

**Judge Benson – Law & Motion – Wednesday, February 19, 2025 @ 9:00 AM  
TENTATIVE RULINGS**

**1. 21CV02640 Espinoza, Raquel v. Delallo’s Italian Foods, Inc.**

*EVENT: Compliance Hearing (Continued from 12/11/24)*

Pursuant to CCP § 384, the Judgment and Order dated April 24, 2024 is hereby amended to direct the Settlement Administrator to distribute the sum of \$6,851.32 representing unclaimed class member funds to the California State Controller in accordance with California Unclaimed Property Law. Plaintiff shall prepare an order consistent with this ruling within 2 weeks.

**2-3. 23CV01731 Rodriguez, Salvador, Jr. v. RGIS, LLC et al.**

*EVENT: (1) Case Management Conference*

*(2) Plaintiff’s Motion for Final Approval of Settlement*

Class Action and PAGA Settlement Final Approval is GRANTED. A compliance hearing is hereby scheduled for December 10, 2025 at 9:00am. A declaration concerning compliance shall be filed no later than 14 calendar days before the hearing. The Court will sign the proposed judgment with these modifications.

**4. 24CV02515 Mesa, Isela v. Pozar, Kimberly**

*EVENT: Defendant Kimberly Pozar’s Motion to Compel Plaintiff’s Attendance at a Deposition; Request for Monetary Sanctions and Reasonable Attorney Fees*

Defendant Kimberly Pozar’s Motion to Compel Plaintiff’s Attendance at a Deposition; Request for Monetary Sanctions and Reasonable Attorney Fees is GRANTED. Plaintiff is ordered to attend deposition within 30 days of this order. Plaintiff is sanctioned in the amount of \$420.00. Defendant/Cross-Complainant shall prepare an order within two weeks of this ruling.

5. **24CV03847 In re: Allison, Robert Andrew**

*EVENT: Change of name (adult) (Continued from 1/8/25)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

6. **24CV04073 In re: Hunt-Parsons, Emily Annemarie**

*EVENT: Change of name (adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

7. **24CV04084 In re: Carmack, Jenna Renee**

*EVENT: Change of name (adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

8. **24CV04207 In re: Charles, Holly Noelle**

*EVENT: Change of name (adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

9. **24CV04508 In re: Feucht, Abigail Sandra**

*EVENT: Change of name (adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

10. **25CV00020 In re: Yavitz, Nathaniel Isaac**

*EVENT: Change of name (adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

11. **25CV00040 In re: Weller, Diane Merie**

*EVENT: Change of name (adult)*

The Court is in receipt of the proof of publication and will sign the decree provided.

12. **25CV00052 In re: Ciprian, Gilberto**

*EVENT: Change of name (adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

**13. 141833 NDS, LLC v. Wilcox, Lloyd A**

*EVENT: Application for Order For Sale of Dwelling*

The Court will conduct a hearing. Absent satisfactory evidence of a homestead exemption, the Court is inclined to grant the application.

**14. 24CV01790 Charles J Marcotte LLC v. Morimoto, Anna et al.**

*EVENT: Motion to Set Aside Default Judgment*

Motion to Set Aside Default Judgment is GRANTED. Respondent shall file an answer within 10 days of this order. Respondent shall prepare and submit the form of order.

**15. 24CV03752 In re: Kissiar, Jessica**

*EVENT: Change of name (minor) (Continued from 1/8/25 and 2/5/25)*

The Court will conduct a hearing.

**16. 20CV01510 Ortega, Ruben et al. v. Puig-Palomar, Miguel, MD et al.**

*EVENT: Plaintiffs Motion to Compel Further Answers at Deposition and for Sanctions (Continued from 2/5/25)*

Plaintiffs Motion to Compel Further Answers at Deposition and for Sanctions is DENIED. Technically, Plaintiffs are correct in that, outside of privileged information, other objections are not grounds for refusing to answer a question at deposition.

However, even under the broad standard of relevance, the Court fails to understand how this line of questioning could lead to the discovery of admissible evidence. The law does not require a futile act. (*Crawford v. JPMorgan Chase Bank, N.A.* (2015) 242 Cal.App.4th 1265, 1274 citing *Sutherland v. Barclays American/Mortgage Corp.* (1997) 53 Cal.App.4th 299, 313) The subject area clearly requires expert testimony, and it is clear Dr. Fleischman is not an expert in the area.

On an unrelated topic, the Court finds good cause exists to establish a briefing schedule for all motions in limine in light of the upcoming trial. The Court is inclined to set the following schedule:

Moving Papers: April 3, 2025

Opposition: April 15, 2025

Reply: April 28, 2025

Defendant Dr. Dunnington shall prepare and submit a form of order within 2 weeks.

**17. 23CV00275 Macarthy, Michael R. v. Balken, Lynda**

*EVENT: Plaintiff's Omnibus Discovery Motion*

Plaintiff's Omnibus Discovery Motion is GRANTED in PART as discussed below. To the extent the motion is granted, Defendant shall provide further responses within 10 days' notice of this order.

