

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/18/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2101828

PRESIDING: HON. ANDREW SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: STELA LLUSHA

vs.

DEFENDANT: CHRISTOPHER MADDUX

NATURE OF PROCEEDINGS: 1) MOTION – ATTORNEY’S FEES
2) MOTION - STRIKE

RULING

The Court denies Plaintiff Stela Llusha’s (“Llusha”) motion for attorney fees as untimely. The Court denies Plaintiff Stela Llusha’s (“Llusha”) motion to strike or tax costs but will exercise its discretion and award no costs.

FACTUAL BACKGROUND

This action involves a dispute between neighbors, Llusha and Christopher Maddox (“Maddox”) regarding Maddox’s installation of a retaining wall to support a new septic system. Maddox hired Ard Mhacha Construction, Inc. and its principal, Michael Kane (“Kane”), to perform the work. Llusha filed her initial complaint against Maddox alleging that I-beams installed by the contractor to support the retaining wall encroached on her property (Case No. CIV 210818). Maddox brought a separate action against Llusha seeking an easement (Case No. CIV2103177).

On January 19, 2022, the Court issued its order which granted Llusha’s special motion to strike (anti-SLAPP) Maddox’s complaint as to the cause of action for nuisance only, and otherwise denied the motion. Also on January 19, 2022 the parties stipulated to consolidate the two actions. On April 29, 2022, Maddox’s anti-SLAPP motion as to Llusha’s complaint was denied as untimely.

On July 26, 2022, Llusha filed her operative Second Amended Complaint included causes of action for quiet title, nuisance, trespass, injunctive relief, declaratory relief, and negligence. On August 5, 2022, Maddox filed his operative First Amended Complaint included causes of action for declaratory relief, quiet title – prescriptive easement, and quiet title – equitable easement. On January 20, 2023, Maddox filed a cross-complaint against Ard Mhacha and Kane for negligence, equitable duty to defend, contribution, and declaratory relief.

Trial was bifurcated and a bench trial commenced on the equitable causes of action on June 12, 2023. On December 15, 2023, this Court found that Maddox met his burden of proof to establish he is entitled to an equitable easement, but did not meet his burden as to his other causes of action. The Court also found that Llusha did not meet her burden of proof to establish her causes of action to quiet title and for injunctive and declaratory relief.

Beginning on September 4, 2024, the Court heard the second phase of the trial to determine the amount of damages owed to Llusha, if any, based upon the creation of an equitable easement. On January 2, 2025, the Court entered judgment against Maddox ordering him to pay Llusha damages of \$1,414.80. On January 3, 2025, Maddox filed a Memorandum of Costs seeking \$42,631.46.

Currently before the Court are Plaintiff's Motion for Attorney Fees and Motion to Strike or Tax Costs.

MOTION FOR ATTORNEY FEES

Legal Standard

"[A] prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion." (Code of Civ. Proc., § 425.16, subd. (c).)

A motion for attorney's fees provided for in statute or contract must comply with California Rules of Court, rule 3.1702, except as otherwise provided by statute. Under California Rules of Court, rule 3.1702(b), "notice of motion to claim attorney's fees for services up to and including the rendition of judgment in the trial court-including attorney's fees on an appeal before the rendition of judgment in the trial court-must be served and filed within the time for filing a notice of appeal under rules 8.104 and 8.108 in an unlimited civil case[.]" Rule 8.104(a) provides the normal timing requirements for a fee motion and unless otherwise provided, a notice of appeal must be filed on or before the earliest of: "(A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, showing the date either was served; [¶] (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or [¶] (C) 180 days after entry of judgment." The term "judgment" includes an appealable order if the appeal is from an appealable order. (Cal. Rules of Court, rule 8.104(e).) Orders granting or denying an anti-SLAPP motion are immediately appealable. (Code of Civ. Proc., § 425.16, subd. (i).) As such, these rules apply to a motion seeking fees following an order on an anti-SLAPP motion, and as such the motion must be served and filed within the time limits for filing a notice of appeal. (*Mallard v. Progressive Choice Ins. Co.* (2010) 188 Cal.App.4th 531, 545.)

