

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

**Department 20, Honorable Socrates Peter Manoukian, Presiding**

**Courtroom Clerk: Hien-Trang Tran-Thien**

191 North First Street, San Jose, CA 95113

Telephone: 408.882.2320

Department20@scscourt.org

"Every case is important" . . . . "No case is more important than any other." —  
United States District Judge Edward Weinfeld (<https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html>)

"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the  
Biggest Case of Your Life." — Common Wisdom.

As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and  
drink as friends." (Shakespeare, *The Taming of the Shrew*, act I, scene ii.)" (*Gregori v. Bank of  
America* (1989) 207 Cal.App.3d 291, 309.)

Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.*  
(1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented  
by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)

By Standing Order of this Court, all parties appearing in this Court are expected to comply with the  
Code of Professionalism adopted by the Santa Clara County Bar Association:

<https://www.sccba.com/code-of-professional-conduct/>

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**DATE: Tuesday, 19 September 2023**

**TIME: 9:00 A.M.**

**Please note that for the indefinite future, all hearings will be conducted remotely as the Old  
Courthouse will be closed. This Department prefers that litigants use Zoom for Law and  
Motion and for Case Management Calendars. Please use the Zoom link below.**

"A person's name is to him or her the sweetest and most important sound in any language."—Dale Carnegie. All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try to be careful how I pronounce the names of others." Please inform the Court how you, or if your client is with you, you and your client prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers. You might also try [www.pronouncenames.com](http://www.pronouncenames.com) but that site mispronounces my name.

You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal  
Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.

Join Zoom Meeting  
<https://scu.zoom.us/j/96144427712?pwd=cW1JYmg5dTdsc3NKNFBpSjJEam5xUT09>  
Meeting ID: 961 4442 7712  
Password: 017350

Join by phone:  
+1 (669) 900-6833  
Meeting ID: 961 4442 7712

One tap mobile  
+16699006833,,961 4442 7712#

## APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in court appearances as well. If you do intend to appear in person, please advise us when you call to contest the tentative ruling so we can give you current instructions as to how to enter the building.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See *Jensen v. Superior Court (San Diego)* (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwidth. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California *Rules of Court*, rule 3.672.

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 8(E) and *California Rules of Court*, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

Please notify this Court immediately if the matter will not be heard on the scheduled date. *California Rules of Court*, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. *California Rules of Court*, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. *California Rules of Court*, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

**All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.**

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will be helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: **Line #/name/party**. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

## CIVILITY.

In the 48 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

This Court is aware of a study being undertaken led by Justice Brian Currey and involving various lawyer groups to redefine rules of civility. This Judge has told Justice Currey that the lack of civility is due more to the inability or unwillingness of judicial officers to enforce the existing rules.

The parties are forewarned that this Court may consider the imposition of sanctions against the party or attorney who engages in disruptive and discourteous behavior during the pendency of this litigation.

## COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); *California Rules of Court*, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if

any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

#### PROTOCOLS DURING THE HEARINGS.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with **California Rules of Court**, rule 3.1312.

#### TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the “Control” key and click. If you see last week’s tentative rulings, you have checked prior to the posting of the current week’s tentative rulings. You will need to either “REFRESH” or “QUIT” your browser and reopen it. Another suggestion is to “clean the cache” of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

**This Court’s tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court’s final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.**

