SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 3
Honorable William J. Monahan, Presiding
Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 9/24/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (9/23/2024) you must notify the:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling.
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court prefers in-person appearances or by Teams. If you must appear virtually, please use video.

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept., and line number.

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV420875	CAPITAL ONE, N.A. vs KIMBERLEY HANARAY	Motion: Judgment on Pleadings by Plaintiff CAPITAL ONE, N.A Unopposed and GRANTED. Moving party to submit order for signature by court.
LINE 2	23CV422506	Richard Goulart vs San Felipe Ranch et al	Hearing: Demurrer to Plaintiff's Second Amended Complaint by Defendant State of California Unopposed and SUSTAINED WITH 10 DAYS LEAVE TO AMEND. [Note: Plaintiff attempted to file a third amended complaint which was rejected on 9/10/2024 by the clerk's office as a noticed motion is required to file such a pleading.] Moving Party to submit order for signature by the court.

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LINE 3	24CV442415	Bank of America, N.A. vs Anna Meraz	Motion: Judgment on Pleadings by Plaintiff Bank of America, N.A. Unopposed and GRANTED. Moving party to submit order for signature by court.
LINE 4	22CV402913	STEPHEN HANLEIGH vs DAVID BRUMLEY et al	Motion: Quash or Modify Subpoenas Served by Defendants/Cross-Complaints David Brumley and Natalie Brumley and Request for Monetary Sanctions by Plaintiff/Cross Defendant STEPHEN HANLEIGH Ctrl Click (or scroll down) on Line 4 for tentative ruling. The court will prepare the order.
LINE 5	24CV429513	Valarie Phillips vs Chloe Young et al	Motion: Quash Subpoena by Plaintiff Valarie Phillips Plaintiff Valarie Phillips, in pro per ("Plaintiff")'s motion to quash subpoena and for monetary sanctions is DENIED WITHOUT PREJUDICE. Although Plaintiff's moving papers refer to Exhibit 1, there is no copy of the subpoena attached. The court is unable to address the merits of Plaintiff's argument without a copy of the subpoena. (Please also include the subpoena's proof of service, if any.) The declaration by Plaintiff is not under penalty of perjury under the laws of the state of California. (See Code Civ Proc. § 2015.5*; Kulshresta v. First Union Commercial Corp*. (2004) 33 Cal.4th 601.) The moving papers failed to include a separate statement, or the information required by California Rules of Court rule 3.1345. Self-represented litigants are entitled to the same, but no greater, consideration than other litigants and attorneys. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) Self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; see also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985 ["A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation."].) The court will prepare the order.

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DATE: 9/24/2024 TIME: 9:00 A.M.

LINE 6	20CV368141	Karla Penados vs Girish Vaitheeswaren	Hearing: Motion Granting Leave of Court to Obtain Additional Medical Exams by Defendant Girish Vaitheeswaren ("Defendant") OFF CALENDAR [Defendant filed notice of withdrawal on 9/18/2024.]
LINE 7	22CV400965	JOHN DOE vs FOUR POINTS BY SHERATON SAN JOSE DOWNTOWN et al	Motion: Motion to Withdraw as Attorney by Daniel Moossai, for Plaintiff JOHN DOE DENIED WITHOUT PREJUDICE. Moving attorney failed to fill out item 3b on page 1 of the declaration in support of attorney's motion to be relieved as counsel. The court will prepare the order.
LINE 8	23CV421270	Performance First Building Services, Inc. vs FPI Management, Inc. et al	Hearing: Pro Hac Vice Counsel by Alexander M. Hangstrom for Defendant/Cross Complainant COMMUNITY HOUSING DEVELOPERS, INC Unopposed and GRANTED. Moving party to submit order for signature by court.
LINE 9	24CV430700	Metropolis Systems LLC vs Cryptic Labs LLC	Motion: Set Aside Default by Defendant Cryptic Labs LLC [**reset to 9/24/2024 per courtroom**] Ctrl Click (or scroll down on Line 9 for tentative ruling. The court will prepare the order.
LINE 10			
LINE 11			
LINE 12			

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Calendar Line 1

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Calendar Line 3

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Calendar line 4
Case Name: STEPHEN HANLEIGH vs DAVID BRUMLEY et al
Case No.: 22CV402913

Plaintiff/cross-defendant Stephen J. Hanleigh ("Hanleigh" or "Moving Party")'s motion for an order to quash defendants/cross-complainants David Brumley ("David") and Natalie Brumley ("Natalie") (collectively "the Brumleys")' deposition subpoenas for production of business records from Safeco Insurance Company of America ("Safco") and Hartford Insurance Company of Midwest ("Hartford") (collectively the "Insurance Subpoenas") is GRANTED.

