

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

**Department 18b
Honorable Shella Deen, Presiding**

Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: August 6, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

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

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

FOR APPEARANCES: Department 18 is fully open for in-person hearings. The Court strongly prefers **in-person** appearances for all contested law and motion matters. For all other hearings, the Court strongly prefers either **in-person or video** appearances. If you must appear virtually, you must use video. Audio-only appearances are permitted, but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 18:

https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

SCHEDULING MOTION HEARINGS: Please go to <https://reservations.scscourt.org> or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion before you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

FOR COURT REPORTERS: The Court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If you want to have a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

https://www.scscourt.org/general_info/court_reporters.shtml

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

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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV371336	Horacio Gaona vs Uriel Soto et al	Motion to Compel (Deposition Questions). Scroll down to Line 1 for Tentative Ruling.
LINE 2	23CV410795	Stacey Belew Vs Luigi Digrande et al	Motion for Terminating Sanctions. Scroll down to Line 2 for Tentative Ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 3	23CV425715	Rita Gutierrez vs General Motors LLC et al	Motion to Compel (Form Interrogatories). Plaintiff's Motions to Compel (1) Form Interrogatories, (2) Requests for Admission, (3) Requests for Production of Documents, and (4) Special Interrogatories. At the last hearing of this matter on June 20, 2024, the parties were ordered to meet and confer. That did not occur. The court orders that all four motions are CONTINUED to October 31, 2024, at 9 a.m. in Department 18b. The parties are again ordered to conduct good faith, reasonable and meaningful meet and confers, either in person, by phone or video conference, to try to narrow the many issues in these motions. If any issues remain after the meet and confer efforts, which may span several sessions, the parties shall file an updated <i>joint</i> statement no later than October 17, 2024, which shall identify the remaining items in dispute and the reasons why further responses should/should not be compelled. Failure to comply with this order will result in sanctions. Moving party to prepare formal order.
LINE 4	23CV425715	Rita Gutierrez vs General Motors LLC et al	Motion to Compel (Requests for Admission). See Tentative Ruling for Line 3.

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LAW AND MOTION TENTATIVE RULINGS

LINE 5	23CV425715	Rita Gutierrez vs General Motors LLC et al	Motion to Compel (Document Request). See Tentative Ruling to Line 3.
LINE 6	23CV425715	Rita Gutierrez vs General Motors LLC et al	Motion to Compel (Special Interrogatories). See Tentative Ruling to Line 3.
LINE 7	24CV433621	Sedigheh Hajizadeh vs Magic Mountain, LLC	Motion to Compel (Deposition). Scroll down to Line 7 for Tentative Ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 8	16CV300709	Joan Todd v. Dai Truong, et al.	<p>Motion to Vacate. Motion by Defendant Keith Tai Wong to vacate and declare void the July 26, 2019 order amending Judgment to name him as the alter ego of Judgment Debtor TWA Construction, Inc. and the Amended Judgment entered on August 5, 2019, based on Code of Civil Procedure Section 473 (d). Defendants/Cross-Complainants/Judgment Creditors Dai Truong and Sally Kim oppose the motion. The moving party has not met his burden and no good cause has been shown. There was also no explanation as to why Mr. Wong waited 5 years to bring this motion and nothing he presented provides the Court with any reason to grant this motion. Putting aside the lack of proper notice for this motion, the motion fails as Mr. Wong appears to have received actual notice of the underlying motions: his daughter appeared at the first hearing advising that he was out of the country at the time, he filed a late opposition to that motion, and his attorney, Jeffrey Tuan, specially appeared for him at one of the hearings. Further, after the Second Amended Judgment was entered Mr. Wong unsuccessfully moved for reconsideration of the order granting the motion to add him as a judgment debtor and he was also added as an appellant to the appeal of that order, that was denied. Accordingly, the motion to vacate is DENIED.</p> <p>Defendants/Cross-Complainants/Judgment Creditors Dai Truong and Sally Kim to prepare formal order.</p>
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LAW AND MOTION TENTATIVE RULINGS

