

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

Department 6

Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: March 5, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

FOR ORAL ARGUMENT: Before 4:00 PM today you must notify the:

- (1) Court by calling (408) 808-6856 and
 - (2) Other side by phone or email that you plan to appear at the hearing to contest the ruling
- (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:

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

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

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

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website.

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	21CV391498	Hugo Amaya et al vs The Permanente Medical Group Inc. et al	Universal Protection Services, L.P., Ronnie Laureta, and Steve Horton's Demurrer to Plaintiff's Third Amended Complaint is SUSTAINED with 10 days leave to amend. A notice of motion with this hearing date and time was served by electronic mail on Plaintiff on January 18, 2024. No opposition was filed. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) While Plaintiff failed to file an opposition or seemingly to address numerous flaws that remain in her Third Amended Complaint, at the hearing on the Kaiser Defendants' demurrer and motion to strike her Third Amended Complaint, Plaintiff represented that she had already prepared a Fourth Amended Complaint that addressed all deficiencies identified by both the Kaiser and Universal Defendants. Because Plaintiff's counsel does have a client, the Court thus finds it appropriate to provide Plaintiff with one final chance to amend her complaint to address the deficiencies. Court to prepare formal order.
2	21CV391498	Hugo Amaya et al vs The Permanente Medical Group Inc. et al	Universal Protection Services, L.P., Ronnie Laureta, and Steve Horton's Motion to Strike Portions of Plaintiff's Third Amended Complaint is GRANTED with 10 days leave to amend. Please see line 1, above. Court to prepare formal order.
3	23CV423607	Anne Heiting vs Nutanix, Inc.	Off calendar.
4	23CV427692	David Williams vs Computer History Museum	Defendant's Demurrer is SUSTAINED WITHOUT LEAVE TO AMEND. A notice of motion with this hearing date and time was served by U.S. mail on Plaintiff on January 18, 2024. No opposition was filed. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) The Court has also reviewed the Complaint and concludes there is no relationship or interaction between the parties that could give rise to a cognizable cause of action. It is Plaintiff's the burden to show how the complaint can be amended to state a legitimate cause of action. (<i>Campbell v. Regents of University of California</i> (2005) 35 Cal.4th 311, 320.) Plaintiff failed to do that here. Accordingly, Defendant's demurrer is sustained without leave to amend. Court to prepare formal order sustaining the demurrer. Defendant to promptly prepare form of judgment and dismissal for the Court's review and signature.
5	21CV390984	Westlake Services, LLC et al vs Catrina Velasquez et al	Off calendar.

6	21CV391498	Hugo Amaya et al vs The Permanente Medical Group Inc. et al	Kaiser Foundation Hospital's Motion to Compel Responses to Special Interrogatories and for Issue Sanctions is GRANTED. A notice of motion with this hearing date and time was served by electronic mail on Plaintiff on February 1, 2024. No opposition was filed. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) Plaintiff also failed to comply with the Court's October 2023 order granting Kaiser's motion to compel at least by (a) serving a single blanket response to these interrogatories and (b) failing to state whether all information in her possession, custody, or control has been produced; Plaintiff was "ordered to (1) review her interrogatory responses and make sure that she has provided <u>Kaiser Foundation Hospital</u> with all information she has and (2) supplement her answers to (a) identify any additional documents, addressing each interrogatory individually, rather than providing only blanket responses and (b) indicate that after a reasonable search she has produced all information in her possession, custody, or control responsive to the specific special interrogatory." Code of Civil Procedure section 2031.310(i) provides: "if a party fails to obey an order compelling further [discovery] responses, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction." (See also <i>Department of Forestry & Fire Protection v. Howell</i> (2017) 18 Cal.App.5th 154.) An issue sanction either orders that designated facts be taken as established or prohibits a party from supporting or opposing designated claims or defenses. (Code of Civ. Pro. §2023.030(b); <i>Kuhns v. State</i> (1992) 8 Cal.App.4th 982, 989; <i>Marriage of Chakko</i> (2004) 115 Cal.App.4th 104, 109-110.) The trial court has broad discretion to impose discovery sanctions; a judge's sanction order will not be reversed absent "a manifest abuse of discretion that exceeds the bounds of reason." (<i>Rutledge v. Hewlett-Packard Co.</i> (2015) 238 Cal.App.4th 1164, 1191.) The Court finds the facts listed at page 7 of Kaiser's motion to enforce to be established as fact for all purposes in this action, with the following modification: "beyond those provided in plaintiff's discovery responses served on any defendant in this action before January 30, 2024." Court to prepare formal order.
7	19CV347080	American Express National Bank f/k/a American Express Centurion Bank vs Monica Nelson	The parties are ordered to appear, and Defendant is ordered to show cause why her answer to the complaint should not be stricken for her failure to appear at the mandatory settlement conference and trial assignment. If Defendant does not appear at this hearing, her answer will be stricken. Any orders will be reflected in the minutes.
8	20CV373782	Athena Palombi vs Yang Lin et al	Plaintiff's Motion for order and publication of summons is DENIED WITHOUT PREJUDICE. While the attachments to the motion include extensive correspondence with the process server regarding service attempts, the Court was unable to locate an affidavit from any process server illustrating due diligence. Further, the materials suggest Defendant Yang Lin owns property in San Jose. Plaintiff is directed to select a publication more likely to provide notice to Mr. Lin, such as the San Jose Mercury News or other approved San Jose publication. Plaintiff may resubmit this motion via ex parte application in compliance with applicable rules (which do require notice). Court to prepare formal order.

