

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

**Department 3**  
**Honorable William J. Monahan, Presiding**  
Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: (408) 882-2130

**DATE: 10/3/2024 TIME: 9:00 A.M.**

**TO CONTEST THE RULING:** Before 4:00 p.m. today (10/2/2024) 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 or by Teams. If you must appear virtually, please use video.

**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.

**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). Please include the date, time, dept., and line number.

**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
<a href="#">LINE 1</a>	21CV388783	Kathleen Liccardo vs Kenneth Simoncini	Motion: Compel Plaintiff's Further Responses to Further Interrogatories, Set Two, and for Monetary Sanctions by Defendant Kenneth Simoncini  <b>OFF CALENDAR</b>  (Per 10/1/2024 stipulation and order the hearing was continued to 10/10/2024 at 9:00 a.m. in Dept. 6).
<a href="#">LINE 2</a>	24CV432761	JRK Investors, Inc. et al vs Fairfield Great Oaks LP et al	Motion: Compel Responses and Production of Documents from Defendants to Plaintiffs' Request for Production of Documents by Plaintiff JRK Investors, Inc.  Ctrl Click (or scroll down) on Line 2 for tentative ruling. The court will prepare the order.

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<a href="#">LINE 3</a>	17CV320200	Pedro Diaz et al vs Luis Santiago et al	Motion: Enforce Settlement by Plaintiff Pedro Diaz and Maria Tostado  Ctrl Click (or scroll down) on Line 3 for tentative ruling. The court will prepare the order.
<a href="#">LINE 4</a>	21CV389381	Dee Shisler et al vs Shelly Koning	Hearing: Motion hearings to Substitute Plaintiff Dee Shisler Successor in Interest in Place of Deceased Plaintiff Isabel Shisler, his deceased wife, by Plaintiff Dee Shisler  Unopposed and GRANTED. Moving party to submit order for signature by court.
<a href="#">LINE 5</a>	23CV426746	Karen Louise Finkle vs Good Samaritan Hospital et al	Motion: Leave to Amend to File Third Amended Complaint by Plaintiff  Unopposed and GRANTED. Plaintiff has 15 days leave to file the Third Amended Complaint.  Moving party to submit order for signature by court.
<a href="#">LINE 6</a>	24CV445638	In re: 5312 Cedar Grove Circle, San Jose, CA 95123	Hearing: Other: Disbursement of sale proceeds pursuant to Civil Code section 2924j(d)  The verified Petition and Declaration Regarding Unresolved Claims and Deposit of Undistributed Surplus Proceeds of Trustee's Sale was filed on 8/21/2024. No claims having been filed with the Court; the \$659,080.93 surplus funds deposited per order filed 08/23/2024 shall escheat according to law to the California State Controller's Office.  The court will prepare the order.
<a href="#">LINE 7</a>			
<a href="#">LINE 8</a>			
<a href="#">LINE 9</a>			
<a href="#">LINE 10</a>			
<a href="#">LINE 11</a>			
<a href="#">LINE 12</a>			

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**Calendar Line 2**

**Case Name:** JRK Investors, Inc, et al vs Fairfield Great Oaks LP, et al.

**Case No.:** 24CV432761

Plaintiffs JRK Investors, Inc. and Duo Apartments Property Owner, LLC (collectively “Plaintiffs”)’s motion to compel further responses by defendants Fairfield Great Oaks LP (“Fairfield Great Oaks”) and Fairfield Development LP (“Fairfield Development”) (collectively “Fairfield”) to Plaintiffs’ Request for Production of Documents (Set One) (“RPD”) No. 53, to produce responsive documents and for monetary sanctions is GRANTED IN PART.

Plaintiffs’ motion to compel a further response and production of documents to RPD No. 53 (without any time limitation) is DENIED. The parties’ counsel met and conferred in good faith and the extremely overbroad scope of RPD No. 53 was limited by agreement to the time period of January 2022 to the present. Fairfield failed to provide the further response (for the agreed time period) by the date promised, so Plaintiffs filed this motion to compel. However, Plaintiffs’ motion sought to compel a further response and production of documents to RPD No. 53 (without any time limitation) which is clearly overly broad and is contrary to the meet and confer agreement made between counsel in this action.

