

**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 14, 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](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](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	19CV348787	Kelly Osborne vs Santa Clara Valley Medical Center et al	Santa Clara Valley Medical Center's ("VMC") Motion for Summary Judgment is GRANTED. A notice of motion with this hearing date was served by personal service and electronic mail on Plaintiff Kelly Osborne on December 29, 2023. Plaintiff did not oppose the motion. "[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 fails to demonstrate a triable issue of fact regarding her medical malpractice claim. VMC meets its initial burden to show that it is not responsible for any negligent act that was the substantial factor in bringing about Plaintiff's injuries. Plaintiff's substantial injuries when she arrived at VMC coupled with the medical records detailing the cause of her alleged injuries as metabolic and not from a fall and the records showing no discernable changes in Plaintiff's ongoing pain when she did fall while using the beside commode dictate against a finding of causation. And, since Plaintiff submits no evidence to support otherwise, summary judgment for VMC is appropriate. Court to prepare formal order. VMC to promptly prepare form of judgment. Parties ordered to appear for argument.
2	21CV381190	Nayoung Lee vs Raul Arias et al	Pursuant to stipulation, this motion for summary judgment/adjudication is continued to May 14, 2024 at 9 a.m. in Department 6.
3	22CV402312	Col. Michael Maxwell (Ret.) vs Kristin Filice et al	Defendants' Motion to Compel Responses to Requests for Production, Interrogatories, and Requests for Admissions and for Sanctions is GRANTED. A notice of motion with this hearing date was served by electronic mail on January 31, 2024. Plaintiff did not oppose the motion. "[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.) At the recent order to show cause for Plaintiffs' two prior failures to appear, Plaintiff's counsel reported that Plaintiff is gravely ill, the parties would meet and confer regarding this outstanding discovery, and there could be a settlement. As of this date, nothing in the docket reflects either resolution of these motions or a settlement agreement. And, while Plaintiff previously attended all hearings until recently, Defendants also have a right to bring this case to a close and to obtain Code compliant discovery responses to do so. The record reflects that Plaintiff was duly served with relevant discovery requests and failed to respond in any way. Defendants are also entitled to be reimbursed for having to file this motion to obtain discovery. Accordingly, Plaintiff is ordered to (1) serve code compliant written responses without objections, (2) produce all requested documents, and (3) pay Defendants \$890 in fees and costs incurred to bring this motion within 30 days of service of this formal order, which order the Court will prepare.
4	23CV418655	KELVIN GARCIA vs U GYM, LLC et al	This matter has been sent to arbitration and is now stayed. Accordingly, the motion to compel is off calendar.

5	23CV421935	Michelle Santos vs Bohr Bhandal et al	Plaintiff's Motion to Compel Further Responses to Form Interrogatories (Set One), Special Interrogatories (Set One), Request for Production of Documents (Set One), Special Interrogatories (Set Two), and Request for Production of Documents (Set Two) is GRANTED. A notice of motion with this hearing date was served by regular and electronic mail on February 5, 2024. Plaintiff did not oppose the motion. "[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 served these discovery requests on Defendants on October 10, 2023 (set one) and October 24, 2023 (set two). Defendant Kaur received extensions of time and correspondence from Plaintiff regarding the failure to respond then finally served written responses to Plaintiff's Form and Special Interrogatories (set one) and requests for production of documents (set one) and produced a small number of documents. To date, Defendant Kaur has served no responses to Plaintiff's second set of discovery requests. Plaintiff's separate statement demonstrates the relief sought is appropriate. Defendant Kaur is thus ordered to (1) provide complete, code compliant responses to Form Interrogatory Nos. 12.1(a)-(d) and 15.1(a)-(c); Special Interrogatory Nos. 1, 2, 3, 5, 10-12, 15, 21, 22, 24, 25, 30, 31, and 34; and Request for Production Nos. 3, 4, 6-13, and 15-29; (2) provide complete, code compliant responses without objections to Special Interrogatory Nos. 35-71 and Request for Production Nos. 30-57; (3) produce all responsive documents to request for production sets one and two; and (4) pay Plaintiff \$3,750 in sanctions within 20 days of service of this formal order. Court to prepare formal order.
6	23CV425219	Meritronics, Inc. vs Purlite Clean, LLC	Defendant Purlite Clean LLC's Motion to Compel Arbitration is GRANTED. Please scroll down to line 6 for full tentative ruling. Court to prepare formal order.
7	2011-1-CV-212974	W. Dresser vs A. Hirananeek	The parties are ordered to appear and provide (1) a copy of the order from which Mr. Hirananeek is currently appealing and (2) status of that appeal. The Court will then determine whether Mr. Dresser's complaint for unpaid attorneys' fees filed in 2011 may be set for a one day trial.
8	2011-1-CV-212974	W. Dresser vs A. Hirananeek	See line 7, above.
9	2013-1-CV-249665	Wahr Financial Group, Llc vs R. Castro	Defendant's claim of exemption is GRANTED, IN PART. The Court will prepare a form of order for \$150 per month to be garnished.

**Calendar Line 6**

**Case Name:** *Meritronics, Inc. vs Purlite Clean, LLC*

**Case No.:** 23CV425219

Before the Court is Defendant Purlite Clean LLC's Motion to Compel Arbitration. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

In a motion to compel arbitration, the Court must determine “(1) whether there is a valid agreement to arbitrate between the parties; and (2) whether the dispute in question falls within the scope of that arbitration agreement.” (*Bruni v. Didion* (2008) 160 Cal. App. 4th 1272, 1283 (citations omitted).) “The petitioner bears the burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. [Citation.] In these summary proceedings, the trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination. [Citation.]” (*Bruni*, 160 Cal. App. 4th at 1282 (citations omitted).)

The parties do not dispute their agreement contains an arbitration provision. The parties also do not appear to dispute that claims concerning the parties' relationship fall within that provision. Plaintiff argues, however, that because it seeks a declaratory judgment regarding ownership of the goods in its warehouse and specific performance, language in the arbitration clause requires that it seek relief from a court to avoid obtaining an arbitration award voidable for the arbitrator exceeding their authority. The Court disagrees.

First, the Court agrees with Defendant that Plaintiff's argument conflates the claims with the relief sought. Here, Plaintiff's claims are grounded in the parties' agreement and are therefore encompassed by the arbitration clause.

Next, Plaintiff's citation to the damages limitations language in the arbitration clause cannot be reasonably read to preclude the arbitrator's ability to make declarations about the parties' relative rights and responsibilities under the contract or to order specific performance. That language bars recovery of monetary damages other than compensatory. Defendant is correct that if Plaintiff's argument were adopted, a party seeking to avoid arbitration could simply seek forbidden relief in a court. This result

would obviously be contrary to the law's repeated instruction to trial courts to favor interpretations that support arbitration. The California Supreme Court's analysis in *Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4<sup>th</sup> 362 underscores this conclusion.

Accordingly, Defendant's motion to compel arbitration is GRANTED. This matter is ordered to arbitration and stayed pending the outcome of that proceeding. The April 9, 2024 case management conference is VACATED, and a status conference regarding the arbitration is set for November 7, 2024.

Pursuant to the parties' agreement, Defendant is also entitled to its fees and costs for bringing this motion. While the attorney rates are reasonable for this case type and area, the Court finds the number of hours spent excessive—although Defendant did bring the motion twice, much of the motion is the same and doubling the fees is thus not justified. Accordingly, Plaintiff is ordered to pay \$12,910 in fees and costs to Defendant within 30 days of service of this formal order.