**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: August 15, 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, you must 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.scscourt.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.scscourt.org/general_info/court_reporters.shtml

**FOR YOUR NEXT HEARING DATE:** Use Court Schedule to reserve a hearing date for your next motion. Court Schedule is an online scheduling tool that can be found on the court's website here:
https://reservations.scscourt.org/

| LINE | CASE NO. | CASE TITLE | TENTATIVE RULING |
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| 1 | 18CV335735 | SABSE TECHNOLOGIES et al vs YOGESH PATEL et al | Plaintiff's motion to lift stay is GRANTED. First, the Court did take pause at *Van Keulen v. Cathay Pacific Airways, Ltd.* (2008) 162 Cal. App. 4th 122 wherein the court of appeal affirms dismissal of a case stayed on *forum non conveniens* grounds for plaintiff's lack diligence. However, the Court finds the facts here more akin to those in *Auffret v. Capitales Tours, S.A. 2* (2015) 39 Cal. App. 4th 935, where it was unclear whether the foreign court had jurisdiction and the Court of Appeal found the trial court's dismissal for failure to prosecute premature. The parties' dueling counsel declarations regarding Indian law, which Judge Kulkarni did not have before him on Defendant's original *forum non conveniens* motion, reflect that jurisdiction over these claims is at least uncertain. (Defendant's objections to Plaintiff's expert declaration are overruled. There is sufficient foundation for the testimony. Defendant's objection to the exhibit attached to Mr. Bhatia's declaration is sustained for lack of foundation.) Next, having studied the First Amended Complaint and the claims asserted in India for Defendants' motion to dismiss and this motion, it is apparent that, while the claims here may stem from alleged fraudulent conduct that overlaps with the conduct alleged in the lawsuits pending in India, they are different in kind and reach only activity alleged to have taken place in California. Given that jurisdiction over these claims in India is at best uncertain and resolution of the Indian lawsuits will not permit recovery of monies allegedly lost in California without litigation in California in any event, the Court sees little basis for continuing to stay this case in favor of the Indian lawsuits and accordingly lifts the stay. The Court orders the parties to immediately and diligently commence discovery. Given the age of the case, the Court intends to move the matter forward to trial as soon as possible. Court to prepare formal order. |