<u>LINE 9</u>	22CV392899	Sierra Lumber & Fence Co., Inc. Vs Aldofina Gonzalez et al	<p>Motion to Compel (Discovery). Motion by Judgment Creditor's Assignee Pacific States Industries Inc. for order compelling Judgment Debtors Aldofina Gonzalez and Salvador S. Zamora to answer interrogatories, sanctions, attorney's fees and costs. The motion to compel was filed and served on June 18, 2024. No opposition to this motion was filed by Judgment Debtors. A failure to oppose a motion may be deemed a consent to the granting of the motion. CRC Rule 8.54c. Failure to oppose a motion leads to the presumption that Judgment Debtors have no meritorious arguments. (<i>Laguna Auto Body v. Farmers Ins. Exchange</i> (1991) 231 Cal. App. 3d 481, 489.) There is also good cause to grant this motion. Judgment Debtors should have served a response within 30 days of service of the interrogatories (Code Civ. Proc., §2030.260 (a)). Moving party meets its burden of proof. Good cause appearing, the Motion is GRANTED. The request for sanctions is DENIED as the amount of sanctions sought was not identified in the notice of the motion. (Code Civ. Proc., §§ 708.020(a) and (c), 2030.010, 2030.290, 2030.300 <i>et seq.</i>) Judgment Debtors shall serve verified, code-compliant responses to the interrogatories within 15 days of service of this order.</p> <p>Moving party shall prepare a formal order.</p>
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LAW AND MOTION TENTATIVE RULINGS

LINE 10	22CV394300	Knights Flooring, Inc. vs FPC Builders, Inc. et al	<p>Motion to Consolidate. Plaintiff Knights Flooring, Inc.’s motion to consolidate this case with five (and possibly additional) other pending cases on the grounds that the issues of fact and law relating to the cases are common to all actions, and consolidation of these actions is appropriate, applying the standards set forth in California Code of Civil Procedure 1048(a) and California Rules of Court 3.300 (a). All six actions identified in the notice of motion, relate to the Silvery Tower project in San Jose. The motion seeks to consolidate cases that relate to other subcontractors employed by Defendant FPC Builders, Inc. for work at that project. Some of the subcontractors have stipulated to the consolidation. The Court has also reviewed the oppositions that were filed. The notice of motion seeks consolidation of six cases (cases ending ‘300, ‘735, ‘941, ‘943, ‘031 and ‘464), however the moving papers, declaration and stipulation appear to seek consolidation of five <i>additional</i> cases (ending ‘627, ‘635, ‘338, ‘046 and ‘531). The motion is therefore inconsistent. Further, notice of this motion was not filed in each of the cases in which consolidation was sought as required by California Rules of Court, Rule 3.350. As such, the motion to consolidate is DENIED without prejudice.</p> <p>Moving party to prepare formal order.</p>
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LAW AND MOTION TENTATIVE RULINGS

<u>LINE 11</u>	22CV398680	William Healy vs Robert Brower, Sr. et al	<p>Motion for Assignment of Rights, Restraining Disposition of Right to Payment and Turnover. Judgment Creditor moves for an order against Judgment Debtors for an assignment of rights, restraining of disposition of payment rights, and turnover pursuant to a judgment entered by this court on August 14, 2023 in the amount of \$186,601.76. Judgment Creditor declares that the judgment has not been satisfied, in whole or in part, by any party or non-party and that the judgment is valid and enforceable and not subject to any stay. The motion was noticed and served on June 17, 2024. No opposition to this motion was filed by Judgment Debtors. A failure to oppose a motion may be deemed a consent to the granting of the motion. CRC Rule 8.54c. Failure to oppose a motion leads to the presumption that Judgment Debtors have no meritorious arguments. (<i>Laguna Auto Body v. Farmers Ins. Exchange</i> (1991) 231 Cal. App. 3d 481, 489.) There is also good cause to grant this motion. Moving party meets his burden of proof. Good cause appearing, the motion is GRANTED (Code of Civil Procedure Sections 699.040, 708.510, and 708.520 <i>et seq.</i>).</p> <p>Moving party to prepare formal order.</p>
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LAW AND MOTION TENTATIVE RULINGS

