

**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: October 1, 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 will appear at the hearing to contest the tentative
- If you fail to so notify the court or opposing side, the Court will not hear argument, and the tentative ruling will be adopted.***

(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

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	24CV434129	Citibank, N.A. vs My Nguyen	Plaintiff's Motion for Judgment on Pleadings is GRANTED. A notice of motion with this hearing date and time was served by U.S. Mail on August 29 , 2024. Defendant 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.) Defendant also does not deny owing the debt in the answer. Plaintiff's complaint is therefore conceded, and judgment on the pleadings is appropriate. Moving party shall prepare form of judgment within 10 days of service of the formal order, which formal order the Court will prepare.
2-4	23CV427316	CAN CAPITAL, INC. et al vs SCOTT HELF et al	A notice of bankruptcy stay was filed September 25, 2024. This matter is now stayed, and these motions are off calendar until the stay is lifted.
5	21CV385527	Michael Darden vs The Board of Trustees of the Leland Stanford University et al	Michael Darden's motion is CONTINUED to October 10, 2024 at 9 a.m. in Department 6 to be heard with Mr. Darden's motion to compel.
6	17CV305073	Khosro Farahani vs Mohammad Sadigh et al	<p>The matter is both for an order to show cause why this case should not be dismissed for failure to prosecute and Plaintiff's motion for entry of default. Plaintiff's motion is DENIED and this case is DISMISSED WITH PREJUDICE.</p> <p>Plaintiff fails to show cause how it is not an absolute ethical violation for Plaintiff's attorney of record to also be the administrator of decedent's estate, which is now the Defendant. Plaintiff's counsel's declaration simply recites the same facts: Defendant died after the lawsuit was filed, Defendant's family refused to open an estate, so Plaintiff's counsel did so himself. There is no question Plaintiff's counsel is now on both sides of this lawsuit, which is simply not permitted as a matter of law. The Court is astounded that Plaintiff's counsel thought this was a possible solution.</p> <p>California Rule of Ethical Conduct 1.7 states: "A lawyer shall not, without informed written consent* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter." Plaintiff cannot obtain such informed written consent here. But even if Plaintiff's counsel could obtain such consent, this representation would still be prohibited under Rule 1.7(d)(3), which makes clear: "Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and: . . . the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal." That is EXACTLY what Plaintiff's counsel is doing here.</p> <p>The Court thus makes the following orders: (1) The stipulation and order permitting the estate to substitute in as defendant is STRICKEN. That stipulation is signed by Plaintiff's counsel on behalf of Plaintiff and Defendant, which is prohibited. (2) This case is dismissed with prejudice pursuant to Code of Civil Procedure sections 583.410-583.430, 583.310, and 583.360. Plaintiff cannot stipulate with himself around the five year rule, which is mandatory. (Code Civ. Proc. §583.360 states ("The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute.") The Court will prepare the formal order.</p>