In light of this ruling, proceeding with trial on February 24, 2025 is not feasible (unless Plaintiff is willing to withdraw this motion). Consequently, the Trial Readiness Conference and Court Trial dates are hereby vacated. A further Case Management Conference is set for March 26, 2025 at 10:30am.

*Discovery Cut-Off*

CCP § 2024.020 requires discovery motions be heard a minimum of 15 days before trial unless a motion pursuant to CCP § 2024.050 is made and the Court grants that motion. Before the Court can entertain a discovery motion that does not comply with section 2024.020 (as is the case here), the Court must first address the threshold question of whether an extension of the discovery cut-off is appropriate by analyzing the factors set forth in section 2024.050. (See *Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.*, (2008) 165 Cal. App. 4th 1568)

Defendant is technically correct that the order granting Plaintiff's ex parte is silent as to whether an extension of the discovery cut-off was granted. Additionally, there is no separate and formal motion before the Court entitled as a motion to extend discovery deadlines pursuant to section 2024.050.

However, the caption, title, or label of a pleading ... does not determine its nature or legal effect. (*Spotlight on Coastal Corruption v. Kinsey*, (2020) 57 Cal. App. 5th 874, 884) The body of the ex parte clearly identifies section 2024.050 and provides an analysis of the factors under subdivision (b). Further, Defendant has had the opportunity to oppose the merits of a section 2024.050 extension. Indeed, the opposition contends Plaintiff was not diligent and unreasonably delayed in propounding discovery, a primary factor in a section 2024.050 analysis.

The Court finds that although no formal motion has been submitted, the issue of a discovery cut-off extension is properly before the Court.

As to the merits of Plaintiff's request for a discovery cut-off extension, the Court finds good cause exists supporting an extension. The information sought is relevant to the case. Further, it appears Plaintiff's counsel as been attempting for well over a year to determine the assets received by Defendant after decedent's death.

#### *Meet and Confer*

The Court finds Plaintiff has satisfied the statutory meet and confer requirements.

#### *Special Interrogatories, Set One*

No.1 – The request is overbroad. The request is hereby limited in scope as follows. Defendant shall identify each of the following assets with specificity: Real property, vehicles, jewelry, and investments. Regarding personal property items valued at \$500 or less, Defendant may provide aggregate responses. For example, Defendant estimates decedent's clothing is valued at \$300, furniture valued at \$500, etc. If decedent had an item of clothing or furniture, or other item of personal property with a market value in excess of \$500, that item will need to be specifically identified.

The Court agrees with Plaintiff that a portion of the substantive response is incomplete and evasive:

“and some other items of community property jointly owned with Lynda Balken like the vehicles, including Lynda Balken's Jeep SUV ...”

The words “some” and “including” are evasive. The response acknowledges there are multiple vehicles but only identifies the Jeep SUV. Each vehicle must be identified with reasonable specificity.

No. 2 - A further response is required consistent with the ruling as to request no. 1. Regarding DMV records, public records typically fall under the category of "equally available to the propounding party." However, as it pertains to vehicles, one needs some preliminary information, such as a Vehicle Identification Number (VIN) in order to conduct an inquiry. As discussed in request no. 7 below, Defendant must provide Plaintiff with the entire VIN for each vehicle.

Nos. 3 and 4 - Consistent with the ruling on nos. 1 and 2, a further response is required. However, Plaintiff need only identify specific items that were destroyed or disposed concerning real property, vehicles, jewelry, investments, and any specific personal property with a value of \$500 or more.

No. 7 – The motion is GRANTED. Defendant must provide the entire VIN for each vehicle.

#### *Production of Documents, Set Three*

Nos. 32 and 33 – The motion is GRANTED. The opposition appears to acknowledge the response provided was not the response intended.

No. 34 – The motion is granted to the extent the response does not address all of the vehicles identified in the response to special interrogatory no. 7, *supra*.

#### *Supplemental Interrogatories No. 1*

The motion is denied. While Plaintiff may be technically correct in that a response to the supplemental interrogatory should have been provided, response to special interrogatories set one (the only special interrogatories propounded in this case) was served. From a practical standpoint, the supplemental interrogatory and special interrogatories set one were propounded on the same day. The requests appears to be duplicative in the Court's view.

#### *Supplemental Production of Documents no. 1*

The motion is denied. Plaintiff may be technically correct in that a response to the supplemental request for production of documents should have been provided. However, from a practical perspective, Defendant has recently provided amended responses to set one and has recently provided responses to set two and set three.

*Motion for Sanctions For Providing Willfully False Responses*

The motion is denied. The discrepancies in the discovery responses are noted. All requests for sanctions are denied.

**18. 18CV03287 In re: Beyhawck, Alek Luciano**

*EVENT: Motion to expunge and seal case #18CV03287*

Motion to expunge and seal case #18CV03287 is DENIED. The reasons stated in Petitioner's motion do not satisfy the requirements of California Rules of Court 2.550(d).