. 22) In the subject motion, plaintiff seeks an order awarding costs pursuant to the Memorandum of Costs. BMW does not contest the request for costs in its Opposition. Accordingly, the plaintiff's request for costs of $30,371.66 is GRANTED

Plaintiff's Objections

Plaintiff's objection numbers 1 and 2 are GRANTED (Relevance).

Summary of Ruling

The plaintiff's Motion for Attorneys Fees and Costs is GRANTED and defendant BMW is ordered to pay to plaintiff $82,850.60 in attorney's fees and $30,371.66 in costs for a total of **$113,222.26.**

Plaintiff to submit an amended judgment reflecting this ruling.

Counsel for plaintiff is ordered to give notice of this ruling.

8	Iwanami v. Paco	Defendants Carlos L. Paco, Zeltzin Vargas-Garcia and Dora L. Cardenas' motion to set aside default and default judgment is GRANTED. "If the complaint is amended, a copy of the amendments shall be filed, or the court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendments or amended complaint must be served upon the defendants affected thereby." (Code Civ. Proc., § 471.5, subd. (a).) "'It has been repeatedly held that a defaulting defendant is entitled to be served by an amended complaint when the amendment is as to a matter of substance and not a mere matter of form. The reason for this rule is plain. A defendant is entitled to opportunity to be heard upon the allegations of the complaint on which judgment is sought against him.' [Citations.] An amendment which significantly increases the amount of damages sought is an amendment of substance which must be served before a default can be entered. [Citation.]" (Engebretson & Co., Inc. v. Harrison (1981) 125 Cal.App.3d 436, 440.) Furthermore, "[w]here the defendant has failed to appear in the action, service of an amended complaint in the manner provided for service of summons, while not necessarily a requirement for personal jurisdiction [citation], is an essential prerequisite to a valid default judgment [citation]." (Id., at p. 443.) Here, the original complaint alleged three causes of action - breach of contract, common counts, and statutory damages - and sought damages in the amount of $60,600 and attorney's fees according to proof. [ROA 2] The First Amended Complaint alleges three causes of action - breach of contract, common counts, and intentional tort - and sought damages in the amount of $89,322.25, and attorney's fees in the amount of $1,960. [ROA 10] Because the FAC changed a cause of action and substantially increased the amount of damages sought against all the defendants, the FAC had to be served on all defendants. The proof of service for Defendants Paco and Vargas-Garcia show that they were served with the original complaint. [ROA 14, 18] Plaintiff did not file anything before June 13, 2022, the date she requested entry of their defaults, to show that they were subsequently served with the FAC. As such, the clerk improperly entered Defendants Paco and Vargas-Garcia's defaults and they are ordered to be set aside. (See Code Civ. Proc., § 473, subd. (d) ["The court may… on motion of either party after notice to the other party, set aside any void judgment or order."]; Code Civ. Proc., § 128, subd. (a)(8) ["Every court shall have the power to… To amend and control its process and orders so as to make them conform to law and justice"].) The default judgment against Defendants Paco and Vargas-Garcia, it is also ordered set aside. As for Defendant Dora Cardenas, Plaintiff obtained an order for service by publication and filed a proof of service to demonstrate that the summons was published. But under the case of *Shapell Rental Properties vs. Chico's FAS Inc*. (2022) Cal.App.5th 198 and *Lasalle vs. Vogel* (2019) 36 Cal.App.5th 127, a plaintiff's attorney is ethically required to provide fair warning to the defendant's