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| 2 | 18CV337836 | Cryplex, Inc. vs Bitmain Technologies Holding Company | Defendant Bitmain Technologies Holding Company's motion to compel Plaintiff Cryplex's production of technical documents and for spoliation is DENIED. A party seeking to compel is required to "set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Pro. §2031.210(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) This burden may be satisfied by a fact-specific showing of relevance. (*TBG Ins. Services Corp. v. Superior Court* (2002) 96 Cal.App.4th 443, 448.) Bitmain submitted the declaration of computer scientist Stephen Melvin who analyzed Cryplex's production as of May 2024 and concluded the production was incomplete. However, Cryplex produced significant additional documents after that date and claims it has now exhausted its search and its production is complete as of July 8, 2024. The Court could not locate a supplemental declaration from Mr. Melvin detailing whether his opinion regarding Cryplex's document production had changed because of the additional production. While Bitmain argues in reply that the supplemental document production remains incomplete, there is no evidence currently before the Court to support that claim.<br><br>The current record also contains insufficient evidence for a finding of spoliation. "[A] party moving for discovery sanctions based on the spoliation of evidence must make an initial prima facie showing that the responding party in fact destroyed evidence that had a substantial probability of damaging the moving party's ability to establish an essential element of his claim or defense." (*Williams v. Russ* (2008) 167 Cal. App. 4th 1215, 1227.) For missing information to be considered spoliated, "the party in possession and/or control of the information [must have been] under a duty to preserve the evidence because the party was objectively aware the [information] would be relevant to anticipated future litigation, meaning the litigation was "reasonably foreseeable." (*Silvestri v. General Motors Corp., supra*, 271 F.3d at p. 590.) Litigation is reasonably foreseeable when it is "probable" or "likely" to arise from a dispute or incident (e.g., *MacNeil Automotive Products, Ltd. v. Cannon Automotive, Ltd., supra*, 715 F.Supp.2d at p. 801), but not when there is no more than the "mere existence of a potential claim or the distant possibility of litigation." (*Micron, supra*, 645 F.3d at p. 1320.) However, the "reasonable foreseeability" standard does not require that the future litigation be "'imminent [or] probable *without significant contingencies*,'" or even "certain." (*Hynix II, supra*, 645 F.3d at pp. 1345, 1347, italics added.)" (*Victor Valley Union High School Dist. v. Superior Court* (2023) 91 Cal. App. 5th 1121, 1149.) The record here is insufficiently developed for the Court to determine whether (a) Plaintiff was under a duty to preserve information, (b) Plaintiff intentionally or negligently destroyed information while Plaintiff was under that duty, or (c) if so, whether Bitmain is prejudiced by any such alleged destruction. If the record is further developed before trial, there are remedies to address such wrongdoing, "[c]hief among these is the evidentiary inference that evidence which one party has destroyed or rendered unavailable was unfavorable to that party." (*Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, citing Evid. Code §413.) Court to prepare formal order. |
| 3-4 | 20CV367561 | ZACHARY KOWITZ et al vs MICHAEL KOWITZ et al | Judgment Creditor's application for an order to sell dwelling is GRANTED. Notice of this application was duly served; judgment debtor opposed the application in writing. The estimated fair market value of the property less the homestead exemption and other liens will still produce a bid sufficient to satisfy the judgment. The judgment has not been stayed by motion or operation of law. Indeed, the bankruptcy court granted leave from the automatic stay provisions. Accordingly, there is no good cause to stay sale of the dwelling, and Judgment Creditor's motion is GRANTED. These rulings will be reflected in the minutes. Moving party to prepare formal order. |

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| 5-6, 9 | 23CV419871 | JOHNNY CAYLOR vs California s Great America, LLC et al | Cedar Fair, L.P. and California Great America, LLC's motion to compel Plaintiff Johnny J. Caylor to serve further responses to form interrogatories (set one) and $1,425 in sanctions, request for production (set one) and for $1,035 in sanctions, and special interrogatories (set one) and for $1,035 in sanctions is GRANTED IN PART. Some of these requests are overbroad or unsuitable for the discovery tool used (e.g. all documents identifying people living with you at the time of the incident—an interrogatory would suffice) and others contain substantially Code compliant responses. The Court thus makes the following rulings:<br><br>FROG 1.1: DENIED<br>FROG 2.6: DENIED<br>FROG 6.2: GRANTED. Plaintiff is ordered to describe the alleged injury to his foot.<br>FROG 6.4: DENIED. Although without supplementation, Plaintiff is confined to this single doctor and visit at trial.<br>FROG 8.2: DENIED<br>FROG 8.3: GRANTED. "None" is non-responsive and contradicts other responses.<br>FROG 8.4: GRANTED. Is the $4,000 from Plaintiff's wages alone? From benefits? From other household members? From more than one job?<br>FROG 8.7: GRANTED. Is the $4,000 from wages? One job or two? Other sources?<br>FROG 11.1: GRANTED. This does not require expert opinion.<br>FROG 12.4: GRANTED. There are plainly at least 2 photographs, so this answer is nonsensical.<br><br>Defendants' motion to compel further written verified responses to the identified requests for production is GRANTED. The current written response does not indicate whether documents exist and Plaintiff no longer has them or that the documents do not exist. If there are no social media posts or videos, for example, it will clarify for Defendants that such materials do not exist if Plaintiff simply says there are none.<br><br>SROG 2, 6, 9, 12, 15, 22: GRANTED. "Parties to the Action" is too vague. Were there family members or friends when the incident allegedly occurred? Where there any specific employees of Defendants' who Plaintiff interacted with at the time of the incident? These are just examples.<br>SROG 21: GRANTED. The answer is non-responsive. The interrogatory seeks information regarding what Plaintiff did after the accident, not before.<br>SROG 32, 33: GRANTED.<br>SROG 37: GRANTED. Plaintiff must identify the supervisors he knows.<br><br>Plaintiff is ordered to serve the above-ordered verified supplemental responses and to pay Plaintiff $1,425 in sanctions within 20 days of service of the formal order. The Court finds sanctions appropriate here because while some of Defendants' motion to compel was denied, for the most part, Plaintiff's answers to the requests where Defendants' motion was granted were non-responsive, vague, or seemingly invasive. While the Court sympathizes with Plaintiff's counsel's difficulty reaching their client, Plaintiff filed this lawsuit, Plaintiff is responsible for moving it forward, and Defendant is entitled to the discovery sought. The Court does find, however, that this was in essence a single motion to compel and reduces the sanction request accordingly. Court to prepare formal order. |
| 7 | 24CV440155 | Rosemarie Nelson vs Benihana National Corp. | Parties stipulated to relief sought; matter off calendar. |
| 8 | 2012-1-CV-236649 | Unifund CCR, LLC vs H. Le | Off calendar. |