Discussion

In her instant motion filed on January 21, 2025, Llusha seeks a total of \$63,467.14 in attorney fees for work performed in connection with Llusha's anti-SLAPP, and defense of Maddox's anti-SLAPP. As to Llusha's anti-SLAPP, the Court partially granted her anti-SLAPP motion on January 19, 2022 and a Notice of Entry of Order was filed on January 31, 2022. As to Maddox's anti-SLAPP motion, the Court denied the motion as untimely on April 29, 2022 and on June 29, 2022 the Court entered its Order after Hearing. Given the instant motion seeks fees related to orders filed in 2022, the instant motion is untimely as it is far beyond 180 days after entry. Therefore, the Court denies Plaintiff's motion for attorney fees.

MOTION TO STRIKE OR TAX COSTS

Maddox is the prevailing party, but he is awarded no costs

A "prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code of Civ. Proc., § 1032, subd. (b).) The statute provides that "unless the context clearly requires otherwise," the term "[p]revailing party" includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034." (Code of Civ. Proc., § 1032, subd. (a)(4).) In other words, where a party does not fall into one of the four express categories set forth in (C.C.P., § 1032(a)(4), the court is not required to award costs to the party "as a matter of right" and may exercise its discretion to award or deny costs. (*Lincoln v. Schurgin* (1995) 39 Cal.App.4th 100, 105.)

The losing party may dispute any or all of the items in the prevailing party's costs memorandum by a motion to strike or tax costs. (See Cal. Rules of Court, rule 3.1700(b).) Technically, a motion to strike challenges the entire costs bill (e.g., on the ground the claimant is not the "prevailing party"), whereas a motion to tax challenges particular items or amounts. But the terms are often used interchangeably and there is no difference in the procedural rules. (See Cal. Rules of Court, rule 3.1700(b)(2).)

The parties dispute who is the prevailing party for purposes of costs. Llusha argues she is the prevailing party as she received a net monetary recovery. Maddox argues he is the prevailing party by virtue of his award of an easement during the first trial. The Court agrees with Maddox.

By obtaining an easement, Maddox "recover[ed] other than monetary relief and in situations other than as specified," meaning the second sentence of Code of Civil Procedure section 1032, subdivision (a)(4), applies. "This portion of the statute does not require the trial court to award costs to the prevailing party 'as a matter of right.'" (*Texas Commerce Bank v. Garamendi* (1994) 28 Cal.App.4th 1234, 1249, quoting Code Civ. Proc., § 1032, subd. (b).) Rather, "[i]f a party recovers anything other than monetary relief ... , a trial court shall determine the prevailing party and use its discretion to determine the amount and allocation of costs, if any." (*Goodman v.*

Lozano (2010) 47 Cal.4th 1327, 1333.) “In other words, Code of Civil Procedure section 1032, subdivision (a)(4)’s second ‘prong ... calls for the trial court to exercise its discretion *both* in determining the prevailing party *and* in allowing, denying, or apportioning costs.” (*Lafayette Bollinger Development LLC v. Town of Moraga* (2023) 93 Cal.App.5th 752, 786 [internal citations omitted].) Achievement of a practical result sought in an action, which is a “substantive determination on the merits” of the case, is sufficient to allow determination of an award of costs to the successful party. (*Friends of Spring Street v. Nevada City* (2019) 33 Cal.App.5th 1092, 1104-1106,

By prevailing on his claim for an easement, Maddox achieved his main litigation objective, which was to complete construction of the retaining wall utilizing the I-beams already in place and complete his project to replace his failing septic system. Llusha’s award of damages of \$1,414.80 alone is not sufficient to determine her to be the prevailing party in light of Maddox’s result during the equitable phase of trial. However, under the circumstances of this case, even though Maddox is the prevailing party, the Court will exercise its discretion not to allow him costs. The burden of the equitable easement imposed on Llusha is costly enough for her without the addition of court costs. (*Hinrichs v. Melton* (2017) 11 Cal. App. 5th 516, 528–529.) As such, the Court exercises its discretion and determines that Maddox is the prevailing party since “the action yielded the primary relief sought.” (*Friends of Spring Street v. Nevada, supra*, 33 Cal.App.5th at p. 1104; Code of Civ. Proc., § 1032, subd. (a)(4).) However, the Court further exercises its discretion to award Maddox no costs.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2025 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1>

Meeting ID: 161 516 2449

Passcode: 073961

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court’s website: <https://www.marin.courts.ca.gov>

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/18/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2104266

PRESIDING: HON. ANDREW SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: MAKTAB TARIGHAT
OVEYSSI SHAHMAGHSOUDI

vs.