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	22CV404710	Cyril Smith, III et al. vs. General Motors, LLC	<b>Motion of Defendant to Strike Punitive Damages From Plaintiff’s Complaint.</b> OFF CALENDAR per request.
LINE 2	22CV396105	Columbia Campbell; Geraldine Campbell vs. Encompass Insurance Company	<b>Motion of Defendant to Compell Plaintiff to Provide Further Responses to Requests For Admissions.</b> According to the reply papers, plaintiffs submitted responses to the disputed requests in Encompass’s second set of admission requests, and to request number 13 in the first set. Those issues are therefore now moot. Defendant states that plaintiffs’ continue to refusal to respond to requests numbers 10, 11, and 12. The motion is GRANTED and plaintiffs shall serve code-compliant responses to the requests within 10 days of the filing and service of this order. NO FORMAL TENTATIVE RULING.
LINE 3	22CV401442	Robert Foss vs. Cheryl Durzy; Imsperity Peo Serices, Inc.; Intellidib, Inc.; Liberation Distribution, LLC	<b>Motion Of Plaintiff To Compel Defendants To Comply With This Court’s Discovery Order of 20 July 2023.</b> The motion of plaintiff to compel defendants to comply with this Court’s discovery order of 20 July 2023 is MOOT WITHOUT PREJUDICE to a motion to compel further responses. This Court will start the 45-day clock from the filing and service of this Order. Plaintiff is entitled to additional monetary sanctions in the amount of \$1,625.00 in addition to the sum of \$1,625.00 previously ordered. Defendants are to comply with this order within 10 days of the filing and service of this Order. SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 4	22CV401442	Robert Foss vs. Cheryl Durzy; Imperity Peo Serices, Inc.; Intellidib, Inc.; Liberation Distribution, LLC	<p><b>Motion Of Plaintiff To Deem The Request For Admissions To Be Admitted and for Monetary Sanctions.</b></p> <p>The motion of plaintiff to deem the request for admissions to be admitted is MOOT as this defendant has responded to the requests. This Court will award sanctions in the amount of \$1,800.00 payable within ten days of the filing and service of this Order.</p> <p>SEE TENTATIVE RULING ATTACHED TO LINE #3.</p>
LINE 5	22CV396933	Pacific Specialty Insurance Company v. Lupe Snyder	<p><b>Motion of Plaintiff to Compel Defendant to Answer Plaintiff's First Set Of Form Interrogatories and Request For Monetary Sanctions.</b></p> <p>Defendant did not oppose the motion.</p> <p>The motion is GRANTED. Defendant shall serve code-compliant responses without objections within 20 days of the filing and service of this order.</p> <p>The request of plaintiff for monetary sanctions is code-compliant and is GRANTED. Defendant shall pay \$1,410.00 to counsel for plaintiff with 20 days of the filing and service of this Order.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 6	22CV396933	Pacific Specialty Insurance Company v. Lupe Snyder	<p><b>Motion Of Plaintiff To Deem The Truth Of Matters Specified In Plaintiff's First Set Of Requests For Admissions To Be Admitted And Request For Monetary Sanctions.</b></p> <p>Defendant did not oppose the motion.</p> <p>The motion is GRANTED. Defendant shall serve code-compliant responses without objections within 20 days of the filing and service of this order.