TENTATIVE RULINGS

DEPT. C-16
(657-622-5216)

Judge David A. Hoffer
April 21, 2025

These are the Court's tentative rulings. They may become orders if the parties do not appear at the hearing. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

If a party intends to submit on the Court's tentative ruling, please call the Court Clerk to inform the court. If both parties submit, the tentative ruling will then become the order of the Court.

APPEARANCES: Department C16 conducts non-evidentiary proceedings, such as law and motion, remotely by Zoom videoconference. All counsel and self-represented parties appearing for such hearings should check-in online through the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Check-in instructions and an instructional video are available on the court's website. All remote video participants shall comply with the Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also posted online at https://www.occourts.org/media-relations/aci.html. A party choosing to appear in person can do so by appearing in the courtroom on the date/time of the initial appearance.

Court Reporters: Parties must provide their own remote court reporters (unless they have a fee waiver). Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- Civil Court Reporter Pooling; and
- Court Reporter Interpreter Services

THE PARTIES ARE PROHIBITED BY RULE OF COURT AND LOCAL RULE FROM PHOTOGRAPHING, FILMING, RECORDING, OR BROADCASTING THIS COURT SESSION.

#	Case Name	
1	30-2021-01223909 Horsfall vs. French Park Care Center	Before the court is Defendants Bartlett Care Center, LLC, Donna Kimura, and John Kimball (collectively "Defendants")' Motion to Compel Production and Compliance with Subpoena for Business Records. The motion is **DENIED** without prejudice.

		CRC 3.1346 states that "A written notice and all moving papers supporting a motion to compel an answer to a deposition question or to compel production of a document or tangible thing from a nonparty deponent must be personally served on the nonparty deponent unless the nonparty deponent agrees to accept service by mail or electronic service at an address or electronic service address specified on the deposition record." Here, there is no deposition record specifying an agreement to accept service by mail or electronic service. Accordingly, the motion must be served on the nonparty deponent personally. The proof of service attached to the motion shows it was served on non-party deponent by mail on 10/22/24, which is not sufficient. Accordingly, the motion is denied without prejudice. Moving party is ordered to give notice of this ruling.
2	30-2022-01252131 Mann vs. Knuppel	Before the court is the unopposed Motion for Attorney's Fees and Costs Pursuant to Code of Civil Procedure § 473(b) filed by Defendants Neil W. Knuppel and Neil W. Knuppel, A Professional Law Corporation (collectively "Defendants"). The motion is **GRANTED** in part. A court granting mandatory relief pursuant to section 473(b) shall direct the attorney to pay "reasonable compensatory legal fees and costs to opposing counsel or parties." (Code Civ. Proc., § 473(b) [emphasis added].) At hearing on the Motion to Vacate from 7/15/24, the court ruled: "The Knuppel Defendants request attorney fees in the amount of $7,759.00 that were incurred "in dealing with the Motion to Confirm and opposing Plaintiff's present motion to vacate." (Newcomb Decl. ¶ 23.) The Knuppel Defendants' counsel, however, did not provide a breakdown of their time. Consequently, the court cannot determine whether the requested fees are reasonable. Should they desire, the Knuppel Defendants' may file a noticed motion for attorneys' fees." Defendants have filed the present motion seeking those fees, but now request fees and costs totaling $15,201.04, broken down as $12,978.50 in attorney's fees and $2,222.54 in costs, but still do not present a breakdown of hours. Based on counsel's asserted rate of $265/hour, the original requested

