Superior Court of the State of California
County of Orange

Tentative Rulings
Law and Motion Calendar
Department C23
Honorable David J. Hesseltine

Hearing Date and Time: June 26, 2025, at 2:00 p.m.

Court Reporters: Official court reporters (i.e., court reporters employed by the court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it is that party's responsibility to provide a court reporter, unless the party has a fee waiver and timely requests a court reporter in advance of the hearing (see link at end of this paragraph for further information). Parties must comply with the Court's policy on the use of privately retained court reporters, which may be found at the following link: **Civil Court Reporter Pooling**. For additional information regarding court reporter availability, please visit the court's website at **Court Reporter Interpreter Services**.

Tentative Rulings: The court endeavors to post tentative rulings on the court's website no later than 12:00 noon on the date of the afternoon hearing. Tentative rulings will be posted case by case on a rolling basis as they become available. Jury trials and other ongoing proceedings, however, may prevent the timely posting of tentative rulings, and a tentative ruling may not be posted in every case. Please do not call the department for tentative rulings if one has not been posted in your case. **The court will not entertain a request to continue a hearing or any document filed after the court has posted a tentative ruling.**

Submitting on Tentative Rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5223. Please do not call the department unless **ALL** parties submit on the tentative ruling. If all sides submit on the tentative ruling and advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under California Rules of Court, rule 3.1312.

Non-Appearances: If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also may make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Appearances: Department C23 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C23 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at

https://www.occourts.org/media-relations/civil.html before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at **https://www.occourts.org/media-relations/aci.html**. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also are available at **https://www.occourts.org/media-relations/aci.html**. Those procedures and guidelines will be strictly enforced.

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#	Case Name	Tentative
1.	**Ren v. Luo** *2025-01472867*	Before the court is the unopposed petition to confirm arbitration award filed by petitioners Xiao Ren and Hua An Group, Inc. (collectively, Petitioners) against respondents Hai Luo and Great Power Capital Holdings, LLC (collectively, Respondents). The Petition is **GRANTED** as set forth below. This case arises from an arbitration at JAMS which was conducted pursuant to paragraph 38 of the Vacant Land Purchase Agreement and Joint Escrow Instructions. On February 19, 2025, Judge Luis Cardenas (Ret.), issued a Final Award of $131,795.55 in favor of Hua An Group, Inc. (seller) and against Great Power Capital Holdings, LLC (buyer). Code of Civil Procedure section 1290.2 provides as follows: "A petition under this title shall be heard in a summary way in the manner and upon the notice provided by law for the making and hearing of motions, except that not less than 10 days' notice of the date set for the hearing on the petition shall be given." Once a party to an arbitration files a petition to confirm, correct, or vacate an award, a response must be filed and served within 10 days after service of the petition, unless a judge extends, or both parties agree to extend, this deadline. (Code Civ. Proc., § 1290.6). If a response is not filed by the deadline,

		the allegations of the petition are deemed admitted by the respondent. (Code Civ. Proc., § 1290.) Here, there has been no response to the petition by Respondents. Further, the court finds that the Petition complies with the requirements of Code of Civil Procedure section 1285.4. A copy of the Vacant Land Purchase Agreement and Joint Escrow Instructions is attached as Attachment 4(b) to the Petition. Paragraph 38 of the purchase agreement contains the arbitration provision. The Petition sets forth the name of the arbitrator, Judge Luis Cardenas, Retired. Finally, a copy of the JAMS Arbitration Final Award dated February 19, 2025, is attached as Attachment 8(c). The court finds Petitioner's Petition by Hua An Group, Inc. complies with Code of Civil Procedure section 1285.4, and therefore is **GRANTED** and the arbitrator's Final Award is **CONFIRMED**. The court notes the Final Award specifically states "This award is applicable only to: a) Great Power Capital Holdings LLC the buyer. b) Hua An Group, Inc., the seller. c) No individuals are subject to this award." (Final Award, page 8) Accordingly, the proposed judgment to be submitted by Petitioners must be consistent with that award and not include any financial award in favor of or against any individual. Petitioners are ordered to give notice and submit a proposed judgment consistent with the arbitrator's award.
2.	**National Collegiate Student Loan Trust 2007-1 v. Guthridge** *2013-00690337*	Before the court is the motion of defendant Jason Guthridge (Defendant) to set aside the default judgment pursuant to Code of Civil Procedure section 473, subdivision (d), and/or equitable grounds. As set forth below, the motion is **DENIED**. *Relief Under Code of Civil Procedure Section 473, Subdivision (d), Based on Claim Judgment is Void on its Face:* Code of Civil Procedure section 473, subdivision (d), states, "The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order." Generally, defendants have six months from entry of judgment to move to vacate. (Code Civ. Proc., § 473,

		subd. (b).) If, however, "the judgment is void on its face, then the six months limit set by section 473 to make other motions to vacate a judgment does not apply." (*National Diversified Services, Inc. v. Bernstein* (1985) 168 Cal.App.3d 410, 414.) "A judgment or order is said to be void on its face when the invalidity is apparent upon an inspection of the judgment-roll." (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1441 (*Dill*).) This inquiry, however, "does not hinge on evidence: A void judgment's invalidity appears on the face of the record." (*Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 181.) The due process clauses of the United States and California Constitutions require that a party be given reasonable notice of a judicial action or proceeding. (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 54 (*Goddard*).) To establish personal jurisdiction, compliance with statutory procedures for service of process is essential; if a default judgment was entered against a defendant who was not served with a summons as required by statute, the judgment is void, as the court lacked jurisdiction in a fundamental sense over the party and lacked authority to enter judgment. (*OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1330–1331.) To determine "whether an order [or judgment] is void for purposes of section 473, subdivision (d), courts distinguish between orders [or judgments] that are void on the face of the record and orders [or judgments] that appear valid on the face of the record but are shown to be invalid through consideration of extrinsic evidence. 'This distinction may be important in a particular case because it impacts the procedural mechanism available to attack the judgment [or order], when the judgment [or order] may be attacked, and how the party challenging the judgment [or order] proves that the judgment is void.'" [Citation] A judgment 'is considered void on its face only when the invalidity is apparent from an inspection of the judgment roll or court record without consideration of extrinsic evidence.'" (*Braugh v. Dow* (2023) 93 Cal.App.5th 75, 87 (*Braugh*), citing *Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1020-1021 (*Pittman*).) When a default judgment has been taken, the judgment roll consists of "the summons, with the affidavit or proof of service; the complaint; the request for entry of default . . .,

		and a copy of the judgment." (Code Civ. Proc., § 670, subd. (a).) There is no time limit to attack a judgment void on its face. (*Pittman*, *supra*, 20 Cal.App.5th at p. 1021.) If the invalidity can be shown only through consideration of extrinsic evidence, such as declarations or testimony, the order/judgment is not void on its face. (*Braugh*, *supra*, 93 Cal.App.5th at p. 87, citing *Pittman*, *supra*, 20 Cal.App.5th at p. 1021.) Such an order must be challenged within the six-month time limit prescribed by section 473, subdivision (b), or by an independent action in equity. (*Pittman*, *supra*, 20 Cal.App.5th at p. 1021.) If the invalidity does not appear on its face, the judgment or order may be attacked either in an independent equitable action without time limits (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1228 (*Gorham*), citing *Groves v. Peterson* (2002) 100 Cal.App.4th 659, 670, fn. 5), or by motion in the action in which the judgment or order was entered, usually made under a statute providing for such relief within certain time limits or a reasonable time., i.e. Code of Civ. Proc. §§ 473(b) or 473.5. Based upon the foregoing, Code of Civil Procedure section 473, subdivision (d), is inapplicable here because the judgment is not void on its face as the invalidity is not apparent upon an inspection of the judgment-roll. Rather, extrinsic evidence is needed to attack the judgment. Moreover, Defendant does not offer any discussion on how the judgment is void on its face, but just states it is so. The authority provided herein demonstrates this judgment is not void on its face. If it were, then no extrinsic evidence would have been needed to set aside this judgment. Further, the time to move to set aside the default and default judgment pursuant to Code of Civ. Proc. sections 473, subdivision (b) (6 months), or 473.5 (either two years after entry of judgment or 180 days after service on him of the written notice of entry of default or default judgment, whichever is earlier) has clearly lapsed. Accordingly, the only way for Defendant to attack the judgment is through a collateral attack by bringing a separate action, for which there is no time limit, or if there is an equitable ground to set aside the judgment.

