

**NOTICE:**

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-7858 (Department 53) by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 3.04.

Judge McMaster discloses that attorneys appearing in cases on today's calendar may have donated to the Committee for Judicial Independence which was formed to oppose the attempted recall of Judge McMaster. A list of donors and amounts donated is under the custody of court executive officer Jody Patel and can be reviewed at room 611, sixth floor, courthouse, 720 Ninth Street.

**Department 53  
Superior Court of California  
800 Ninth Street, 3rd Floor  
LOREN E. MCMASTER, Judge  
T. West, Clerk  
V. Carroll, Bailiff**

**Tuesday, February 06, 2007, 2:00 PM**

Item 1    **01AS07521        BARRY S. JAMESON VS. CALIFORNIA DEPT. OF CORRECTIONS, ET AL**  
Nature of Proceeding: Motion for Lift of Stay of Discovery  
Filed By: Jameson, Barry S.

Dropped. An identical motion was calendared for January 25, 2007 and continued to March 15, 2007.

The clerk shall mail a copy of this minute order to the parties.

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Item 2    **04AS01499        CITY OF SACRAMENTO VS. PATRICIA H. NOBLE**  
Nature of Proceeding: Motion of Receiver J. Benjamin McGrew (plus joinder)  
Filed By: Daniel L. Baxter

The Court has reviewed the supplemental Declaration of Daniel Baxter and now rules as follows:

The Receiver's Motion is granted. The Intervenors and City's Joinders are granted.

The City filed this action against defendant to secure rehabilitation of the health and safety violations on the defendant's mobile home park on West Stockton Boulevard. On May 6, 2004 the Court appointed the Receiver. The Receiver rehabilitated the property and then sold the property to settle the receivership estate. There is an ending cash balance of over \$500,000 after payment of the requested receiver expenses.

The receiver hired an investigator to locate the defendant. Counsel for the Receiver sent all documents concerning this motion to Ms. Noble via express mail on December 27, 2006. The documents were returned marked "attempted, not known." In light of Ms. Noble's overall transiency, the Court approves the Receiver's motion, including the additional receiver fees and attorneys fees incurred since the original

motion was filed. The Receiver is awarded at total of \$59,158.67 for receiver fees and \$58,083.67 for attorneys fees. Out of the remaining sum the receiver shall pay the City \$130,000 and Intervenor \$20,115.39 plus interest from December 6, 2006. The remaining money is to be deposited into Court.

The Receiver shall prepare a formal order to include all of the monetary disbursements set forth above. The proposed formal order shall be sent to the P.O. Box last identified as a current address by the investigator.

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Item 3 **04AS02833 BEA HEIR, ET AL VS. ADVANCED LASER CLINICS OF SACTO, LLC**

Nature of Proceeding: Demurrer

Filed By: Fritsch, John J.

The demurrer to the first cause of action for negligence is overruled. The demurrer to the second cause of action, violation of the UCL, is sustained with leave to amend.

Defendant argues the first cause of action is barred by the statute of limitations.

Plaintiff alleges she was injured on April 9, 2003 when receiving laser hair removal treatment, She returned for treatment of the burns on April 11, 2003. Defendant argues that the statute of limitations began to run either on the date of injury or the date plaintiff returned for treatment. However, plaintiff alleges in paragraph nine that when she returned on April 11 she was told the burning and scarring would heal and she believed these representations. She continued to be treated by defendant, without referral to a physician, until June 3, 2003 when she was referred to a physician.

Plaintiff contends the statute began to run on June 3, 2003. Plaintiff filed a notice of intent to sue on April 14, 2004. According to her calculations this would be within the last 90 days of the limitations period, thus extending it to July 13, 2004. This action was filed on July 13, 2004.

The allegations of the complaint are sufficient to withstand demurrer. What plaintiff knew, what she was told, and what she revealed to Dr. Rice are all evidentiary matters and outside the complaint.