		amount reflected approximately 29.3 hours in fees. The court finds that both the rate and the original calculation of hours is reasonable, and thus awards $7,759 in attorney's fees plus the asserted $2,222.54 in costs associated with filings necessitated by Plaintiff's counsel's error. Accordingly, the court grants the motion, and awards a total of $9,981.54 in reasonably compensatory fees and costs to Defendants against Plaintiff's counsel, Cliff Schneider. Moving party is ordered to give notice of this ruling.
3	30-2022-01271233 Farahmand vs. Farahmand	**Continued to 4-28-25**
4	30-2023-01335078 Phillips vs. Sullivan	**Case Management Conference**
5	30-2022-01290072 State Farm Mutual Automobile Insurance Company vs. Sullivan	The unopposed motion to consolidate actions filed by Defendant Gloria Sullivan ("Sullivan") is **GRANTED**. Sullivan moves for an order consolidating this action, *State Farm Mutual Automobile Insurance Company v. Gloria Jane Sullivan*, case no. 2022-01290072, with *Michael Phillips v. Gloria Jane Sullivan*, case no. 2023-01335078. Sullivan has now complied with the procedural requirements of California Rules of Court, rule 3.350. The Court has considered the record before it and the factors relevant to consolidation and has concluded that consolidation of these matters is warranted. (Code Civ. Proc., § 1048(a); Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial § 12:362.) Accordingly, the motion to consolidate is granted. The instant matter, case no. 2022-01290072, shall be designated the lead case. Counsel for Sullivan is ordered to give notice of this ruling to all parties.

6	30-2023-01311869 Sheybani vs. Starbucks Corporation	The "Motion to Compel Plaintiff Sherry Sheybani to Submit to Independent Medical Examinations and Request for Sanctions in the Amount of $2,400," filed by Defendant Starbucks Corporation ("Defendant") on 10/30/24, is **GRANTED IN PART**. By this Motion, Defendant seeks an order compelling Plaintiff Sherry Sheybani ("Plaintiff") to submit to four independent medical exams ("IMEs"), including one for a neuropsychological exam. Defendant here has shown good cause for all four IMEs under the circumstances here. A defendant, upon a showing of good cause, may obtain multiple exams of a personal injury plaintiff in addition to an initial exam. (*Shapira v. Sup. Court* (1990) 224 Cal.App.3d 1249, 1256.) When multiple exams are requested, the trial court is to exercise its discretion as to whether good cause exists for the requested exam(s). (Id. at 1254-1256.) Here, the Motion demonstrates that Plaintiff has asserted claims in this action which involve traumatic brain injury, cognitive impairment, head injury with loss of consciousness and ongoing memory loss, concentration issues, neck pain, lower back pain, blurry vision, and anxiety. (ROA 55, Ex. I.) Defendant has also made an adequate showing as to why all four IMEs are needed to address different aspects of Plaintiff's claims. (ROA 51, pp. 6-7.) Good cause is thus shown here. Plaintiff argues in response that not all of the proposed IMEs should be allowed as they "substantially overlap in scope and are redundant" (Opp p. 2) and are "not justified by individualized need" (Doulatshahi Decl., ¶ 6). But she has failed entirely to show here why that is so, and does not dispute that she has made the substantial and divergent injury claims as identified in the Motion. Plaintiff also does not dispute here that <u>no</u> objections were served for any of the IMEs at issue when they were noticed. The Court is thus inclined to grant the Motion. However, as reflected in the Opposition and the Reply, Plaintiff has evidently since submitted to one of those IMEs, so that only 3 remain at issue. But while Plaintiff claims to have now been seen by neurologist Dr. Ludwig (ROA 77, Doulatshahi Decl., ¶ 3), the Reply says she was seen only by neurosurgeon Dr. Lederhaus (ROA 83, Motazedi Decl., ¶ 5; Reply p. 2). So what