The Moving Party's request for monetary sanctions under CCP section 1987.2(a) in the reasonable amount of (7.5 hours at $210 per hour) for a total of $1,575 against the Brumleys is GRANTED. The Brumleys shall pay that amount to Hanleigh within 15 days of this order.

The Moving Party's request for monetary sanctions against the Brumleys' counsel is DENIED. The Moving Party failed to specify in their notice of motion or moving papers the names of the attorney or attorneys that they sought monetary sanctions against.

Introduction and Background

This is a landlord/tenant dispute. Hanleigh was the owner of real property located at 1172 Husted Avenue in San Jose (the "Subject Property"). The Brumleys were tenants at the Subject Property. The residential lease between the parties as executed on or about July 12, 2021. (See First Amended Complaint, ¶ 6.) Hanleigh alleges, among other things that he permitted the Brumleys to keep a dog at the property for a short time but did not disclose the dog was a pit bull mix. Hanleigh also alleges that the Brumleys kept two other dogs at the property without permission; an ongoing dispute with the Brumleys and property damage at the property ensued. The Brumleys cross-complained against Hanleigh and alleged that: Hanleigh harassed them; the unit was unsafe and uninhabitable; and Hanleigh refused to make needed repairs. The Brumley's cross-complaint alleges they were tenants at that property from approximately July 2021 to April 2022, when they were constructively evicted. (Cross-Complaint ¶ 6.)

On May 7, 2024, the Brumleys issued subpoenas for the production of business records to Hanleigh's insurance carriers (Safeco and Hartford), which were disclosed in Hanleigh's responses to Form Interrogatory 4.1. (Declaration of Tanner London (London Decl.) ¶ 2.)

Between May 24, 2024, and June 19, 2024, counsel for Hanleigh and the Brumleys met and conferred regarding the subpoenas. On or about May 24, 2024, Hanleigh's counsel, Dalbir Chopra, met and conferred with the Brumleys' counsel, Michael L. Smith, regarding the original subpoenas. Ms. Chopra took the position that the subpoenas were overbroad as to time and sought irrelevant, private information. The Brumleys' counsel agreed to request a hold on the original subpoenas while new language could be considered. (London Decl. ¶ 3.)

On or about June 12, 2024, the Brumleys' counsel, Tanner London, sent Ms. Chopra an email with the new language proposed for the Safeco and Hartford subpoenas. The revised subpoena language contained document requests with specific categories and a 10-year time limitation for the information sought. (London Decl. ¶ 4 & Ex. A.)

On or around June 19, 2024, the Brumleys' counsel withdrew the original subpoenas and issued the subject subpoenas ("subject subpoenas") with the revised records requests. That same day, Brumleys' counsel received correspondence from Ms. Chopra's office objecting to each and every one of the revised document requests in the subject subpoenas. (London Decl. ¶¶ 5-6.)

The Brumleys' counsel requested a hold on the subject subpoenas while the parties met and conferred regarding the subject subpoenas. Ms. Chopra indicated that the document requests would potentially expose Hanleigh's private information or privileged communications. As a solution, Brumleys' counsel offered to provide her office a "first look" at each and every document and redact anything deemed private or privileged. Ms. Chopra said that she would take this concession into consideration and follow up later. At some point thereafter, Ms. Chopra informed the Brumleys' counsel that the "first look" offer was an inadequate concession and that Hanleigh still intended to file motions to quash the subject subpoenas. (London Decl. ¶¶ 7-9.)

Code of Civil Procedure ("CCP") section 1987.1(a) states:

> If a subpoena requires the attendance of a witness or the production of books, documents, electronically stored information, or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by any person described in subdivision (b), or upon the court's own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person.