Demurring defendant was added as a DOE in October 2006. Defendant argues that plaintiff was not genuinely ignorant of its identity. The fact that Dr. Garrison's license to practice was displayed on the wall of the clinic does not mean plaintiff knew or should have known the identity of Advanced Laser Clinics of Sacramento, A Medical Corporation as opposed to Advanced Laser Clinics of Sacramento, LLC. What she saw or did not see, what her counsel saw or did not see, are evidentiary matters that cannot be resolved on a demurrer.

Plaintiff's UCL claim is based on the allegations that defendant operated its facilities without the supervision of a physician. She alleges violations of B&P Code section 2000 et seq and 2700 et seq. This is not sufficient. If the UCL claim is based on a violation of a statute, plaintiff must allege which section or sections have been

violated. "Et seq." does not suffice. If there is no statutory requirement that the clinic must be supervised by a physician, then there is no unfair, unlawful, or deceptive practice by defendant.

The demurrer to this cause of action is sustained with leave to amend.

Plaintiff shall file and served an amended complaint by February 16, 2007. Responsive pleadings shall be filed and served 10 days thereafter, 154 days if service is by mail.

This minute order is effective immediately and no formal order is required.

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Item 4    **04AS02833**    **BEA HEIR, ET AL VS. ADVANCED LASER CLINICS OF SACTO, LLC**

Nature of Proceeding: Motion To Strike

Filed By: Fritsch, John J.

Defendant's motion to strike the attorney's fees claim is granted. Prior to passage of Proposition 64 a plaintiff who prevailed on a section 17200 claim could claim attorney's fees under CCP 1021.5. Now, a plaintiff asserting representative rights must comply with the requirements applicable to a class action. Plaintiff is given leave to amend to comply with CCP section 382.

Plaintiff agrees that her claim for punitive damages maybe stricken. The motion is granted without prejudice to plaintiff moving to amend if evidence is later discovered to support this claim.

This minute order is effective immediately and no formal order is required.

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Item 5    **05AS01363**    **MELLANIE KELDERMAN VS. THE OAKS AT ARCADE CREEK, ET AL**

Nature of Proceeding: Motion To Compel Deposition and Inspection of Documents and Things

Filed By: Brown, Gregory H.

Defendants' motion to compel plaintiff to attend her deposition is unopposed and granted.

Plaintiff's deposition has been continued several times at her request. Most recently it was noticed for October 10, 2006 but plaintiff failed to appear.

Plaintiff shall attend her deposition on March 29, 2007.

Plaintiff is sanctioned \$531.40 for her failure to appear at the deposition which necessitated this motion. Sanctions shall be paid by March 6, 2007.

The Court will sign the formal order submitted with the motion.

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Item 6    **05AS02409**    **WILLIAM E. KELLEY VS. COSTCO WHOLESALE CORP., ET AL**

Nature of Proceeding: Summary Judgment

Filed By: Grajski, Mark P.

Defendants Costco Wholesale Corp., Costco Wholesale Membership, Inc. and Robert Panarelli's Motion for Summary Judgment, or in the Alternative for Summary Adjudication of Issues is granted in part and denied in part.

The Court does not rule on Plaintiff's Evidentiary Objections to moving party's separate statements of fact, as they are not evidence.

The Court rules on Defendant's Evidentiary Objections as follows: objections nos. 14, 43, 61-67 and to Exhs.10, 14, 17-19 are sustained; the remainder of the objections are overruled.

The Court finds that the material facts as stated by moving party are essentially undisputed.

Plaintiff William E. Kelly's Complaint alleges five causes of action against defendants: the 1<sup>st</sup> for age discrimination, harassment and retaliation, in violation of FEHA, the 2<sup>nd</sup> for age discrimination, harassment and retaliation, in violation of public policy, the 3<sup>rd</sup> for gender discrimination, harassment and retaliation, in violation of FEHA, the 4<sup>th</sup> for wrongful termination in violation of public policy and the 5<sup>th</sup> for failure to pay wages, including overtime, in violation of public policy, the Labor Code section and C.C.R. Defendants move for summary adjudication of each cause of action.

