

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

Department 3

Honorable William J. Monahan, Presiding

Allison Croft, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 2/22/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (2/21/2024) you must notify the:

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

TO APPEAR AT THE HEARING: The Court prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to **Department 3**.

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

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: 408-882-2430 When you can call: **Monday to Friday, 8:30 am to 12:30 pm**

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet).

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV420831	Gail Bennett vs Tracy Tram, PhD	Hearing: Demurrer to the Complaint by Def Ctrl click (or scroll down) on Line 1 for tentative ruling. The court will prepare the order.

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LINE 2	23CV424335	REGINA RIOS vs STEVEN TA	Hearing: Demurrer to plaintiff Regina Rios's Complaint by defendant Steven Ta Ctrl click (or scroll down) on Line 2 for tentative ruling. The court will prepare the order.
LINE 3	22CV406150	Jotishna Sharma et al vs American Honda Motor Co, Inc.	Motion: Compel Deposition of Plaintiff Nilesh Sharma and request for Production of Documents by Defendant American Honda Motor Co, Inc. Ctrl click (or scroll down) on Line 3 for tentative ruling. The court will prepare the order.
LINE 4	22CV406150	Jotishna Sharma et al vs American Honda Motor Co, Inc.	Motion: Compel deposition of Plaintiff Jotishna Sharma and Request for Production of Documents by Defendant American Honda Motor Co, Inc. Ctrl click (or scroll down) on Line 4 for tentative ruling. The court will prepare the order.

**SUPERIOR COURT, STATE OF CALIFORNIA
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DATE: 2/22/2024 TIME: 9:00 A.M.

LINE 5	23CV424278	Elisa Martinez vs Ross Stores, Inc.	<p>Hearing: Petition Compel Arbitration. Motion for order compelling Arbitration due to respondent Ross Stores, Inc.'s failure to pay the arb fee and request for sanctions by Petitioner Elisa Martinez</p> <p>Petitioner Elisa Martinez ("Petitioner")'s motion for order compelling arbitration due to respondent Ross Store, Inc. ("Respondent")'s failure to pay the arbitration fee and request for monetary sanctions is unopposed and GRANTED.</p> <p>Respondent is ordered to arbitrate Petitioner's employment claims and to pay its share of the arbitration fees within 30 days and to pay Petitioner's reasonable attorney's fees and costs as monetary sanctions in the amount of \$5,835 for Respondent's failure to comply with California Code of Civil Procedure sections 1281.2, 1281.97 and 1281.99. Payment in full by Respondent is due within 30 days of this order.</p> <p>Moving party to prepare order.</p>
LINE 6	23CV424856	William Merriott vs SALMA AGHMANE et al	<p>Motion: Withdraw as Attorney. Motion to be Relieved as Counsel for Plaintiff William Merriott by Amanda K. Collins</p> <p>Unopposed and GRANTED. Moving party to prepare order.</p>
LINE 7	23CV425833	David Williams vs Michael Williams	<p>Motion: Order for injunction against fraudulent and duplicative family court proceedings by Plt David George Williams (Pro Per) and request for reasonable attorney's fees by defendant Michael Gavin Williams</p> <p>Ctrl click (or scroll down) on Line 7 for tentative ruling. The court will prepare the order.</p>

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DATE: 2/22/2024 TIME: 9:00 A.M.

LINE 8	24CV428928	In Re: M.J.	Hearing: Other. RESERVED. Petition for Transfer of structured settlement payment rights by Plaintiff LVNV OFF CALENDAR. No proof of service or notice of motion in file.
LINE 9	2015-1-CV-288390	National Collegiate Student Loan Trust 2007-4 vs D. Washington, et al	Motion: Set Aside Dismissal (10/17/2016 Order) and Enter Judgment Against Defendants Dwayne Washington, Linda Pastors, by Plaintiff National Collegiate Student Loan Trust 2207-4. ***C/F 11/21/23 per MO*** Plaintiff National Collegiate Student Loan Trust 2007-4, a Delaware Statutory Trust (“Plaintiff”)’s motion to set aside and vacate Code of Civil Procedure section 664.6 dismissal without prejudice (10/17/2016 order) and enter judgment against defendants Dwayne Washington and Linda Pastors in the principal amount of \$46,723.60, plus court costs of \$1,125, less credits of \$7,866, for a total of \$39,982.60 is unopposed and GRANTED. Note: The case remains dismissed as to defendants Does 1-5. Moving party to prepare order and [proposed] judgment.
LINE 10			
LINE 11			
LINE 12			

