Judge Mosbarger – Law & Motion – Wednesday, October 14, 2026 @ 9:00 AM
TENTATIVE RULINGS

1. 22CV01506 VAIL, NATHAN ET AL v. ANDERSON BURTON CONSTRUCTION, INC ET AL

EVENT: Motion to Compel Further Responses to Request for Production of Documents, Set One; Request for Sanctions

The Court finds that Defendant Anderson Burton Construction, Inc. ("Defendant" herein) provided supplemental responses to the discovery at issue on September 17, 2026 and September 30, 2026 [See Declaration of Lindy H. Scoffield at ¶¶9-11; Exhibits 11-13]. Consequently, the Court deems the Motion to Compel to be moot and is, for that reason, denied. However, Plaintiffs Nathan Vail and Emily Vail's ("Plaintiffs" herein) request for sanctions are granted, the Court finding that Plaintiffs were forced to seek this relief prior to Defendant providing such supplemental responses without substantial justification. The Court awards sanctions against Defendant and her counsel of record Evan, Wieckowski, Ward & Scoffield, LLP, in the amount of $1,000, which are to be paid within 30 days' notice of this ruling. The Court will sign the form of order submitted by Defendant with modification as to sanctions.

2. 22CV02560 PETERSON, CHELSEA ET AL v. 1271 WHITEWOOD WAY RESIDENCE, ET AL

EVENT: Plaintiffs' Motion to Vacate March 25, 2026 Order Sustaining Defendant Jared Treat's Demurrer Without Leave to Amend and Any Resulting Dismissal

Code of Civil Procedure §473(b) authorizes the Court, "upon any terms as may be just," to relieve a party "from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect," if the application is made within a reasonable time, not exceeding six months after the judgment or dismissal. The statute also contains a mandatory provision requiring the Court to vacate a default, default judgment, or dismissal "entered against his or her client" when accompanied by an attorney's sworn affidavit attesting to fault. However, the mandatory provision is generally limited to default-type situations (e.g., defaults or dismissals resulting from a failure to respond or appear), and does not automatically apply to judgments entered after the Court sustains a demurrer on the merits. However, here the Court finds that the demurrer is treated as a dismissal motion for mandatory-relief purposes because Plaintiffs Kyle Valezquez and Chelsea Peterson ("Plaintiffs" herein) were deprived of the opportunity to respond (See, *Pagnini v. Union Bank, N.A.* (2018) 28 Cal.App.5th 298), and dismissal was thereafter entered by the Court.

As to mandatory relief, Plaintiffs have failed to meet their burden of establishing entitlement to mandatory relief under Code of Civil Procedure §473(b). *Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410 ["The party seeking relief … bears the burden of proof in establishing a right to relief."]. Mandatory relief is available only if the default or dismissal was "in fact caused by the attorney's mistake, inadvertence, surprise, or neglect." *Code of Civil Procedure* §473(b). Here, the Court finds that Plaintiffs' counsel's conduct did not constitute "mistake, inadvertence, surprise, or neglect" within the meaning of *Code of Civil Procedure* §473(b) because it amounted to a

deliberate failure to respond. See, *Rodriguez v. WNT, Inc* (2025) 116 Cal.App.5th 791, 808, citing *Jerry's Shell v. Equilon Enterprises, LLC* (2005) 134 Cal.App.4th 1058, 1061-1074.

Plaintiffs' counsel attributes the missed deadline to a failure to monitor an email address associated with his firm, confusion between attorneys at different firms representing different defendants, and a failure to meet and confer with Defendant Jared Treat ("Defendant" herein) counsel. Defendant argues, and the Court agrees, that those failures cannot be divorced from the procedural history of this action. Plaintiffs had already failed to oppose a discovery motion, had already filed an untimely opposition to Defendant's motion for judgment on the pleadings, and would again untimely oppose another defendant's demurrer. Viewed in context, the conduct described in Plaintiff's counsel's declaration reflects not an isolated mistake that a reasonably prudent attorney might make, but a recurring failure to monitor filings, track counsel and deadlines, satisfy meet-and-confer obligations, and timely prosecute Plaintiffs' case.

The Court thus concludes that Plaintiffs' untimely opposition was not an isolated mistake, but further conduct in a pattern of missed deadlines and unopposed motions. The motion for mandatory relief under *Code of Civil Procedure* §473(b) is DENIED.

Under the discretionary portion of *Code of Civil Procedure* §473(b), the moving party must show: (1) The motion is timely; (2) The judgment or dismissal was taken against the party as a result of mistake, inadvertence, surprise, or excusable neglect; and (3) Granting relief would be equitable and not futile in light of other governing statutes (e.g., jurisdictional claim-presentation requirements). As indicated above, the Court finds that Plaintiffs' untimely opposition was not an isolated mistake, but further conduct in a pattern of missed deadlines and unopposed motions. Furthermore, the motion is untimely. *Code of Civil Procedure* §473(b) requires that the application be made "within a reasonable time". Plaintiffs "must also show diligence in filing its application under section 473 after learning about the default. If there is a delay in filing for relief under section 473, the reason for the delay must be substantial and must justify or excuse the delay." *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1181. Here, Plaintiffs' counsel was aware of the Court's ruling on the Demurrer on February 25, 2026, and the instant Motion was not filed until August 24, 2026, 180 days later. There is no explanation by Plaintiffs' counsel for this delay. The motion for discretionary relief under *Code of Civil Procedure* §473(b) is DENIED.