It is undisputed that Plaintiff was employed at Costco beginning in 1986. (UMF 6.) His employment was always as an entry level manager. (UMF 7-8.) In 1995 he transferred to the Roseville warehouse. He received a performance evaluation reflecting that he met or exceeded all requirements in June 1999. (UMF 9-10.)

Moving party' asserts that after that evaluation, plaintiff experience personal problems, including a divorce and child custody disputes. His personal problems negatively affected his job performance, as reflected in his Feb. 2000 evaluation. He was warned that his conduct and attitude have been unacceptable, and if continued he will no longer be able to maintain his management position. (UMF 12-17.)

In Dec. 2000, plaintiff transferred to the Rancho Cordova warehouse. Moving party asserts that in Jan. 2002, his performance evaluation reflected that he had made little or no progress, and his attitude had not improved. (UMF 21-25.) In June 2002, he got another review, scoring no higher than "meets expectations" in any area, and lower in about half the rating areas.

It is undisputed that after two additional transfers, he was evaluated again in March 2004. He was rated "consistently does not meet expectations" in a number of areas, including personal leadership, interpersonal skills and communication and decision making.

Moving party presents evidence that at his June 2004 follow up performance review, plaintiff was told that he had not improved since his prior evaluation, and was told that he had two months to turn his performance around, or else he would be demoted. (UMF 48-52.)

Panarelli later took him aside and told plaintiff that because he had been around for 20 years, he should have been a Warehouse Manager by now. He needed to step aside and let other people progress in the company. Panarelli asked plaintiff to make his decision by the next day. Plaintiff understood that he was being asked to take a demotion or quit. (UMF 53-54.)

On June 14, 2004, plaintiff wrote a letter of complaint to Dennis Hoover, Costco's Regional Vice President, complaining about how he was treated, based upon his 20 year history with the company. He complained about a "hostile work environment" but made no mention of age, sex or any other protected classification. (UMF 60-61.)

Plaintiff took vacation leave, gave two weeks' notice on July 23, 2004, and remained on vacation through his termination date of Aug. 8, 2004. (UMF 58.) He was 46 years old at the time. (UMF 59.)

Summary adjudication of the 1<sup>st</sup> cause of action for age discrimination, harassment and retaliation, in violation of FEHA, is granted in part and denied in part.

Discrimination, harassment and retaliation are each addressed separately below, pursuant to *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1854- 1855.

#### Harassment

Summary adjudication of the 1<sup>st</sup> cause of action for age harassment in violation of FEHA, is granted.

The elements of environmental age harassment are: (1) plaintiff belongs to a protected group; (2) plaintiff was subject to unwelcome age harassment; (3) the harassment complained of was based on age; (4) the harassment complained of was sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment; and (5) respondeat superior. *Fisher v. San Pedro Peninsula Hosp.* (1989) 214 Cal. App. 3d 590, 608.

Harassment includes, but is not limited to, verbal epithets or derogatory comments, physical interference with freedom of movement, derogatory posters or cartoons, and unwanted sexual advances. Harassment is not conduct of a type necessary for management of the employer's business or performance of the supervisory employee's job. Instead, harassment consists of conduct outside the scope of necessary job performance, conduct presumably engaged in for personal gratification, because of meanness or bigotry, or for other personal motives. *Janken v. GM Hughes Electronics* (1996) 46 Cal. App. 4th 55, 63.

Plaintiff contends that Panarelli "harassed" him by criticizing his job performance. (UMF 56-68.) Plaintiff concedes that it is a normal part of Panarelli's job to evaluate and criticize plaintiff's job performance, to make work assignments and even to demote plaintiff. (UMF 69.)

As, by definition, criticism of job performance is "conduct of a type necessary for management of the employer's business or performance of the supervisory employee's

job” it therefore is not actionable harassment.