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Calendar Line 1

Case Name: *Gail Bennett v. Tracy Tram, M.D.*

Case No.: 23-CV-420831

Demurrer to the Complaint by Defendant Tracy Tram, M.D.

Factual and Procedural Background

This is a medical negligence action by plaintiff Gail Bennett (self-represented) (“Plaintiff”) against defendant Tracy Tram, M.D. (“Defendant”).

According to the complaint, Plaintiff met with Defendant to properly diagnose and treat a serious illness. (See Attachment to Complaint.) During the appointment, Defendant requested a CT scan for Plaintiff. (Ibid.) Plaintiff did not receive a call from Defendant explaining the results of the CT scan or to discuss any risks or future treatment. (Ibid.) Instead, Plaintiff received a postcard concerning her test results which simply stated, “no abnormalities.” (Ibid.)

On August 18, 2022, Plaintiff woke up and was nearly completely blind in her right eye. (See Attachment to Complaint.) Plaintiff alleges Defendant should have diagnosed her properly as she had all the signs and symptoms of Giant Cell Arteritis. (Ibid.) As a consequence, Plaintiff remains blind in one eye, can no longer drive, and must depend on others to help her. (Ibid.)

On August 14, 2023, Plaintiff filed a judicial council form complaint against Defendant alleging medical negligence.

On November 7, 2023, Defendant filed the motion presently before the court, a demurrer to the complaint.

On February 6, 2024, Plaintiff filed a motion for leave to amend her complaint which is set for hearing on March 12, 2024.¹

A further case management conference is scheduled for June 25, 2024.

Demurrer to the Complaint

Defendant argues the complaint fails to allege sufficient facts to state a claim for medical negligence. (See Code Civ. Proc., § 430.10, subd. (e).)

Legal Standard

“In reviewing the sufficiency of a complaint against a general demurer, we are guided by long settled rules. ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which may be judicially noticed.’ ” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations

¹ The court does not see a proof of service filed with Plaintiff’s motion for leave to amend.

in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213–214.)

“The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. The court does not, however, assume the truth of contentions, deductions or conclusions of law. ... [I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment.” (*Gregory v. Albertson's, Inc.* (2002) 104 Cal.App.4th 845, 850.)

Analysis

“ ‘The absence of any allegation essential to a cause of action renders it vulnerable to a general demurrer. A ruling on a general demurrer is thus a method of deciding the merits of the cause of action on assumed facts without a trial.’ [Citation.] ‘Conversely, a general demurrer will be overruled if the complaint contains allegations of every fact essential to the statement of a cause of action, regardless of mistaken theory or imperfections of form that make it subject to special demurrer.’ [Citation.]” (*Morris v. JPMorgan Chase Bank, N.A.* (2022) 78 Cal.App.5th 279, 291-292 (*Morris*).)

“A complaint, with certain exceptions, need only contain a ‘statement of the facts constituting the cause of action, in ordinary and concise language’ [citation] and will be upheld ‘ “so long as [it] gives notice of the issues sufficient to enable preparation of a defense.” ’ [Citation.] ‘[T]o withstand a demurrer, a complaint must allege ultimate facts, not evidentiary facts or conclusions of law.’ [Citation.]” (*Morris, supra*, 78 Cal.App.5th at p. 292.)