		attorney, if the former is aware that the defendant has counsel, before requesting entry of default. Here, Plaintiff--a licensed attorney--was provided notice back in August of 2022, that Cardenas was represented by counsel. Specifically, as set forth in Plaintiff's own declaration, she received a copy of a motion to set aside by attorney Frank Sanzo. Although the face of the moving papers were ambiguous as to who Frank Sanzo represented, the attached declaration included the following statement by Mr. Sanzo: "I am the attorney of record for Defendants CARLOS L. PACO, DORA L. CARDENAS and ZELTZIN VARGAS-GARCIA in the above-captioned matter . . . ." Thus, Plaintiff should have given Mr. Sanzo warning and a reasonable opportunity to avoid a default being entered against Ms. Cardenas. Dropping a copy of the request for entry of default into the mail just five court days before filing is insufficient. Although much of Plaintiff's lapse was caused Mr. Sanzp's failure to clearly identify who he represented on the face of his motion and respond to her inquiry regarding his representation of Defendants, the Court is nonetheless required to "take appropriate corrective action" against Plaintiff. *See Shapell,* at fn. 3. The corrective action the Court here deems appropriate is to set aside the default against Cardenas. Defendants to give notice of ruling.
9	Creditors Adjustment Bureau Inc. v. Ghabrial 4MS LLC	O/C
10	Lewis v. County of Orange	O/C
11	Sencerbox v. Oakmont Senior Living etc. et al	Before the Court at present are four motions filed by Plaintiff Diana Sencerbox ("Plaintiff"): two are directed to Defendant Oakmont Senior Living of Torrance Opco, LLC ("OSL"), with the other two directed to Defendant Oakmont Management Group LLC ("OMG"). The specific motions are as follows: (1) Plaintiff's Motion to Compel Further Responses and Documents, etc., filed as ROA 51 on 1/18/24, concerning Plaintiff's Request for Identification and Production of Documents, Set One to OSL ("**Motion 1**"); (2) Plaintiff's Motion to Compel Further Responses, etc., filed as ROA 49 on 1/18/24, concerning Plaintiff's Form Interrogatories, Set One to OSL ("**Motion 2**"); (3) Plaintiff's Motion to Compel Further Responses and Documents, etc., filed as ROA 123 on 2/8/24, concerning Plaintiff's Request for Identification and Production of Documents, Set One to OMG ("**Motion 3**"); and

(4) Plaintiff's Motion to Compel Further Responses, etc., filed as ROA 121 on 1/18/24, concerning Plaintiff's Special Interrogatories, Set One to OMG ("**Motion 4**").

For Motions 1 and 2, as supplemental responses were served while the motion was pending, the Motions are **MOOT**, except as to the requests for sanctions. It is not sufficient for Plaintiff to have "partially withdrawn" the motions as to what Plaintiff now deems satisfactory based upon the supplementation provided, while presenting new arguments on reply as to what Plaintiff deems to be deficient therein. Plaintiff must instead confer anew as to those responses, and if necessary, file a new motion directed to any perceived deficiencies therein, so that the defense can meaningfully respond to.

The requests for sanctions on Motions 1 and 2 are **DENIED**. In light of what has been presented, each side appears to have acted with substantial justification for at least some of their respective positions, so that under the circumstances as shown, imposition of sanctions on these motions appears unjust.

Motion 3 is **GRANTED IN PART**. Based on Plaintiff's subsequent notices of partial withdrawals as reflected in ROAs 321 and 374, what remains at issue are Request Nos. 9-17.

The Motion as to Request Nos. 9-12 is **DENIED**. Those requests are extremely broad, and seek substantial financial information concerning OMG. For these requests, OMG's privacy objections are well-taken.

Where privacy rights are at issue, the party asserting a privacy right must establish a legally protected privacy interest, an objectively reasonable expectation of privacy in the given circumstances, and a threatened intrusion that is serious. The party seeking information may raise in response whatever legitimate and important countervailing interests disclosure serves, while the party seeking protection may identify feasible alternatives that serve the same interests or protective measures that would diminish the loss of privacy. A court must then balance these competing considerations. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 552, citing *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35.)

Here, OMG has a legally protected privacy interests in the materials requested, which interest is also supported by the protections embodied in Civil Code §3295(c). In response, Plaintiff argues that this material could be beneficial in demonstrating that the facility lacked adequate budgets for staffing. But Plaintiff has not shown why alleged understaffing issues cannot otherwise be adequately addressed. On balance, the Court thus does not find that the discovery at issue here is warranted.