CCP section 1985.3(g) provides, in part:

> Any consumer whose personal records are sought by a subpoena duces tecum and who is a party to the civil action in which this subpoena duces tecum is served may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and deposition officer at least five days prior to production. The failure to provide notice to the deposition officer shall not invalidate the motion to quash or modify the subpoena duces tecum but may be raised by the deposition officer as an affirmative defense in any action for liability for improper release of records.

Separate Statement

California Rules of Court ("CRC"), rule 3.1345(a), states in part:

> **Separate Statement required** Except as provided in (b), any motion involving the content of a discovery request or the responses to such a request must be accompanied by a separate statement. The motions that require a separate statement include a motion: … **[¶]** (5) To compel or to quash the production of documents or tangible things at a deposition … ."

(Emphasis in CRC rule 3.1345(a).)

The court overlooks the requirement of the Separate Statement because the Opposition did not object on this ground, and Hanleigh made the same objection to the Modified Subpoenas. Accordingly, pursuant to CRC rule 3.1345(b)(2) the court has exercised its discretion to consider the Moving Party's motion to quash on its merits and to treat the moving, opposition, and reply papers and their supporting declarations as "a concise outline of the discovery request and each response in dispute" in place of a separate statement.

For future motions to quash however, please note the normal requirements of a Separate Statement and include the text of the objections and other material required by CRC rule 3.145(c) in it because it makes it much easier and faster for the court to review.

Motion to Quash

In civil discovery, the burden lies with the party objecting to the disclosure of discoverable information to show why it should not be disclosed. (See *Williams v. Superior Court* (2017) 3 Cal.5th 531, 541 ["the burden of justifying any objection and failure to respond remains at all times with the party resisting an interrogatory"].) Discovery statutes are construed broadly in favor of disclosure. *(Puerto v. Superior Court* (2008) 158 Cal.App.4th 1242, 1249.) Additionally, the party asserting the existence of a privilege as a reason not to provide otherwise discoverable information bears the burden of demonstrating that privilege applies. (See *Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 596.)

Following a motion to quash a subpoena duces tecum, the Court examines the issues raised, determines the relevancy of the documents sought, and determines whether the request for documents constitutes an unlawful invasion of privacy. (*Southern Pac. Co. v. Superior Court* (1940) 15 Cal.2d 206, 209.) The Court may then issue an order quashing the subpoena entirely, modifying it, or directing compliance on specified terms or conditions, or may make "any other order as may be appropriate" to protect from unreasonable or oppressive demands. (CCP § 1987.1(a).)

The Modified Subpoenas

On June 12, 2024, counsel for the Brumleys proposed modified language as follows:

1. Any and all documents (including communications and correspondence) related to property damage claims made by Stephen Hanleigh for the property located at 1172 Husted Ave., San Jose, CA 95125 in the past ten years.
2. Any and all documents (including communications and correspondence) related to insurance claims made by Stephen Hanleigh for damage caused by tenants or renters at the property located at 1172 Husted Ave., San Jose, CA 95125 in the past ten years.
3. Any and all documents (including communications and correspondence) related to insurance claims made by tenants or renters against Stephen Hanleigh for any home covered by the policy in the past ten years.

4. Any and all documents (including communications and correspondence) related to legal claims made by tenants or renters against Stephen Hanleigh for any home covered by the policy in the past ten years.
5. Any and all documents (including communications and correspondence) related to Natalie Brumley in the past ten years.
6. Any and all documents (including communications and correspondence) related to David Brumley in the past ten years. (Chopra Decl., ¶ 6; Exhibit F).

On June 19, 2024, counsel for Mr. Hanleigh sent another meet and confer letter to counsel for Cross-Complainants informing of their disagreement with the modified language and their intent to quash the Subpoenas consisting of the modified language, if served. (Chopra Decl., ¶ 7; Exhibit G.)

On June 19, 2024, the Brumleys served subpoenas with the above previously proposed modified language to both Safeco and Harford (hereinafter, "Modified Subpoenas") with a response date of July 18, 2024. (Chopra Decl., ¶ 8; Exhibits H and I.)

On July 9, 2024, counsel for Hanleigh served Objections to Modified Subpoenas on all parties and the Subpoena Services to prevent the release of the responsive documents. (Chopra Decl., ¶ 10; Exhibit K.)