DEFENDANT: NAPA VALLEY
MEMORIAL PARK, ET AL

NATURE OF PROCEEDINGS: MOTION – SANCTIONS AGAINST DEFENDANTS AND
THEIR ATTORNEY OF RECORD

RULING

Plaintiff's motion for sanctions under Code of Civil Procedure Section 128.5 and/or 128.7 is denied. Defendants' request for sanctions is also denied.

Procedural Background

Plaintiffs Maktab Tarighat Oveyssi Shahmaghsoudi ("MTO") and Nader Angha ("Nader") filed their Complaint against Napa Valley Memorial Park, International Association of Sufism ("IAS"), Ali Kianfar ("Kianfar") and Nahid Angha ("Nahid") on December 23, 2021. Plaintiffs alleged that MTO is the corporate embodiment of a hierarchical religious and religious educational order that teaches and practices Sufism, and Nader (the "Religious Leader") is the religious leader of MTO. (Complaint, ¶¶1, 2.) The Religious Leader is the son of MTO's Former Leader, Sadegh Angha (the "Former Leader"). In 1980, the Former Leader's remains were transferred to San Rafael at Valley Memorial. (*Id.*, ¶11.) However, unbeknownst to the Religious Leader, in 2000, Defendants Kianfar, Nahid (the Religious Leader's sister) and IAS made a secret arrangement with Valley Memorial and moved the Former Leader's remains to Napa Valley. (*Id.*, ¶¶13, 19.) A court ordered Napa Valley to disinter the remains of the Former Leader from its cemetery and to inter the remains at Valley Memorial. (*Id.*, ¶16.) Napa Valley disinterred a bluish casket which was then transferred to Valley Memorial. (*Id.*, ¶17.) IAS constructed a mausoleum at Napa Valley and, at some point, IAS, Kianfar and Nahid ordered a black granite headstone to be placed at a gravesite there containing the Former Leader's name. (*Id.*, ¶21.) On November 10, 2022, the Court entered an Order dismissing Napa Valley Memorial Park and substituting Welcome Home Universal Church, dba Napa Valley Memorial Park ("Napa Valley") as Doe 1 and Skyview Memorial Lawn ("Skyview") as Doe 2.

At some point in 2024, Plaintiffs arranged with Valley Memorial to exhume, disinter and open a casket that was represented to be that of the Former Leader, and to take remains for DNA testing. At an issue conference on May 13 and 14, 2024, the parties discussed the DNA testing and its effect on which theory Plaintiffs intended to pursue at trial, as their Complaint alleged two alternative, mutually exclusive theories (i.e., (i) the remains are at Valley Memorial, or (ii) the remains were never actually transferred and are still at Napa Valley).

On August 20, 2024, Plaintiffs dismissed Nader as a party in this action, leaving MTO as the only plaintiff.

On October 16, 2024, MTO filed a First Amended Complaint focusing on the theory that Defendants are improperly representing that the Former Leader is buried at Napa Valley when the remains are actually at Valley Memorial. The First Amended Complaint asserts causes of action for fraud, conspiracy to defraud, intentional misrepresentation, breach of contract against Napa Valley, aiding and abetting, breach of the implied covenant of good faith and fair dealing, unfair competition, and tort of another.

Standard

Code of Civil Procedure Section 128.5 provides in part:

(a) A trial court may order a party, the party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.

(b) For purposes of this section:

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.

(2) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party

(Code Civ. Proc. § 128.5.) Code of Civil Procedure Section 128.7 provides in part:

(a) Every pleading, petition, written notice of motion, or other similar paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when

otherwise provided by law, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation

Request for Judicial Notice

Defendants' request for judicial notice of documents filed in Case Nos. CV000738, CV034969, and A106204 is granted. (Evid. Code §§ 452, 453.)