9	21CV391498	Hugo Amaya et al vs The Permanente Medical Group Inc. et al	<p>Defendant Universal Protection Services' Motion to Enforce December 5, 2023 Order Granting Motion to Compel is GRANTED. A notice of motion with this hearing date and time was served by electronic mail on Plaintiff on February 1, 2024. No opposition was filed. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) The record also demonstrates that Plaintiff persistently fails to comply with the Code of Civil Procedure even after being ordered to do so. The undersigned Court's attempts to supplement its orders with explanations during argument regarding the necessity of serving complete, code compliant discovery responses for each defendant apparently have also failed to prompt Plaintiff's compliance. Code of Civil Procedure section 2031.310(i) provides: "if a party fails to obey an order compelling further [discovery] responses, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction." (See also <i>Department of Forestry & Fire Protection v. Howell</i> (2017) 18 Cal.App.5th 154.) An issue sanction either orders that designated facts be taken as established or prohibits a party from supporting or opposing designated claims or defenses. (Code of Civ. Pro. §2023.030(b); <i>Kuhns v. State</i> (1992) 8 Cal.App.4th 982, 989; <i>Marriage of Chakko</i> (2004) 115 Cal.App.4th 104, 109-110.) The trial court has broad discretion to impose discovery sanctions; a judge's sanction order will not be reversed absent "a manifest abuse of discretion that exceeds the bounds of reason." (<i>Rutledge v. Hewlett-Packard Co.</i> (2015) 238 Cal.App.4th 1164, 1191.) Regarding Universal's special interrogatory nos. 25, 28, 31, 33, 34, 37, 40, 43, 46, 49, 52, 55, 58, 61, 64, and 67 the following fact is established for all purposes in this action: "Plaintiff is unaware of any facts supporting her responses to the above special interrogatories beyond those facts specifically contained within Plaintiff's Third Amended Complaint." Regarding the balance of Universal's discovery Set One that was the subject of the Court's December 5, 2023 order, Plaintiff is again ordered to serve verified, code compliant responses without objections within 20 days of service of this formal order. Plaintiff's counsel is also ordered to pay \$3,025 to Universal Defendants within 30 days of service of this formal order. The Court specifically orders Plaintiff's counsel to pay for this sanction, as it is Plaintiff's counsel's actions and not Plaintiff individually that required this motion. Court to prepare formal order.</p>
10	21CV391498	Hugo Amaya et al vs The Permanente Medical Group Inc. et al	<p>Universal Protection Services' Motion for an Undertaking in the amount of \$25,000 is GRANTED. A notice of motion with this hearing date and time was served by electronic mail on Plaintiff on February 1, 2024. No opposition was filed. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) It is also undisputed that Plaintiff is not a California resident or that Plaintiff is seeking substantial damages. The parties also frequently appear before the undersigned Court for significant motion practice, and Plaintiff repeatedly fails to comply with the Code of Civil Procedure or this Court's orders. Accordingly, Plaintiff is ordered to post an undertaking in the amount of \$25,000 within 30 days of service of this formal order. The parties are ordered to appear on April 30, 2024 at 9 a.m. in Department 6. If Plaintiff is unable to demonstrate proof that the undertaking has been posted, her case against the Universal Defendants will be dismissed without prejudice. Court to prepare formal order.</p>

11	23CV412270	Ruby Rebosa vs Dolores Tapay	Adam S. Juratovac's Motion to be Relieved as Counsel for Plaintiff Ruby Rebosa is GRANTED. Court to use order on file. The Court has also reviewed the parties' correspondence regarding the discovery responses, including Mr. Juratovac's attempts to protect his client even while he planned to withdraw, and finds it appropriate to provide Plaintiff 60 days to locate new counsel, during which time discovery shall be stayed. The July 2, 2024 case management conference is VACATED and RESET to May 2, 2024 at 10:00 a.m. in Department 6. Ms. Rebosa is ordered to file a substitution of counsel on or before that date or, if she intends to proceed in pro per, to personally appear for the case management conference. If Ms. Rebosa fails to appear herself or through new counsel of record on May 2, 2024 at 10:00 a.m. in Department 6, her case may be dismissed without prejudice.
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