LINE 12	23CV417955	Lightpost Holdings, LLC vs Windermere Holdings, LLC et al	Motion to Compel. Dismissal filed. OFF CALENDAR.
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LAW AND MOTION TENTATIVE RULINGS

LINE 13	23CV421976	Community Education Foundation, a Delaware Corporation vs George Eshoo et al	<p>Motion for Leave to Amend Answer.</p> <p>Defendants motion to file a first amended answer to Plaintiff's Complaint. Plaintiff does not oppose the motion (but does not waive any rights to challenge said pleading, once filed) "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading." (Code of Civil Procedure, section 473 subd. (a)(1).) Judicial policy favors the liberal exercise of discretion to permit amendment of the pleadings so as to resolve all disputed matters between the parties in the same lawsuit. The court's discretion is typically exercised liberally so as not to deprive a party of the right to assert a meritorious cause of action or a meritorious defense. (<i>Morgan v. Superior Court</i> (1959) 172 Cal.App.2d 527, 530.) Defendants have adequately described the amendments they propose and have met their burden. The Court will exercise its discretion and given the non-opposition, the motion is GRANTED.</p> <p>Defendants shall file their First Amended Answer to Complaint within 10 days of this Order. The parties are ordered to meet and confer prior to filing any motion in this matter. A failure to do so, as by Defendant with this motion, unnecessarily adds to an already severely impacted calendar.</p> <p>Moving party to prepare the formal order.</p>
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LAW AND MOTION TENTATIVE RULINGS

LINE 14	23CV421976	Community Education Foundation, a Delaware Corporation vs George Eshoo et al	<p>Motion for Leave to File Cross-Complaint. Defendants motion for leave to file a cross-complaint. Plaintiff does not oppose the motion (but does not waive any rights to challenge said pleading, once filed) "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading." (Code of Civil Procedure, section 473 subd. (a)(1).) Judicial policy favors the liberal exercise of discretion to permit amendment of the pleadings so as to resolve all disputed matters between the parties in the same lawsuit. The court's discretion is typically exercised liberally so as not to deprive a party of the right to assert a meritorious cause of action or a meritorious defense. (<i>Morgan v. Superior Court</i> (1959) 172 Cal.App.2d 527, 530.) Defendants have adequately described the amendments they propose and have met their burden. The Court will exercise its discretion and given the non-opposition, the motion is GRANTED. Defendants shall file their Cross-Complaint within 10 days of this Order. The parties are ordered to meet and confer prior to filing any motion in this matter. A failure to do so, as by Defendant with this motion, unnecessarily adds to an already severely impacted calendar.</p> <p>Moving party to prepare the formal order.</p>
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Calendar Line 1

Case Name: *Horacio Gaona v. Uriel Soto et al.*

Case No.: 20CV371336

Before the Court is Defendants Flagship Facility Services, Inc. and Uriel Soto (“Defendants”) motion for an Order compelling Plaintiff Horacio Gaona to provide further responses to deposition questions regarding his post-employment, and sanctions in the amount of \$3,930 against Plaintiff and/or his counsel. This motion is made pursuant to California Code of Civil Procedure Sections 2025.480, 2025.450(g)(1) and 2023.010, et seq.