Discussion

MTO moves for \$45,375 in sanctions against Defendants IAS, Nahid, Kianfar and counsel John Dahlberg and Sa'id Vakili, jointly and severally, pursuant to Code of Civil Procedure Sections 128.5 and 128.7. MTO argues that after Defendants subpoenaed and obtained records from Valley Memorial, on August 23, 2024, Mr. Vakili sent a litigation hold letter to MTO's counsel

Elizabeth Zareh stating that he represents Nahid and demanding that Ms. Zareh preserve and retain records relating to, among other things, the 2024 disinterment and DNA testing. (Declaration of Elizabeth Zareh (“Zareh Decl.”), Exh. A.)¹ The letter was also sent to Nader, Nader’s counsel Craig Miller, and MTO’s CFO Alireza Mottaghi. (Zareh Decl., ¶5.) Shortly after the letters were sent, Mr. Dahlberg sent an email to Ms. Zareh stating that his clients now had significant claims against Nader, Ms. Zareh, MTO and Mr. Mottaghi arising from the 2024 disinterment and DNA testing that they would pursue in a separate action, and proposing that the parties attend mediation to achieve a global settlement of all claims. (Zareh Decl., Exh. G.) MTO argues that the conduct of Defendants and their counsel violates California Rules of Professional Conduct 3.1, 3.10 and 5-100, and the litigation hold letters were issued in bad faith because the conduct of Ms. Zareh relating to the 2024 disinterment and DNA testing occurred during this litigation and is therefore shielded by the litigation privilege under Civil Code Section 47. MTO further argues that Defendants and their counsel Mr. Dahlberg are aware of a 2003 order designating Nader as the sole person to make burial decisions for the Former Leader. (See Zareh Decl., Exh. K.)

Defendants argue that the litigation letter was sent because they need MTO and its counsel to preserve evidence regarding the 2024 disinterment, which they intend to use in a future lawsuit. Defendants argue that this court has previously ruled in two cases (Nos. CV000738 and CV034969) that Nader was not entitled to disinter or test the Former Leader’s remains and that a court order was required authorizing the disinterment in 2024, which MTO or the cemetery did not obtain. They argue that Ms. Zareh convinced the Marin cemetery to allow the disinterment based on language the court had previously found did not give MTO the right to do so, and without advising the cemetery that Nader had a sister (Nahid) who objected to any disinterment. Nahid retained Mr. Vakili in connection with her claims against MTO, who then sent out the litigation hold letter. Defendants argue that the disinterment is not protected by the litigation privilege because it is conduct only and not a communicative act. (See *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1058.)

The Court denies MTO’s motion for sanctions under Section 128.7 because the litigation hold letters are not a “pleading, petition, written notice of motion, or other similar paper” presented to the court by Defendants. Sanctions are also not warranted under Section 128.5. Litigation hold letters are commonly used by attorneys as a means to preserve evidence for anticipated litigation. The letters here state that they were sent for that purpose. They did not seek discovery, as MTO claims, but rather requested that Ms. Zareh preserve evidence in the event Nahid proceeds with asserting affirmative claims against MTO or others based on the 2024 disinterment. Whether Nahid or the other defendants have valid claims against MTO in relation to the 2024 disinterment, or whether any conduct is protected by the litigation or other privilege, is not currently before the Court. The issue before the Court is whether sanctions are appropriate under Section 128.5, which requires actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay. There is no showing of bad faith, frivolous conduct, or conduct intended to cause delay here. There is, at most, a dispute between the parties as to whether Nahid can assert valid claims against MTO related to the 2024 disinterment and DNA testing. The Court also notes that MTO fails to show that the large sum of attorney’s fees it

¹ Mr. Vakili has not previously appeared in this case but has filed a separate opposition on behalf of Nahid and himself.

seeks was incurred “as a result of” the litigation hold letters. (See Code Civ. Proc. § 128.5.) MTO’s motion for sanctions is therefore denied. Defendants’ request for sanctions is also denied.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2025 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7FhrI3Q7qPFgFZa.1>

Meeting ID: 161 516 2449

Passcode: 073961

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/18/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2301666

PRESIDING: HON. ANDREW SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: PUNI ELSTON

vs.