		remains at issue are the requested exams with neuropsychologist Dr. Thaler and neuro-opthamologist Dr. Shabo, and one more [either neurosurgeon Dr. Lederhaus, or neurologist Dr. Ludwig]. Counsel will need to address at the time of the hearing which exam has occurred. The Court will then **GRANT** the Motion as to the other three IMEs. Counsel should be prepared to set specific dates for those exams at the time of the hearing. Defendant's request for sanctions against Plaintiff is also **GRANTED** but only as to the $1,200 no-show fee which plaintiff concedes was incurred because she "inadvertently missed the original appointment." (ROA 77, Doulatshahi Decl., ¶ 3). This no-show fee should not be borne by the faultless defendant. The request for further sanctions is denied because defendant was required to seek court approval before requesting more than one IME (CCP section 2032.310(a)), and thus this motion could well have been necessary in any case and plaintiff was not required to accede to three additional IME's just because defendant requested them. Although the court concurs with defendant that plaintiff's counsel should have done a better job conferring with defense counsel, the court finds that it is not just to impose additional sanctions on the plaintiff (who must undergo four separate IME's) because defendant, which did not have a court order, sought to engage in discovery that required one. Counsel for Defendant is to give notice of this ruling.
7	30-2023-01319862 Lopez vs. Castonguay	Before the court is the continued hearing on two discovery motions filed by plaintiff Tony Lopez against defendant New Prime, Inc. The first is a motion to compel a further production of documents and the second is a motion to compel further answers to form interrogatories. Following the 2/10/25 hearing, the parties each submitted supplemental briefs. After consideration of the supplemental briefs, the first motion is **DENIED** and the second motion is **GRANTED**. Also on calendar is a Motion to Reopen Discovery filed by defendants New Prime, Inc. and Christopher Canstonguay. That motion is **MOOT** in light of the court's 3/19/25 Minute Order and is therefore **DENIED**. <u>I. MOTION TO COMPEL PRODUCTION</u>

		The instant motion seeks further responses to defendant's supplemental responses to request for production numbers 25 and 26. In these two requests, the plaintiff seeks production of sub-rosa videos depicting the plaintiff, as well as related reports and other writings. Defendant asserts that these videos are work product and that the defense intends to offer them to impeach plaintiff's testimony at trial. CCP § 2018.020 sets forth the state's policy regarding an attorney's work product, which is to: "(a) Preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases. (b)Prevent attorneys from taking undue advantage of their adversary's industry and efforts." CCP § 2018.030 sets the level of protection, providing: "(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances. (b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice." (See Coito v. Superior Court (2012) 54 Cal.4th 480, 499 - confirming that, pursuant to section 2018.030, subdivision (b), "A party seeking disclosure has the burden of establishing that denial of disclosure will unfairly prejudice the party in preparing its claim or defense or will result in an injustice".) Plaintiff argues that he will be prejudiced if not able to view the sub-rosa videos because he needs to "evaluate the authenticity of the evidence." (Motion at 10:11) Plaintiff suggests, for example, that the video may be manipulated to depict him walking up a hill when, in fact, the ground was flat. However, plaintiff has been provided the dates of the sub rosa videos and there is no evidence suggesting he would not be able to testify as to what is depicted in the videos. Plaintiff also claims it would be unfairly prejudicial for him to be surprised with the video at trial. However, the sub rosa footage is of Plaintiff regarding his personal injury claims. Presumably, Plaintiff is the most knowledgeable about his medical condition and what activities he was, or was not, able to perform in light of his alleged injuries. Thus, he would not be

		"surprised" or prejudiced by being shown footage of his own conduct on particular days. On the other hand, if the videos were ordered produced, the time and effort spent by the defendant in obtaining the videos would essentially be rendered valueless. Rather than the defense (which obtained the videos) using them for rebuttal, the plaintiff (who did not obtain the videos) would be able to use them to structure testimony around any rebuttal. This would discourage attorneys from investigating their cases. Production of the videos would be counter to the expressed intent of the Legislature to "encourage [attorneys] to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases." (CCP §2018.020) With regard to the writings by counsel to the investigator, or the investigator's notes/reports, these represent the attorney's thoughts and strategy and are also protected as work product. (CCP §2018.030(a).) For the foregoing reasons, the motion to compel production of the sub-rosa videos and related documents is denied. <u>II. MOTION TO COMPEL INTERROGATORIES</u> This motion arises from the defendant's response to a supplemental interrogatory wherein the defendant updated its responses to Form Interrogatories 13.1 and 13.2. In the supplemental response to these interrogatories, the defendant identified the sub-rosa videos but did not provide the name, address, and telephone number of the "consultant" who made the videos (13.1(c)) or prepared the report (13.2(c)) Initially, the court viewed the issues in this motion as the same as in the motion to compel production. However, in the supplemental briefing, plaintiff argues that he needs the investigator's contact information to depose him on two issues (1) what he observed plaintiff to be doing, and (2) the "methods used during the investigation, any potential biases, or inconsistencies in their observations or report." As to the first issue, the analysis is the same as the motion to compel production. Since what the investigator saw and what he or she filmed is the same thing, a deposition on this issue would be the same as asking the investigator for an oral description of what is depicted in the surveillance video – which would

