Dept. 1
Civil Law and Motion Tentative Rulings for Friday, December 20, 2024, at 8:30 a.m.

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

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1. **CVL65691** **Bank of America v. Johnson**
   Hearing on: Deem RFAs Admitted
   Moving Party: Plaintiff
   Tentative Ruling: HEARING REQUIRED

This is a limited jurisdiction collections case. Before the Court this day is plaintiff's unopposed motion to deem previously-served RFAs admitted. As established by the unrefuted submissions, plaintiff caused to be served upon defendant on 01/19/24 a single set of RFAs, using the mailing address provided by defendant on her answer. Defendant did not timely respond, resulting in an automatic waiver of the right to assert objections (CCP §2033.280(a)), and triggering plaintiff's right to seek judicial intervention (CCP §2033.280(b)). On 11/18/24, plaintiff caused such a motion to be filed, and served a copy thereof on defendant at the same mailing address provided. No opposition has been received by this Court.

As noted by one Court of Appeal, "the law governing the consequences for failing to respond to requests for admission may be the most unforgiving in civil procedure." *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 394-39. That is mostly true, save perhaps for one, often-overlooked, safe harbor therein, to wit: CCP §2033.280(c). Pursuant thereto, a substantially-compliant response to the RFAs made at any time "before the hearing on the motion" will moot the motion almost entirely (sanctions would still recoverable, but plaintiff did not seek those here). See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 778. Because the motion was filed four weeks ago, and defendant might provide substantially-compliant responses before Friday at 8:30 a.m., plaintiff must appear at the hearing and confirm that did not occur. Assuming no such response, the Court intends to grant the motion and deem the RFAs admitted. Without such clarification the motion will go off-calendar.

2. **CVL66019** **Bank of America v. Viado**
   Hearing on: Deem RFAs Admitted
   Moving Party: Plaintiff
   Tentative Ruling: HEARING REQUIRED

This is a limited jurisdiction collections case. Before the Court this day is plaintiff's unopposed motion to deem previously-served RFAs admitted. As established by the unrefuted submissions, plaintiff caused to be served upon defendant on 09/11/24 a single set of RFAs, using the mailing address provided by defendant on his answer. Defendant did not timely respond, resulting in an automatic waiver of the right to assert objections (CCP §2033.280(a)), and triggering plaintiff's right to seek judicial intervention (CCP

§2033.280(b)). On 11/18/24, plaintiff caused such a motion to be filed, and served a copy thereof on defendant at the same mailing address provided. No opposition has been received by this Court.

As noted by one Court of Appeal, "the law governing the consequences for failing to respond to requests for admission may be the most unforgiving in civil procedure." *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 394-39. That is mostly true, save perhaps for one, often-overlooked, safe harbor therein, to wit: CCP §2033.280(c). Pursuant thereto, a substantially-compliant response to the RFAs made at any time "before the hearing on the motion" will moot the motion almost entirely (sanctions would still recoverable, but plaintiff did not seek those here). See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 778. Because the motion was filed four weeks ago, and defendant might provide substantially-compliant responses before Friday at 8:30 a.m., plaintiff must appear at the hearing and confirm that did not occur. Assuming no such response, the Court intends to grant the motion and deem the RFAs admitted. Without such clarification the motion will go off-calendar.

3. CV65376 Joslin v. Hill
Hearing on: Ex Parte (Reserved)
Moving Party: Defendant
Tentative Ruling: N/A

This is a personal injury "dog push" case. On 12/11/24, the day defendant switched her defense counsel, this Court received a call indicating that the defense wishes to run an ex parte application on this day. No papers are yet on file, so it is unclear to this Court what emergency relief was being sought, but given that this case has only been at issue for eight months and trial is set to commence in four weeks, no crystal ball is needed to prognosticate that the request would have something to do with kicking out the trial date.

