**SUPERIOR COURT, STATE OF CALIFORNIA**
**COUNTY OF SANTA CLARA**

**Department 10**
**Honorable Frederick S. Chung**

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

**DATE: April 18, 2024 TIME: 9:00 A.M.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The courthouse is open:** Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

**Scheduling motion hearings**: Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

**CourtCall is no longer available**: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

**Recording is prohibited**: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

**Court reporters**: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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| LINE # | CASE # | CASE TITLE | RULING |
|---|---|---|---|
| LINE 1 | 20CV374827 | Jeanette Philippidis et al. v. Good Samaritan Hospital, L.P. et al. | Motion for summary judgment by defendant Dwight Chen: in light of the 11th-hour dismissal of the moving party, this matter is now OFF CALENDAR. |
| LINE 2 | 20CV374827 | Jeanette Philippidis et al. v. Good Samaritan Hospital, L.P. et al. | Motion to seal: the court GRANTS the unopposed motion, finding that the redactions to the plaintiff's medical records are targeted and that an overriding interest exists to overcome the right of public access to the redacted information. The court also finds that the overriding interest supports maintaining the redacted medical records under seal; a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; the proposed sealing is narrowly tailored; and no less restrictive means exist to achieve the overriding interest. |
| LINE 3 | 22CV401668 | Steinberg Hart v. Z&L Properties, Inc. | Click on LINE 3 or scroll down for ruling. |
| LINE 4 | 2002-7-CV-423048 | First Select, Inc. v. Christina M. Hodge | Claim of exemption: the court agrees with the judgment creditor that the earnings at issue are not exempt, and so the claim must be DENIED. In addition, the court finds that judgment debtor Hodge's proposed amount to be withheld of $30/month is unreasonable, given that she claims she is making installment payments to other lenders in the amount of $554/month. First Select's judgment takes priority over these other lenders. The court observes that a withholding of earnings in the neighborhood of $300/month would be more reasonable. |

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| | | | |
|---|---|---|---|
| LINE 5 | 18CV326162 | The Santana Row-Deforest Building Residential Condominium Owners Association v. Claude Wilkes | Motion to be relieved as counsel: the motion was filed without a hearing date, and there is no amended notice of hearing in the file. Parties to appear to address the apparent notice defect. |
| LINE 6 | 22CV408721 | Bret Meek et al. v. Doe 1 et al. | Click on LINE 6 or scroll down for ruling. |
| LINE 7 | 23CV420866 | Robert White v. Crawford Communications Group | Click on LINE 7 or scroll down for ruling. |
| LINE 8 | 23CV425777 | Janet M. Story et al. v. Ford Motor Company et al. | OFF CALENDAR |
| LINE 9 | 24CV429020 | Feribah Nawid v. Elham Rahimy et al. | Motion for change of venue from Santa Clara County to San Joaquin County: notice is apparently proper as to the parties who have appeared in the case so far (although the court notes that the defendants in Santa Clara County have not yet been served with the summons and complaint), and the motion is unopposed. Good cause appearing, the court GRANTS the motion to transfer venue under Code of Civil Procedure section 394. The moving party will submit the proposed order for the court's signature. |

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**Calendar Line 3**
**Case Name:** *Steinberg Hart v. Z&L Properties, Inc.*
**Case No.:** 22CV401668

This is a motion to compel further responses to requests for production of documents (Code Civ. Proc., § 2031.310), as well as a motion to compel compliance with those requests for production (Code Civ. Proc., § 2031.320), brought by plaintiff Steinberg Hart (a California corporation) against defendant Z&L Properties ("Z&L," also a California corporation). For the reasons that follow, the motion is GRANTED IN PART and DENIED IN PART.

First, Steinberg Hart seeks further responses to Requests for Production Nos. 24, 25, and 26 from its second set of document requests, under section 2031.310. Z&L's responses consisted solely of objections, without any statement of compliance. But Z&L argues in its opposition that these requests are duplicative of Requests for Production Nos. 4, 5, and 6, which were presumably contained in Steinberg Hart's first set of document requests (neither side has submitted a copy of this first set for the court's review), and as to which the 45-day deadline to file a motion to compel further responses had expired by the time this motion was filed. In its reply brief, Steinberg Hart fails to address this argument, and so the court assumes it to be true. Steinberg Hart apparently missed an earlier deadline to move to compel further responses to Requests Nos. 4-6, and it cannot perform an end-run around the 45-day rule by propounding the same discovery requests as Requests Nos. 24-26. (See *Professional Career Colleges, Magna Institute, Inc. v. Superior Court*, 207 Cal. App. 3d 490, 494.) Therefore, the motion to compel further responses to Requests Nos. 24-26 is DENIED.