		The motion to set aside the judgment based upon Code of Civil Procedure section 473, subdivision (d), therefore is **DENIED**. *Equitable Grounds for Relief:* Even where relief is no longer available under statutory provisions, a trial court generally retains the inherent power to vacate a default judgment or order on equitable grounds where a party establishes that the judgment or order was void for lack of due process (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 488) or resulted from extrinsic fraud or mistake (*Olivera v. Grace* (1942) 19 Cal.2d 570, 576-578; *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1300 (*Sporn*); *Bae v. T.D. Service Co.* (2016) 245 Cal.App.4th 89, 97). In addition to providing proof that a judgment or order is void, a false return of summons may constitute both extrinsic fraud and mistake. (*Gorham*, *supra*, 186 Cal.App.4th at p. 1229, citing *Munoz v. Lopez* (1969) 275 Cal.App.2d 178, 181 (*Munoz*).) When a judgment or order is obtained based on a false return of service, the court has the inherent power to set it aside, and a motion brought to do so may be made on such ground even though the statutory period has run. (*Gorham*, *supra*, 186 Cal.App.4th at p. 1229, citing *Munoz*, *supra*, 275 Cal.App.2d at pp. 182–183 [an equitable attack to set aside a judgment or order "for lack of jurisdiction of the cause where that jurisdiction is in turn dependent on personal service on the defendant who at the later date seeks to question that service" is not precluded by any set time].) Where it is shown there has been a complete failure of service of process upon a defendant, the defendant generally has no duty to take affirmative action to preserve their right to challenge the judgment or order even if they later obtain actual knowledge of it because "[w]hat is initially void is ever void and life may not be breathed into it by lapse of time." (*Gorham*, *supra*, 186 Cal.App.4th at p. 1229, quoting *Los Angeles v. Morgan* (1951) 105 Cal.App.2d 726, 731 (*Morgan*).) Consequently, under such circumstances, "neither laches nor the ordinary statutes of limitation may be invoked as a defense" against an action or proceeding to vacate such a judgment or order. (*Ibid*.) And, where evidence is admitted without objection that shows the existence of the invalidity of a judgment or order valid on its face,

		"it is the duty of the court to declare the judgment or order void." (*Ibid*.) Nonetheless, a court sitting in equity in such situation may "refuse to exercise its jurisdiction in a proper case by declining to grant affirmative relief" (*Gorham*, *supra*, 186 Cal.App.4th at p. 1229, quoting *Morgan*, *supra*, 105 Cal.App.2d at p. 731), such as where "(1) The party seeking relief, after having had notice of the judgment, manifested an intention to treat the judgment as valid; and (2) Granting the relief would impair another person's substantial interest of reliance on the judgment." (Rest.2d Judgments, § 66.) Because of the strong public policy in favor of the finality of judgments, equitable relief from a default judgment or order is available only in exceptional circumstances. (*Gorham*, *supra*, 186 Cal.App.4th at pp. 1229-1230.) There are three essential requirements to obtain equitable relief. The party in default must show: (1) a meritorious defense; (2) a satisfactory excuse for not presenting a defense to the original action; and (3) diligence in seeking to set aside the default once it was discovered. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 982; *Kramer v. Traditional Escrow, Inc.* (2020) 56 Cal.App.5th 13, 29; *Sporn*, *supra*, 126 Cal.App.4th at p. 1301.) Relief on the ground of extrinsic fraud or mistake is not available to a party who has been given notice of the action yet fails to appear, unless he or she was prevented from participating in the action. (*Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 472; *Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 502; *Yolo County Dept. of Child Support Services v. Myers* (2016) 248 Cal.App.4th 42, 49 [no relief where party had actual notice and there was no fraud].) Defendant has failed to establish the essential requirements to obtain equitable relief. The motion based upon equitable grounds therefore is **DENIED**. Plaintiff's counsel is ordered to give notice of this ruling.
3.	**Picarella – Name Change**	Before the court is the "Motion to Vacate Decree Changing Name, Allow and Grant Amended Petition as Required by the California Department of Public Health OR, in the Alternative, Approve an Order to Show

	2024-01423690	Cause Hearing for the Amended Petition If New Publishing is Required" filed by petitioner Antonio Joaquín Arrué Mendez, formerly known as Jack Anthony Picarella (Petitioner). As set forth below, the motion is **DENIED**, but Petitioner is granted leave to file an amended petition in this case seeking to further change his name as described below. The procedure for changing one's name is set forth in Code of Civil Procedure sections 1275, et. seq. On September 3, 2024, Jack Anthony Picarella filed a Petition for Change of Name. In that petition, he sought to change his name to Antonio Joaquín Arrué Mendez (with accent marks over the "i" in Joaquin and the "e" in Arrue). On October 23, 2024, the court granted the petition as requested and entered a Decree Changing Name. Since October 23, 2024, Petitioner's name has been Antonio Joaquín Arrué Mendez (with accent marks over the "i" in Joaquin and the "e" in Arrue). By this motion Petitioner seeks to vacate the order changing his name and instead change his name to Antonio Joaquin Arrue Mendez (without any accent marks). Although Petitioner cites Code of Civil Procedure section 473(b), that section gives the court authority to relieve a party of a judgment "taken against" the party. Here, there has been no judgment against Petitioner; he received the exact order he requested. Similarly, although Code of Civil Procedure section 128 gives the court broad powers, it does not authorize the court to change a person's name without following the requirements of Code of Civil Procedure section 1275 et. seq. Moreover, as noted above, since the petition was granted, Petitioner's name has been Antonio Joaquín Arrué Mendez (with accent marks over the "i" in Joaquin and the "e" in Arrue), and vacating the order would change his name back to Jack Anthony Picarella until another petition is granted. Based on the foregoing, the motion is **DENIED**. <u>The court, however, hereby grants Petitioner leave to file an amended petition in this case, and the clerk is directed to accept the amended petition, issue a new order to show cause, and set a new hearing. The amended petition should seek to change Petitioner's name from Antonio Joaquín Arrué Mendez (with accent marks over the "i" in Joaquin and the "e" in Arrue) to Antonio Joaquin Arrue Mendez (without any accent</u>