		impact the same concerns for work product as turning over the video itself. As to the second issue, the analysis is different. On this issue, plaintiff could ask the investigator questions such as what camera he used, how far away from the subject he was, whether he altered or manipulated the videos, what was the duration of the videos, and what special knowledge, training, and experience he or she has in producing surveillance videos. As to this issue, there remain work product concerns as defense counsel hired and directed the investigator, but these concerns do not outweigh the need for plaintiff to perform this investigation in advance of the trial. Thus, although the question is a close one, the court will grant the motion and require defendant to provide the name and contact information for the investigator. At any subsequent deposition, the plaintiff may not inquire of the investigator as to what the investigator saw or filmed (as these issues are too close to one another to be separated), but may inquire of the investigator as to issues similar to those discussed above. Accordingly, the motion to compel further responses to Form Interrogatories 13.1 and 13.2 is granted. In the plaintiff's Supplemental Brief, he requests that the court conduct an in camera review of the sub rosa videos. This request is **DENIED**. III. MOTION TO REOPEN DISCOVERY This motion was filed on 3/12/25. However, when the court granted the Ex Parte application to continue the trial on 3/19/25, the court also ordered that "all pretrial deadlines including discovery cut off deadlines are to coincide with the new trial date." Accordingly, the Motion to Reopen Discovery is moot. Therefore, as the Motion to Reopen Discovery is moot, it is denied without prejudice to the Defendants filing further motions to compel discovery after meeting and conferring with opposing counsel. Counsel for defendant is ordered to give notice of these rulings.

9	30-2024-01382082 Jiang vs. Reynolds	The motion by plaintiff Qi Jiang to set aside the dismissal entered on 10/2/24 is **GRANTED**. CCP §473(b) states in pertinent part as follows, “(b) 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. … Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect.” Here, the plaintiff’s complaint was dismissed when plaintiff failed to appear for a hearing on an OSC re Dismissal for failure to serve the defendants on 10/2/24. Counsel filed the instant motion on 11/12/24 and it is supported by a declaration of counsel attesting to his mistake which led to his failure to appear at the 10/2/24 hearing. As plaintiff has met the requirements under CCP §473(b), the motion is granted. The dismissal is therefore set aside and the case restored to the active list. Further, the court sets a Case Management Conference for 5/21/25 at 09:00 AM. If service of process is not completed by this date, the court may set a renewed order to show cause regarding dismissal for failure to proceed. Plaintiff is ordered to give notice of this ruling.
10	30-2024-01390588 Hart vs. NSMG Shared Services LLC	**Off Calendar**

11	30-2024-01395894 Librush vs. General Motors, LLC	**Off Calendar**
12	30-2024-01396064 Mesbah vs. ALHV, LLC	**1) Motion to Deem ALHV's Requests for Admission Responses as Admitted** Plaintiff Ezat Mesbah, by and through her Successor in Interest Alan Safari's ("Plaintiff") unopposed Motion to Deem defendant ALHV, LLC dba Villa Valencia Healthcare Center's ("ALHV") responses to Requests for Admission, Set One ("RFA") as admitted is **DENIED** as ALHV served responses to the RFA's on March 6, 2025 (See Declaration of Jessica Munoz, Exhibit D). Where a compliant RFA response is in place prior to the hearing, the sanction of deeming the RFAs admitted is unavailable. Civ. Proc. Code § 2033.280(c). However, monetary sanctions for the expense of moving for these responses may still be obtained and, here, Plaintiff requests $2,430 in monetary sanctions against ALHV and its counsel of record on this motion. Counsel's billing rate is a reasonable $395/hr. The hours requested are high given no opposition or reply brief was filed on this motion, and that requested time is deducted. The appearance time is also split evenly between the four motions. The total monetary sanctions against ALHV and its counsel of record on this motion is: $395/hr. x 2 hrs. + $60 fee = $850 **2) Motion to Compel Aspen's Responses to Form Interrogatories** Plaintiff's Motion to Compel defendant Aspen Skilled Healthcare, Inc.'s ("Aspen") responses to Form Interrogatories, Set One ("FROG") is **GRANTED** The proof of service ("POS") of the FAC indicates that "FROG – General" were served on Aspen. (ROA 34.) Although Aspen argues there is no proof the FROG was served on Aspen and subsequently that the "corrected" POS does not prove service on Aspen, the original POS <u>does</u> state FROG were served on Aspen. Additionally, defense counsel appears to concede Aspen was served with the discovery requests specifically to Aspen and not simply as to ALHV. (Opposition