Second, Steinberg Hart moves to compel compliance with Requests for Production Nos. 21-23 and 27-40, as to which Z&L included the following statement of compliance: "Subject to, and without waiver of, the above stated objections, following a diligent search for available documents, *Responding Party responds with documents produced concurrently herewith*." (Emphasis added.) Putting aside the fact that this statement does not fully comply with the language of Code of Civil Procedure section 2031.220,[1] the more critical practical issue is that Z&L did not produce any documents "concurrently herewith." According to Steinberg Hart, Z&L still has not produced any documents to date.

In response, Z&L's sole basis for opposing the motion is that Steinberg Hart's supporting separate statement does not include a statement of reasons for compelling further responses. (Opposition at p. 2:17-20.) In making this argument, Z&L betrays a fundamental lack of understanding of the discovery rules. A separate statement is required when the motion seeks further responses to the document requests (under *section 2031.310*)—*i.e.*, that is when a statement of reasons for compelling further responses becomes necessary. By contrast, when the motion is to compel compliance with document requests under *section 2031.320*, a separate statement is *not* required—it is purely optional. Therefore, the sufficiency of Steinberg Hart's separate statement here is not a basis for denying the motion to compel compliance.

[1] Section 2031.220 requires, in relevant part, that the responding party "state that the production . . . will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production."

Because Z&L stated that it would produce documents in response to Requests Nos. 21-23 and 27-40 "concurrently herewith" and failed to do so, the court GRANTS Steinberg Hart's motion as to these requests and orders Z&L to produce its responsive documents **within 30 days** of notice of entry of this order.

Finally, Steinberg Hart has requested monetary sanctions against Z&L. Although the court understands that Z&L underwent a transition of counsel during the time that it was supposed to be producing documents, that still does not fully excuse it from complying with its discovery obligations and failing to respond with *any* documents over the past six months. The court finds that Z&L did not act with substantial justification in opposing the greater part of this motion. The court GRANTS Steinberg Hart's request for sanctions IN PART and orders Z&L to pay **$1,180.00** (four hours at $295/hour) to Steinberg Hart within 30 days of notice of entry of this order.[2] The court emphasizes that the purpose of monetary discovery sanctions is compensatory, not punitive.

IT IS SO ORDERED.

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[2] This sanctions order applies only to Z&L and not to counsel.

**Calendar Line 6**
**Case Name:** *Bret Meek et al. v. Doe 1 et al.*
**Case No.:** 22CV408721

**1. Background**

In this case, plaintiffs Bret Meek and Scott Rodvold ("Plaintiffs") allege that they were sexually assaulted (in multiple separate incidents) by a librarian at Bernal Intermediate School during the 1974-1975 school year, when they were in the eighth grade. Defendant Doe 1, a school district (hereinafter, the "District"), filed a demurrer to Plaintiffs' complaint, which was heard by this court on January 23, 2024. The primary basis for the District's demurrer was the claim that Assembly Bill 218 ("AB 218"), which amended the limitations period for bringing a childhood sexual assault claim under Code of Civil Procedure section 340.1, was unconstitutional under Article XVI, § 6 of the California Constitution, also known as the "Gift Clause." The court ultimately rejected this claim and overruled the demurrer. (See January 23, 2024 Order.)[3] Two days later, on January 25, 2024, the District filed the present motion to stay this case.

For the reasons that follow, the court denies the motion to stay.

**2. The Parties' Positions**

The stay motion is based on an appeal of another trial court's decision in another appellate district: a ruling from the Contra Costa County Superior Court that is now before the First District Court of Appeal. Because that appeal presents the same issue that was rejected here—the purported unconstitutionality of AB 218 under the Gift Clause—the District argues that resolution of this question "may make further proceedings in this and hundreds of other AB 218 cases unnecessary." (Memorandum, p. 4:1-2.) Thus, the District argues that a stay will promote judicial economy by obviating "a needless expenditure of substantial funds by all involved and a waste of judicial resources" and also avoid the risk of inconsistent rulings between the numerous trial courts that currently have childhood sexual abuse cases. (*Id.* at p. 3:10-11.)[4]

Plaintiffs respond that the District cannot show the likelihood of success on the pending appeal(s), that there is no realistic possibility of conflicting rulings between this case and other childhood sexual abuse cases, that the District would not be irreparably harmed if this case were allowed to proceed, and that the Plaintiffs themselves will be prejudiced by an indefinite stay of this case. They also note that the District is the party who bears the burden of showing the propriety of a stay, and that it has not satisfied this burden.

[3] The court did sustain the demurrer with leave to amend as to the second cause of action, as asserted by Meek (but not Rodvold), based on Evidence Code section 44808. Under Evidence Code section 452, subdivision (d), the court takes judicial notice of this order on its own motion.
[4] Since the filing of this motion, another trial court decision from Santa Barbara County has been appealed to the Second District Court of Appeal with the same issue. (Reply, p. 3:7-11.)