		marks). Petitioner will need to publish the new order to show cause as he did before.
4.	**Intarachueajan – Name Change** *2024-01450398*	Before the court is the motion to set aside dismissal filed by petitioner Wisaphorn Intarachueajan (Petitioner). Petitioner seeks to set aside the March 6, 2025 dismissal of Petitioner's petition for change of name. Petitioner has shown the dismissal was taken due to Petitioner's mistake, inadvertence, surprise, or excusable neglect. (Code Civ. Proc., § 473(b).) The motion is therefore **GRANTED**. Although Petitioner did file a proof of publication, this was for a May 14, 2025 hearing, which was not scheduled in this matter. The court therefore will schedule another Order to Show Cause re Change of Name for August 26, 2025, at 1:30 p.m., in Department D100, and require Petitioner to file a proof of publication for the new hearing date. Before contacted the newspaper to arrange publication, Petitioner must submit a new proposed Order to Show Cause with the new hearing date, and obtain that new order back from the court with the new hearing date and signature.
5.	**The Anaheim Hills Estate Community Association v. Patel** *2021-01235909*	Before the court is the motion for an award of attorney fees and costs filed by plaintiff The Anaheim Hills Estates Community Association (Plaintiff) on April 24, 2025. As set forth below, the motion is **GRANTED**, but attorney fees are awarded in a reduced amount. By this motion, Plaintiff seeks to recover from defendant Chinubhai Patel (Defendant) $203,374.50 in attorney fees (which includes $12,665 in attorney fees for this motion) and $20,814.61 in costs. The requested costs are set forth in a memorandum of costs Plaintiff filed on March 10, 2025. As the prevailing party, Plaintiff is entitled to recover its costs as a matter of right. (Code Civ. Proc., § 1032, subd. (b).) Given this is an action to enforce Plaintiff's governing documents, Civil Code section 5975, subdivision (c) also authorizes Plaintiff to recover its costs. Defendants does not dispute Plaintiff's right to recover costs as the prevailing party. California Rules of Court, rule 3.1700(b)(1) required Defendant to file and serve a motion to tax or strike the costs sought in Plaintiff's memorandum of costs

		within 15 days after service of the memorandum. Defendant failed to file any motion challenging Plaintiff's costs (and Defendant's opposition to the present motion likewise asserts no challenge to Plaintiff's costs). Defendant's failure to challenge Plaintiff's costs waives any objection to the costs Plaintiff identified in its memorandum of costs. (*Douglas v. Willis* (1994) 27 Cal.App.4th 287, 290.) Accordingly, Plaintiff is awarded costs against Defendant in the full amount sought in the memorandum of costs—i.e., $20,814.61. As for attorney fees, Plaintiff is seeking to recover its fees as the prevailing party under both the Plaintiff's governing documents (ROA 352, Ex. 4, Article XVI, at § 4(d)), and Civil Code section 5975. Defendant does not disputed Plaintiff is entitled to recover its reasonable attorney fees incurred in this case under either the governing documents or section 5975. Defendant's solely disputes the amount of attorney fees Plaintiff seeks to recover, arguing the amount is unreasonable in the relatively simple and straightforward action. The fee setting inquiry ordinarily begins with the "lodestar," i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095-96.) The lodestar figure may then be adjusted either up or down based on factors specific to the case "to fix the fee at the fair market value for the legal services provided." (*Ibid*.) The trial court must ascertain whether under all the circumstances of the case, the amount of actual time expended and the monetary charge for the time expended are reasonable. (*Mikhaeilpoor v. BMW of North America, LLC* (2020) 48 Cal.App.5th 240, 247.) The party claiming fees has the burden of showing the fees incurred were reasonably necessary to the conduct of the litigation, and reasonable in amount. (*Ibid*.) Reasonable fees incurred in preparing the fees motion also may be recovered. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 1002.) If the court determines the amount of attorney fees is inflated, the court has discretion to reduce the fees or deny them altogether. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 635.) As noted, Plaintiff seeks $203,374.50 in attorney fees, which includes $12,665 in attorney fees for this

		motion. To support this request, Plaintiff has provided declarations by the three senior attorneys who worked on this case as well as the redacted billing records. For the three senior attorneys who worked on this case as well as the associate attorney, Plaintiff seeks hourly rates of "$285-$305." The senior attorneys explain they have 43 years, 27 years, and 6 years of experience, with an emphasis on representing common interest developments such as Plaintiff. For the staff paralegals or legal assistances who worked on this case, Plaintiff seeks an hourly rate of $125. Given the experience, the issues involved, and the Orange County market where this case was litigated and tried, the court finds these hourly rates to be more than reasonable. The number of hours and the manner in which this case was staffed, however, raises concerns for the court. The declarations and billing records reveal Plaintiff seeks to recover a total of 607.2 hours of attorney time, which includes 556.1 hours for the three senior attorneys and 51.1 hours for the sole associate. That does not include the time sought for this motion. As for the various paralegals and legal secretary, Plaintiff seeks 70 hours of time. The court acknowledges this case took three years to get to trial, there were multiple trial continuances with Plaintiff having to prepare for trial each time, and there were various delays caused by Defendant changing attorneys, seeking to reopen discovery, and needing to have a guardian ad litem appointed. Nonetheless, there was limited written discovery, no meaningful motion practice, no depositions (either lay or expert), and the trial was a three-day bench trial that did not require time for jury selection. Moreover, the case was a simple and straightforward claim regarding Defendant's failure to maintain the property. Defendant strenuously avoided repairing his property until shortly before trial, and he sought to establish a selective enforcement defense that Plaintiff had to prepare to oppose. Nonetheless, Plaintiff had three senior attorneys spend significant time working on this file. The billing records reveal extensive internal conferences and other duplicative work by the senior attorneys as well as two attorneys present and billing for every moment of trial. Plaintiff also seeks time for preparing a statement of decision that was never timely requested. The court has reviewed both the

		declarations of counsel as well as the billing records, and presided over the trial as well as several pretrial proceedings. Based on the totality of the circumstances the court finds the total hours requested to be excessive and unreasonable. Accordingly, the court finds a reduction of 30 percent, or $61,012.35 is appropriate. That results in a total attorney fee award of $142,362.15. When the costs of $20,814.61 is added to the attorney fee award, the result is a total award of attorney fees and costs of $163,176.76. That amount is awarded to Plaintiff as against Defendant pursuant to the governing documents, Civil Code section 5975, and Plaintiff's statutory right to costs as the prevailing party. Plaintiff's counsel is ordered to give notice of this ruling, and may submit an amended judgment.
6.	**Jardine v. Landmark Health, LLC** *2025-01464374*	Before the court is the application of attorney Michael J. Willemin to appear pro hac vice on behalf of plaintiff Rod Jardine (Plaintiff). The application is **DENIED AS MOOT**. Attorney Willemin applies to appear pro hac vice on Plaintiff's behalf in connection with Plaintiff's motion to quash a subpoena served on non-party Agile CxO LLC. The court ruled on that motion on May 22, 2025, and there are no other matters pending in this matter, which was commenced by defendant Landmark Health, LLC solely for the purposes of obtaining the California subpoena served on Agile CxO, LLC. As such, this application for pro hac vice is moot. To the extent it was not moot, the hearing would need to be continued because Plaintiff did not provide proof of service of the application on the California State Bar as required by California Rules of Court, rule 9.40(c)(1). The application shows payment was made to the State Bar, but there is no proof the application was served on the State Bar. Plaintiff to give notice of this rule.
7	**Bennett v. Progressive Casualty Insurance Company** *2011-00497143*	Before the court is a motion filed by plaintiff, cross-defendant, and judgment debtor Stephen Bennett (Bennett) for orders (1) dismissing the March 5, 2012 cross-complaint of Progressive Casualty Insurance Company (Progressive), (2) dismissing the April 30, 2012 cross-complaint of Premier Commercial Bancorp (Premier), and (3) enjoining the third-party examination of Kathleen Ann Bennett. For the reasons