Courts have held an employee generally cannot recover for harassment that is occasional, isolated, sporadic, or trivial; rather, the employee must show a concerted pattern of harassment of a repeated, routine, or a generalized nature. *Lyle v. Warner Bros. TV Prods.* (2006) 38 Cal. 4th 264, 283.

Defendants assert that only two comments form the basis of the harassment claim: the first was on April 10, 2004, when plaintiff stated he was going home and Panarelli responded “What’s wrong, you getting old? Can’t keep up any more?” The second comment occurred May 22, 2004, again when plaintiff was leaving for the day and Panarelli responded by calling him a “clock watcher” and stating “You must be getting old because you can’t work long hours.” The two comments in a ten month period is insufficient show a concerted pattern of harassment that creates a hostile work environment.

Nor does Panarelli’s management style of being short tempered and curt with plaintiff and other supervisors, create a hostile work environment. FEHA is not a civility code. *Lyle, supra*, 38 Cal. 4th at 295.

Summary adjudication is granted as to both defendants on harassment.

### Discrimination

Summary adjudication of the 1<sup>st</sup> cause of action for age discrimination, in violation of FEHA, is granted.

To prevail on a cause of action for discrimination, the plaintiff must provide evidence that (1) he was a member of a protected class, (2) he was qualified for the position he sought or was performing competently in the position he held, (3) he suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggests discriminatory motive. *Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 355.

Here, plaintiff met his initial burden, of showing age discrimination. Defendants submit evidence that Costco had legitimate, non-discriminatory reasons (plaintiff’s poor performance on the job) for its conduct, shifting the burden back to plaintiff.

Plaintiff asserts that these reasons are pretextual, based on his conclusion that evaluations of 2 and 3s (“does not consistently meet expectations” and “meets expectations”) is sufficient to show that he is qualified for his position, is not supported by admissible evidence.

Summary adjudication is granted as to both defendants on discrimination.

### Retaliation

Summary adjudication of the 1<sup>st</sup> cause of action for age retaliation, in violation of FEHA, is denied.

To establish a prima facie case of retaliation, the plaintiff must show (1) he or she engaged in a protected activity; (2) the employer subjected the employee to an

adverse employment action; and (3) a causal link between the protected activity and the employer's action. *Akers v. County of San Diego* (2002) 95 Cal. App. 4th 1441, 1453.

Plaintiff asserts that he was retaliated against for his letter of complaint on June 14, 2004, to Dennis Hoover, Costco's Regional Vice President. In that letter, plaintiff complained about how he was treated, based upon his 20 year history with the company. He complained about a "hostile work environment" but made no mention of age, sex or any other protected classification. (UMF 60-61.)

Plaintiff availed himself of company's open door policy, which requires a prompt response to a grievance to the V.P. (PMF 163-165.) Plaintiff received a return call from Hoover, but Hoover stated only that "It was time for Bill Kelley to either step aside or find another career." (PMF 167, 169.) There was no investigation made into his complaints. (PMF 168.)

An employee is not required to use legal terms or buzzwords when opposing discrimination. The court will find opposing activity if the employee's comments, when read in their totality, oppose discrimination. *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal. 4th 1028, 1047.

The Court finds that although plaintiff failed to use the words "age discrimination", the reference to his 20 year history is sufficient to raise an inference that his complaint was understood as one of age discrimination or harassment. The letter of complaint is protected activity. (PMF 176-177.)

The request that plaintiff step aside or find another career constitutes adverse employment action. (PMF 170, 175.)

The court must view the evidence, and all inferences reasonably drawn therefrom in the light most favorable to the opposing party." *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826, 843; Code of Civil Procedure section 437c (c).

There is no evidence that an investigation was conducted as a result of plaintiff's complaint. The inference to be drawn is that plaintiff's complaints were ignored. The Court must further draw an inference that the plaintiff was the victim of retaliation, caused by his protected conduct, and deny the motion as to this issue.