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| 10 | 19CV348400 | Black Sails Technology, Inc. et al vs Ruoxi Zhao | The Court has studied both Plaintiff's motion for protective order and Defendant's motion to compel, which are related motions set to be heard on August 22 and 15, respectively. The parties are hereby placed on notice that the Court will hear argument on both motions during the August 15 hearing, as the motions involve the same issues, are fully briefed, and ripe for resolution.<br><br>Plaintiff Shuo Wang's motion for protective order is DENIED and Defendant's motion to compel is GRANTED. Simply put, the Court does not find credible that (1) Plaintiff Black Sales Technology has "no ability" to present its own CEO or CFO for deposition or that an expert and former employee it intends to rely on at trial to explain its technology based evidence to the jury needs to be subpoenaed but cannot be because he now resides in Utah or (2) that individual Plaintiff cannot be deposed even with the accommodations Defendant offered.<br><br>The record on these motions demonstrates to the Court that Plaintiffs are evading discovery. Plaintiffs' prior adversary was gravely ill for most of the time she was representing Defendant, thus Plaintiffs were not faced with producing any meaningful discovery. Now that Plaintiffs are being asked to produce evidence to support their claims, they are nowhere to be found—even after the Court ordered certain discovery to be completed by April 25, 2024. Plaintiffs' reliance on a single doctor's note obtained on April 17, 2024 and based on a single 50 minute intake session conducted remotely on April 15, 2024 to avoid producing <u>any</u> deposition discovery is a non-starter. Plaintiff Wang's health was never once raised in counsels' negotiations or the motion practice around the case schedule. This issue was raised for the first time on the eve of the Court's deposition deadline. There is no explanation for this sudden turn of events or why the proposed accommodations of a remote deposition spread out over several days to avoid over-taxing Plaintiff would be insufficient. The Court is also unpersuaded by Plaintiffs' arguments to support not producing the individuals for deposition; those arguments make a mockery of the Code of Civil Procedure.<br><br>Plaintiffs and their counsel are therefore ordered to (1) produce all witnesses and documents sought in Defendants' deposition notices within 10 days of this hearing, and (2) within 30 days of service of the formal order, (a) pay Defendant $5,178.31 in sanctions for defending the motion for protective order and (b) pay Defendant $6,158.31 in sanctions for preparing the motion to compel. The Court finds Defense counsel's billable rate appropriate for this county and case type and the number of hours spent reasonable.<br><br>Since Plaintiffs failed to comply with the Court's previous discovery order, please note: Code of Civil Procedure section 2031.310(i) provides that when "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 *Department of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154.) Plaintiffs filed this lawsuit, and Plaintiffs must comply with the Code of Civil Procedure and this Court's discovery orders or face terminating sanctions, including dismissal.<br><br>Court to prepare formal order. |