### 3. The Relevant Legal Standard

A court ordinarily has the inherent power and discretion "'to stay proceedings when such a stay will accommodate the ends of justice.'" (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141 (*OTO*) [quoting *People v. Bell* (1984) 159 Cal.App.3d 323, 329].) The "'power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel and for litigants.'" (*OTO*, 8 Cal.5th at p. 141 [quoting *Landis v. North American Co.* (1936) 299 U.S. 248, 254]; see also *Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489 [trial courts generally have the inherent power to stay proceedings in the interest of justice and to promote judicial efficiency]; *Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367, 1376-79; Code Civ. Proc., §§ 128(a)(3) ["Every court shall have the power to do all of the following: To provide for the orderly conduct of proceedings before it, or its officers."] and (a)(5) ["Every court shall have the power to do all of the following: To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto."].

Here, both sides advance the factors set forth in the U.S. Supreme Court's decision in *Nken v. Holder* (2009) 556 U.S. 418, 434 (*Nken*) to guide the court's decision, and the court agrees with the parties that this decision provides a useful framework for evaluating the stay request. As that case points out, "The fact that the issuance of a stay is left to the court's discretion 'does not mean that no legal standard governs that discretion . . . . "[A] motion to [a court's discretion is a motion, not to its inclination, but to its judgment; and its judgment is guided by sound legal principles"'" (*Ibid.* [quoting *Martin v. Franklin Capital Corp.* (2005) 546 U.S. 132, 139 and *United States v. Burr* (CC Va. 1807) 25 F. Cas. 30, 35] [brackets in original].) "As noted earlier, those legal principles have been distilled into consideration of four factors: '(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.'" (*Nken*, 556 U.S. at p. 434 [quoting *Hilton v. Braunskill* (1987) 481 U.S. 770, 776].)

### 4. Discussion

Applying the foregoing four factors, the court finds that a stay is not warranted.

First, the court agrees with Plaintiffs that the District has not "made a strong showing that [it] is likely to succeed on the merits." As the court indicated in its order overruling (in part) the District's demurrer, the constitutionality of AB 218 is not a close question, because AB 218 is not an "appropriation of money," it plainly did not create a new tort liability that never existed before, and it clearly serves a public purpose. (See January 23, 2024 Order, pp. 10-13.) At the January 23, 2024 hearing, the court also found unpersuasive the District's argument that because the government claim presentation requirement is supposedly "substantive" in nature, AB 218's exemption of sexual assault claims from this requirement constituted the creation of a "new" tort liability that did not exist before.[5] The parties have also

[5] This argument was based on a misapplication of *Shirk v. Vista Unified School District* (2007) 42 Cal.4th 201 (*Shirk*), which described claim presentation requirement as "substantive" in its effort to divine the California Legislature's intent as to whether sexual assault claims were exempt from those requirements. The Legislature

submitted copies of numerous other trial court decisions that have addressed this issue, requesting that the court take judicial notice of these decisions. The District emphasizes that two judges (one in Contra Costa County and one in Los Angeles County) have found that AB 218 is unconstitutional, while Plaintiffs emphasize that at least 22 decisions from courts around the state have gone the opposite way.[6] Under Evidence Code section 452, subdivision (d), the court takes judicial notice of the existence of these other orders, but not of the correctness of their rulings or the truth of any factual findings. (See *Sosinsky v. Gran*t (1992) 6 Cal.App.4th 1548, 1565; *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1749; *Kilroy v. State of Calif*. (2004) 119 Cal.App.4th 140, 145-148; *Barri v. Workers' Comp. Appeals Bd*. (2018) 28 Cal.App.5th 428, 437-438.) There is no "horizontal stare decisis" (*In re Marriage of Shaban* (2001) 88 Cal.App.4th 398, 409). The court ultimately relies on its own analysis of the merits to evaluate the likelihood of success for the District, and the court finds it to be very low.

Second, the District has not shown that it would be irreparably injured without a stay. The District argues that the expense of litigating this case—and the attorney's fees incurred—may ultimately be "needless" if the Court of Appeal ultimately agrees with the District's interpretation of the Gift Clause. While this may well be true in the unlikely event that AB 218 is found to be unconstitutional, the court finds that incurring litigation costs is not an "irreparable" injury, as these are expenses that are incurred in every case. To find that these customary and expected costs of litigation are the basis for finding "irreparable" harm would mean that this second factor is *always met in every case* where a stay is requested. That is not a reasonable application of *Nken*, and the court finds that the District has failed to satisfy its burden of showing this second factor.