On July 11, 2024, the Brumleys' counsel informed the counsel for Hanleigh that they will not withdraw the Modified Subpoenas. (Chopra Decl., ¶ 11; Exhibit L.)

Thereafter, this motion to quash was filed. The court has reviewed the moving papers, the opposition papers, and the reply papers.

Hanleigh's motion to quash categories Nos. 1-6 is SUSTAINED.

Hanleigh's First Amended Complaint alleges that the lease between the parties was executed on or about July 12, 2021, and the Cross Complaint alleges that they were tenants at that property from approximately July 2021 to April 2022, when they were constructively evicted. (Cross-Complaint ¶ 6.) Yet, all six categories in the Modified Subpoenas seek "any and all" documents "for the past ten years." This is clearly overbroad. Furthermore, Categories Nos. 1 and 2 are *not* limited to similar claims and Categories 3 and 4 are *not* even limited to the Subject Property or similar claims. Because the ten-year period requested is so overbroad, the subpoena seeks documents that are irrelevant to the subject matter and violates the Constitutional rights to personal and financial privacy, and the Insurance Code section 791.13, regardless of Plaintiff's offer of a "first look" to Hanleigh's counsel protect the attorney client and attorney work product doctrine.

Insurance Code section 791.13 provides, in part, that an insurance institution shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is with the written authorization of the individual or in response to a facially valid administrative or judicial order, including a search warrant or subpoena. (Ins. Code, § 791.13(a), (h); see also *Mead Reinsurance Co. v. Superior Court* (1986) 188 Cal.App.3d 313, 321 ("*Mead*") [discovery of insurance claim files may be conditioned on obtaining the written consent of the persons to whom the files relate].)

As the court noted in *Mead,* "[w]e observe with interest, if not incredulity, that mead, in its petition here has raised no objection to the order on grounds there was no showing of relevancy by City in the trial court." (Id., 188 Cal.App.3d at 319.) The court could not reach the issue because it had not been raised. (Id.) However, the court went on to summarize one of its recent decisions involving a request to produce accident reports for accidents at the same location as the plaintiff in that case. (*Id.*) The court explained that in *Nelson*, it found a plaintiff had made no showing "that any of the other accidents were even remotely the same factually as plaintiff's." (*Id*. at 320 [citing *Nelson v. Superior Court* (1986) 184 Cal. App. 3d 444, 452-53 ("*Nelson"*)].) In the absence of "a showing the other accidents were or might have been even remotely similar in nature to his own, plaintiff failed to show his request was reasonably calculated to discover admissible evidence." (*Id.*) Even under California's broad relevancy inquiry, some showing of similarity was still required. (*Nelson*, 184 Cal. App. 3d at 452-53.) Given the lack of similarity, the *Nelson* court characterized the plaintiff's purpose as a "fishing expedition." (*Id.* at 453.)

As to Categories Nos. 1 and 2, Hanleigh has disclosed some information related to the Brumleys' claim pertaining to the subject property in discovery (See Chopra Decl. ¶15; Exhibit P). Although, the Brumleys have argued in their Opposition that prior tenants who experienced habitability problems with the property would also potentially be percipient witnesses to the existence or non-existence of defective condition (Opposition to Motion to Quash ("Oppo") Page 4, Lines5-7), it is worth noting here that, through written discovery, Hanleigh has already disclosed to the Brumleys the contact information of such prior tenants, and the Brumleys can contact and interview them informally, or formally, depose these "percipient witnesses". It is evident that the Brumleys are on a fishing expedition through these overbroad (ten-year period) subpoenas to obtain irrelevant information and documents that are clearly protected by Insurance Code and the Right to Privacy pursuant to California Constitution.

As to Categories Nos. 3 and 4, the Brumleys have failed to argue in their Opposition as to how the information sought through these specific categories related to Haneligh's insurance records for the last ten years providing coverage to Haneligh's several other properties, which are not remotely related to the Brumleys' allegations regarding their tenancy on the Subject Property, is relevant to their claim. As argued in the moving papers, the Brumleys' subpoenas seeking insurance claims and legal claims information pertaining to all of Hanleigh's rental properties during the last ten years are clearly overbroad, oppressive, irrelevant and should be quashed.