		set forth below, the motion is **DENIED IN ITS ENTIRETY**. Contrary to Bennett's contentions, the October 1, 2013 Judgment resolved all claims in this action. As judgment creditor Coastline JX Holdings LLC (Coastline) points out in the opposition, the judgment specifically recited the causes of action upon which judgment was awarded, and confirmed the dismissal of the remaining claims. (See ROA 562.) The judgment was affirmed by the Court of Appeal on October 30, 2015. (ROA 735.) The court entered the amended judgment awarding attorneys' fees and costs on appeal against Bennett on June 29, 2016, and it was not appealed. (ROA 892.) Because there has been a final determination of the case by way of the summary judgment motions and dismissals, the five-year period set forth in Code of Civil Procedure section 583.360 is inapplicable in this instance. (See, e.g., *McDonough Power Equipment Co. v. Superior Court* (1972) 8 Cal.3d 527, 532.) Bennett argues in the reply the October 1, 2013 judgment was not a final judgment, but he failed to offer any authority or reasoned argument to support that contention. The motion for orders dismissing the cross-complaints filed by Progressive and Premier therefore is **DENIED**. Bennett's request to enjoin the third-party examination of Kathleen Bennett is unsupported. To the extent Bennett contends the third-party examination should be enjoined because the cross-complaints are subject to dismissal, this argument fails for the reasons discussed above. To the extent Bennett contends the third-party examination should be enjoined because none of Mrs. Bennett's property is subject to enforcement of a money judgment, he fails to offer any facts whatsoever in support of this claim. His affidavit states only Ms. Bennett is his spouse. Other than arguing the cross-complaints should be dismissed, he offers no explanation to support his request to enjoin the third-party examination of Mrs. Bennett. (See Code Civ. Proc., § 708.120(d).) The motion for an order enjoining the third-party examination of Ms. Bennett therefore is **DENIED**. Coastline's request for judicial notice is **GRANTED** as to the existence of and legal effects of the records, but

		not as to the truth of any disputed facts asserted therein. (Evid. Code § 452(d); *Fontenot v. Wells Fargo Bank, NA* (2011) 198 Cal.App.4th 256, 264; *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.) Counsel for Coastline is ordered to give notice of this ruling.
8.	**White v. Hay** *2021-01199239*	Before the court is the motion by plaintiff and appellant Mark White (Plaintiff) to tax the "Memorandum of Costs After Judgment" filed by defendants and respondents Michael Hay and Sheldon Hay (collectively, Respondents) on March 26, 2025. The motion is **GRANTED IN PART** and **DENIED IN PART** as set forth below. On July 19, 2023, Plaintiff filed a notice of appeal from the judgment entered after the court granted Defendants' motion for summary judgment. On December 11, 2024, the Court of Appeal affirmed the trial court judgment. On February 13, 2025, the Court of Appeal issued the remittitur with the order Respondents to recover their costs on appeal costs. California Rules of Court, rule 8.278, entitled Costs on Appeal, states, "(c)(1) Within 40 days after issuance of the remittitur, a party claiming costs awarded by a reviewing court must serve and file in the superior court a verified memorandum of costs under rule 3.1700." Following the remittitur, Defendants did file a memorandum of costs seeks certain costs. Unfortunately, they filed the wrong form which has greatly complicated this motion and they did not file any opposition to the motion either. Judicial Council Forms MC-010 and MC-011, entitled Memorandum of Costs (Summary) and Memorandum of Costs (Worksheet), are optional forms for use to claim trial court costs following judgment and are helpful because the identify the statutorily authorized costs following judgment. Judicial Council From APP-013, entitled Memorandum of Costs on Appeal, is a mandatory Judicial Council Form that is helpful because it identifies the separate costs that are recoverable following an appeal. Defendants did not use any of these forms. Instead, Defendants filed Judicial Council Form MC-012, entitled Memorandum of Costs After Judgment, Acknowledgement of Credit, and Declaration of Accrued Interest. This form is used for

		seeking enforcement of judgment costs, not costs on appeal. Neither California Rules of Court, rule 8.278 nor rule 3.1700 specify what form is to be used, just that one is to be used. As such, the court will proceed to address the merits of Defendants' efforts to recover costs, but notes the use of the improper form has led to Defendants seeking costs that are not recoverable on an appeal and failing to seek costs that otherwise would have been recoverable on appeal. In general, "[i]f the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they were not reasonable or necessary." (*Ladas v. California State Automobile Association* (1993) 19 Cal.App.4th 761, 774.) "There is no requirement that copies of bills, invoices, statements, or any other such documents be attached to the memorandum. Only if the costs have been put in issue via a motion to tax costs must supporting documentation be submitted." (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1267.) If the party seeking to tax costs makes a proper objection to an item in the cost bill, the burden then shifts back to the party claiming them as costs. (*Acosta v. SI Corp.* (2005) 129 Cal.App.4th 1370, 1380.) The propriety of costs is a question of fact to be determined by the trial court. (*Jones*, *supra*, at p. 1266.) By this motion, Plaintiff challenges three groups of costs sought in the memorandum of costs. The first group are those costs that are duplicative of the costs included on their earlier Memorandum of Costs filed on July 5, 2023 following the grant of the motion for summary judgment. Plaintiff identifies $1,331.12 in such costs. All such costs clearly pre-date the entry of the judgment and therefore have nothing to do with the appeal, and Defendants have not filed any opposition to dispute these costs already were recovered on their prior memorandum of costs. As such, the motion is **GRANTED** as to these costs, and $1,331.12 is **STRICKEN** from the current memorandum of costs. The second group are those costs related to the June 20, 2023 judgment that should have been sought in the prior memorandum of costs and therefore should be stricken because they were not timely sought. Specifically, Plaintiff asserts the costs in this group should have been included on the memorandum

		of costs filed in connection with the June 20, 2023 judgment, not the appeal. Plaintiff is correct as to all of the costs in this group except one. Indeed, all are costs that should have been included in the prior memorandum of costs (and therefore are untimely) except the $385 charge identified as a cost incurred by Defendants on August 23, 2023, for preparation of the clerk's transcript. On its face, that is an appropriate appellate cost and Plaintiff has not shown it is not. Accordingly, the motion is **GRANTED** as to this group of costs except at to that one charge for $385. As a result, $3,183.31 in costs are **STRICKEN** from the current memorandum of costs. The final group is those costs which Plaintiff asserts are improper appellate costs. The only information Defendants provided regarding these costs is they are listed as "filing fees." What filing fees, however, are not identified and Defendants have not filed any opposition to specifically identify what these fees are for. Accordingly, the motion is **GRANTED** as to these charges and $1,003.02 in costs are hereby **STRICKEN**. Based on the foregoing, a total of $5,517.45 in costs are hereby stricken from the memorandum of costs Defendants filed on March 26, 2025. That leaves $1,297.20 in costs that are either not challenged by Plaintiff or as to which Plaintiff's challenge was overruled. Plaintiff's counsel is ordered to give notice of this ruling.
9.	**Dearlove v. Flory** *2021-01224182*	Before the court is the motion to be relieved as counsel of record for plaintiff Natasha Dearlove (Plaintiff) filed by Michael J. Vroman, Esq., on behalf of Tenant Law Group, PC. The Motion is **CONTINUED TO JULY 31, 2025, AT 2:00 P.M., IN DEPARTMENT C23**, as set forth below. On January 23, 2025, the court continued a prior motion to be relieved to February 27, 2025, due to various issues regarding confirming Plaintiff's last known address and lack of email address for email service. (ROA 79.) The court denied the prior motion on February 27, 2025, as counsel failed to file any supplemental evidence correcting the initial issues and did not appear at the hearing. (ROA 81.)