Because trial continuances are strongly disfavored, any request to continue a trial must be supported by an affirmative showing of good cause, and must be made as soon as possible once the necessity for a continuance is discovered. See CRC 3.1332; *Reales Investment, LLC v. Johnson* (2020) 55 Cal.App.5th 463, 468-469. Every motion for continuance is addressed to the sound discretion of the trial court. *Hamilton v. Orange County Sheriff's Department* (2017) 8 Cal.App.5th 759, 766. The factors which a trial court is to consider when weighing the various interests implicated include:

(1) The proximity of the current trial date (four weeks);
(2) Whether there were any previous continuances (none);
(3) The length of the continuance requested (unknown);

(4) The availability of alternative means to address the problem that gave rise to the motion or application for a continuance (perhaps greater diligence by former defense counsel);
(5) The prejudice that parties or witnesses will suffer as a result of the continuance (unknown);
(6) If the case is entitled to a preferential trial setting, the reasons for that status and whether the need for a continuance outweighs the need to avoid delay (none);
(7) The court's calendar and the impact of granting a continuance on other pending trials (none);
(8) Whether trial counsel is engaged in another trial (unknown);
(9) Whether all parties have stipulated to a continuance (unknown);
(10) Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance (unknown); and
(11) Any other fact or circumstance relevant to the fair determination of the motion or application (unknown).

Based on a totality of the circumstances, and the fact that this case has not yet passed the 18-month presumptive deadline under the Fast Track guidelines (see TCSC Rule 2.06.0), a brief continuance would likely be granted – if that is indeed what the ex parte application was reserved for. See CCP §§ 2024.020(b), 2024.050.

4. CV65602 **Nieh et al v. Nuzzo et al**
Hearing on: MSA/MSJ and Seal
Moving Party: Defendant Sonora Community Hospital (only)
Tentative Ruling: MSJ Grant; Seal Denied w/o Prejudice

This is a personal injury, medical malpractice case involving an unsuccessful orthopedic surgery performed by co-defendant Dr. Nuzzo at a local hospital, co-defendant Sonora Community Hospital (dba Adventist Health). Before the Court this day are two motions filed by co-defendant Sonora Community Hospital: a motion for summary adjudication/judgment on plaintiff's complaint (although there are two plaintiffs, the analysis will refer to plaintiff in the singular given that consortium claims are entirely derivative); and a motion to seal medical records used by Sonora to secure summary adjudication/judgment.

The purpose of the law of summary adjudication is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute. To prevail on its motion for summary

judgment, Sonora must affirmatively negate at least one of plaintiff's essential elements, show that plaintiff does not have, and cannot get, evidence to establish an essential element, or prove each element of an affirmative defense. If Sonora is able to accomplish this task, the burden would then shift to the plaintiff to show by substantial evidence that a triable issue of material fact exists as to the claim or defense. Contrary to popular folklore, summary judgment is no longer a disfavored remedy; instead, it is "now seen as a particularly suitable means to test the sufficiency of the plaintiff's case" to see if trial is really warranted. *Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851-854.

Sonora, which finds itself subject to the operative pleading as Doe 1, is alleged to be Dr. Nuzzo's principal or employer, and Dr. Nuzzo's conduct in treating plaintiff was within that agency. See Complaint Para 6.a. Separately, since Sonora acknowledges its identity as "dba Adventist Health Sonora," the averments contained in negligence cause of action (see Page 4) also apply. In other words, it is alleged by plaintiff that Sonora Community Hospital is both directly liable for its own medical negligence, and vicariously liable for Dr. Nuzzo's negligence. The Notice of Motion does not distinguish between the two, describing the motion instead as one based entirely on the fact that Sonora's services were at all times within the applicable standard of care. Technically this would not reach "every theory of liability" (see *Barclay v. Jess M. Lange Distributors* (2005) 129 Cal.App.4th 281, 290), in the operative pleading, taking summary *judgment* off the table. See CRC 3.1110(a); *Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1124. However, the memorandum of points and authorities goes further than the Notice, providing argument on the vicarious liability issue (see MPA 14:9 – 18:8). Since the supporting papers here provide all the grounds needed for summary *judgment*, the presumptive rule that the relief sought should be limited to the four corners of the Notice can be overlooked in this instance. See *Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1277; *In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 514; *Carrasco v. Craft* (1985) 164 Cal.App.3d 796, 808.