The 2nd cause of action is for age discrimination, harassment and retaliation, in violation of public policy, based upon the same facts, founded upon FEHA, Art I, Sec. 8 of the California Constitution and Civil Code section 51, et seq.

Civil Code section 51, the Unruh Civil Rights Act, has no application to employment discrimination. *Rojo v. Kliger* (1990) 52 Cal. 3d 65, 77. Cal Const, Art. I § 8, prohibits employment discrimination based on "sex, race, creed, color, or national or ethnic origin". It makes no mention of age.

For the reasons set forth above, summary adjudication of the claims for harassment and discrimination are granted.

The claim for tortious discharge in violation of public policy/retaliation is denied as to the entity defendants, to the extent that it is based on FEHA, only.

Panarelli's motion for summary adjudication of all claims is granted, as such claims lie only against the employer. There is no law we know of to support the notion that anyone other than the employer can discharge an employee. *Weinbaum v. Goldfarb, Whitman & Cohen* (1996) 46 Cal. App. 4th 1310, 1315.

Summary adjudication of the 3<sup>rd</sup> cause of action issues for gender discrimination, harassment and retaliation, in violation of FEHA, is granted. Plaintiff asserts that he has dismissed his causes of action for reverse sex harassment/discrimination/retaliation, therefore this motion is moot. (Pltf's Response to Def.'s Sep. Statement, 30:15-18, 22-25, 31:5-8, 13-16, 22-25.)

Summary adjudication of the 4<sup>th</sup> cause of action for wrongful termination in violation of public policy (gender) is granted.

As plaintiff has dismissed his cause of action for reverse sex harassment/discrimination/retaliation, and has presented no evidence that he ever complained of reverse sex discrimination/harassment, there cannot have been any retaliation based on protected conduct. The reference in his letter to Hooper to his 20 year history with Costco is insufficient to raise an inference that his complaint could have been understood as one of gender discrimination or harassment. (PMF 176-177.)

Summary adjudication of the 5<sup>th</sup> cause of action for failure to pay wages, including overtime, in violation of public policy, the Labor Code section and C.C.R., is granted. Plaintiff asserts that he has dismissed this cause of action, therefore this motion is moot. (Pltf's Response to Def.'s Sep. Statement, 32:18-19.)

The motion for summary judgment by defendant Panarelli is granted. The motion for summary adjudication by the Costco entities is denied, as all motions for summary adjudication are not granted

The prevailing party defendants are directed to prepare an order for the Court's signature pursuant to C.C.P. section 437c(g) and C.R.C., Rule 391.

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Item 7    **06AS00481**    **LYON FINANCIAL SERVICES, INC., ET AL VS. ROBERT DO, ET AL**  
Nature of Proceeding: Motion To Compel Further Responses to Discovery  
Filed By: Bryan M. Grundon

**(Continued to this date for oral argument only.)**

Plaintiff's Motion to Compel Further Responses to Special Interrogatories 1, 2, 3, 7, 8, 9, 10, 11, and 12 and Requests for Production Nos. 1, 2, and 3 is granted only as to information relating to the copiers in the four locations at issue. The motion is otherwise denied.

This action is to recover the unpaid balance of five copier lease agreements

entered into between plaintiff and defendant Robert Do. Defendant contends that the person who was authorized to procure the copiers forged the leases. Plaintiff sought information about all copiers leased at all nine of defendant's business locations for the past five years. Plaintiff contends that information about all of the copiers is relevant to flesh out the details of how the copiers were acquired given defendant's contention that the leases were forged. Defendant contends that the only relevant copiers are at the four buildings where the copiers that are the subject of the lease dispute are located. Plaintiff has not articulated how the copiers not at issue in this complaint are relevant or could lead to admissible evidence about the leases at issue in this case.