		On April 25, 2025, Counsel filed the present renewed motion to be relieved. (ROA 87, 91.) Counsel now indicates Plaintiff's mailing and email addresses were confirmed within 30-days by way of a skip trace and other means. (ROA 87.) Unfortunately, the proof of email service filed with the motion does not include the email address at which Plaintiff was served. (ROA 85.) A second proof of service was filed, but that does not indicate any means of service as neither the "by mail" box nor "by email" box was checked. Finally, counsel seeking to be relieved from their duty representing a client must file and serve form MC-053 (Order Granting Attorney's Motion to be Relieved as Counsel) with the court with the moving papers. (Cal. Rules Ct., rule 3.1362(e).) There is no form MC-053 in the court's file. The hearing is **CONTINUED** as stated above to permit counsel to properly serve and file the required documents and proofs of service. Moving counsel is ordered to give notice of this ruling
10.	**Thomas v. McKeon** *2020-01166729*	Before the court is the motion of "All Plaintiffs" to use a settled statement instead of a reporter's transcript under California Rules of Court, rule 8.137. As set forth below, the motion is **DENIED**. Initially, the court notes the motion purports to be brought by "All Plaintiffs" and relates to one of multiple appeals in this case apparently taken by plaintiffs. The pleadings in this case identify three plaintiffs: (1) Denise Thomas, (2) [L.G.T.], a minor (by and through her appointed Guardian ad Litem, Ernest Calhoon), and (3) Ernest Calhoon. Pursuant to orders the Court of Appeal issued on March 28, 2025, the appeals in this case have been dismissed as to Denise Thomas and L.G.T., a minor (by and through her appointed Guardian ad Litem, Ernest Calhoon). Thus, as to the appeal, the only plaintiff remaining to make this motion is Mr. Calhoon. The first ground on which the motion is denied is the lack of any proof of service showing the motion has been served on all parties. There is no proof of service attached to the motion and no proof has been separately filed showing the motion was properly served. California Rules of Court, rule 3.1300(c) requires "[p]roof of service of the moving papers must

		be filed no later than five court days before the time appointed for the hearing." Next, California Rules of Court, rule 8.137(b)(2) requires any motion for court order to use a settled statement as the record of oral proceedings must be served and filed with the notice designating the record on appeal. Here, the notice designing the record on appeal was filed on March 27, 2025, and this motion was not filed until April 16, 2025. Rule 8.137(b)(2) also requires any motion to use a settled statement must be support by a showing (1) a substantial cost savings will result and the statement can be settled without significantly burdening opposing parties or the court, (2) the designated proceedings cannot be transcribed, or (3) the requesting party is unable to pay for a reporter's transcript. The motion does not make any one of these showings. Rule 8.137(b)(3) requires any such motion to (1) specify the date of each oral proceeding to be included in the settled statement, (2) identify whether each proceeding designated under (1) was reported by a court reporter and, if so, provide the name of the reporter and identify whether a certified transcript has previously been prepared. The motion does not meet these requirements. Indeed, the motion is highly conclusory and simply asks for previously produced transcripts to be used as a settled statement without designated which transcripts are to be used in this fashion. Finally, the motion seeks to use previously produced transcripts as the settled statement. According to rule 8.137(a) a settled statement is a summary of the superior court proceedings approved by the superior court. A reporter's transcript, however, is not a summary of court proceedings, but rather a verbatim transcript of the proceedings. Transcripts need not be approved by the superior court because they are certified by the reporter. This does not appear to be the proper procedure. It also is worthy of note, the motion does identify the appeal to which it relates and there are apparently multiple appeals pending relating to this case. Based on the foregoing, the motion is **DENIED**. The clerk is directed to give notice of this ruling.

11.	**Mann v. Nice Sheen International, Inc.** *2024-01403670*	Before the court is the unopposed motion of petitioners Jeffrey Mann and Suzette R. Mann (collectively, Petitioners) to serve respondent through substitute service to the California Secretary of State. As set forth below, the motion) is **DENIED WITHOUT PREJUDICE**. Petitioners request an order permitting service of a subpoena and judgment debtor examination order on respondent Nice Sheen International, Inc. (Respondent), via the California Secretary of State. Service on an entity by serving the California Secretary of State is permissible so long as the serving party cannot with reasonable diligence find a corporation's agent for service of process at the address designated for personally delivering the process. (Code Civ. Proc. § 416.10, subd. (d); Corp. Code § 1702, subd. (a).) Petitioners put forth Respondent's corporate statement of information filed with the California Secretary of State showing two addresses. (Rader Decl., Ex. 1.) The first address 65 Glacier Valley, Irvine CA 92602 (Irvine Address) is listed as the "Street Address of Principal Office of Corporation" as well as the "Street Address of California Office of Corporation." The second address 21163 Newport Coast Dr., #205, Newport Beach, CA 92657), however is listed as the mailing address of the corporation, the address for all identified officers and directors, and most importantly, the address for the "Agent for Service of Process." In attempting to serve Respondent, Petitioners' counsel has contacted the counsel Mark Butler, Esq., who represented Respondent in the underlying arbitration and asked if counsel would accept service on behalf of Respondent, but no agreement was made. (Rader Decl. ¶ 2.) Petitioners' process server has attempted to serve Respondent at the Irvine Address approximately 15 times with no success. (Rader Decl. ¶ 4, Ex. 2.) Despite the Newport Address being listed as both the address for both Respondent's officers and directors, as well as Respondent's Agent for Service of Process, there is no evidence Petitioners ever attempted service at the Newport Address. Petitioners therefore have not met the requirements for service via the California Secretary of State. (Corporations Code section 1702, subdivision (a).)

		Based on the foregoing, the motion is **DENIED WITHOUT PREJUDICE.** Any future motion must show reasonable diligence in attempting to serve Respondent's officers or agent for service of process at all listed addresses. Petitioners' counsel are ordered to give notice of this ruling.
12.	**Netlist, Inc. v. Micron Technology, Inc.** *2025-01470155*	Before the court are two petitions/motions by petitioner Netlist, Inc. (Netlist) to quash deposition subpoena respondents Micron Technology, Inc. and Micron Semiconductor Products, Inc. (collectively, Micron) served to obtain discovery for use in Micron's action against Netlist in Idaho state court. Specifically, Netlist's first motion seeks to quash deposition subpoenas Micron served on Eric Lucas and Marc Frechette, who have been referred to as former in-house attorneys and licensing executives for Netlist. Netlists second motion deposition subpoenas Micron served on Jayson Sohi and Noel Whitley, who similarly have been referred to as former in-house attorneys and licensing executives for Netlist. Both motions are based on Netlist's assertion the attorney-client privilege and work product doctrine bar the depositions in their entirety. Both motions also assert service deficiencies with some of the subpoenas. Pursuant to the Interstate and International Depositions and Discovery Act, a party to a proceeding in a foreign jurisdiction may obtain discovery in California by retaining a local attorney to issue a subpoena. (Code Civ. Proc., § 2029.350.) If a dispute arises relating to the subpoena, any party may petition the superior court where the discovery is to be conducted for a protective order or an order enforcing, quashing, or modifying the subpoena. (Code Civ. Proc., § 2029.600.) Although discovery sought under the Interstate and International Depositions and Discovery Act is intended for use in a foreign jurisdiction, it is governed by California's Civil Discovery Act, section 2016.010 et seq. (Code Civ. Proc., § 2029.500.) Section 2017.010 of the Discovery Act sets forth the permissible scope of discovery in California: "[A]ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action . . . if the matter either is itself admissible in evidence or appears reasonably