Defendant's moving papers and supporting evidence are sufficient to permit a reasonable factfinder to conclude in its favor on both direct and vicarious liability bases. As such, defendant has met its initial burden to show that plaintiff will be unable to prove breach or causation by a preponderance of the evidence. The burden then shifts to plaintiff, who has signaled complete surrender with a filing on 12/09/24 indicating that plaintiff "will not file an opposition" to the adjudication motion. Doing so removes the "empty chair" issue without preordaining a decision on the merits to Dr. Nuzzo. It is a tactical decision that plaintiff is certainly entitled to make. With no opposition, there is both an absence of the required separate statement (see CCP §437c(b)(3)) and a failure to demonstrate a

triable issue of fact (see CCP §437c(c)). As such, Sonora Community Hospital is entitled to an order granting its motion – which will include entry of judgment in its favor.

Sonora Community Hospital has also filed a motion to seal all of plaintiff's medical records used by it to support the MSA/MSJ. "The public has a First Amendment right of access to civil litigation documents filed in court and used at trial or submitted as a basis for adjudication. Substantive courtroom proceedings in ordinary civil cases, and the transcripts and records pertaining to these proceedings, are presumptively open." *NBC Subsidiary (KNBC–TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1208–1209. This strong presumption in favor of openness exists because "the public has an interest, in all civil cases, in observing and assessing the performance of its public judicial system." *In re Marriage of Nicholas* (2010) 186 Cal.App.4th 1566, 1575.

Because of the presumption favoring open access to records – especially those used as a basis for adjudication of claims – a party requesting that a record be filed under seal must demonstrate the following: (1) there exists an overriding interest that overcomes the right of public access to the record; (2) the overriding interest supports sealing the record; (3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest. CRC 2.550(d). In addition, an order sealing may only cover "those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal." CRC 2.550(e). For this reason, a blanket order sealing everything is generally improper. *Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 88-89. Instead, the moving party has the burden of directing the court to specific portions of particular documents subject to the request. Without this particularity, the moving party effectively shifts the burden to the Court to do a page/line analysis as to each of the 5 factors necessary for sealing.

Sonora has failed to provide any evidence from which this Court could reasonably find *facts* supporting an overriding interest at issue, that there existed a substantial probability of prejudice if the records were not sealed, or that less-restrictive means were not available. *In re Marriage of Nicholas* (2010) 186 Cal.App.4th 1566, 1576. Not all matters of a sensitive nature are constitutionally protected. *In re Clergy Cases I* (2010) 188 Cal.App.4th 1224, 1234-1235. Lastly, courts are under a duty to continually monitor sealing orders, and to unseal when there are changed circumstances. *Copley Press, Inc. v. Superior Court* (1998) 63 Cal.App.4th 367, 374. Since plaintiff's records will likely be relevant for Dr. Nuzzo and any trial in this matter, the seal would arguably be lifted before too long. For all of these reasons, the motion to seal is denied without prejudice.

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

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5. CV66621 O'Reilly v. O'Reilly
Hearing on: Preliminary Injunction
Moving Party: Plaintiff
Tentative Ruling: TRO Dissolved

This is a father-son dispute involving equitable ownership of construction equipment/tools used in their respective trades. There is no dispute that the equipment was purchased and legally owned by plaintiff. There is also no dispute that plaintiff granted defendant a right to use said equipment. Plaintiff wants the equipment back; defendant contends that plaintiff gifted him the equipment.

On 11/27/24, plaintiff (father) secured an ex parte TRO barring defendant from selling, using, giving, loaning, or otherwise disposing of the equipment at issue, and to prepare an inventory of the equipment in his possession. Plaintiff was ordered to serve the TRO papers and order on defendant by 12/06/24. This is consistent with CCP §527(d)(2), which provides in pertinent part as follows:

> "The party who obtained the temporary restraining order shall, within five days from the date the temporary restraining order is issued or two days prior to the hearing, whichever is earlier, serve on the opposing party a copy of the complaint if not previously served, the order to show cause stating the date, time, and place of the hearing, any affidavits to be used in the application, and a copy of the points and authorities in support of the application."

A review of the court file fails to reveal any proof of the aforementioned service having taken place. Although there is an indication that the *complaint* was previously served on defendant on 11/11/24, there is no POS covering the application for provisional relief, much less the order thereon. "If the party who obtained the temporary restraining order has failed to effect service as required by paragraph (2), the court shall dissolve the temporary restraining order." CCP §527(d)(3).