</p> <p>The request of plaintiff for monetary sanctions is code-compliant and is GRANTED. Defendant shall pay \$1,410.00 to counsel for plaintiff with 20 days of the filing and service of this order.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 7	201CV391166	Guadalupe López; Manuel López Ochoa vs. Andrea Gómez.	<p><b>Motion of Southwest Legal Group, Anthony R.López And Marie C. Ballon to Withdraw As Counsel for Plaintiffs.</b></p> <p>The motion is not opposed. There does not appear to be a proof of service in the file.</p> <p>Assuming that the clients were duly served, the petition is GRANTED. Counsel is to provide a proper filled-in form order to the Clerk's efilng queue.</p> <p>NO FORMAL TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 8	22CV399246	Mohamed Marleen; ProHealth Care, Inc.; ProHealth Home Care, Inc. vs. Malalai Olomi a.k.a. Malalai Mohideen; Mohamed Insaaf Mohideen.  And related cross-complaint.	<b>Motion of Mohamed Insaaf Mohideen On Behalf of Plaintiffs/Cross-Defendants ProHealth Care, Inc. and ProHealth Home Care, Inc. to Determine the Lack of Good Faith Settlement.</b>  The motion of Mohamed Insaaf Mohideen on behalf of plaintiffs/cross-defendants ProHealth Care, Inc. and ProHealth Home Care, Inc. to determine the lack of good faith settlement. Is DENIED.  SEE ATTACHED TENTATIVE RULING.
LINE 9	22CV399246	Mohamed Marleen; ProHealth Care, Inc.; ProHealth Home Care, Inc. vs. Malalai Olomi a.k.a. Malalai Mohideen; Mohamed Insaaf Mohideen.  And related cross-complaint.	<b>Motion of Defendant/Cross-Complainant Malalai Olomi a.k.a. Malalai Mohideen for Court Approval of Settlement of Derivative Action.</b>  The motion of defendant/cross-complainant Malalai Olomi a.k.a. Malalai Mohideen for Court approval of settlement of derivative action is GRANTED.  SEE TENTATIVE RULING ATTACHED TO LINE #8.
LINE 10	22CV399246	Mohamed Marleen; ProHealth Care, Inc.; ProHealth Home Care, Inc. vs. Malalai Olomi a.k.a. Malalai Mohideen; Mohamed Insaaf Mohideen.  And related cross-complaint.	<b>Trial Setting Conference.</b>  NO TENTATIVE RULING.
LINE 11	23CV412138	Karina Jimenez vs. David Nguyen; Pacific Gas & Electric Co.	<b>Further Case Management Conference.</b>  Both parties should be present at the hearing on this motion to discuss the current status of the litigation.  NO FORMAL TENTATIVE RULING.
LINE 12	23CV412138	Karina Jimenez vs. David Nguyen; Pacific Gas & Electric Co.	<b>Motion to Consolidate Case Number 23CV412138 with Case Number 23CV412774.</b>  No opposition has been filed.  The motion is GRANTED. Both cases will proceed under case number 23CV412138.  NO FORMAL TENTATIVE RULING.
LINE 13			SEE ATTACHED TENTATIVE RULING.
LINE 14			SEE ATTACHED TENTATIVE RULING.
LINE 15			SEE ATTACHED TENTATIVE RULING.
LINE 16			SEE ATTACHED TENTATIVE RULING.
LINE 17			SEE ATTACHED TENTATIVE RULING.
LINE 18			SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 19			SEE ATTACHED TENTATIVE RULING.
LINE 20			SEE ATTACHED TENTATIVE RULING.
LINE 21			SEE ATTACHED TENTATIVE RULING.
LINE 22			SEE ATTACHED TENTATIVE RULING.
LINE 23			SEE ATTACHED TENTATIVE RULING.
LINE 24			SEE ATTACHED TENTATIVE RULING.
LINE 25			SEE ATTACHED TENTATIVE RULING.
LINE 26			SEE ATTACHED TENTATIVE RULING.
LINE 27			SEE ATTACHED TENTATIVE RULING.
LINE 28			SEE ATTACHED TENTATIVE RULING.
LINE 29			SEE ATTACHED TENTATIVE RULING.
LINE 30			SEE ATTACHED TENTATIVE RULING.