		calculated to lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.010.) A party also may obtain discovery of "the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document [or] electronically stored information . . . ." (*Ibid*.) As for the attorney client privilege, "a communication made in confidence in the course of the lawyer-client . . . relationship . . . is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential." (Evid. Code, § 917, subd. (a).) "[T]he opponent of the claim of privilege has the burden of proof to establish the communication was not confidential or that the privilege does not for other reasons apply." (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733 (*Costco*).) "'We begin with the premise that there can be no discovery of materials which are privileged.'" (*Manela v. Superior Court* (2009) 177 Cal.App.4th 1139, 1146 (*Manela*).) Work product protection applies when an attorney acts in a litigation or "nonlitigation legal capacity." (*Rumac, Inc. v. Bottomley* (1983) 143 Cal.App.3d 810, 815-816 (*Rumac*).) Further, "the work product privilege is not limited to documents prepared in anticipation of litigation but also applies to the work product of an attorney generated in his role as counselor." (*Aetna Casualty & Surety Co. v. Superior Court* (1984) 153 Cal.App.3d 467, 478-479 (*Aetna*).) The privilege also can apply where an attorney is fact-finding, because "'[t]he first step in the resolution of any legal problem is ascertaining the factual background and sifting through the facts with an eye to the legally relevant.' [Citation.]" (*City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023, 1034 (*Petaluma*).) **Motion No. 1: Subpoenas to Lucas and Frechette** At issue on the first motion is (1) the Subpoena for Videotaped Deposition of Eric Lucas and (2) the Subpoena for Videotaped Deposition of Marc Frechette. (Harbour Decl. ¶¶ 4-5; Exhs. 1-2.) Frechette and Lucas are attorneys who formerly worked for Netlist. (Harbour Decl. ¶ 3.) Micron

		asserts Frechette was Netlist's Chief Licensing Officer from July 2019 to August 2021 and Lucas was Vice President of Licensing at Netlist from November 2021 to February 2025. There is no dispute as to these facts. Additionally, it is undisputed Frechette sent multiple letters to Micron regarding licensing discussions to reach an agreement on royalty-bearing licenses to Netlist patents. (See e.g. RJN, Exhibit 1 [Complaint, Exh. 1].) Further, Netlist has identified Frechette as having relevant information in the Idaho case. Micron asserts Lucas participated in discussions with Micron concerning a potential licensing agreement from at least May 2023 to early 2025. The parties do not dispute an attorney-client relationship existed between Netlist, on the one hand, and Frechette and Lucas, on the other. Accordingly, confidential communications between Netlist and counsel are presumptively shielded from discovery by the attorney-client privilege unless Micron can show the privilege does not apply. (See Evid. Code, § 917, subd. (a); *Costco*, *supra*, 47 Cal.4th at p. 733; *Manela*, *supra*, 177 Cal.App.4th at p. 1146.) It is worthy of note neither Frechette nor Lucas are attorneys who represent Netlist in this or the Idaho litigation. Rather, they both were employees of Netlist, but neither is any longer employed by Netlist. As such, we are not presented with an attempt to depose opposing litigation counsel. Netlist contends Micron seeks to depose Frechette and Lucas in an attempt to elicit privileged testimony. Micron argues both Frechette and Lucas have knowledge of relevant non-privileged information due to serving as business licensing executives. Specifically, Micron asserts "Mr. Frechette's knowledge includes information underlying Netlist's decision to press ahead with the '833 patent case notwithstanding Micron's July 2021 Rule 11 letter asking it to drop the case (a request it reiterated in August 2021) and August 2021 counterclaim pointing out the reasons the asserted claims were unpatentable. Mr. Lucas, in turn, has knowledge concerning Netlist's continuation of the '833 patent case in the face of Micron's January 2022 petition for inter partes review, Micron's motion to stay or dismiss the case in April 2022, the Patent Office's institution of that review in September 2022, its final decision finding all asserted claims unpatentable in

		August 2023 (which Netlist did not appeal), and even the November 2023 certificate cancelling the asserted claims of the '833 patent." (Opp. at 9:1-9.) Information possessed by Frechette and Lucas regarding Netlist's decision to commence and continue the '833 patent case, though relevant to the Idaho case, almost certainly is protected by the attorney-client privilege and/or work product doctrine. Moreover, the attorney-client privilege may still apply even where a business decision is implicated. (See *High Point Sarl v. Sprint Nextel Corp.* (D. Kan. Jan. 25, 2012) No. 09-2269-CM-DJW, 2012 WL 234024, at *12 [attorney-client privilege protects communications made for the purpose of seeking legal advice regarding business decisions such as "whether to sell a patent, enter into a licensing relationship, or make some other business decision"].) Nevertheless, there also appears to be nonprivileged topics upon which Frechette and Lucas may be deposed, including but not limited to communications they had with Micron as well as any nonconfidential communications they may have had. Accordingly, Netlist has failed to meet its burden to show the subpoenas should be quashed in their entirety because, although some topics of inquiry appear to be privileged (e.g., litigation decisions), other topics clearly are not privileged (e.g., external communication and nonconfidential internal communications). Unfortunately, despite the court's direction for the parties to meet and confer after the last hearing on this motion, the parties have failed to provide the court with sufficient information to make a clear, specific, and enforceable order limiting the scope of the deposition, even though some limitations are in order. Accordingly, at this time, the court **DENIES** the motion to quash, and any further dispute regarding specific topics will need to be the subject of a later motion filed after the depositions have occurred and specific questions posed. The court acknowledges Netlists contention Lucas was not properly personally served with the subpoena—rather, it was handed to his son. Netlist, however, failed to meet its burden on this challenge. "The return of a [registered] process server [] upon process or notice establishes a presumption, affecting the burden of producing evidence, of the facts stated

		in the return." (Evid. Code, § 647; see *Floveyor Int'l, Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789 (*Floveyor*), 795; *American Exp. Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 390 (*Zara*).) Netlist acknowledges the existence of a proof of service by a register process server. With the petition, Netlist submits a declaration by its litigation counsel stating, "Eric Lucas has stated that the deposition subpoena filed by Micron in the Idaho Action was not served on him personally, but rather was handed to his son." This is inadmissible hearsay insufficient to meet Netlist's burden. With its reply, Netlist submits a declaration by Lucas stating, "a process server handed my son a subpoena to provide deposition testimony in connection with the Idaho litigation captioned above. The process server never personally provided me with a copy of the subpoena." First, a moving party may not submit new evidence with a reply brief that should have been submitted with the moving papers. On truly responsive evidence is appropriate for a reply. As such, the court refuses to consider the Lucas declaration. Nonetheless, even if the court were to consider the declaration, it too is insufficient to meet Netlist's burden. If the subpoena was handed to Lucas's son and Lucas was not present, he would have not personal knowledge about the service and therefore is declaration would be inadmissible. If he was present when the subpoena was handed to his son, then that would be sufficient service and the declaration would not be sufficient to overcome the foregoing presumption. Either way, the challenge to the service is overruled. Finally, Micron's request for judicial notice of Exhibits 1, 3, 4, and 5 is **GRANTED**. (Evid. Code, § 452, subds. (c), (d).) Judicial notice of Exhibit 1 and Exhibit 3 is limited to the documents' existence. Judicial notice of the allegations and arguments in the Complaint and Corrected Brief is improper because the truthfulness of their contents is disputable. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCourt* (2001) 91 Cal.App.4th 875, 882 [disputable facts are not the proper subject of judicial notice]; see also *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d. 369, 374 ["Taking judicial notice of a document is not the same as accepting the truth of its