Sanctions are denied since the court is not granting the motion as to the discovery objected to.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

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Item 8    **06AS00521        JENNIFER WRIGHT VS. RALEY'S BELL AIR MARKETS, ET AL**

Nature of Proceeding: Motion To Compel Further Discovery Responses

Filed By: Van Parys, Joel M.

Defendant's motion to compel plaintiff to provide further responses to discovery is unopposed and granted. Compliance shall be by February 16, 2007.

Sanctions are denied because the motion was not opposed. Although CRC 3.1030 purports to authorize sanctions if a motion is unopposed, the Court declines to do so, as the specific statutes governing this discovery (CCP 2030.290(c), 2031.300 (c)) authorize sanctions only if the motion was unsuccessfully made or opposed. Any order imposing sanctions under the CRC must conform to the conditions of one or more of the statutes authorizing sanctions. *Trans-Action Commercial Investors, Ltd. v Firmater Inc.* (1997) 60 Cal.App.4th 352, 355. However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. See *Laguna Auto Body v. Farmers Insurance Exchange* (1991) 231 Cal. App. 3d 481.

This minute order is effective immediately and no formal order is required.

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Item 9    **06AS00763        LA CURTIS SUMLIN VS ZURICH INSURANCE CO, ET AL**

Nature of Proceeding: Motion To Withdraw Attorney of Record

Filed By: Schultz, Steven H.

The motion to withdraw by counsel for plaintiff is unopposed and granted. The Court will sign the formal order submitted with the moving papers.

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Item 10    **06AS00963        EVALYN T. RASALAN ET AL VS. DANIELLE M. MAILHIOT**

Nature of Proceeding: Demurrer

Filed By: Greenblatt, Hank G.

This matter is continued to 4/16/2007 at 02:00PM in this department.

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Item 11 **06AS01039 MARK GREENUP ET AL VS. LARRY BENNINGER ET AL**

Nature of Proceeding: Demurrer

Filed By: Cordano, Kimberly

The demurrers of defendants Ron & Cleo Greenwood and Cleo Greenwood as Trustee of the Benninger Trust are sustained without leave to amend.

Defendants own improved real property located at 3981 Monarch Way. Plaintiffs allege Benninger uses it as "a base of operations" for harassing plaintiffs. Apparently he resides there. None of the acts of which plaintiffs complain occurred on the property or resulted from Benninger's use of the property. Although plaintiffs allege he does certain things at 3981 Monarch, it is apparent that he is actually engaging in the harrassing conduct on the road and off the property.

The numerous cases cited by plaintiff do not support a cause of action against the property owners, They all involved conduct occurring on the owner's property of which the owner either knew or should have known. The allegation that Benninger uses the property as "a base of operations" is insufficient.

"A landlord's duty derives from his control and ability to prevent dangerous conditions on his property." *Donchin v Guerrero* (1995) 34 Cal.App.4th 1832. Defendants have no duty to control the behavior of Larry Benninger, which is not occurring on their property and does not involve the property.

This is the third attempt by plaintiffs to plead a cause of action against demurring defendants. It is apparent they cannot do so and the demurrer is sustained without leave to amend,

Defendants shall submit a formal order and judgment of dismissal.

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Item 12 **06AS01383 COHEN DURRETT,LLP VS KERRI POPOVICH, ET AL**

Nature of Proceeding: Motion for Sanctions

Filed By: Finch, Gregory M.

Plaintiff's motion for terminating sanctions as to defendant Morales is unopposed and granted.

Defendant did not respond to discovery and did not oppose plaintiff's motion to compel, which was granted on September 29, 2006. A copy of the minute order was mailed to plaintiff on October 2, 2006 and a letter requesting compliance was sent on November 15, 2006. Defendant's willful disobedience of the Court's order justifies sanctions.

The answer is ordered stricken.

Plaintiff may apply for a default and default judgment in the usual manner.

This minute order is effective immediately and no formal order is required.

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Item 13 **06AS04439 TIA XIONG VS. SIA VUE ET AL**

Nature of Proceeding: Demurrer

Filed By: Zeff, Timothy L.