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**Calendar Line 3**

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

**DEPARTMENT 20**

**161 North First Street, San Jose, CA 95113**  
**408.882.2320 · 408.882.2296 (fax)**  
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*http://www.scscourt.org*

*(For Clerk's Use Only)*

**CASE NO.: 22CV401772**  
**DATE: 19 September 2023**

**TIME: 9:00 am**

**Robert Foss v. Cheryl Durzy et al.**  
**LINE NUMBER: 03, 04**

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2<sup>nd</sup> Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 18 September 2023. Please specify the issue to be contested when calling the Court and Counsel.

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**Order on Motions of Plaintiff to:**

- 1. Compel Defendants to Comply with This Court's Order of 20 July 2023; and**
- 2. To Deem Requests for Admissions to Be Admitted.**

**I. Statement of Facts.**

Plaintiff alleges that in April 2020, Defendants Liberation Distribution, LLC (hereinafter "LibDib"), Intellidib, Inc., and Insperity PEO Services, L.P. (collectively "Corporate Defendants") hired Plaintiff Robert Foss as Vice President of Revenue. Plaintiff was responsible for bringing in revenue and overseeing the company's vendors and customers. He reported directly to Josh Zeller, Chief Operations Officer ("COO").

After he reported that he believed shipments were being made to unlicensed purchasers, defendants began referring to his age, calling him "Boomer" and indicating that they thought he was younger than he actually was. He eventually was told that his position was being eliminated and he was terminated from his employment. However, he learned that defendants transferred the role to an employee they had previously promoted by meeting the position called VP Of Sales and Customer Support." This position title was later changed to "VP, Revenue & Support." Both titles and job descriptions were substantially similar to the role he performed.

**II. Discovery Motions.**

**A. 20 July 2023 Court Order.**

On this date, this Court granted the motion of plaintiff to compel defendants to respond to plaintiff's discovery requests (Form Interrogatories-Employment Law and for sanctions in the amount of \$1,625.00, with code compliant responses without objections and the payment of the sanctions within 20 days of the filing and service of the order.

**B. Current Discovery Motions.**

- 1. Motion to Compel Compliance with Court Order (Line #3):**

In this current motion, plaintiff seeks an order compelling the defendants to comply with the foregoing order since defendants neither provided the court ordered discovery responses nor did he receive the court-ordered sanctions.

Defendants have filed opposition to this motion. Defendants indicate that on 15 August 2023, they informed plaintiff that the responses were under review and would be provided to a mediation that was scheduled on 05 September 2023.<sup>1</sup> the responses apparently were actually served on 31 August 2023.

The defendants further seemed to state that the monetary sanctions would be paid within seven days of the filing of the opposition.

According to the reply papers, plaintiff has received the responses but claims they are not code-compliant. Plaintiff claims that the responses to the interrogatories refused to identify documents replied upon in the termination decision or claiming that no responsive documents exist, even though defendant has produce such documents.

As of the filing of the reply by plaintiff, defendants have not paid the court-ordered monetary sanctions.

## **2. Motion to Deem Requests for Admissions to Be Admitted.**

On 26 May 2023, plaintiff served his first set of requests for admissions along with Form Interrogatory-general That 17.1 and a related request for production of documents (number 86) upon defendant liberation distribution, LLC. Defendant never responded to these discovery requests.

Plaintiff filed this motion on 15 August 2023.

Defendant filed opposition on 06 September 2023, responding that the response to the requests for admissions was served and therefore the motion is moot.

## **III. Analysis.**

### **A. Motion to Compel Compliance with Court Order (Line #3):**

Defendants make no attempt whatsoever to explain their failure to comply with the 20 July 2023 order of this Court.

However, defendants have served responses. Even though plaintiff asserts that the responses are not code-compliant, the service of verified responses MOOTS the motion. The motion is therefore MOOT, but this Court will deem further that this order is WITHOUT PREJUDICE to a motion to compel further responses. This Court will start the 45-day clock from the filing and service of this Order.

This Court will further order that plaintiff is entitled to additional monetary sanctions in the amount of \$1,625.00 in addition to the sum of \$1,625.00 previously ordered.

Defendants are to comply with this order within 10 days of the filing and service of this Order.

### **B. Motion to Deem Requests for Admissions to Be Admitted.**

The motion is MOOT as this defendant has responded to the requests. In reply, plaintiff apparently does not object to the responses per se but still requests monetary sanctions.