In addition, “Judicial Council form complaints are not invulnerable to a demurrer. Conversely, Judicial Council form complaints do not always fail to state a cause of action and, thus, they are not necessarily susceptible to demurrer. The logical implication from these polar opposite principles is that use of a Judicial Council form complaint is not a determinative factor in deciding whether or not to sustain a demurrer. Instead, a reviewing court must examine the particular allegations in the form pleading and determine whether those allegations satisfy the pleading requirements established by California law.” (*Esparza v. Kaweah Delta Dist. Hospital* (2016) 3 Cal.App.5th 547, 555.)

The operative complaint appears to allege a cause of action for medical negligence.²

To state a claim for medical negligence, a plaintiff must allege: (1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence. (*Belfiore-Braman v. Rotenberg* (2018) 25 Cal.App.5th 234, 238, fn. 3.)

² The complaint checks a box for “General Negligence” but the substance of the pleading concerns a claim more specifically for medical negligence. (See Complaint at p. 3; see also *O'Grady v. Merchant Exchange Productions, Inc.* (2019) 41 Cal.App.5th 771, 792 [courts are more concerned with the substance of underlying allegations than how a plaintiff labels the cause of action].)

Here, Defendant persuasively argues there are no facts pled to support a claim for medical negligence. Rather, Plaintiff provides only conclusory statements that Defendant failed to provide the standard of care along with citations to various sections of the Civil Code. No opposition has been filed to the demurrer. Plaintiff however has filed a motion for leave to amend which, in effect, concedes the merits of the demurrer. The court therefore finds the demurrer is sustainable on this ground but will afford Plaintiff leave to file an amended pleading.

Accordingly, the demurrer to the complaint is SUSTAINED WITH 20 DAYS' LEAVE TO AMEND on the ground that the pleading fails to state a cause of action. (See *City of Stockton v. Super. Ct.* (2007) 42 Cal.4th 730, 747 [if the plaintiff has not had an opportunity to amend the pleading in response to a motion challenging the sufficiency of the allegations, leave to amend is liberally allowed as a matter of fairness, unless the pleading shows on its face that it is incapable of amendment].)

Disposition

The demurrer to the complaint is SUSTAINED WITH 20 DAYS' LEAVE TO AMEND on the ground that the pleading fails to state a cause of action.

The motion for leave to amend, scheduled for hearing on March 12, 2024, is MOOT and taken OFF-CALENDAR.

The court will prepare the Order.

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Calendar Line 2

Case Name: *Regina Rios v. Steven Ta et al.*

Case No.: 23CV424335

I. Factual and Procedural Background

Plaintiff Regina Rios (“Plaintiff”) brings this negligence action against defendant Steven Ta (“Defendant”).

On October 4, 2021, at or around 6:40 PM, Plaintiff was rear-ended by Defendant who was driving at a great speed. (Compl., ¶ 5.) The accident caused Plaintiff to sustain great property damage and serious bodily injury. (*Ibid.*) At the time of the accident, Defendant, the owner and operator of the vehicle, was driving a 2017 Lexus RX. (Compl., ¶¶ 3-4.) Plaintiff did not contribute to the accident. (Compl., ¶ 7.)

On October 16, 2023, Plaintiff filed her Complaint alleging a negligence cause of action against Defendant.

On January 2, 2024, Defendant filed a demurrer to the Complaint. Plaintiff opposes the motion.

II. Demurrer

a. Legal Standard

“A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Comm. on Children’s Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14.)

b. Statute of Limitations and Emergency Rule 9 Generally

A court may sustain a demurrer on the ground of failure to state sufficient facts if “the complaint shows on its face the statute [of limitations] bars the action.” (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315.) A demurrer is not sustainable if there is only a possibility the cause of action is time-barred; the statute of limitations defense must be clearly and affirmatively apparent from the allegations in the pleading. (*Id.* at pp. 1315-16.) When evaluating whether a claim is time-barred, a court must determine (1) which statute of limitations applies and (2) when the claim accrued. (*Id.* at p. 1316.) “To determine the statute of limitations which applies to a cause of action it is necessary to identify the nature of the cause of action, i.e., the ‘gravamen’ of the cause of action.” (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 22.) “The nature of the cause of action and the primary right involved, not the form or label of the cause of action or the relief demanded, determine which statute of limitations applies.” (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 412.)

