

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

**Department 10**

**Honorable Frederick S. Chung**

Rachel Tien, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408-882-2210

**DATE: November 7, 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.

**The courthouse is open:** Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. 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.

**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.

**CourtCall is no longer available:** Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: [https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml). Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

**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.

**Court reporters:** Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See [https://www.scscourt.org/general\\_info/court\\_reporters.shtml](https://www.scscourt.org/general_info/court_reporters.shtml).

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

**Department 10  
Honorable Frederick S. Chung**

Rachel Tien, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408-882-2210

**DATE: November 7, 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.

LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	20CV373181	Ao Wang et al. v. Bethany Liou et al.	OFF CALENDAR
<a href="#">LINE 2</a>	21CV375892	Space Designs, Inc. v. Studley & Associates	Order of examination: <u>parties to appear</u> .
<a href="#">LINE 3</a>	22CV397491	Barjinderpal Gill v. Amy Lui et al.	Click on <a href="#">LINE 3</a> or scroll down for ruling.
<a href="#">LINE 4</a>	23CV409815	Yesenia Torres v. Zafar Jafri et al.	Motion by third-party West Valley-Mission Community College District to quash subpoena: notice is apparently proper, and the court has received no opposition to the motion. In the absence of any opposition, the court discerns no possible relevance of the educational and medical records sought by the subpoena to the premises liability causes of action in this case. The court therefore GRANTS the motion to quash. The District will submit a proposed order for signature.
<a href="#">LINE 5</a>	23CV427200	Walter James Kubon et al. v. Rosalie Guancione	Click on <a href="#">LINE 5</a> or scroll down for ruling in lines 5-6.
<a href="#">LINE 6</a>	23CV427200	Walter James Kubon et al. v. Rosalie Guancione	Click on <a href="#">LINE 5</a> or scroll down for ruling in lines 5-6.
<a href="#">LINE 7</a>	22CV396538	Nyra Chalasani v. Rainbow Montessori Day Care Center, Inc.	Petition for approval of compromise of minor's claim: <u>parties to appear</u> , in accordance with CRC 7.952.

- oo0oo -

### **Calendar Line 3**

**Case Name:** *Barjinderpal Gill v. Amy Lui et al.*

**Case No.:** 22CV397491

This is a motion to compel further responses to plaintiff Barjinderpal Gill's third set of requests for production of documents from defendants Amy Lui and Michael Gong. These requests were addressed in the court's May 30, 2024 order, but Gill argues that defendants' written responses are still deficient.

On the one hand, it is entirely unclear to the court whether any documents remain to be produced by defendants. Defendants represent that they completed their document productions in response to these requests on May 16, 2024, nearly six months ago. Therefore, it is difficult to tell whether this motion amounts to anything more than a hill of beans.

On the other hand, the court does not understand why it has been so difficult for defendants to provide timely, code-compliant written responses. If all responsive documents have now been produced, then defendants should say so in verified written responses. Instead, the court finds that defendants have continued to struggle to meet their basic discovery obligations.

On the previous motion to compel, heard on May 30, 2024, Gong claimed that he had "served verified, supplemental discovery responses on April 3, 2024," and so the motion as to the requests for production of documents [was] moot." (May 30, 2024 Order, p. 3:6-7 [quoting Gong's opposition brief on the prior motion].) Defendants now acknowledge that this representation to the court was wrong, and that they did not actually serve their written responses on Gill until May 29, 2024, the eve of the previous hearing. (Declaration of Marianne Taleghani, ¶ 4.) The court did not see these responses, because they were never submitted for consideration. In response to the present motion to compel, which argues that these responses are still deficient, defendants argue that their responses "substantially complied" with the Civil Discovery Act, but "in the interest[] of cooperation," they "are simultaneously serving amended written responses to Plaintiff's Requests for Production, Set Three" with their opposition brief. (Opposition, p. 1:19-24.)

Given that the present motion was filed on July 23, 2024, it is unreasonable for defendants to have waited until the due date for their opposition brief, October 23, 2024, to serve these amended responses. That three-month lag is inexcusable. In any event, the court finds that these amended responses are still inadequate. (See Declaration of Marianne Taleghani, Exhibits F & G.) They all contain substantially the same boilerplate text for each request:

Subject to and without waiving the foregoing objections, Responding Party responds as follows: Responding Party has produced all non-privileged documents responsive to this Request, if any, to the extent such documents existed and were within Responsive Party's possession, custody, or control, in Responding Party's previously served document productions.