Defendant responds that sanctions should not be awarded because plaintiff was not prejudiced by the delay in providing the responses to the requests for admissions. However, where requests for admissions are concerned, there is no requirement that a moving party show prejudice on a motion to compel in order to recover monetary sanctions. (*Deck v. Developers Investment Co., Inc.* (2023) 89 Cal.App.5th 808, 833.<sup>2</sup>)

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<sup>1</sup> This Court notes that 15 August 2023 is more than 20 days from the service of the previous order, like three weeks late.

<sup>2</sup> "A prevailing party on a motion to compel further responses to discovery requests need not show prejudice in order to recover monetary sanctions. Successfully bringing the motion is sufficient to entitle the prevailing party to recover monetary

"It is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion." (**Code of Civil Procedure**, § 2033.280(c).) However, the amount claimed by plaintiff seems to be excessive. This Court will award sanctions in the amount of \$1,800.00 (four hours at \$450/hour) payable within ten days of the filing and service of this Order.

**IV. Case Management.**

The Trial Setting Conference currently set for 06 February 2024 at 11:00 AM in Department 20 shall REMAIN AS SET.

**VI. Order.**

The motion of plaintiff to compel defendants to provide further Discovery responses is MOOT WITHOUT PREJUDICE to a motion to compel further responses. This Court will start the 45-day clock from the filing and service of this Order. Plaintiff is entitled to additional monetary sanctions in the amount of \$1,625.00 in addition to the sum of \$1,625.00 previously ordered. Defendants are to comply with this order within 10 days of the filing and service of this Order.

The motion of plaintiff to deem the request for admissions to be admitted is MOOT as this defendant has responded to the requests. This Court will award sanctions in the amount of \$1,800.00 payable within ten days of the filing and service of this Order.

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**DATED:**

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**HON. SOCRATES PETER MANOUKIAN**  
*Judge of the Superior Court*  
*County of Santa Clara*

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sanctions unless the trial court finds the party unsuccessfully opposing the motion acted with substantial justification or the sanction is otherwise unjust." (citation omitted, punctuation modified.)

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**Calendar Line 8**

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

**DEPARTMENT 20**

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*(For Clerk's Use Only)*

**CASE NO.: 22CV399246**  
**DATE: 19 September 2023**

**Mohamed Marleen et al. vs. Malalai Olomi a.k.a. Malalai Mohideen et al.**  
**TIME: 9:00 am**

**LINE NUMBER: 08, 09**

**This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2<sup>nd</sup> Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 18 September 2023. Please specify the issue to be contested when calling the Court and Counsel.**

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**Order on Cross Motions of  
Plaintiffs/Cross-Defendants ProHealth Care, Inc. and ProHealth Home Care, Inc.  
and Defendant/Cross-Complainant Malalai Olomi a.k.a. Malalai Mohideen  
Concerning Good Faith Settlement or Lack Thereof.**

**I. Statement of Facts.**

The Prohealth Parties are California corporations in the business of providing home health care service. Olomi and Marleen each own 50 per cent of the shares in the Prohealth Parties. Olomi is the former spouse of Mohideen. Mohideen and Olomi divorced in February of 2018 with their separation becoming final on 20 September 2018.

Marleen and Olomi agree that Mohideen never held shares of either company in his own name. Mohideen does not dispute this fact, except to say that he has a community interest in the shares.

Marleen and the Prohealth Parties allege that Mohideen and Olomi opened a secret account with Wells Fargo and diverted revenue from the Prohealth Entities into this account to pay for personal expenses.

**II. Motion.**

Present here are competing motions concerning the good faith of the settlement entered into between some of the parties. Olomi filed a cross-complaint

**III. Analysis.**

**A. Objections to the Evidence.**

Defendant/cross-complainant has filed two objections to the evidence of plaintiff/cross-defendant.



There is no legal basis requiring a court to rule on an evidentiary objection made in connection with a motion other than one for summary judgment or an anti-SLAPP motion. To the extent Plaintiff seeks to exclude portions of the transcript from evidence, the Court will not make such an evidentiary ruling in connection with a discovery motion. (See generally, **People v. Morris** (1991) 53 Cal.3d 152, 188 [providing that a motion in limine is a motion brought before the trial court for the purpose of excluding evidence].)