Pursuant to Code of Civil Procedure section 335.1, an action for negligence must be brought within two years of the negligent act. (Code Civ. Proc., § 335.1.)

In 2020, Governor Gavin Newsom declared a state of emergency due to COVID-19 and on March 27, 2020, he issued an executive order suspending “any limitations in Government Code section 68115 or any other provision of law that limited the Judicial Council’s ability to issue emergency orders or rules, and suspended statutes that may be inconsistent with rules the Judicial Council may adopt.” (*Committee for Sound Water & Land Development v. City of Seaside* (2022) 79 Cal.App.5th 389, 401 (*Sound Water*)). In response, the Judicial Council

adopted a set of emergency rules, including Emergency Rule 9 (“Rule 9”). (*Ibid.*) Rule 9 effectively tolled the statute of limitations and repose for civil causes of action that exceed 180 days from April 6, 2020 until October 1, 2020. (Cal. Rules of Court, Appx., Emergency Rule 9, subd. (a).) The rule was “intended to apply broadly to toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action.” (Advisory Comm. Cmt., Cal. Rules of Court, Emergency Rule 9.)

The rule’s purpose is to toll the “statutes of limitations and repose for civil causes of action.” Statutes of limitations and statutes of repose are specific statutes that serve to bar the initiation of legal proceedings after the expiration of a defined timeline.” (*People v. Philadelphia Reinsurance Corp.* (2021) 70 Cal.App.5th Supp. 10, 16.) Tolling is “‘designed to prevent unjust and technical forfeitures of the right to a trial on the merits when the purpose of the statute of limitations – timely notice to the defendant of the plaintiff’s claims – has been satisfied.’ Where applicable, [tolling] will ‘suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness.’” (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 99.)

c. Analysis

Defendant argues Plaintiff’s complaint is time-barred because she did not file her complaint within two years after the accident occurred. (Demurrer, p. 4:19-21.) Defendant asserts that, despite Plaintiff’s statements during their meet and confer efforts that Rule 9 applies to her case, Rule 9 is in fact not applicable, as the accident took place after the tolling period ended. (*Id.* at p. 3:7-11.)

Rule 9, subdivision (a) states: “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”

Neither party disputes that Plaintiff’s accident occurred on October 4, 2021 and a timely complaint was to be filed by October 4, 2023. Additionally, the parties do not dispute that Plaintiff’s complaint was filed on October 16, 2023, 12 days after the statute of limitations ran. However, Plaintiff asserts that Rule 9 extended the deadline for her to file her complaint to April 1, 2024. In other words, Plaintiff asserts she may tack on 180 days to the October 4, 2023 deadline.

The Court first notes that Plaintiff’s calculation is an inaccurate application of the tolling period. “[T]he *tolled interval*, no matter when it took place, is tacked onto the end of the limitations period, thus extending the deadline for suit by the entire length of time during which the tolling previously occurred.” (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 370 [emphasis added].) For example, if Plaintiff’s accident occurred on April 6, 2020, without the benefit of Rule 9, the cause of action would have accrued on April 6, 2020 and the statute of limitations would expired on April 6, 2022. However, because of Rule 9, the number of days between April 6, 2020 and October 1, 2020 gets added to the end of April 6, 2022, giving Plaintiff an additional 180 days to file suit. But if Plaintiff’s accident instead occurred on May 20, 2020, and the statute of limitations expired on May 20, 2022, applying Rule 9, the number of days between May 20, 2020 and October 1, 2020 gets added to the end of May 20, 2022, giving Plaintiff only 134 additional days to file suit. In other words, Plaintiff would tack on the days between the accident’s occurrence and the end of the tolling period.