DEFENDANT: FAIRFIELD WYNDOVER
L.P., ET AL

NATURE OF PROCEEDINGS: MOTION – ANSWERS TO INTERROGATORIES;
DISCOVERY FACILITATOR PROGRAM

RULING

This matter was referred to the discovery facilitator program, pursuant to Local Rule 2.13B. The court has not received a notice of non-resolution. Thus the court expects the matter has been or will be resolved through facilitation.

Accordingly, the motion is ordered off calendar. Should the parties fail to reach resolution through the facilitator, either party may request (by *ex parte* application) that the court re-set the motion for an expedited hearing.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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Meeting ID: 161 516 2449

Passcode: 073961

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/18/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0000974

PRESIDING: HON. ANDREW SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: GERALDINE RANDALL

vs.

DEFENDANT: VILLA MARIN
HOMEOWNERS ASSOCIATION, A NON-
PROFIT MUTUAL BENEFIT
CORPORATION

NATURE OF PROCEEDINGS: MOTION – RELIEVE COUNSEL

RULING

The motion to be relieved as counsel for plaintiff Geraldine Randall (“Plaintiff”) by attorney Douglas N. Akay (“Counsel”) is granted. (Code Civ. Proc., § 284, subd. (2); Cal. Rules of Court, rule 3.1362.)

DISCUSSION

Where, as here, a client fails to consent to the attorney’s withdrawal from the case, the attorney can file a motion to withdraw pursuant to Code of Civil Procedure section 284, subdivision (2).¹ (Code Civ. Proc., § 284, subd. (2); Cal. Rules of Court, rule 3.1362.) The attorney may request a withdrawal for a number of reasons, as set forth under the Rules of Professional Conduct. (Rules Prof. Conduct, rule 1.16 [formerly rule 3-700(C)].)

An attorney moving to be relieved as counsel under Code of Civil Procedure section 284 subdivision (2) must meet the requirements set out in California Rules of Court, rule 3.1362. To comply with rule 3.1362, the moving party must submit the following forms: (1) Notice of Motion and Motion to be Relieved as Counsel (form MC-05 1); (2) Declaration in Support of Attorney's Motion to be Relieved as Counsel (form MC-052); and (3) Order Granting Attorney's Motion to be Relieved as Counsel (form MC-053). (Cal. Rules of Court, rule 3.1362(a), (c), (e).) The moving party must serve the aforementioned forms on the client and all other parties who have appeared in the case. (Cal. Rules of Court, rule 3.1362(d).) Further, when the client is

¹ Plaintiff indicates that she terminated Mr. Akay’s representation on March 18, 2025, “for all purposes other than collection of his attorney’s fees and costs to which [she is] entitled by law or contract.” (Declaration of Geraldine Randall, ¶ 4, filed April 8, 2025.)

served by mail, the attorney's declaration must show that the client's address was confirmed within the last 30 days and how it was confirmed. (*Ibid.*)

Here, Counsel submits all of the mandatory forms. Counsel provides proof of service of the instant papers.

The attorney in an action may be relieved at any time before or after judgment or final determination either upon consent of both client and attorney, or upon order of the court. (Code Civ. Proc., § 284.) A motion to be relieved as counsel under Code Civ. Proc, section 284, subd. (2) must comply with the requirements set forth in Cal. Rules of Court, rule 3.1362. Specifically, the accompanying declaration “must state in general terms and without compromising the confidentiality of the attorney client relationship why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil Procedure section 284(1).” (Cal. Rules of Court, rule 3.1362(c).)

Under California Rules of Professional Conduct, 1.16, subdivision (b), “. . . a lawyer may withdraw from representing a client if: . . . (4) The client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation effectively. . . .”

The determination of whether to grant a motion to withdraw as counsel lies in the sound discretion of the trial court. (See *Manfredi & Levine v. Super. Ct.* (1998) 66 Cal.App.4th 1128, 1133; see also *People v. Brown* (1988) 203 Cal.App.3d 1335, 1340.) Even if all of the requirements are met, “the court has discretion to deny an attorney's request to withdraw where such withdrawal would work an injustice or cause undue delay in the proceeding.” (*Mandell v. Superior Court* (1977) 67 Cal.App.3d 1, 4.)