The Motion as to Request Nos. 13 and 14 is **GRANTED IN PART**. Although the requests as presented are plainly overbroad, Plaintiff has shown that she should be permitted to obtain records of any actual communications with or from the Department for the

		specified period [with resident names redacted if listed], to the extent that they concern staffing levels or any allegations of understaffing, resident neglect, or resident injury. The Motion as to Nos. 13 and 14 is therefore **GRANTED**, with that limitation. For Request Nos. 15-17, although the requests as presented are plainly overbroad, Plaintiff has shown that she should be permitted to obtain records of any complaints made during the specified period [with resident names redacted if listed], concerning resident safety, alleged understaffing, or any fall incidents. The Motion as to No. 16 is therefore **GRANTED**, with that limitation, but **DENIED** as to Nos. 15 and 17. Defendant OMG is to provide verified supplemental responses for Request Nos. 13, 14, and 16, to the extent permitted above, along with any corresponding documents, within 15 days after service of notice of this ruling. The requests for sanctions on Motion 3 is **DENIED**. In light of what has been presented, each side appears to have acted with substantial justification for at least some of their respective positions, so that under the circumstances as shown, imposition of sanctions on this motion appears unjust. **Motion 4** is **DENIED**. Based on Plaintiff's subsequent notice of partial withdrawal, as reflected in ROA 327, what remains at issue is only Interrogatory No. 8. Interrogatory No. 8 seeks identification of documents reflecting adequate capitalization for "the deponent" for the specified period. To the extent that "the deponent" was meant to refer to OMG, it seeks identification of what appears to be most if not all of OMG's financial documents and records for the specified period. OMG has thus reasonably objected thereto. OMG has also shown here that it does not dispute that it has direct potential liability on the claims presented by Plaintiff: on reply, Plaintiff has not shown why this discovery is nonetheless necessary here. The Motion as to Interrogatory No. 8 is therefore **DENIED**. In light of this ruling, the requests for sanctions on Motion 4 is also **DENIED**. Counsel for Plaintiff is to give notice of these rulings.
12	Calderon v. Danesh	Before the Court are four motions to compel deposition of Plaintiffs David Calderon, Jose Martinez, Steven Williamson and Ramon Williams (collectively "Plaintiffs") filed by Defendant 3S Network ("Defendant"), and a motion for relief under C.C.P. § 473(b) filed by Plaintiffs. **MOTIONS 1-4: Motions to Compel Depositions** "If, after service of a deposition notice, a party to the action … without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document, …the party giving the notice may move

for an order compelling the deponent's attendance and testimony, and the production..." (Code Civ. Proc., § 2025.450.)

"[A]ny party served with a deposition notice that does not comply with Article 2 (commencing with Section 2025.210) waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served." (Code Civ. Proc., § 2025.410(a).)

The motions demonstrate that Defendant's counsel served the notices of deposition on Plaintiffs' counsel on November 22, 2023, for depositions on December 5, 2023. (Exhs. A to Motions.) Plaintiffs failed to serve timely objections and failed to proceed with the depositions. Although Plaintiffs contend the depositions were taken off calendar, it does not appear from the correspondence provided that there was a mutual agreement to take these depositions off calendar. Although one of the emails from Plaintiffs' counsel states that the parties agreed to postpone the depositions, Defendant's counsel disputes that any such agreement existed and none of the emails from Defendant's counsel reflects such an agreement. It is also undisputed that Plaintiffs served their objections to the deposition notices on December 5, 2023. The objections were thus untimely. (Code Civ. Proc., § 2025.410(a).)