With that said, the Court next notes that Plaintiff’s accident occurred more than a year after the Rule 9 tolling period ended. Plaintiff cites to no authority, and the Court is aware of none, that would make a tolling period which ended in October 2020 applicable to a civil cause of action that began to accrue more than a year later. (See *Sound Water, supra*, 79 Cal.App.5th at p. 403 [“the plainly intended meaning of Emergency rule 9 is that statutes of limitation and

repose for pleadings commencing civil causes of action are *temporarily* tolled”)[emphasis added]; see also *United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 153 [court may disregard conclusory arguments that are not supported by pertinent legal authority or fail to disclose the reasoning by which the party reached the conclusions she wants us to adopt].)

Moreover, Plaintiff’s reliance on Rule 9, subdivision (b) is not helpful. (See Opposition, p. 5:22-28.) Rule 9, subdivision (b) pertains to statutes of limitations for civil causes of action that are 180 days or less. Subdivision (b) does not state that Rule 9 applies to causes of action arising after the tolling period ends. Rule 9 was issued as a result of the threat of COVID-19 and a civil plaintiff’s inability to take civil action. (See e.g., *Lerner v. Los Angeles City Board of Education* (1963) 59 Cal.2d 382, 391 [“the running of the statute of limitations is suspended during any period in which the plaintiff is legally prevented from taking action to protect his rights”].) It is unclear why Plaintiff was unable to bring her civil action within two years after the accident occurred in October 2021, a year after Rule 9’s tolling period ended.

Based on the foregoing, the Court finds that Rule 9 did not extend the deadline for Plaintiff to file her civil action. Accordingly, the demurrer is SUSTAINED. As Plaintiff essentially concedes that without Rule 9, her complaint is untimely, the demurrer is sustained without leave to amend. (See *Eghtesad v. State Farm General Ins. Co.* (2020) 51 Cal.App.5th 406, 411 [“denial of leave to amend constitutes an abuse of discretion unless the complaint ‘shows on its face that it is incapable of amendment.’”].)

III. Conclusion and Order

The demurrer is SUSTAINED without leave to amend. The Court shall prepare the final Order.

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Calendar Line 3

Case Name: *Jotishna Sharma et al vs American Honda Motor Co, Inc.*

Case No.: 22CV406150

Good cause appearing, Defendant American Honda Motor Co.'s ("Defendant") Motion to Compel Deposition ("Motion") of Plaintiff Nilesch Sharma ("Plaintiff") is GRANTED. Plaintiff is ordered to appear for deposition by Plaintiff within 30 days of this Order.

Defendant's motion to compel the documents in Plaintiff's Request for Production of Documents (RPD) Nos. 1-17 at deposition is DENIED.

Discussion

On 12/8/2022 Defendant served a notice of taking Plaintiff's deposition on 12/28/2022 and requested the RPD Nos. 1-17 be produced at the deposition.

Written objections must be served on the party noticing the deposition at least three calendar days before the deposition. (Code Civ. Proc. § 2025.410(a), (b).)³

Plaintiff served timely written objections to the notice of deposition by email on 12/23/2022.

A party may move to compel deposition attendance and production of documents when (1) the opposing party fails to appear for examination or to produce documents and (2) does not serve a valid objection under section 2024.410. (§ 2025.450.) Objections to a notice of deposition are limited and may only pertain to errors or irregularities in the deposition notice. (§ 2025.410.)

While Plaintiff made numerous objections to RPD Nos. 1-17, Plaintiff only made one *purported* objection to the *taking* of the deposition, stating:

This deposition was unilaterally noticed by Defendant for a date and time on which Plaintiff and/or Plaintiff's counsel is unavailable. Accordingly, Plaintiff will not be produced for the deposition on the date, time, and location noticed. *Plaintiff will meet and confer with Defendant to reschedule the deposition on a date and time that is mutually convenient.*

(See Decl. of Theophil in Opp. filed 2/7/2024, Ex. 2 [emphasis added].) The court finds that Plaintiff has *not* served a *valid* objection to the *taking* of their deposition under section 2025.410. The unavailability excuse is not adequately documented, nor has Plaintiff been made available on a date and time that is mutually convenient as promised. Here, over a year later, Plaintiff has still not agreed on a date despite Defendant's good faith meet and confer efforts. The motion to compel shows good cause to compel Plaintiff's deposition. The motion to compel the deposition of Plaintiff is GRANTED.