As to Categories Nos. 5 and 6, the Brumleys are seeking information pertaining to both of them in the past ten years is again overbroad because the Brumleys signed a lease with Hanleigh in July, 2021, for 18 months and the Cross Complaint alleges that they were tenants at that property from approximately July 2021 to April 2022, when they were constructively evicted. (Cross-Complaint ¶ 6.) Nowhere, in their Opposition, have Cross-Complainants provided any basis for seeking information from prior to signing the lease in July 2021. The ten-year language of these modified subpoenas is in itself an indication of the Brumleys' motive to harass Hanleigh.

Furthermore, it is evident from the Brumley's argument in their Opposition that the Brumleys have failed to exhaust other non-intrusive or non-oppressive discovery methods to

obtain the same information that they are seeking through these Modified Subpoenas. Hanleigh can be deposed. The Bumleys have been provided with the contact information of alleged percipient witnesses, including the prior tenants on the subject property, and can readily interview and/or depose them. These subpoenas are an attempt at an overbroad unlawful intrusion of privacy and the possible disclosure of protected and irrelevant financial information of both Hanleigh and third parties. Because the Opposition has failed to justify the Brumleys' need for ten years of Hanleigh's insurance records or explained why the Brumleys have not first tried less-intrusive means of obtaining the information they claim they are seeking, Hanleigh's motion should be granted in its entirety and these subpoenas should be quashed and Hanleigh should be awarded monetary sanctions for the cost incurred in bringing this motion.

As argued in the moving papers, the right of privacy in California is a constitutional right. (Cal. Const. Art. 1, sec. 1.) The legislature extended the right to privacy to an insured's files with the Insurance Information and Privacy Protection Act (Insurance Code section 791.01, et seq.).

Here, the Modified Subpoenas are directed to insurance companies, Safeco and Hartford, that provided coverage to Hanleigh and seek documents in their files. The subpoenas seek personal and privileged information about Hanleigh and third-party tenants during a 10-year period, and potentially regarding tenants and properties that are not related to the Subject Property or tenancy period at issue here. Neither Hanleigh nor the third-party tenants have consented to the disclosure of such insurance claims and legal claims requested in the modified subpoenas. The request for a ten-year period of insurance records was overbroad and there was no showing that any of the other claims was even remotely the same factually as the Brumleys. Thus, under the Insurance Code, disclosure of the records sought by the subpoenas are barred. (See *Mead, supra*, 188 Cal.App.3d 313, 321.) The insurance claims files are clearly protected by the Insurance Information and Privacy Protection Act and Hanleigh's and third parties' privacy rights.

Because the Modified Subpoenas seek discovery of Hanlegh's (and third parties') personal and privileged insurance information for a ten-year period, the court was required to balance the Brumley's interest in disclosure against the Hanleigh's (and third parties') protected privacy interests and reasonable expectation of privacy. (See *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557.) After doing so, this court concludes that the overbroad Modified Subpoenas threatened a serious intrusion into Hanleigh's (and third parties') privacy interests, and that the Brumleys failed to raise a legitimate and countervailing interest in the disclosure of Hanleigh's insurance records for a ten-year period.

Monetary Sanctions

CCP section 1987.2(a) states:

> Except as specified in subdivision (c), in making an order pursuant to motion made under subdivision (c) of Section 1987 or under Section 1987.1, the court may in its discretion award the amount of the reasonable expenses incurred in making or opposing the motion, including reasonable attorney's fees, if the court finds the motion was made or opposed in bad faith or without substantial justification or that one or more of the requirements of the subpoena was oppressive.

The court finds that this motion to quash was opposed by the Brumleys without substantial justification or that one or more of the requirements of the Modified Subpoenas was oppressive.

The Moving Party's request for monetary sanctions under CCP section 1987.2(a) in the reasonable amount of (7.5 hours at $210 per hour) for a total of $1,575 against the Brumles is GRANTED. The Brumles shall pay that amount to Hanleigh within 15 days of this order.

The Moving Party's request for monetary sanctions against the Brumleys' counsel is DENIED. The Moving Party failed to specify in their notice of motion or moving papers the names of the attorney or attorneys that they sought monetary sanctions against.