Defendant's demurrer to the complaint for declaratory relief is overruled.

Defendant was married to Thao Xiong. She waived her rights as primary beneficiary to Thao's life insurance as part of a marital settlement agreement. After Thao died she made claims against the policy. Plaintiff, as contingent beneficiary, filed this action for declaratory relief. Meanwhile defendant returned to the Family Law Court and filed a motion to modify the agreement. The motion was granted, relieving her from waiver. Thao's estate has appealed that ruling.

The demurrer is based on CCP 430.10(c), another action pending. However, this action does not involve the same parties who are involved in the Family Law action. Also the issues, although similar, are not the same. The issue before the Family Law Court was waiver. That Court did not determine who has rights to the insurance proceeds, only that defendant had not waived her rights. The outcome of the appeal of the Family Law Court's decision will have some impact on the issues in this case but will not necessarily be dispositive. The competing claims of plaintiff and defendant must be resolved in this action.

In the interests of judicial economy, the Court on its own motion (and as suggested by plaintiff in opposition) will stay this action pending the decision of the appellate court on the appeal of the family law case.

This minute order is effective immediately and no formal order is required.

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Item 14 **06AS04845 BANK OF AMERICA VS. GILBERT A. SAVALA, III, ETAL**

Nature of Proceeding: Writ of Possession Hearing

Filed By:

Appearance required.

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Item 15 **03AM05105 EDUCATION RESOURCES INSTITUTE, INC. VS. SCOTT A HESS,ET AL**

Nature of Proceeding: Motion to set Aside Dismissal And Enter Judgment

Filed By: Counts, Emahn

Plaintiff's motion to set aside the dismissal and enter judgment pursuant to stipulation (CCP 664.6) is unopposed and granted.

Plaintiff shall submit a formal order and judgment.

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Item 16 **06AM03389 CAVALRY PORTFOLIO SERVICES ET AL VS. FRANCISCO LEYVA**

Nature of Proceeding: Claim of Exemption

Filed By: Protsker, Stephen R.

The claim of exemption is denied. \$100.00 per pay period may be withheld. Judgment debtor is paying other creditors \$940.00 per month. Judgment creditor has priority.

This minute order is effective immediately and no formal order is required.

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Item 17 **06AM04509 PLACER CREDITORS BUREAU VS. KAREN RAE DOSSETT, ET AL**

Nature of Proceeding: Claim of Exemption

Filed By: Lee, Warren R.

The claim of exemption is denied. \$100.00 per pay period or \$200.00 per month may be withheld.

Judgment debtor lists medical benefits in the amount of \$660.34 per month as a payroll deduction. She also lists medical payments of \$658.41 as an expense.

This minute order is effective immediately and no formal order is required.

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Item 18 **06AM05859 FOCUS COMMERCIAL, INC. VS. PACIFIC NEON, ETAL**

Nature of Proceeding: Default Hearing

Filed By:

Continued to February 20, 2007 for the clerk to locate the file.

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Item 19 **04CS00725 ROCHELLE OLSON-HARRY VS. ALLSTATE INSURANCE COMPANY**

Nature of Proceeding: Motion to Appoint Arbitrator

Filed By: Sette, Frederick J.

Claimant's motion for appointment of arbitrator is unopposed and granted.

Claimant has not provided a list of arbitrators from which the Court could make an appointment. However she did submit a list in an earlier motion to compel arbitration: Allan Owen, Nick Lowe, John Demas, and Paul Bossenmaier.

The Court appoints Nick Lowe.

This minute order is effective immediately and no formal order is required.

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Item 20 **06AS01573 MARAYANN BREWER VS. DAVID W. WASHINGTON**

Nature of Proceeding: Default Hearing

Filed By: Hart Nibbrig, Leonard C.

This matter is continued to 2/20/2007 at 02:00PM in this department.