		3:7-14; Munoz Decl. ¶ 2, Ex. A.) Even if the court were to discount the "corrected" POS, the original POS does include FROG being served on Aspen. Evidence addressing Aspen's objection filed with the reply brief also shows the written discovery was sent to First Legal for service on Aspen. (Willoughby Reply Decl. ¶¶ 7 – 8, Ex. B.) Service of the FROG was proper on Aspen, yet Aspen failed to serve any responses, even following a meet and confer between party counsel wherein responses were requested by 11/27/24. Aspen's responses to FROG apparently have not been served and any objections are therefore waived. (Civ. Proc. Code § 2030.290(a).) Plaintiff's motion was proper to compel Aspen's initial responses to FROG. (Civ. Proc. Code § 2030.290(b).) The motion is granted, and Aspen is ordered to serve objection-free responses to the FROG within 30-days of service of this ruling. Monetary sanctions are also permissible. (Civ. Proc. Code § 2030.290(c).) This motion is almost identical to the SPROG motion so the requested 2.5 hours will be split between the two motions. There are joint opposition/reply briefs covering the FROG, SPROG, and RFP motions, so the 1.5 hours for a reply will be split between the three motions. Finally, the 2.0 hours of hearing time will be split evenly amongst the four motions. The total monetary sanctions against Aspen and its counsel of record on this motion is: $395/hr. x 2.25hrs. + $60 fee = $948.75 **3) Motion to Compel Aspen's Responses to Special Interrogatories** Plaintiff's Motion to Compel defendant Aspen's responses to Special Interrogatories, Set One ("SPROG") is **GRANTED.** Aspen's argument boils down to the point that POS indicating SPROG and Requests for Production, Set One ("RFP"), relating to ALHV were served, but not SPROG/RFP requests relating to Aspen. However, Plaintiff filed a corrected POS and provided evidence the Aspen SPROG/RFP were sent to First Legal for service on Aspen. (Willoughby Reply Decl., ¶¶ 4-8, Exs. A – B.) Additionally, defense counsel stated she had agreed to provide substantive responses from defendants

		(which would include Aspen) in exchange for Plaintiffs' counsel taking the motions being taken off calendar, which is a concession the SPROG/RFP as to Aspen were actually served on Aspen. (Munoz Decl. ¶ 2, Ex. A.). As Aspen's responses to SPROG were not served. any objections are therefore waived. (Civ. Proc. Code § 2030.290(a).) The motion is granted, and Aspen is ordered to serve objection-free responses to the SPROG within 30-days of service of this ruling. Monetary sanctions are also permissible. (Civ. Proc. Code § 2030.290(c).) This motion is almost identical to the FROG motion, so the total monetary sanction against Aspen and its counsel of record on this motion is: $395/hr. x 2.25hrs. + $60 fee = $948.75 **4) Motion to Compel Aspen's Responses to Requests for Production** Plaintiff's Motion to Compel defendant Aspen's responses to RFP is **GRANTED.** As with the SPROG motion above, the court finds the RFP relating to Aspen to have been properly served. Aspen's failure to provide any responses to the RFP resulted in the waiver of objections. (Civ. Proc. Code § 2031.300(a).) The motion is granted, and Aspen is ordered to serve objection-free responses to the RFP within 30-days of service of this ruling. Monetary sanctions are also permissible. (Civ. Proc. Code § 2031.300(c).) The total monetary sanction against Aspen and its counsel of record on this motion is: $395/hr. x 2.5 hrs. + $60 fee = $1,047.50 Plaintiff is ordered to give notice of these rulings.