Third, Plaintiffs argue that they have a "pressing need for a speedy resolution of their claims and for discovery to prove those claims before memories fade any further, and relevant documents and data are lost." (Opposition, p. 9:10-17.) They note that "[f]urther delaying proceedings, as District requests, would exclusively benefit District and diminish Plaintiffs' ability to prove their case." (*Id.* at p. 9:19-20.) In reply, the District claims that the appellate proceedings in the First and Second Districts "should have a resolution on this issue within the next six months," and so there would be "only a short delay in pursuing their claims, which is a relatively benign outcome." (Reply, p. 2:24-25 & p. 2:12-13.) The court notes that this latter fact cuts both ways on the stay analysis: on the one hand, a speedy resolution and shorter stay would diminish the prejudice to Plaintiffs under this factor, but on the other hand, a shorter stay would also diminish any alleged (non-irreparable) harm to the District from allowing the case to proceed under the second factor above. In the end, the court generally agrees that a stay would be detrimental to the Plaintiffs' interests here, given the age of their allegations. It would not necessarily be catastrophic, but it would be substantial, and it satisfies the third factor regarding a "substantial" injury.

Fourth, the court finds that public interest considerations support both sides, but that the considerations are weightier for the Plaintiffs. Plaintiffs argue that a stay "would

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overruled *Shirk*'s (mis)reading of its intent the following year, with the enactment of Government Code section 905, subdivision (m). (*Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 914 [observing that the Legislature "overruled" *Shirk*].) It was further overruled by AB 218, which made the exemption retroactive by adding section 905, subdivision (p).

[6] In addition to these 22 decisions from other courts, the undersigned has issued written decisions in three cases upholding the constitutionality of AB 218, including this case.

unquestionably contravene the public purpose served by AB 218," which is to "hold[] those responsible for childhood sexual abuse accountable." (Opposition, p. 10:22-27.) In addition, a stay would be contrary to the more general, fundamental policy of the courts of providing prompt justice for litigants. (See Gov. Code, § 68607 ["[J]udges shall have the responsibility to eliminate delay in the progress and ultimate resolution of litigation, to assume and maintain control over the pace of litigation, to actively manage the processing of litigation from commencement to disposition, and to compel attorneys and litigants to prepare and resolve all litigation without delay. . . ."].) The District argues in reply that "a stay of this and other AB 218 cases has the potential to save taxpayers millions of dollars." (Reply, p. 4:12-13.) Although the District could theoretically be correct that a simultaneous stay here and in hundreds of other childhood sexual abuse cases around the state could save taxpayers a significant amount of money, this court has no control over those hundreds of other cases. Moreover, the Legislature has already determined with the enactment of AB 218 that there is a tangible public interest in seeing childhood sexual abuse victims obtain prompt justice. For purposes of analyzing this fourth factor and whether it supports a stay, the court concludes that the Legislature's express determination of a specific public interest outweighs the broader and more general public interest in saving taxpayer funds.

In short, the court finds that all four of the *Nken* factors weigh against staying the present case.

**5. Conclusion**

The motion is DENIED.

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**Calendar Line 7**
**Case Name:** *Robert White v. Crawford Communications Group*
**Case No.:** 23CV420866

In this case against defendant Crawford Communications Group ("CCG"), plaintiff Robert White moves for leave to file a second amended complaint to add a new defendant—Judith Crawford, the founder and CEO of CCG—and new causes of action for breach of fiduciary duty and fraudulent concealment against Crawford, as well as a few other smaller amendments. Because this case is still in its early stages, because there is no indication that White was dilatory in bringing this proposed amendment, and because defendant CCG fails to show any prejudice arising from the amendment, the court grants the motion.

White's motion describes learning of relevant facts—*i.e.*, Crawford's early conversion of a promissory note into shares in CCG—only after this litigation was commenced. According to White, this gives rise to breach of fiduciary duty and fraud claims against Crawford, in the event that this conversion was legally effective. In response, CCG's only argument is that "there is no legal analysis supporting Plaintiff's assertion that Judy Crawford's decision to exercise her option to convert her note is tortious." (Opposition at p. 2:8-14.) In making this argument, CCG is apparently under the misimpression that a motion for leave to amend a complaint must contain "legal analysis" to establish the merits of the new causes of action. On the contrary: "'Leave to amend should be denied only where the facts are not in dispute, and the nature of the plaintiff's claim is clear, but under substantive law, no liability exists and no amendment would change the result.'" (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428 [quoting *Edwards v. Superior Court* (2001) 93 Cal.App.4th 172, 180].) In this case, CCG offers only the conclusory allegation that the new causes of action fail to state a claim against Crawford, without showing that such an amendment would substantively be futile.

Just as critically, CCG fails to show any prejudice that would arise from allowing the second amended complaint to be filed.

The court therefore GRANTS the motion for leave to amend. Rather than "deeming the proposed SAC filed by virtue of this motion" as White suggests, however (Notice of Motion at p. 1:24), the court orders White to file his proposed second amended complaint as a separate, standalone document within 10 days of this order.

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