Plaintiff’s Complaint asserts claims against his former employer, Defendant Flagship Facility Services, LLC (“Flagship”) for discriminatory termination of employment, failure to accommodate and failure to engage in interactive process, among other claims, in violation of the Fair Employment and Housing Act, and wrongful termination in violation of public policy. Plaintiff seeks damages for lost income and benefits. Defendants assert that the income Plaintiff made after leaving his employment with Flagship is relevant to his mitigation efforts. Plaintiff’s recovery of damages for wrongful termination will be lessened by the income Flagship can prove that Plaintiff earned from his employment after he left Flagship. To the extent that Plaintiff’s post-employment income conflicts with his statements that he had no income, Plaintiff’s post-employment income is also relevant to assess his credibility. Defendants also assert that Plaintiff’s Social Security benefits are also directly relevant to this case. Plaintiff admitted at deposition that he stopped looking for new work after he started receiving Social Security benefits, as such Defendants argue that the amount of Social Security benefits is directly relevant to Plaintiff’s decision not to look for new work.

At the continued deposition on April 2, 2024, Plaintiff did not answer questions relating to 1) his social security income and 2) what he reported as income in 2023 and 3) income received from properties in Mexico based on his attorney’s instruction not to answer as he opined that the question sought collateral source information and/or invasive of privacy rules for tax returns.

Defendants assert that the information regarding Plaintiff’s reported income after his termination from Flagship is directly relevant to his claim that he has suffered lost earnings and benefits as a result of Flagship’s alleged conduct. Further that mitigation evidence needs to be evaluated and that California courts have long considered that “the measure of recovery by a wrongfully discharged employee is the amount of salary agreed upon for the period of service, less the amount which the employer affirmatively proves the employee has earned or with reasonable effort might have earned from other employment.” *Parker v. Twentieth Century–Fox Film Corp.* (1970) 3 Cal.3d 176, 181. *Erler v. Five Points Motors* (1967) 249 Cal. App. 2d 560, 568. Also, social security benefits are relevant to determining Plaintiff’s efforts to mitigate his damages based on his testimony that he stopped looking for work after he started receiving Social Security benefits.

In opposition, Plaintiff argues that this is an employment case, for, *inter alia*, wrongful termination, Plaintiff has already been deposed for two days and he has produced documents about job searches. Plaintiff also argues that Plaintiff was asked about his annual income on the first day of his deposition (taken on December 12, 2023) and answered the questions without any objections. (His answers were that he did not remember). Plaintiff was also asked what his

total income was in the years following his termination from Flagship. Plaintiff objected to this question about income reported on the tax return, arguing that it violates the tax return privilege.

As to the specific questions:

Question 1: How much do you receive each week from social security?

Plaintiff argues that under the collateral source rule, evidence of compensation from an independent third party is not admissible to mitigate damages. (*Acosta v. Southern Cal. Rapid Transit Dist.* (1970) 2 Cal.3d 19, 25-26.). The issue here is whether the collateral source rule is applicable and whether or not the information is discoverable.

The collateral source rule provides ". . . if an injured party receives some compensation **for his injuries** from a source wholly independent of the tortfeasor, such payment should not be deducted from the damages which the plaintiff would otherwise collect from the tortfeasor." (*Helfend v. Southern Cal. Rapid Transit Dist.* (1970) 2 Cal.3d 1, 6.)(Emphasis added).

The motion to compel is GRANTED. The Court finds that the information is discoverable and there is no evidence that was presented that this is compensation for Plaintiff's injuries.

Question 2: Mr. Gaona, can you tell me what you reported as income ...for 2023?

Plaintiff opposes the motion based on the tax privilege. Defendant argues that while taxpayers may claim the privilege to withhold disclosure of their tax returns, the *underlying records and data upon which the returns are based* remain subject to discovery. The Court agrees. (*Webb v. Standard Oil Co. of Calif.* (1957) 49 Cal. 2d 509, 513–14.

The motion to compel is GRANTED

Question 3: How much income do you get from ... the properties in Mexico...?

For the reasons stated for Question 1, the motion to compel is GRANTED. The collateral source rule does not prevent discovery of relevant and discoverable information. The collateral source rule is an issue of admissibility at trial, not an issue of discovery and income from properties is not compensation for injuries. Thus the rule is not applicable here.