Because Plaintiffs failed to proceed with the December 5, 2023 depositions without having served valid objections under Section 2025.410, an order compelling their attendance at depositions is warranted. However, as discussed below, because Plaintiffs' motion for 473(b) relief is well-taken, the Court will **GRANT** the motion to require an in-person deposition of Plaintiffs David Calderon and Jose Martinez and a remote deposition of Plaintiffs Steven Williamson and Ramon Williams, who are residents of North Carolina.

Both parties' request for sanctions are **DENIED**. (*Mattco Valley Forge v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 1437 [court's authority to deny sanctions upon mixed results].) Moreover, this is a dispute that the parties clearly should have been able to work out for themselves.

MOTION 5: Motion for Relief Pursuant to CCP §473

Plaintiffs contend the "crux" of the dispute and the purpose of this motion is to gain relief from Defendants' "unreasonable, improper demand to force two residents of North Carolina to come to California for 90 minute, in person depositions." Plaintiffs' counsel states he mis-calendared the date for the depositions of the Plaintiffs for December 15, 2023 instead of December 5, 2023 and due to the mis-calendaring of the date, Plaintiffs failed to timely serve objections to the location of the deposition (for the North Carolina Plaintiffs) and to the documents requests which could cover attorney-client privileged communication.

C.C.P. § 473 provides for two distinct types of relief – discretionary and mandatory. As to mandatory relief, the statute allows the court to vacate a default or a resulting default judgment or dismissal. Because the present case does not involve a default, default judgment or dismissal, the mandatory relief provision of C.C.P. § 473 is unavailable based on a plain reading of the statute.

However, discretionary relief is available. The discretionary provision of C.C.P. § 473(b) provides: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, ***or other proceeding*** taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Emphasis added.)

Citing *Zellerino v. Brown* (1991) 235 Cal.App.3d 1097, Plaintiffs argue that the failure to serve objections to the deposition notices was due to mistake, inadvertence, surprise, or excusable neglect and that relief from the waiver is available under C.C.P. § 473. In *Zellerino*, the Court of Appeal held the trial court properly granted relief under section 473 from the failure to timely serve a demand for exchange of experts. The Court of Appeal recognized a line of cases construing the term "proceeding" in section 473 broadly: "The term 'proceeding' is generally applicable to any step taken by a party in the progress of a civil action. Anything done from the commencement to the termination is a proceeding." Proceeding "includes any step taken in a case, whether by the court or by one of the parties thereto." (*Id*. at p. 1105-06.)

The *Zellerino* court explained:

Relief under section 473 is unavailable when the discovery act provides analogous, if more limited, relief. As nothing in the section governing expert witness disclosure provides for relief from failure to file a timely demand for exchange of expert trial witnesses information, relief is available under section 473. In this case the court was authorized to grant relief under section 473.

(Zellerino at p. 1107.)

Here, as Plaintiffs argue, there is no analogous provision in C.C.P § 2025.410 – the section governing objections to deposition notices – providing for relief from failure to timely serve objections. Thus, pursuant to *Zellerino*, the Court finds that the relief requested is available under the discretionary provision of C.C.P. § 473(b).

Moreover, the motion reflects that Plaintiffs are agreeable to remote depositions for the two Plaintiffs residing in North Carolina and that Plaintiffs have agreed to allow the depositions of all four Plaintiffs to proceed. In addition, Defendant has not asserted it would be prejudiced in any way if the Court were to order remote depositions for the non-resident Plaintiffs.

Based on the foregoing, the Court **GRANTS** the motion to sustain the objection to the deposition notices for Plaintiffs Steven Williamson and Ramon Williams to the extent they require in-person

		depositions, and sustains the objection to the document demands contained in the deposition notices to the extent the documents requested cover attorney-client privileged communication. Plaintiffs Steven Williamson and Ramon Williams are ordered to sit for a remote deposition and Plaintiffs David Calderon and Jose Martinez are ordered to sit for an in-person deposition, on a mutually agreeable date within 30 days of the date of this order. Counsel for Plaintiffs is ordered to give notice of these rulings.
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