Dept. 1
Civil Law and Motion Tentative Rulings for Friday, April 19, 2024 at 8:30 a.m.

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

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1. **CV63717** **CIGA v. Gunter et al**
   Hearing on: Default Prove Up
   Moving Party: Plaintiff
   Tentative Ruling: Continued to 06/07/24 at 8:30 a.m.

This is a subrogation action stemming from a satisfied homeowners' claim for damages caused by a residential burglary. Default was entered as to each of the four alleged perpetrators, though one (Hernandez) succeeded in having the action against him dismissed. The remaining three defendants remain in default, and have shown no interest in participating in these proceedings.

Before the court this day is plaintiff's default prove-up, which this Court presumes was intended to be via declaration (counsel's TUO-CV-125 does not state). Although the matter was set on 12/12/23, there is no prove-up package in the court file, and no proof of service on the defaulted parties. As to the former, plaintiff must submit a case summary, supporting declarations, military service affidavit, exhibits to be considered, proposed judgment, and all calculations impacting the judgment amounts. See CRC 3.1800; CCP §585(b); in accord, *Holloway v. Quetel* (2015) 242 Cal.App.4th 1425, 1434-1435. As to the latter, it remains an open question as to whether notice of the entry of default is sufficient, or if further notice of the proposed judgment must also be provided. See *Bae v. T.D. Service Co. of Arizona* (2016) 245 Cal.App.4th 89, 107-108.

Hearing must be continued for proper filing and service of a complete default prove-up package, unless of course counsel for plaintiff confirms that is was his intention to proceed with a live hearing on the topic.

2. **CV65385** **Shopp v. Smith**
   Hearing on: Motion to Set Aside Judgment
   Moving Party: Defendant/Respondent
   Tentative Ruling: Denied

This is a special proceeding to confirm an arbitration award, entered in petitioner/claimant's favor in a case involving collection of arrears on a promissory note made as part of a prior dissolution proceeding (FL10283). The note included a mandatory arbitration clause. Defendant did not appear in the arbitration, and a default award was entered in the amount of $54,643.38. Defendant did not appear here either, resulting in the entry of that arbitration award as a Judgment. It was only *after* that

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Judgment was entered (on 11/08/23) that Defendant decided he would like to participate in the proceedings.

On 02/05/24, Defendant filed a motion to *set aside the arbitration award* on the singular basis that this Court "lacked subject matter jurisdiction" because jurisdiction had previously been reserved in the family law case. The notice of motion is defective in that it fails to carefully delineate the scope of the requested relief, let alone the legal grounds therefore. See CCP §1010; CRC 3.1110(a); in accord, *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 137-138. However, since the opposition papers appear to have deciphered defendant's request accurately, the notice defect can be overlooked. See *Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1277; *In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 514.

Defendant was served with the new civil action to enforce the arbitration award (CV65385) on 09/01/23. If he genuinely felt that the civil action had to abate in favor of the existing family case (FL10283), that would have been the time to raise the concern. See CCP §430.10(c). Instead, he did nothing for five months, waiting to see what would become of the arbitration award. Pleas in abatement are disfavored in the law, often viewed as exalting form over substance. For that reason, courts have generally concluded that a plea in abatement must be raised at the earliest opportunity, or it shall be deemed waived. This is especially true where, as here, the abatement issue was raised for the first time *after* a judgment had already been rendered. See *Bollinger v. National Fire Ins. Co. of Hartford* (1944) 25 Cal.2d 399, 406; *V&P Trading Co, Inc. v. United Charter, LLC* (2012) 212 Cal.App.4th 126, 133-134; *Graham v. Flory* (1955) 134 Cal.App.2d 729, 731. Defendant's reliance on *Neal v. Superior Court* (2001) 90 Cal.App.4th 22, actually cuts the other way since the Court of Appeal found in *Neal* that the trial court should have sustained the wife's *timely* plea in abatement.

Finally, the entire premise behind the motion to set aside the judgment entered 11/08/23 is flawed. Defendant contends that only the "family court" could convert the arbitration award into an enforceable judgment, but unlike *Neal* – where the promissory note was "wholly ancillary" (*id*. at 26) – the separate promissory note represents the sole dispute between the parties. There as no obligation to run the arbitration award through FL10283 absent a timely objection, and no "jurisdictional" issue with running the arbitration award through CV65385. The rule of deference to "family court" stems from the principle of priority of jurisdiction, which holds that where a proceeding has been assigned for hearing and determination to one department of the superior court, and the proceeding has *not* been finally disposed of, it is beyond the jurisdictional authority of another department of the same court to interfere with that assignment. See *Glade v. Glade*

(1995) 38 Cal.App.4th 1441, 1449-1450. There is no risk of that here since the family court has not been involved in the parties' finances since 2011, and the case itself has been dormant since 2018. In other words, there is nothing happening in the family case which could arguably be interfered with. This is not about enforcing the family court judgment from 2011 since defendant did sign the promissory note (see Family Code §290), but rather a separate contractual obligation to enforce a promise made to repay what amounts to a loan between two persons who happened to be married to one another a long, long time ago.