		contents or accepting a particular interpretation of its meaning"].) The request for judicial notice of Exhibits 2, 6, 7, and 8 is **DENIED**. (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 194, citing *Unlimited Adjusting Group, Inc. v. Wells Fargo Bank, N.A.* (2009) 174 Cal.App.4th 883, 888, fn. 4 [statements of facts contained in press release not subject to judicial notice].) "The contents of the Web sites and blogs are 'plainly subject to interpretation and for that reason not subject to judicial notice.'" (*Ragland*, 209 Cal.App.4th at p. 194, quoting *L.B. Research & Education Foundation v. UCLA Foundation* (2005) 130 Cal.App.4th 171, 180, fn. 2.) **Motion No. 2: Subpoenas to Sohi and Whitley** At issue on the second motion is (1) the Subpoena for Videotaped Deposition of Jayson Sohi and (2) the Subpoena for Videotaped Deposition of Noel Whitley. (Harbour Decl. ¶¶ 6-7; Exhs. 3-4.) Sohi and Whitley are attorneys who formerly worked for Netlist. (Harbour Decl. ¶ 3.) Micron asserts Sohi was Netlist's Director of IP Strategy from December 2021 to May 2024, and Whitley was Netlist's Vice President, Intellectual Property and Licensing from July 2013 to about 2019. There is no dispute as to these facts. Additionally, it is undisputed Sohi sent multiple letters to Micron. Netlist admitted Sohi has relevant information to the Idaho case. Whitley attended a 2015 meeting with Micron, at which Whitley presented a business proposal he had drafted regarding Netlist's patent portfolio. Netlist identified Whitley as having relevant information in its discovery responses in the Idaho matter. The parties do not dispute an attorney-client relationship existed between Netlist, on the one hand, and Sohi and Whitley, on the other. Accordingly, the communications between Netlist and counsel are presumptively shielded from discovery by the attorney-client privilege unless Micron can show the privilege does not apply. (See Evid. Code, § 917, subd. (a); *Costco*, *supra*, 47 Cal.4th at p. 733; *Manela*, *supra*, 177 Cal.App.4th at p. 1146.) It is worthy of note neither Sohi nor Whitely are attorneys who represent Netlist in this or the Idaho litigation.

		Rather, they both were employees of Netlist, but neither is any longer employed by Netlist. As such, we are not presented with an attempt to depose opposing litigation counsel. Netlist contends Micron seeks to depose Sohi and Whitley in an attempt to elicit privileged testimony. Micron argues both Sohi and Whitley have knowledge of relevant non-privileged information due to serving as business licensing executives. Specifically, Micron asserts that Whitley "has knowledge of information of which Netlist was aware before sending its April 2021 letter (see Idaho Code § 48-1703(2)(a)), prior assertions of the same or similar claim (*id*. at § 48-1703(2)(h)), the value of the license demanded in the letter (*id*. at § 48-1703(2)(e), and the deceptive nature of the letter (*id*. at § 48-1703(2)(g)). Mr. Sohi, for his part, has information bearing on the reasons for Netlist's continued assertion of the '833 patent against Micron—including both its ongoing licensing demands and maintenance of the Western District Case notwithstanding Micron's many requests that Netlist drop it—which similarly violated those same, non-exclusive factors." (Opp. 11:25-12:4; Amended Opp. 13:11-14.) Micron has cited to *Diagnostics Systems Corp. v. Symantec Corp.* (C.D. Cal., Aug. 12, 2008, No. SA CV 06-1211 DOC) 2008 WL 9396387, *Diagnostics Systems Corp. v. Symantec Corp.* (C.D. Cal., Aug. 12, 2008, No. SA CV 06-1211 DOC) 2008 WL 9396387, and *SanDisk Corporation v. Round Rock Research LLC* (N.D. Cal., Feb. 21, 2014, No. 11-CV-05243-RS (JSC)) 2014 WL 691565, to support its position Netlist's ability to assert privilege over communications involving Sohi and Whitley are more limited because they are business executives who also happen to be lawyers. These cases, however, are distinguishable. First, all three cases involved suits for patent infringement. At issue in the Idaho action is whether Netlist made a bad faith assertion of patent infringement against Micron. As the court in *Diagnostics Systems Corp.* acknowledged, privilege protection for activities relating to litigation and legal advice are proper. (*Diagnostics Systems Corp.*, 2008 WL 9396387, at *5.) Second, *Diagnostics Systems Corp.*, *Thought, Inc.*, and *SanDisk Corporation* involve document productions rather than the deposition testimony that Micron seeks here. Whether certain documents are subject to the attorney-client privilege

		or work product protection is readily determined. The same is not necessarily true for deposition testimony. The information possessed by Whitley is based on his involvement in discussions that almost certainly are protected by the attorney-client privilege or work product doctrine. (See ROA 69 [Under Seal Opp.] at 11:22-28; ROA 94 [Under Seal Amended Opp.] 13:4-11.) Similarly, Sohi's knowledge regarding the reasons for Netlist's continued assertion of the '833 patent against Micron likely implicates privileged communications or work product. Moreover, the attorney-client privilege may still apply even where a business decision is implicated. (See *High Point Sarl v. Sprint Nextel Corp.* (D. Kan. Jan. 25, 2012) No. 09-2269-CM-DJW, 2012 WL 234024, at *12 [attorney-client privilege protects communications made for the purpose of seeking legal advice regarding business decisions such as "whether to sell a patent, enter into a licensing relationship, or make some other business decision"].) Nevertheless, there also appears to be nonprivileged topics upon which Sohi and Whitley may be deposed, including but not limited to communications they had with Micron as well as any nonconfidential communications they may have had. Accordingly, Netlist has failed to meet its burden to show the subpoenas should be quashed in their entirety because, although some topics of inquiry appear to be privileged (e.g., litigation decisions), other topics clearly are not privileged (e.g., external communication and nonconfidential internal communications). Unfortunately, despite the court's direction for the parties to meet and confer after the last hearing on this motion, the parties have failed to provide the court with sufficient information to make a clear, specific, and enforceable order limiting the scope of the deposition, even though some limitations are in order. Accordingly, at this time, the court **DENIES** the motion to quash, and any further dispute regarding specific topics will need to be the subject of a later motion filed after the depositions have occurred and specific questions posed. The court acknowledges Netlist's contention the subpoenas served on Sohi and Whitley should be quashed because service was improper.