Sanctions in the amount of \$2500 are awarded to Defendants.

The continued deposition of Plaintiff by Defendants shall take place within 30 days of this order, or on a date mutually agreed upon by the parties.

Moving party to prepare the formal order.

Calendar Line 2

Case Name: *Stacey Belew v. Luigi Digrande Et Al*

Case No.: 23CV410795

Before the Court is Plaintiff Stacey Belew's motion for terminating sanctions against Defendant Brinker International, Inc. for its willful refusal to obey the Court's April 1, 2024 order. Defendant was ordered to serve code-complaint responses to Special Interrogatories 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, and Form Interrogatories 4.1, 12.1, 12.6, 13.2, and 17.1 and ordered Defendant to pay \$2,560 in sanctions within 20 days of the filing and service of the order. Plaintiff argues that Defendant Brinker has willfully refused to comply with the order and requests that the Court strike Brinker's Answer and enter default judgment against Brinker, or, alternatively, order issue and evidentiary sanctions against Brinker. Plaintiff also seeks \$3,560 in sanctions against Brinker and its counsel.

In opposition, whilst alluding to Plaintiff's own failure to comply with a court order relating to discovery, Defendant argues that Defendant has expended considerable time and resources and has made best efforts to comply with the discovery orders issued in this matter, has paid all sanctions—some 2 hours after the filing of the motion, which were on extension and late due to unavoidable illness of defense counsel and staff.

"Terminating sanctions are unique in their severity and finality" and trial courts may invoke this authority only "in extreme situations, such as when the conduct was clear and deliberate" and "where no lesser alternatives would remedy the situation." (*Del Junco v. Hufnagel* (2007) 150 Cal.App.4th 789, 799. The Court does not find that terminating sanctions are appropriate here. Brinker has served supplemental responses and paid the sanctions. If Plaintiff has issues with the further court ordered responses, that is not now before the Court; Plaintiff will have to bring a new motion. If any such motion is brought, the parties are ordered to meet and confer in person, or by video conference in as many sessions as it takes to address every item of discovery in dispute.

The motion is DENIED. The request for sanctions is DENIED.

Counsel for Plaintiff to prepare the formal order.

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Calendar Line 7

Case Name: *Sedigheh Hajizadeh vs Magic Mountain, LLC*

Case No.: 24CV433621

Defendant Magic Mountain, LLC moves for an order pursuant to Code Civ. Proc., §2025.480(a) compelling Plaintiff Sedigheh Hajizadeh to answer deposition questions following her counsel's instructions not to answer. Defendant seeks an order to compel Plaintiff to complete her deposition, seeks sanctions of \$4,560 and requests that Plaintiff pay for the costs of the deposition.

The questions at issue include:

- 1) The procedural history of this action and the related Los Angeles action;
- 2) Plaintiff's lack of authorization to the filing of this action and the dismissal with prejudice;
- 3) The clerical errors that occurred which caused this filing and dismissal with prejudice;
- 4) Plaintiff's diligence in seeking to vacate the dismissal;
- 5) Plaintiff's lack of authorization to file and dismiss with prejudice this action; and
- 6) Plaintiff's background
- 7) Counsel's involvement regarding the dismissal.

The parties appear to have met and conferred and made some headway in resolving this issue. The Court would like the parties to *further* meet and confer. As such, this motion to compel is CONTINUED to September 24, 2024, at 9 a.m. in Department 18b. The parties are ordered to conduct good faith, reasonable and meaningful meet and confers, either in person, by phone or video conference. If any issues remain after the meet and confer efforts, which may span several sessions, the parties shall file an updated *joint* statement no later than September 10, 2024, which shall identify the remaining items in dispute and the reasons why further responses should/should not be compelled.

Moving party to prepare the formal order after hearing.

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