## **B. Good Faith Settlements.**

Under California law, if a trial court determines a settlement was entered into in good faith, a settling defendant is relieved from any further liability for equitable indemnification. (**Code of Civil Procedure**, § 877.6). The California Supreme Court set the parameters for determining good faith under Section 877.6 in **Tech-Bilt, Inc. v. Woodward-Clyde & Associates** (1985) 38 Cal.3d 488.) There, the Court articulated a liberal standard for establishing good faith, requiring only that “a defendant’s settlement figure must not be so grossly disproportionate to what a reasonable person, at the time of settlement, would estimate the settling defendant’s liability to be.” *Id.* at 499. A mere showing that a defendant “paid less than his theoretical proportionate or fair share” is insufficient to successfully challenge a settlement. Any settlement that is not “out of the ballpark” will pass muster. *Id.* at 499 (citations omitted).

To determine what is in the “ballpark,” the **Tech-Bilt** Court enumerated several factors that a court may consider in assessing the good faith of a settlement:

- the amount of the settlement;
- a rough approximation of plaintiff’s total recovery and the settler’s proportionate liability;
- a recognition that a settling defendant should pay less in settlement than after an adverse judgment at trial;
- the settler’s financial condition and insurance policy limits; and
- evidence of any fraud or collusion. (*Id.* at 449.)

In analyzing a settlement, however, “[a] judge charting the boundaries of good faith of necessity must avoid a rigid application of the factors set forth in **Tech-Bilt**.” (**North County Contractor’s Association, Inc. v. Touchstone Insurance Services** (1994) 27 Cal.App.4th 1085, 1090; see also **City of Grand Terrace v. Superior Court** (1987) 192 Cal. App. 3d 125 1 (1987) (reasoning that not all of the **Tech-Bilt** factors are relevant in every case, and that the essential question is whether a settlement is fair).

The goal is not to attain “perfect or even nearly perfect apportionment of liability.” (**Abbott Ford, Inc. v. Superior Court** (1987) 43 Cal.3d 858, 874.) All that is necessary is that there is a “rough approximation” between the settling party’s offer of settlement and its proportionate liability. (**Bay Development, Ltd. v. Superior Court** (1990) 50 Cal.3d 1012, 1027.)

Once the settling party has demonstrated that a settlement exists, a presumption of good faith exists. (See **Code of Civil Procedure**, § 877(d); **Schultz v. Superior Court** (1980) 104 Cal.App.3d 250, 252.) The party asserting that the settlement was not made in good faith must demonstrate that the settlement is “so far out of the ballpark in relation to [the above factors] as to be inconsistent with the equitable objectives of the statute.” (**Tech-Bilt**, supra at 499-500.)

“Trial courts have “broad discretion in determining whether a settlement was entered in good faith and within the **Tech-Bilt** ballpark, and in allocating potential liability and exposure between or among joint tortfeasors.” (**Norco Delivery Service, Inc. v. Owens Corning Fiberglass, Inc.** (1998) 64 Cal.App.4th 955, 962.)

There is no precise yardstick for measuring “good faith” of a settlement with just one of several factors. It must harmonize the public policy of settlements with the competing public policy favoring equitable sharing of costs among tortfeasors. To accomplish this, the settlement must be within the “reasonable range” of the settling tortfeasors share of liability for the plaintiff’s injuries, taking into consideration the facts and circumstances of the particular case. Not every factor will apply in every case. (**Tech-Bilt**, supra at 499; **Dole Food Co., Inc. v. Superior Court (Shell Oil Co.)** (2015) 242 Cal.App.4th 894, 909.)