		As explained above, "[t]he return of a [registered] process server [] upon process or notice establishes a presumption, affecting the burden of producing evidence, of the facts stated in the return." (Evid. Code, § 647; see *Floveyor*, *supra*, 59 Cal.App.4th at p. 795; *Zara*, *supra*, 199 Cal.App.4th at p. 390.) The proof of service for the Whitley subpoena states the subpoena was served by Jason Wirick, a registered process server. (Harbour Decl. ¶ 10, Exh. 5; Lang Decl. ¶ 14, Exh. 21.) Netlist's counsel declares that "[a]ccording to Mr. Whitley, he does not believe he has been served with the deposition subpoena filed by Micron in the Idaho Action." That is hearsay and speculation that is insufficient to meet Netlist's burden. As to the Sohi, the only objection is the amount of notice, but given the delays caused by these motions, there was been more than adequate notice and Micron has agreed to work with Sohi to select an acceptable date. As such, the motion is denied on this ground as well. Finally, Micron's request for judicial notice of Exhibits 1, 3, 4, 5, and 9 is **GRANTED**. (Evid. Code, § 452, subds. (c), (d).) Judicial notice of Exhibits 1, 3, and 9 is limited to the documents' existence. It is improper to take judicial notice of the allegations and arguments in the Complaint and Corrected Brief because the truthfulness of their contents is disputable. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCourt* (2001) 91 Cal.App.4th 875, 882 [disputable facts are not the proper subject of judicial notice]; see also *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d. 369, 374 ["Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning"].) The request for judicial notice of Exhibits 2, 6, 7, and 8 is **DENIED**. (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 194, citing *Unlimited Adjusting Group, Inc. v. Wells Fargo Bank, N.A.* (2009) 174 Cal.App.4th 883, 888, fn. 4 [statements of facts contained in press release not subject to judicial notice].) "The contents of the Web sites and blogs are 'plainly subject to interpretation and for that reason not subject to judicial notice.'" (*Ragland*, 209 Cal.App.4th at p. 194, quoting *L.B. Research &*

		Education Foundation v. UCLA Foundation (2005) 130 Cal.App.4th 171, 180, fn. 2.) Micron's counsel is ordered to give notice of the foregoing rulings.
13.	**Newport Harbor Offices & Marina LLC v. Morris Cerullo World Evangelism** *2016-00878807*	The motions to be relieved as counsel of record for defendants and cross-complainants Morris Cerullo World Evangelism and Plaza Del Sol Real Estate Trust filed by G10 Law, APLC and Daniel Watts are **ORDERED OFF CALENDAR AS MOOT** based on the substitution of attorney forms filed on June 24, 2025. The clerk is directed to give notice.
14.	**The Spartan Associates, Inc. v. Humphreys** *2015-00805807*	Before the court is the "Motion to Vacate Void Judgment" filed by cross-defendant Adam Bereki (Bereki) on May 28, 2025. As set forth below, the motion is **DENIED**. This is the second "Motion to Vacate Void Judgment" Bereki has filed in this action. Bereki filed the first motion to vacate on February 19, 2019, shortly after the Court of Appeal issued its remittitur on its opinion affirming the judgment Bereki seeks to set aside as void. In denying that prior motion, the court (Judge Di Cesare) ruled, "The arguments presented on this motion were already raised and rejected, and the appellate decision affirming the underlying judgment on the merits is now final. Upon remittitur, the trial court is revested with jurisdiction of the case only to carry out the judgment as ordered by the appellate court. (*People v. Dutra* (2006) 145 Cal.App.4th 1359, 1365-1366.) Arguments on the merits of the underlying judgment cannot be entertained anew here. The Motion is therefore Denied." (Mar. 15, 2019 Minute Order.) This prohibition on raising challenges to the trial court judgment and Court of Appeal decision applies not only to challenges or arguments that previously were presented in those proceedings and rejected by the Court of Appeal, but also to any other challenges or arguments that could have been presented at that time. (*Torrey Pines Bank v. Superior Court* (1989) 216 Cal.App.3d 813, 821, citing *Gates v. Superior Court* (1986) 178 Cal.App.3d 301, 311 ["Res judicata bars 'not only the reopening of the original controversy, but also subsequent litigation of all issues which were or could have been raised in the original suit'"].)

		Bereki attempts to avoid that conclusion in a couple ways. First, he argues a void judgment can be challenged at any time, and neither law of the case, res judicata, nor any other doctrine prevents a void judgment from being challenged because its void. Assuming he is correct, there is an important distinction here. The specific reasons he now argues as the basis for the judgment being void were previously considered and rejected by the Court of Appeal. Accordingly, it is not simply that there was a prior appeal in this case that prevents Bereki from raising these challenges now. Rather, these challenges are precluded because the same challenges were previously raised and considered. Indeed, his current claims about the alleged punitive nature of Business and Professions Code section 7031, the lack of evidence, the lack of personal and/or subject matter jurisdiction, etc. were considered by the Court of Appeal and rejected. In the current motion, Bereki acknowledges he raised these issues, and says the Court of Appeal either did not sufficiently consider them or got them wrong. This court cannot find the judgment void based on a ground the Court of Appeal already considered and rejected. Second, Bereki characterizes this motion, at least in the reply, as an "independent action in equity." This, however, is not an independent action in equity. To the contrary, it is another motion to vacate the judgment in the very same case in which the judgment was entered, and in which a prior motion to vacate already was denied. Nonetheless, he has failed to show an independent action would allow a different result because res judicata bars not only the reopening of the original controversy, but also subsequent litigation of all issues which were or could have been raised in the original action. (*Torrey Pines Bank v. Superior Court* (1989) 216 Cal.App.3d 813, 821; *Gates v. Superior Court* (1986) 178 Cal.App.3d 301, 311.) Bereki has failed to show any arguments presented in this motion were not and could not have been presented in the prior proceedings. Bereki's citation to *Eisenberg Village v. Suffolk Construction Co.* (2020) 53 Cal.App.5th 1201, 1212, and *Liu v. SEC* (2020) 591 U.S. 71, 79, do not change that result. The court acknowledges Bereki's argument regarding fraud on the court, but the fraud argument is just a repackaging of the arguments the Court of Appeal already has rejected, i.e., his arguments about the

		punitive nature of section 7031, the lack of evidence, the lack of jurisdiction and the other arguments relating to those assertions. As Bereki acknowledges, his arguments have not only been rejected by the Court of Appeal on his appeal from the judgment in this case, but also by the California Supreme Court in its denial of his petition for review, the United States Supreme Court in its denial of his petition for certiorari, the United States District Court in his unsuccessful separate lawsuit, and the Ninth Circuit in his appeal from the District Court's ruling. In conclusion, having reviewed and considered Bereki's papers in connection with the present motion, Bereki has presented nothing to convince the court that it either can set aside the judgment, or assuming it could, that the court should set aside the judgment. Accordingly, the motion is **DENIED**. Bereki's Request for Judicial Notice is **GRANTED** as to the existence of and legal effects of the various court records identified in the request (i.e., Exhibit 1-12), but otherwise **DENIED** as not relevant in context here. Bereki's request to offer testimony by calling attorney William G. Bissell, counsel for cross-complainants Karen Humphreys and Gary Humphreys (collectively, Humphreys), at the hearing is **DENIED**. Law and motion matters such as Bereki's motion to vacate are customarily decided on the papers with evidence being presented through declarations, requests for judicial notice, and other similar means. Trial courts, however, do have discretion to consider oral testimony. (*Rosenthal v. Great Western Financial Security Corp.* (1996) 14 Cal.4th 394, 414.) Indeed, trial courts have the discretion to receive or not receive oral testimony on law and motion matters based on their determination whether oral testimony would be necessary or helpful in deciding the matter. (*Reifler v. Superior Court* (1974) 39 Cal.App.3d 479, 485.) Here, the trial court declines to exercise its discretion to receive oral testimony and therefore denies Bereki's request because the court finds it is neither necessary nor helpful based on the foregoing analysis of the issues presented. Finally, the Humphreys' request for unspecified monetary sanctions is **DENIED**. That ruling, however,

		is without prejudice to any future request for sanctions and/or to a motion to deem Bereki a vexatious litigant if Bereki continues to repeatedly assert the same challenges to the judgment. The Humphreys' counsel is ordered to give notice of this ruling.
15.		
16.		