Conclusion

Hanleigh's motion to quash the Insurance Subpoenas to Safco and Hartford is GRANTED.

Hanleigh's request for monetary sanctions under CCP section 1987.2(a) in the reasonable amount of (7.5 hours at $210 per hour) for a total of $1,575 against the Brumleys is GRANTED. The Brumleys shall pay that amount to Hanleigh within 15 days of this order.

Hanleigh's request for monetary sanctions against the Brumleys' counsel is DENIED.

The court will prepare the order.

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Calendar line 9
Case Name: Metropolis Systems LLC vs Cryptic Labs LLC, et al.
Case No. 24CV430700

Defendant Cryptic Labs LLC ("Defendant" or "Cryptic Labs")'s motion for order setting aside the default entered against it in this matter on the grounds of inadvertence, surprise, or mistake under Code of Civil Procedure ("CCP") section 473(b) is GRANTED. The application for relief was timely made "within a reasonable time" and "within six months" after entry of default. (CCP § 473(b).) There is no prejudice to Plaintiff. Plaintiff's counsel was willing to stipulate setting aside the default, but not to re-service of the summons and complaint. The default of Defendant filed and entered 4/17/2024 is set aside**.** Defendant has 10 days leave to respond to the complaint.

CCP section 473(b) states in part:

> The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.

As the court of appeal explained in *Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 695:

> 'A motion seeking such relief lies within the sound discretion of the trial court, and the trial court's decision will not be overturned absent an abuse of discretion. [Citations.] However, the trial court's discretion is not unlimited and must be " 'exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.' " [Citations.] [¶] Section 473 is often applied liberally where the party in default moves promptly to seek relief, and the party opposing the motion will not suffer prejudice if relief is granted. [Citations.] In such situations "very slight evidence will be required to justify a court in setting aside the default." [Citations.] [¶] Moreover, because the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default [citations].

(*Fasuyi, supra,*167 Cal.App.4th at p.695.)

The Opposition MPA at page 9 noted the requirement in CCP section 473(b) that the application for this relief "shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted…" and that Defendant failed to accompany its application for this relief with a copy of the answer or other pleading proposed to be filed therein, but Plaintiff's counsel was willing to stipulate setting aside the default, but not to re-service of the summons and complaint. Accordingly, the court finds that requirement that Defendant's application be "accompanied by the answer or other

pleading proposed to be filed therein" in CCP section 473(b) was waived given the outcome of this motion.

CCP section 473.5 states:

> (a) When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered.
>
> (b) A notice of motion to set aside a default or default judgment and for leave to defend the action shall designate as the time for making the motion a date prescribed by subdivision (b) of Section 1005, and it shall be accompanied by an affidavit showing under oath that the party's lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect. The party shall serve and file with the notice a copy of the answer, motion, or other pleading proposed to be filed in the action.
>
> (c) Upon a finding by the court that the motion was made within the period permitted by subdivision (a) and that his or her lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action.

CCP section 473.5 "is designed to provide relief where there has been *proper* service of the summons…but the defendant nevertheless did not find out about the action in time to defend." (Weil & Brown, Cal. Practice Guide: Civil Proc. Before Trial (The Rutter Group 2024) ¶ 5:420, p. 5-123.) Section 473.5 permits the court to vacate a default when service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him. (CCP § 473.5(a).) The phrase actual notice means genuine knowledge and does not include constructive or imputed notice to the client. (*Tunis v. Barrow* (1986) 184 Cal.App.3d 1069, 1077.) "A defendant seeking vacation of a default judgment entered against him must further show that his lack of actual notice in time to defend the action was not caused by his inexcusable neglect or avoidance of service." (*Id.* at 1077-1078, citing CCP § 473.5(c).)

Moreover, it is well established that the court is "not required to accept [a] self-serving evidence contradicting the process server's declaration." (*Rodriguez v. Nam Min Cho* (2015) 236 Cal.App.4th 742, 751.)

Finally, a motion under Section 473.5 must include "the notice a copy of the answer, motion, or other pleading proposed to be filed in the action." (CCP § 473.5(b).)