Moving parties must provide a declaration of a reasonable and good faith attempt at an informal resolution of the discovery disputes at issue. (§2016.040.) Common law crafted at the appellate level has provided guidance as to the expectations of what constitutes a reasonable and good faith effort. (*Obregon v. Superior Court* (1998) 67 Cal. App. 4th 424.) Given the relatively simple and narrow nature of the issue being litigated regarding the taking of Plaintiff's deposition, only a modest effort at coming to an informal resolution is required. (*Id.* at 431.)

Counsel for Defendant has provided evidence of two separate attempts at coming to an agreement on a deposition date, neither of which bore fruit. The opposition filed by Plaintiffs in response to Defendant's motion to compel states that the depositions of Plaintiffs Nilesch and Jotishna Sharma are being scheduled. (Pls.'s Opp. 1:9-10.) As affirmed by both parties, the

³ All undesignated statutory references are to the Code of Civil Procedure.

dispute revolving around the deposition date has been at issue for over one year. It is hard to believe that a convenient scheduling could not have been found in all that time.

Furthermore, California common law has established a customary deference to the broad rights of a civil litigant in seeking discovery. (*Williams v. Superior Court* (2017) 3 Cal.5th 531.) In exercising the discretion afforded to them via statute, judges must also keep in mind the preferences of the legislature in minimizing prospects for “trial by surprise”. (*Id* at 540.) Such a liberal interpretation of discovery rights should be in keeping with pro-discovery inclinations of the legislature. (*Id.*) Defendant showed a good faith attempt to resolve the dispute about taking Plaintiff’s deposition.

However, Defendant failed to show any good faith attempt to resolve the dispute about the specific document requests. Furthermore, the motion to compel must “set forth specific facts showing good cause” justifying the production for inspection of the requested documents. (§ 2025.450(b)(1).) Here, Plaintiff served timely objections to the document demands. Accordingly, a motion to compel documents or tangible things at a deposition must be accompanied by a separate statement setting forth the documents or demands at issue, the responses received, and the reasons why production should be compelled. (CRC 3.1345(a)(5), (b).) Defendant failed to provide any separate statement or show good cause for RPD Nos. 1-17. The motion for order compelling Plaintiff to produce the documents requested at the deposition is DENIED.

The court will prepare the order.

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Calendar line 4

Case Name: *Jotishna Sharma et al vs American Honda Motor Co, Inc.*

Case No.: 22CV406150

Good cause appearing, Defendant American Honda Motor Co.'s ("Defendant") Motion to Compel Deposition ("Motion") of Plaintiff Jotishna Sharma ("Plaintiff") is GRANTED. Plaintiff is ordered to appear for deposition by Plaintiff within 30 days of this Order.

Defendant's motion to compel the documents in Plaintiff's Request for Production of Documents (RPD) Nos. 1-17 at deposition is DENIED.

Discussion

On 12/8/2022 Defendant served a notice of taking Plaintiff's deposition on 12/28/2022 and requested the RPD Nos. 1-17 be produced at the deposition.

Written objections must be served on the party noticing the deposition at least three calendar days before the deposition. (Code Civ. Proc. § 2025.410(a), (b).)⁴

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While Plaintiff made numerous objections to RPD Nos. 1-17, Plaintiff only made one *purported* objection to the *taking* of the deposition, stating:

This deposition was unilaterally noticed by Defendant for a date and time on which Plaintiff and/or Plaintiff's counsel is unavailable. Accordingly, Plaintiff will not be produced for the deposition on the date, time, and location noticed. *Plaintiff will meet and confer with Defendant to reschedule the deposition on a date and time that is mutually convenient.*

(See Decl. of Theophil in Opp. filed 2/7/2024, Ex. 1 [emphasis added].) The court finds that Plaintiff has *not* served a *valid* objection to the *taking* of their deposition under section 2025.410. The unavailability excuse is not adequately documented, nor has Plaintiff been made available on a date and time that is mutually convenient as promised. Here, over a year later, Plaintiff has still not agreed on a date despite Defendant's good faith meet and confer efforts. The motion to compel shows good cause to compel Plaintiff's deposition. The motion to compel the deposition of Plaintiff is GRANTED.