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Item 21 **06AS02147 WILLIAM PAUL TIPPETS VS. ILIJA CVETICH**

Nature of Proceeding: Motion To Compel Form Interrogatories and Request for Production of Documents  
Filed By: Cooke, Phillip A.

Plaintiff's motion to compel defendant to respond to discovery requests and for an order that certain matters be deemed admitted is unopposed and granted. Compliance without objections shall be by February 16, 2007.

The matters are deemed admitted unless defendant serves responses in substantial compliance with CCP sections 2033.210, 2033.220, and 2033.2300. CCP 2033.280. If plaintiff receives responses before the hearing it shall inform the Court.

Mandatory sanctions in the amount of \$ 340.00 (one hour plus filing fee) on the admissions are ordered against defendant. Sanctions are otherwise denied because the motion was not opposed. Although CRC 3.1030 purports to authorize sanctions if a motion is unopposed, the Court declines to do so, as the specific statutes governing this discovery (CCP 2030.290(c), 2031.300(c)) authorize sanctions only if the motion was unsuccessfully made or opposed. Any order imposing sanctions under the CRC must conform to the conditions of one or more of the statutes authorizing sanctions. *Trans-Action Commercial Investors, Ltd. v Firmater Inc.* (1997) 60 Cal.App.4th 352, 355. However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. See *Laguna Auto Body v. Farmers Insurance Exchange* (1991) 231 Cal. App. 3d 481.

Sanctions shall be paid by March 6, 2007.

This minute order is effective immediately and no formal order is required.

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Item 22 **06CS00481 PEOPLE VS. \$3,011.40 MCKINLEY CALVIN WILLIAMS**

Nature of Proceeding: Motion To Strike  
Filed By: Leonard, Stephanie

Petitioner's motion to strike the claim of Real Party in Interest as a discovery sanction is unopposed and granted.

Real Party did not respond to discovery requests, did not oppose petitioner's motion to compel, and has willfully disobeyed the Court's order of November 9, 2006. Terminating sanctions are justified.

The claim is ordered stricken,

This minute order is effective immediately and no formal order is required.

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Item 23 **06CS01241** **IN RE: URSULA RENEE SANCHEZ**

Nature of Proceeding: Petition For Change Of Name

Filed By: Sanchez, Ursula Renee

The petition for name change is unopposed and is granted on condition that proof of publication is filed in Department 53 prior to hearing.

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Item 24 **06CS01571** **CACV OF COLORADO, LLC VS. JEFFREY WILSON**

Nature of Proceeding: Petition To Confirm Arb Award

Filed By: Harvego, Deborah

Dropped. There is no proof of service of the petition in the Court's file CRC rule 3.1300. The petition must be served pursuant to the service provisions of the arbitration agreement or if there are none, then in the same manner as a summons and complaint. CCP 1290.4.

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Item 25 **06CS01807** **IN RE: RONALD POON**

Nature of Proceeding: Petition For Change Of Name In Re: Man Yuk Poon and Chung Huen Po

Filed By: Poon, Ronald

The petition for name change is unopposed and is granted.

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Item 26 **06CM00403** **CACV OF COLORADO, LLC VS. ROBERT VELASQUEZ**

Nature of Proceeding: Petition To Confirm Arb Award

Filed By: Harvego, Deborah

Dropped. There is no proof of service of the petition in the Court's file CRC rule 3.1300. The petition must be served pursuant to the service provisions of the arbitration agreement or if there are none, then in the same manner as a summons and complaint. CCP 1290.4.

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Item 27 **06CM00405** **CACV OF COLORADO, LLC VS. DAWN M. NICHOLS**

Nature of Proceeding: Petition To Confirm Arb Award

Filed By: Harvego, Deborah

Dropped. There is no proof of service of the petition in the Court's file CRC rule 3.1300. The petition must be served pursuant to the service provisions of the arbitration agreement or if there are none, then in the same manner as a summons and complaint. CCP 1290.4.

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