Defendant's motion for relief from the default under CCP section 475.5 is DENIED. Defendant failed to show that its lack of actual notice in time to defend the action was *not* caused by its avoidance of service or inexcusable neglect. (CCP § 473.5(c); *Tunis v Barrow* (1986) 184 Cal.App.3d 1069, 1077-78.) A conclusory declaration does not satisfy this burden. (See *Rios v Singh* (2021) 65 Cal.App.5th 871, 885; see also *Cruz v Fagor America, Inc*. (2007) 146 Cal.App.4th 488, 509.)

Here, Exhibit A filed 2/27/2024 to Yinchao Wang ("Wang")'s declaration shows that the "Principal Address" for Cryptic Labs was 530 Lytton Ave, 2nd Floor, Palo Alto, CA 94301 (the "Palo Alto Address").

The proof of service by a registered California process server (filed 2/28/2024) shows a true copy of the summons and complaint were delivered to Cryptic Labs by leaving copies with "'John Doe', Front Desk Receptionist" at the Palo Alto Address and that copies of the Summons and Complaint were mailed the same day (**2/28/2024**) to Cryptic Labs at the Palo Alto Adress.

Wang's declaration admits "I am *the manager* and agent for service of process for defendant in this matter." (Dec. Wang, ¶ 1 [emphasis added.].) By admitting being "the manager" of Cryptic Labs means that Wang may be served at the "principal address" for Cryptic Labs which was the Palo Alto Adress where he was served. CCP section 416.40 permits service on "a … head of the association… [or] a general manager" at an LLC's principal place of business in accordance with CCP section 415.20(a). It could also serve him at his manager or member address or agent for service of process address of 998 East Duane Avenue, Sunnyvale, CA 94085 (the "Sunnyvale Address"). In any event, Plaintiff has re-served the summons and complaint on Cryptic Labs using a registered process server by leaving a copy for Wang, its agent for service of process, with "'JOHN DOE', AUTHORIZED TO ACCEPT" at the Sunnyvale Adress and mailing a copy of the summons and complaint to the Sunnyvale Address on 7/25/2024. (See Decl. Alfredo W. Amoedo filed 9/11/2024, Ex. 10.)

Wang's declaration claims that "the first time that I was aware of the instant lawsuit" was on **May 6, 2024**, when he received at his residential Sunnyvale Adress USPS mail forwarded from the Palo Alto address [of Cryptic Labs]. (*Id.*, ¶3.) However, the proof of service from the registered process server filed 2/28/2024 states that the summons and complaint was "left with or in the presence of 'John Doe', Front Desk/Receptionist" at the Palo Alto Address for Cryptic Labs and mailed to the Palo Alto Address for Cryptic Labs on **2/28/2024.** In addition, Plaintiff's request to enter default filed 4/17/2024 was mailed on **4/17/2024** to the Palo Alto Address for Cryptic Labs. Wang's declaration does *not* state who forwarded the mail or even what USPS mail was forwarded to his Sunnyvale Address. Wang's declaration also does *not* state what happened to all the documents that were left at or mailed to the Palo Alto Address for Cryptic Labs.

Defendant's request for reservice of summons and complaint

Defendant's request at page 6 of its opposition papers that the court order Plaintiff to re-serve the Defendant with the summons and complaint is DENIED. Defendant's motion did *not* state that it was a motion to quash service nor cite any statutory authority for any motion to quash service of the summons and complaint. In any event, Plaintiff has re-served the summons and complaint on Cryptic Labs using a registered process server by leaving a copy for Wang, its

agent for service of process, with "'JOHN DOE', AUTHORIZED TO ACCEPT" at the Sunnyvale Adress and mailing a copy of the summons and complaint to the Sunnyvale Address on 7/25/2024. (See Decl. Alfredo W. Amoedo filed 9/11/2024, Ex. 10.)

Conclusion

Defendant's motion for relief from the default under CCP section 475.5(c) is DENIED.

Defendant's request at page 6 of its opposition papers that the court order Plaintiff to re-serve the Defendant with the summons and complaint is DENIED.

Defendant's motion for order setting aside the default entered against it in this matter on the grounds of inadvertence, surprise, or mistake under CCP section 473(b) is GRANTED. The default of Defendant filed and entered 4/17/2024 is set aside. Defendant has 10 days leave to respond to the complaint.

The court will prepare the order.

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