

**Judge Benson – Law & Motion – Wednesday, June 25, 2025 @ 9:00 AM**  
**TENTATIVE RULINGS**

**1. 20CV01781 Leland, Morrissey & Knowles v. Bailey, Catherine et al.**

*EVENT: Motion for Reconsideration of Court's Ruling Regarding Petition to Correct/Confirm Arbitration Award*

The Court will hear from counsel on the issue of notice. The proof of service on file indicating the papers were served on 5/27 appears compliant with CCP § 1005 on the surface. Although ordinarily the Court will take a proof of service at face value, circumstances exist which lead the Court to question whether the proof of service adequately demonstrates sufficient notice of the instant motion. The Court understands that the initial filings were rejected by the clerk, and one of the reasons for the rejection was the incorrect hearing date in the caption. (Incorrect date of June 24, 2025, a Tuesday). Additionally, the Court was aware that, at some point in time there was a proof of service in e-filing stating an amended motion was served on 6/10 (which is insufficient notice per CCP § 1005).

The 5/27 proof of service makes no mention of an “amended” motion. Although the motion on file is not labelled as an amended motion, the fact there was an “amended” motion at one point in time leads to more confusion and calls into question whether the instant motion was in fact served on 5/27. It appears to the Court what was served on 5/27 was a motion with a hearing date of June 24 in the caption. To further complicate matters, the motion on file has a captioned hearing of June 25 but states in the first paragraph that the hearing will take place on June 24.

The Court is inclined to continue the matter to August 6, 2025 at 9:00am directing counsel to file and serve Defendants with an amended motion. The amended motion shall include the August 6, 2025 date and time in the caption, and the first paragraph shall correctly reference the August 6 date and time. Counsel shall file a proof of service demonstrating the amended motion was served within the time requirements of CCP § 1005.

**2. 20CV02205 Conrad, Ethan et al v. Orozco, Joshua et al.**

*EVENT: Plaintiffs' Motion for Summary Judgment (Continued from 5/28/25)*

Preliminarily, after further review, notice does comply with CCP § 437c. Additionally, the Court notes that Defendant William Cotter filed a Notice of Bankruptcy on May 28, 2025. Consequently, this action is stayed with respect to Mr. Cotter, and this summary judgment ruling only pertains to Defendants Joshua Orozco and Platinum Sales Group LLC.

The Motion for Summary Judgment with respect to defendants Joshua Orozco and Platinum Sales Group LLC is GRANTED. Plaintiff has met his initial burden of producing

evidence demonstrating no triable issue of material fact exists on each element of the cause of action and the motion is unopposed. The Court will sign the proposed order, striking all references to Defendant William Cotter.

**3. 22CV02593 Haman, John et al v. F&S Houseboats, LLC et al.**

*EVENT: Plaintiffs' Motion to Compel Scott Grimes' Compliance with Requests for Production of Documents and Requests for Sanctions*

Plaintiffs' Motion to Compel Compliance is DENIED.

As to Plaintiffs' evidentiary objections, the Court rules as follows:

Objection nos. 1,3, and 4.

Sustained in part and overruled in part. The objections are sustained to the extent the declaration attempts to relay statements from Mr. Grimes. Such matter is clearly hearsay. The objection is overruled to the extent defense counsel is representing they have produced everything provided to them.

Objection no. 2

Sustained.

Plaintiffs argue this motion is not moot, despite the fact they have obtained text messages from Mr. Rutz because (1) Mr. Rutz only provided text messages, not emails, and (2) Mr. Rutz refuses to provide missing text messages from July 19, 2022.

CCP § 2031.320. Motion for order compelling compliance upon failure to permit inspection, copying, testing, or sampling; Sanctions; Failure to provide electronically stored information

(a) If a party filing a response to a demand for inspection, copying, testing, or sampling under Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280 thereafter fails to permit the inspection, copying, testing, or sampling in accordance with that party's statement of compliance, the demanding party may move for an order compelling compliance.

[Emphasis Added]

We have a factual dispute whether Grimes defendants ("Grimes defendants" means Mr. Grimes individually as well as Sciela, Inc.) have or have not produced all text messages and emails in their possession custody and control. Grimes maintains he has produced everything he has. Unfortunately, the Code provides us with little guidance concerning the evidentiary standard of review when adjudicating such disputes. Nor are there any published decisions on the topic that the Court is aware of.

It appears that, in most cases, factual disputes concerning alleged withholding of evidence or spoliation of evidence are more properly addressed at trial.

*New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1431:

“... we believe that in most cases of purported spoliation the facts should be decided and any appropriate inference should be made by the trier of fact after a full hearing at trial.

(Although spoliation and withholding of evidence are distinct matters, the Court finds that for purposes of factual determinations, the scenarios are analogous)

In the previous motion, Plaintiffs made clear what their intentions are in pursuing this course of discovery: “If, following the Court’s order, Defendants continue to refuse to produce all responsive communications, including the deleted text messages, Plaintiffs will move for terminating, issue, and/or evidentiary sanctions ...”

Thus, the stakes here are high. The sanctions subsequently sought will potentially be dispositive prior to a trial on the merits. Because the stakes are high, it stands to reason that the evidentiary burden on the party alleging withholding of documents is substantial. If the Court were to err in its factual determination, the consequences are potentially dire. We would be issuing an order to compel production of documents that do not exist, and then potentially awarding disposition type sanctions thereafter.