This is not code-compliant, because it fails to say whether documents have actually been produced or whether *no* documents were located after a diligent search and reasonable inquiry. Instead, the hedging language—"if any" and "to the extent such documents exist"—renders the

responses ambiguous. If defendants have produced all responsive documents in their possession, custody, and control, then they should say so, in clear, non-hedging English. If defendants made a diligent search for responsive documents and are unable to comply, then they should say so, with an explanation as to whether documents never existed or were lost/destroyed.

In its May 30, 2024 order, the court declined to make a ruling on whether objections were waived in the May 29 document responses, because the court never received a copy of the responses from the parties. (See Order, p. 3:16-18 [“The court declines to rule on the issue of waiver until it has the specific requests and responses in hand.”].) The court has now reviewed the May 29 and October 23 written responses and finds that defendants’ untimely objections were in fact waived. The court also agrees with Gill that even if they were not waived, these objections are pure boilerplate and of minimal merit.

The motion is GRANTED, and defendants shall serve further amended responses to the third set of requests for production, *with* an adequate statement of compliance or inability to comply and *without* objections, within 10 days of entry of this order.

- oo0oo -

## **Calendar Lines 5-6**

**Case Name:** *Walter James Kubon et al. v. Rosalie Guancione*

**Case No.:** 23CV427200

In this quiet title action, plaintiffs Walter James Kubon and Vally Kubon have brought two motions: (1) a motion to add another defendant to the case, and (2) a motion to compel defendant Rosalie Guancione to provide “responses to requests for production of documents.” The Kubons are representing themselves in this case, and there are some procedural defects in both of their motions. Guancione’s oppositions focus on these procedural defects rather than addressing the merits. The court addresses these motions in turn.

### **1. Motion to Add Defendant**

The Kubons’ motion to “add defendant” is essentially a motion for leave to amend the complaint. As Guancione points out, the motion does not comply with the procedural requirements set forth in rule 3.1324 of the California Rules of Court. At the same time, because the complaint already includes allegations against fictitious, Doe defendants, the present motion could also potentially be construed as an application to file a “Doe” amendment to the complaint, which is generally less procedurally onerous than the requirements of rule 3.1324.

The problem here is that it is not exactly clear from the Kubons’ motion that the new proposed defendant—Prince William Bullock III Stewart (“Stewart”)—is intended to be one of the fictitiously named Doe defendants who may claim “any legal or equitable right [or] title” to the property at issue. (Complaint, ¶¶ 5-6.) The motion states that Stewart “is the spouse/domestic partner of Defendant Rosalie Guancione” and that he “has notarized several documents in connection with” this case. (Motion, p. 2:4-5.) Based on these bare and unexplained allegations, it is not apparent that Stewart has any claim of title in this case or even that the Kubons intend to allege that he does.

Because of the lack of clarity in the papers, the court will DENY the motion but WITHOUT PREJUDICE to the Kubons’ properly submitting an application to file a Doe amendment with the court, if that is what was intended.<sup>1</sup>

### **2. Motion to Compel**

The motion to compel is styled as a motion to compel “responses to requests for production of documents,” but in reality, it appears to be seeking to compel compliance with a document *subpoena* that was served on Guancione. The problem, as Guancione points out, is that the proper vehicle for obtaining documents from a party—as opposed to a third party—is an inspection demand, not a subpoena duces tecum. Guancione also identifies various other defects in the subpoena, which is not properly filled out with all the necessary information.

Accordingly, the court must DENY the motion to compel compliance with the subpoena.

---

<sup>1</sup> If, on the other hand, the Kubons intend to assert different allegations against Stewart, then that will require a more robust amendment that complies with rule 3.1324.

At the same time, the court notes that the subpoena appears to seek a combination of discoverable and non-discoverable documents. Accordingly, in the event that the Kubons do serve a proper inspection demand (or request for production of documents) on Guancione, the court expects that Guancione will ultimately produce any of the following categories of documents in her possession, custody, or control:

- A copy of any canceled check to the Kubons. (Not a “certified” copy – certification is not required.)
- A copy of Guancione’s bank statements for May, June, July, and August 2001. (Again, *not* “certified” copies.)
- Any receipts for work performed at the subject property.

The court does not expect Guancione to produce any tax returns. Personal income tax returns are generally not discoverable. (*Fortunato v. Superior Court* (2003) 114 Cal.App.4th 475, 479.)

### **3. Summary**

Both motions are DENIED, but without prejudice to their being properly brought, as discussed above.

- oo0oo -