“A plaintiff’s claims for damages are not determinative—rather, the court is called upon to make a ‘rough approximation of what the plaintiff would actually recover. (citation omitted.)” (**Dole Food Co., Inc. v. Superior Court** (2015) 242 Cal.App.4<sup>th</sup> 894, 912) (punctuation modified.)

### C. Application.

Business cases that are pendent to family law cases are justice are to settle as family law cases themselves. Negotiation is important and resolution of issues is of prime importance. Otherwise, litigation becomes a bottomless sinkhole of funds that could be used to move on.

All parties eventually agreed to mediation with Judge Jacobs-May and apparently a 12-hour session on 21 March 2023 resulted in a tentative settlement. A Settlement Agreement was executed on 10 May 2023. The terms included:

- Olomi will sell her 50% interest in the ProHealth Parties to Marleen for \$3,500,000 [“Purchase Price”];
- Marleen will pay Olomi \$ 1,500,000 immediately upon court approval of this motion and the remaining \$2,000,000.00 in monthly installments over a 36-month term with the 19 abilities to prepay the remaining balance without penalty;
- Each party to the Settlement Agreement will dismiss their respective actions against one another;
- The parties will continue to prosecute their actions against Mohideen, except as it relates to the fraudulent transfer action against Ms. Olomi’s property in San Jose, California.

The lawyers in the family law matter were aware of this resolution and apparently have not taken any action to void this resolution in the Family Court.

Whether this case should have been resolved in the Family Court is a point that has some merit. However, this Court has not seen it necessary to combine pendent business cases or other financial matters with the dissolution of the marriage itself. The fact that the attorneys in the family case are not opposing the settlement is compelling.

“Practical considerations obviously require that the evaluation be made on the basis of information available at the time of settlement. ‘[A] defendant’s settlement figure must not be grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate the settling defendant’s liability to be.’” (**Tech-Bilt, Inc. v. Woodward-Clyde & Associates** (1985) 38 Cal.3d 488 at 499, quoting **Torres v. Union Pacific R.R. Co.** 157 Cal.App.3d 499, 509.)

As this Court sees the matter, the determination of offsets, if any, misses the point. The ProHealth plaintiffs are not getting any money from Olomi to settle their action against her, and she is not getting money to settle her action against the settling plaintiffs. There simply ending a business relationship and Marleen is buying out Olomi’s interests. She is receiving payment for her shares. This Court does not see solid evidence concerning the value of the shares in any point in time other than the value that the *dramatis personae* have placed on them.

This settlement, in conclusion, seems indeed to be a recognition that further litigation will only devalue the company’s further and that there are issues of potential liability on all sides.

Applying the foregoing standards, this Court finds no gross disproportionality between the settlement and the parties’ share of the liability. Nor does this Court find any other evidence of bad faith. Accordingly, this Court finds that the settlement made here was made in good faith

Good cause appearing, IT IS ORDERED that the motion of Mohamed Insaaf Mohideen on behalf of plaintiffs/cross-defendants ProHealth Care, Inc. and ProHealth Home Care, Inc. to determine the lack of good faith settlement. Is DENIED.

The motion of defendant/cross-complainant Malalai Olomi a.k.a. Malalai Mohideen for Court approval of settlement of derivative action is GRANTED.

**IV. Tentative Ruling.**

The tentative ruling was duly posted.

**V. Case Management.**

The case is also here for a Trial Setting Conference. The parties should meet and confer and agree upon a date within six or seven months of this date.

**VI. Order.**

The motion of Mohamed Insaaf Mohideen on behalf of plaintiffs/cross-defendants ProHealth Care, Inc. and ProHealth Home Care, Inc. to determine the lack of good faith settlement. Is DENIED.

The motion of defendant/cross-complainant Malalai Olomi a.k.a. Malalai Mohideen for Court approval of settlement of derivative action is GRANTED.

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**DATED:**

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**HON. SOCRATES PETER MANOUKIAN**

*Judge of the Superior Court  
County of Santa Clara*

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