Applying this heightened standard, Plaintiffs have not met their burden. Regarding the allegedly deleted July 19, 2022 text messages, Mr. Rutz states that he did not delete text messages. Counsel appears to infer text messages were deleted simply because there is a date of July 19, 2022 with no text messages. In reviewing Plaintiffs’ exhibit, there is nothing on the surface indicating a deleted text. Neither that exhibit nor counsel’s inferences from that exhibit (counsel’s declaration states that it “appeared to be deleted”) are sufficient to meet Plaintiffs’ substantial burden with respect to this motion.

Regarding emails, the Court sees no evidence of document withholding other than Plaintiffs’ allegations of dishonesty and Mr. Grimes’ apparently false testimony that he did not text with Mr. Rutz. Questions about Mr. Grimes’ credibility alone is not sufficient to meet Plaintiff’s burden in the context of this motion. Of course, Plaintiffs may attack Mr. Grimes’ credibility at trial, (there are evidentiary rules and jury instructions on the subject, see CACI 204) but his alleged lack of credibility alone is not sufficient evidence demonstrating that he is in fact withholding emails for purposes of this motion.

All sanctions are denied.

Defendants shall prepare the form of order.

4. **24CV00200 Lovgren, Christian et al v. Enloe Medical Center**

*EVENT: Motion for Preliminary Approval of Class Settlement*

Motion for Preliminary Approval of Class Settlement is GRANTED. The Court will sign the proposed order scheduling a final approval hearing for November 12, 2025 at 9:00am.

5. **24CV04442 In re: Johnson, Steven Kit**

*EVENT: Change of name (adult) (Continued from 3/5/25, 4/2/25, 5/7/25)*

The Court will hear from Petitioner.

6. **25CV01106 In re: Saetern, Flores**

*EVENT: Change of name (Adult)*

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

## 7. 25CV01135 Believe in Chico, LLC v. City of Chico

*EVENT: Demurrer of Respondent City of Chico to Verified Petition for Writ of Mandate and Complaint for Declaratory Relief*

The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND.

Both parties' requests for judicial notice are granted.

The salient issue presented is whether the circumstances surrounding Petitioner's proposed Valley Edge development project resulted in a "decision" to "adopt ... a ... plan". The Petition alleges that in January 2023, the Chico City Council voted to approve the project. Then the City of Chico voters rejected the project via referendum on March 5, 2024. (Note: the Petition states the voters disapproved of the project on March 5, 2025. The only reasonable interpretation is that 2025 is a clerical error.) Following the results of the referendum the Chico City Council voted to adopt the results on May 7, 2024.

The Court takes Judicial Notice of these facts; the Chico City Council's approval of the project in January 2023, the results of the city wide referendum on the project on March 5, 2024, and the action of the Chico City Council adopting the referendum results on May 7, 2024.

The net effect of the Chico City Council's adoption of the referendum resulted in Petitioner's Valley Edge development plan being denied. Although the facts are not identical to the facts in *General Development Co., L.P. v. City of Santa Maria* (2012) 202 Cal.App.4th 1391, the reasoning of that case applies here. *General Development* held that denial of rezoning is a "decision" for purposes of Gov't Code § 65009(c)(1)(A).

*The 90-day Requirement of Gov. Code § 65009(c)(1)(A) Applies to this Action*

Gov't Code § 65009(c)(1)(A)

Except as provided in subdivision (d), no action or proceeding shall be maintained in any of the following cases by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days after the legislative body's decision:

(A) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a general or specific plan. This paragraph does not apply where an action is brought based upon the complete absence of a general plan or a mandatory element thereof but does apply to an action attacking a general plan or mandatory element thereof on the basis that it is inadequate.

[Emphasis Added]

Consistent with the *General Development* case, the Chico City Council's actions in adopting the results of the referendum constitute a decision for purposes of the statute. Thus, the 90-day rule applies here.

Petitioner's argument that CCP § 338(a) supersedes Gov. Code § 65009(c)(1)(A) is not persuasive. As discussed, Gov. Code § 65009(c)(1)(A) applies to this action and prevails as the more specific statute. Consequently, the action is time barred.

The facts surrounding the timing of the Chico City Council's denial of the plan appear to be undisputed. Thus, despite the liberal policy favoring amendment, the Court fails to see how the Petition can be successfully amended to overcome Gov. Code § 65009(c)(1)(A). The demurrer is sustained without leave to amend.

Respondent shall prepare and submit a form of order consistent with this ruling within 2 weeks.

**8. 25CV01539 In re: Armstrong, Brittany**

*EVENT: Change of name (minor)*

The Court will hear from Petitioner. The Petition appears to be brought by both parents, however, the Petition is not signed by father. Father's attendance is required to confirm his consent to the petition.

**9. 25CV01572 In re: Neal, Jacob David**

*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. 25CV01584 In re: Caywood, Alissa Ilene**

*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. 25CV01603 In re: Morgan Tessa Marie**

*EVENT: Change of name (minor)*

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

**12. 25CV01650 In re: Abousmak, Nasser**

*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. 25CV02208 Butte County Animal Control v. Soria, Alexis**

*EVENT: Petition to determine if Dog is Potentially Dangerous*

The Court will conduct a hearing.

**14-15.        24CV04150 Rocky Top Rentals, LLC v. Shade Sedano, Maria Mercedes**

*EVENT: (1) Defendant Maria Mercedes Shade Sedano's Motion to Set Aside Default Judgment*

*(2) Tina Marie Shade's Motion to Set Aside Default Judgment*

Both motions are denied without prejudice. Both motions fail to include a proof of service demonstrating Plaintiff was served with the moving papers within the time requirements of CCP § 1005 (CCP § 1005 requires a minimum of 16 court days' notice plus an additional 5 calendar days if service is by mail). The Court will prepare the order.