Moving parties must provide a declaration of a reasonable and good faith attempt at an informal resolution of the discovery disputes at issue. (§2016.040.) Common law crafted at the appellate level has provided guidance as to the expectations of what constitutes a reasonable and good faith effort. (*Obregon v. Superior Court* (1998) 67 Cal. App. 4th 424.) Given the relatively simple and narrow nature of the issue being litigated regarding the taking of Plaintiff's deposition, only a modest effort at coming to an informal resolution is required. (*Id.* at 431.)

Counsel for Defendant has provided evidence of two separate attempts at coming to an agreement on a deposition date, neither of which bore fruit. The opposition filed by Plaintiffs in response to Defendant's motion to compel states that the depositions of Plaintiffs Niles and Jotishna Sharma are being scheduled. (Pls.'s Opp. 1:9-10.) As affirmed by both parties, the

⁴ All undesignated statutory references are to the Code of Civil Procedure.

dispute revolving around the deposition date has been at issue for over one year. It is hard to believe that a convenient scheduling could not have been found in all that time.

Furthermore, California common law has established a customary deference to the broad rights of a civil litigant in seeking discovery. (*Williams v. Superior Court* (2017) 3 Cal.5th 531.) In exercising the discretion afforded to them via statute, judges must also keep in mind the preferences of the legislature in minimizing prospects for “trial by surprise”. (*Id.*, at 540.) Such a liberal interpretation of discovery rights should be in keeping with pro-discovery inclinations of the legislature. (*Id.*) Defendant showed a good faith attempt to resolve the dispute about taking Plaintiff’s deposition.

However, Defendant failed to show any good faith attempt to resolve the dispute about the specific document requests. Furthermore, the motion to compel must “set forth specific facts showing good cause” justifying the production for inspection of the requested documents. (§ 2025.450(b)(1).) Here, Plaintiff served timely objections to the document demands. Accordingly, a motion to compel documents or tangible things at a deposition must be accompanied by a separate statement setting forth the documents or demands at issue, the responses received, and the reasons why production should be compelled. (CRC 3.1345(a)(5), (b).) Defendant failed to provide any separate statement or show good cause for RPD Nos. 1-17. The motion for order compelling Plaintiff to produce the documents requested at the deposition is DENIED.

The court will prepare the order.

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Calendar Line 5

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Calendar Line 6

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Calendar Line 7

Case Name: *David Williams vs Michael Williams*

Case No.: 23CV425833

Plaintiff David George Williams (“Plaintiff”)’s motion for injunction against fraudulent and duplicative family court proceedings is DENIED.

Defendant Michael Gavin Williams (“Defendant”)’s request for judicial notice is GRANTED.

Defendant’s objections to evidence (filed 2/6/2024) Nos. 1, 2 and 3 are SUSTAINED. However, the outcome of this motion would be the same if that evidence was considered.

Defendant as the prevailing party on this motion is entitled to an award of reasonable attorney’s fees in connection there with. (See Code Civ. Proc. § 527.6(s); *Krug v. Maschmeier* (2009) 172 Cal.App.4th 796, 802-803 [prevailing defendant entitled to costs and fees regardless of plaintiff’s professed good faith in bringing claim.])

Defendant’s request for attorney’s fees against Plaintiff for defending against this motion for injunctive relief in the amount of \$3,925 (15.7 hours X \$250/hour) is GRANTED IN PART. Plaintiff shall pay Defendant the reasonable amount of attorney’s fees of \$3,125 (12.5 hours X \$250/hour) within 30 days of this order.

The court will prepare the order.

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- oo0oo -

Calendar line 12

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Calendar line 13

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