Plaintiff argues Counsel should continue to provide at least limited representation so she can collect his attorney fees to which she is entitled. Counsel, however, asserts several valid reasons for withdrawal, e.g., there has been a breakdown in the attorney-client relationship between Counsel and Plaintiff, such that Counsel cannot carry out the representation effectively, client breached a material term of an agreement with the lawyer relating to the representation, and continuation of the representation will likely result in violation of the Rules of Professional Conduct, *inter alia*. (Rules Prof. Conduct, rule 1.16(b)(4), (5) & (9).) Counsel provides the required forms under rule 3.1362 of the California Rules of Court and has served the client and the opposing parties with the same.

There being good cause to grant Counsel's request to withdraw, Douglas N. Akay's Motion to Be Relieved as Counsel is GRANTED.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2025 is as follows:

<https://marin-courts-ca->

[gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1](https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1)

Meeting ID: 161 516 2449

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/18/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0002572

PRESIDING: HON. ANDREW SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: AARON WHEELER, III

vs.

DEFENDANT: JRM CONSTRUCTION
WEST, LLC, ET AL

NATURE OF PROCEEDINGS: MOTION – COMPEL; DISCOVERY FACILITATOR
PROGRAM

RULING

Defendant JRM Construction West, LLC's Motion to Compel Further Form Interrogatories Responses, and for Sanctions is denied.

On March 21, 2025, the court ruled on this motion and imposed sanctions. It appears Defendant's effort here is to seek more sanctions. The court finds that Plaintiff acted with substantial justification as to any additional issues raised in this motion.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/18/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0003367

PRESIDING: HON. ANDREW SWEET

REPORTER:

CLERK: G. STRATFORD

PLAINTIFF: TIRUPATHI
HOSPITALITY LLC

vs.

DEFENDANT: MARIN COUNTY
EXCHANGE CORPORATION

NATURE OF PROCEEDINGS: MOTION – AMEND

RULING

Plaintiff Tirupathi Hospitality LLC's ("Plaintiff") Motion is GRANTED. The stay is lifted for the sole purpose of allowing Plaintiff to file the proposed amended complaint attached as Exhibit C to the Koss Declaration. Immediately upon such filing, the stay shall resume on the same terms as the Court's prior October 30, 2024 Order. Accordingly, the deadline on defendants' time to respond to the amended complaint (including deadline to file any answer, demurrer or other responsive pleading) shall not begin to run "until either party successfully moves to lift the stay or the stay is lifted by mutual agreement and stipulation and/or the matter is transferred to the Probate Department and consolidated with Case No. PRO2200268." (See 10/30/25 Order.) Once any of these come to pass, defendants will have the entire amount of the statutorily set time to respond.

ALLEGATIONS IN COMPLAINT

Plaintiff engaged defendant Marin County Exchange Corporation (MCEC), to effectuate a 1031 exchange and placed \$1,500,000 in trust with MCEC on or around December 2023. MCEC employee David M. Hellman embezzled funds from MCEC for years prior to his death in 2022, through use of his attorney client trust account with the Law Office of David Hellman. On information and belief, MCEC failed to review its trust accounting records, and so did not notice Mr. Hellman's embezzlement until it no longer was accepting new clients and its trust account balance dwindled to the point that it was unable to use funds for its final clients. Plaintiff was one of those final clients of MCEC, and was notified by MCEC on May 2, 2024 that MCEC was unable to fund the 1031 exchange replacement property purchase as it did not have funds in its accounts sufficient to cover the purchase. Plaintiff, in order to proceed with the property exchange, was forced to come up with an additional \$1,500,000 to purchase the new property as part of the 1031 exchange process. In addition to the lost \$1,500,000, Plaintiff was required to

obtain a loan to cover the lost trust funds. Plaintiff alleges the amount of carrying costs on that loan exceeds even the amount of the initial theft.