7	19CV354477	Rowen Holdings, Inc vs M3A, LLC	<p>Plaintiffs Rowenn Holdings and New Tec Circuit Sales, Inc.’s motion to enforce discovery and for terminating sanctions is GRANTED. The parties’ twice stipulated to production of certain documents. The Court also presided over multiple discovery conferences, and it was clear that additional documents were to be produced. Defendant Conation Technologies LLC (“Conation”) does not state, much less submit evidence to support, that the requested documents they agreed to produce some two years ago do not exist, have already been produced, or would be too burdensome to produce. Instead, Conation appears to suggest that two depositions slated to take place on October 2 and 3 will cure the problems Plaintiffs outline in their motion. The Court disagrees. Plaintiffs have been patient and diligent in their efforts to obtain what appear to the Court to be relevant documents directly related to core issues in the case. Conation has not complied.</p> <p>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 basic purpose of a discovery sanction is to compel disclosure of discoverable information. (<i>Rutledge</i>, 238 Cal.App.4th at 1193.) Sanctions may not be imposed solely to punish the offending party. (<i>Id.</i>; <i>Kwan</i>, 58 Cal.App.5th at 74-75.) However, this is not a situation where monetary sanctions will facilitate production. This record is unusual; Plaintiffs attempted to obtain these documents through meet and confer, by providing extensions, through entering two stipulations, requesting informal discovery conferences, and continuing depositions. Nothing Plaintiffs tried worked to obtain production of these documents—even after Conation agreed to produce them. The Court therefore finds terminating sanctions are the only appropriate sanctions.</p> <p>There are four types of terminating sanctions: (1) striking pleadings in whole or in part; (2) staying further proceedings by a party until it obeys a discovery order; (3) dismissing the action or part of it; and (4) rendering a default judgment. (Code of Civ. Pro. §2023.030(d).) 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.</p> <p>The Court finds the following issue sanction appropriate here: Plaintiffs’ ownership in the inventory sold through M3A, LLC is established. The only issues remaining for trial are whether Conation was aware or should have been aware that it sold stolen inventory and damages to Plaintiffs, if any, resulting from those sales.</p> <p>Conation (not its counsel) is also ordered to pay Plaintiffs \$10,605.75 in sanctions within 60 days of service of the formal order. The Court finds the number of hours spent attempting to obtain these documents over a period of two years and Plaintiffs’ counsel’s billable rate reasonable. Conation also had no justification for making Plaintiffs incur these expenses after entering stipulations to produce these documents.</p> <p>Court will prepare formal order.</p>
8	20CV367561	ZACHARY KOWITZ et al vs MICHAEL KOWITZ et al	<p>Defendant’s motion for reconsideration of the fair market value is DENIED. There is no reason Defendant could not have obtained this information during the time of the original briefing. If the Court were to entertain as “new evidence” different valuations, this motion would be subject to constant reconsideration given natural fluctuations in the real estate market. Regarding the corporate status of Plaintiff Bay Surplus Technology, Inc., the parties are ordered to appear and (1) inform the Court regarding the status of the Bay Surplus following the September 19 meeting with the FTB and (2) provide legal authority as to whether Bay Surplus may be removed from the order and the sale proceed for the other Plaintiffs if Bay Surplus is still in a suspended state. Please note that the Court needs not just argument, but legal authority.</p>
9	21CV381190	Nayoung Lee vs Raul Arias et al	Withdrawn by moving party.

10	23CV415645	Tomaso Moreno vs Isaías Bardales et al	This motion for judgment on the pleadings was continued from August 27, 2024 at the parties' request because they stated they were close to settlement. One defendant was dismissed without prejudice on September 17, 2024. The parties are ordered to appear and provide further status.
11	23CV423749	Alice Cook vs Matrix Absence Management, Inc.	<p>Defendant Matrix Absence Management, Inc.'s ("Matrix") motion to stay pending final resolution of the federal court action is GRANTED. "When an action is brought in a court of this state involving the same parties and the same subject matter as an action already pending in a court of another jurisdiction, a stay of the California proceedings is not a matter of right, but within the sound discretion of the trial court." (<i>Leeds v. Superior Court of Los Angeles County</i> (1965) 231 Cal. App. 2d 723, 724, citing <i>Farmland Irrigation Co. v. Dopplmaier</i> (1957) 48 Cal.2d 208, 215.) To determine whether to impose a stay, the court should consider (1) which case was filed first, (2) whether the litigation is designed solely to harass an adverse party, (3) whether a stay would avoid unseemly conflicts with courts of other jurisdictions, (4) whether the rights of the parties can best be determined by the court of the other jurisdiction because of the nature of the subject matter, and (5) whether the related federal court action is pending in California and not a different state. (See <i>Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.</i> (1993) 15 Cal.App.4th 800, 803.)</p> <p>Most of these factors seem to weigh in favor of not staying this case. Plaintiff filed this lawsuit first in state court nearly one year ago on October 3, 2023. Matrix then removed the matter to federal court, and, in ruling on Matrix's motion to dismiss, the federal court remanded only the UCL claim here. Thus, the UCL claim is the first filed case. That the parties have engaged in discovery in the federal action does not preclude such discovery being produced in this action and/or further discovery being taken in this action. And the basis for the federal court's remanding the UCL claim is that the federal court cannot provide the equitable relief sought by that claim. Thus, resolution of the federal action will not necessarily resolve this claim. The Court nevertheless concludes that a stay is warranted because there is a significant likelihood of inconsistent rulings. The entire basis of Plaintiff's UCL claim is coextensive with the factual allegations at issue in the federal litigation, and factual and legal determinations made in one action could conflict with those made in the other. This can easily be avoided by permitting the federal action to conclude then litigating the UCL claim thereafter. Accordingly, Defendant's motion is GRANTED. This matter is stayed, and a status conference is set for March 20, 2025 at 10:00 a.m. in Department 6. The Court will prepare the formal order.</p>