The Motion is DENIED in its entirety. Counsel for the Defendant shall prepare and submit a form of order consistent with this ruling within two weeks.

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3-4. 25CV00208 TAYLOR, CAROL SUE v. POWELL, SHANE M ET AL

EVENTS: (1) Plaintiff's Motion for Trial Preference

*(2) Case Management Conference *Special Set*

Based upon the Declaration of Richard M. Treger, M.D., the Court finds that Plaintiff's health is such that preference is necessary to prevent prejudicing her interests in this litigation and ensure that the interests of justice are served in this case. Accordingly, the requirements of Code of Civil Procedure §36(d) and (e) are met, and the Motion for Trial Preference is GRANTED. The Court vacates the Case Management Conference special set to trail this Motion and sets the following dates: Mandatory Settlement Conference on December 28, 2026 at 3:00 p.m. with Judge Heithecker; a Trial Readiness Conference on February 4, 2027 at 1:30 p.m.; and a Jury Trial on February 8, 2027 at 8:00 a.m. with a six (6) day estimate.

The Court can, for good cause, order that a motion for summary judgment/ adjudication be heard less than 30 days before trial. Code of Civil Procedure §437c(a)(3). Here, given the deadlines that result upon the Court's granting of this Motion, there is good cause to have Defendant's motion for summary judgment/adjudication heard less than 30 days before trial. Defendant is therefore authorized to file its motion for summary judgment/adjudication to be heard less than 30 days before trial.

The Court will utilize the form of order submitted by counsel.

5-6. 25CV00584 WILSON, MACY v. FADALE, DAMON MARTIN ET AL

EVENTS: *(1) Motion of Defendant and Cross-Complainant Look 1st Inspections, LLC to Consolidate Actions [Case Nos. 25CV00584 and 25CV03849]*

*(2) Case Management Conference *Special Set*

As an initial matter, the mandatory acceptance of electronic service by a represented party in California is primarily established by *Code of Civil Procedure* §1010.6(b)(2). Under this statutory provision, a person represented by counsel who has appeared in an action or proceeding is required to accept electronic service of any notice or document that may otherwise be served by mail, express mail, overnight delivery, or facsimile transmission. See also California Rules of Court, Rule 2.251(c)(3) ["Except when personal service is otherwise required by statute or rule, a party or other person that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties or persons…]. The subdivision cited by counsel for Defendant North State Water Testing/Pump, LLC, in his Declaration filed on September 30, 2026 cites to *Code of Civil Procedure* §1010.6(c)(3), which relates only to unrepresented persons. Thus, the Court deems notice proper and has considered the merits of the Motion.

Good cause appearing, the Motion to Consolidate is granted. The Court orders that *Wilson, Macy v. Fadale, Damon Martin et al* (Case No. 25CV00584) and *Wilson, Mary v.*

Crandall, Jason Owens et al (Case No. 25CV03849), are consolidated for all purposes. The consolidated matter shall proceed under the lower-case number, 25CV00584, which shall be the lead case number. The consolidated matter is assigned to Judge Tamara L. Mosbarger for all purposes. A consolidated Case Management Conference is set for January 20, 2027, at 10:30 p.m. in Department 1. The Court will utilize the form of order submitted by Plaintiff, with modification to Paragraph 6 to include the future Case Management Conference date, striking Paragraph 4 ("Discovery Carryover"), and striking Paragraph 7 ("Trial Setting"). The clerk is directed to file the Order in both cases.

7-9. <u>26CV02704 FRANK LEWIS AS DIRECTOR/SECRETARY GOLDEN BEAVER DISTILLERY INC ET AL v. KRIS KOENIG AS CEO GBD INC ET AL</u>

EVENTS: (1) Defendant Kris Koenig's Demurrer to Plaintiffs' Verified Complaint

(2) Nominal Defendant Joe Earley's Demurrer to Plaintiffs' Verified Complaint

(3) Defendant Thomas Koenig's Demurrer to Plaintiffs' Verified Complaint

Pursuant to Code of Civil Procedure §1005(b), timely oppositions were to be filed and served no later than October 1, 2026 [9 Court days before the hearing]. No timely oppositions having been filed, the Court deems the Demurrers unopposed. Failure to file a written opposition may be construed as having abandoned the claims. See Herzberg v. County of Plumas (2005) 133 Cal.App.4th 1, 20. Defendant Kris Koenig's Demurrer to Plaintiffs' Verified Complaint, Nominal Defendant Joe Earley's Demurrer to Plaintiffs' Verified Complaint, and Defendant Thomas Koenig's Demurrer to Plaintiffs' Verified Complaint are sustained in their entirety. However, the Court grants leave to amend. Any amended complaint shall be filed within 45 days' notice of this order. Defendants shall prepare and submit forms of order within two weeks.