On July 10, 2024 Plaintiff filed the complaint in this action. Thereafter the parties stipulated to stay the matter “including all filings and discovery matters other than third party discovery, until either party successfully moves to lift the stay or the stay is lifted by mutual agreement and stipulation and/or the matter is transferred to the Probate Department and consolidated with Case No. PRO2200268.” The Court entered an Order for the stipulated stay on October 30, 2024.

Plaintiff now seeks to temporarily lift the stay in order to file a first amended complaint.

LEGAL STANDARD

Under Code of Civil Procedure section 473, subdivision (a)(1), the Court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding. As judicial policy favors resolution of all disputed matters in the same lawsuit, courts liberally permit amendments of the pleadings. (*Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939.) Denial is rarely justified unless opposing parties demonstrate unreasonable delay plus prejudice if the motion is granted. A mere showing of unreasonable delay by the plaintiff without any showing of resulting prejudice to defendants is an insufficient ground to justify denial of the plaintiff's motion. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564-565.) Prejudice exists where the amendment would require delaying the trial, resulting loss of critical evidence or added costs of preparation, and an increased burden of discovery, inter alia. (*Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488.)

Generally, arguments attacking the merits of the proposed amendments do not justify denial of the motion. Courts allow the amendment and then let the parties test the legal sufficiency in other appropriate proceedings such as a demurrer. (See *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048, and *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 760.)

A party requesting leave to amend must also comply with California Rules of Court, rule 3.1324. Compliance with the Rules of Court is satisfied by including a copy of the proposed amended pleading, detailing what changes will be made from the previous pleading by stating what allegations are to be deleted or added as compared to the previous pleading including page, paragraph and line number, and attaching a declaration by plaintiff's counsel, as to: (1) the effect of the amendment; (2) why the amendment is necessary and proper; (3) when the facts giving rise to the amended allegations were discovered; and (4) why the request was not made earlier.

DISCUSSION

Plaintiff asserts that the facts giving rise to the amendment were discovered during third party discovery in this matter. Namely, that such discovery now indicates the identity of several individuals who received the stolen funds from Mr. Hellman, Sr., including David Hellman, Jr., Kia Hellman, Shana Hellman, Candace Hellman, and Cate Asher. According to Plaintiff, each of these individuals received multiple checks a month from Mr. Hellman, Sr., all together totaling millions of dollars.

Per Plaintiff, the proposed amendment adds no new claims or allegations against MCEC, the only existing defendant. Rather, the proposed amendment adds Alaisha Hellman, Nadya Mogilev, David Hellman, Jr., Kia Hellman, Shana Hellman, Candace Hellman, and Cate Asher and causes of action directed at those seven individuals. These parties need to be added now, Plaintiff contends, despite the stay, due to issues related to the statutes of limitations.

Plaintiff concludes that the interests of justice and judicial economy all point towards allowing the proposed amendment, particularly since there is no trial date, only preliminary third-party discovery has taken place (and only that third party discovery will continue to take place given the stay), and because there is no anticipated delay as a result of allowing the amendment.

In Opposition, MCEC argues that the basis for the stay still exists (preserving the limited E&O insurance monies) and that the proposed amended complaint fails to state claims for which relief may be granted against the newly named defendants.

The Court finds that Plaintiff has complied with the relevant statutes and Rules of Court in making the motion. It appears to the Court that relief from stay in order to permit Plaintiff to file the proposed amended complaint is warranted. Nor do MCEC's arguments in opposition persuade the Court. First, allowing Plaintiff to file the proposed amended pleading should not significantly reduce the available E&O monies, especially since the stay will remain in place in all other respects and MCEC will not need to answer or respond in any way. Second, attacks on the merits of the proposed amendments are more properly addressed at the demurrer or summary judgment stage. Finally, MCEC's contention that Plaintiff has named an individual plus their alter ego, can also be dealt with as the litigation proceeds. It is unnecessary for the Court to determine the truth of that assertion at this time. Finally, MCEC does not demonstrate any delay on Plaintiff's part in bringing the motion or prejudice to itself if the motion is granted.

For these reasons, the Court GRANTS the motion to lift the stay and leave to file the proposed amended complaint.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2025 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7FhrI3Q7qPFgFZa.1>

Meeting ID: 161 516 2449

Passcode: 073961

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>