Fairfield served a further response to RPD No. 53 on 9/3/2024 (for the agreed time period of January 2022 to present) with a verification on 9/4/2024 (“further response to RPD No. 53”), so the motion to compel a further response (for the agreed time period of January 2022 to present) to RPD No. 53 is MOOT, except for the production of promised non-privileged documents and a privilege log. Fairfield has begun the production of non-privileged documents and expects to complete their production (and a privilege log) by 10/31/2024. **Within 30 days of this order**, Fairfield shall complete the production for inspection of all non-privileged documents in accordance with their further response to RPD No. 53 and provide a privilege log in accordance with the requirements of CCP section 2031.240.

Both side’s request for judicial notice (“RJN”) is GRANTED.

Both sides’ request for monetary sanctions are DENIED. The one subject to sanctions acted with substantial justification or other circumstances make the imposition of sanctions unjust. (CCP § 2032.320(b).)

The court will prepare the order.

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**Calendar Line 3**

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**Case Name:** Pedro Diaz et al vs Luis Santiago et al

**Case No.:** 17CV320200

Plaintiffs Pedro Tostado Diaz and Maria Santiago (collectively “Plaintiffs”) motion to enforce the written settlement agreement (“Agreement”) between Plaintiffs and defendants Luis Santiago and Maria Santiago (collectively “Defendants”) pursuant to Code of Civil Procedure (CCP) section 664.6 and for reasonable attorneys’ fees and costs is GRANTED IN PART.

Plaintiff's request for liquidated damages against Defendants for a third violation of the Agreement in the amount of **\$3,000** is GRANTED.

CCP section 664.6 provides, in part:

(a) If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

(b) For purposes of this section, a writing is signed by a party if it is signed by any of the following:

(1) The party.

(2) An attorney who represents the party.

Here the settlement Agreement was signed by Plaintiffs and Defendants (and signed approved as to form by their attorneys), and it requested the court to retain jurisdiction over the parties to enforce the settlement Agreement pursuant to CCP section 664.6.

“Although a judge hearing a section 664.6 motion may receive evidence, determine disputed facts, and enter the terms of a settlement agreement as a judgment ([Citations] [court may interpret terms of settlement agreement]), nothing in section 664.6 authorizes a judge to *create* the material terms of a settlement, as opposed to deciding what terms *the parties themselves* have previously agreed upon.” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810.)

Section 9 of the Agreement provides:

The Parties agree that in the event they believe any other Party *has breached* any term of this Agreement, the non-breaching Party *will meet and confer in good faith* with the allegedly breaching Party to resolve the dispute. For purposes of this Agreement, “meet and confer in good faith” means *either an in-person conversation or telephone conversation in which the Parties respectfully identify the issue in dispute and propose one or more resolutions.*” (Emphasis added.)

Section 11 of the Agreement provides for liquidated damages in certain amounts “subject to the meet and confer requirement described in Section 9 of this Agreement....” Section 11 provides that the liquidated damages for a third violation payable to the non-breaching family is \$3,000. It also provides: “The Party prevailing at Court will be entitled to receive the penalty at issue and an award of reasonable attorneys’ fees and costs.”

Here, the requirements of CCP 664.6 have been met. Plaintiffs have met their burden of proving a third violation of the Agreement by a preponderance of the evidence. The terms of the Agreement are clear and unambiguous regarding this dispute.

Mr. Santiago admits using his parking space for home projects. (Santiago Dec. ¶¶ 21, 22) and admits that he performs vehicle maintenance in front of his garage, *not* in his parking space (Santiago Dec. ¶¶ 12.13. These are violations of the Agreement.

Use of the Defendants' parking space for construction and home improvement projects is *not* permissible under the express terms of the Agreement and is a violation. (See Section 1 ["The Parties agree each party may park one vehicle on the Driveway alongside the fence..."] and Section 4 ["The Parties agree that no Party or their families, friends, or guests will place or store personal property on the Driveway."])

The vehicle maintenance issue is *not* that it takes 5 minutes or *if* Defendants can do it under the Agreement, they clearly may. The issue is *where the car maintenance takes place*. Sections 3 and 1 of the Agreement clearly requires that Defendants' car maintenance be done *within Defendants' parking space* alongside the fence, *not* elsewhere on the driveway. Mr. Santiago's admission that he does this in front of the garage (instead of within his parking space alongside the fence) is a violation of the Agreement.<sup>1</sup>

The court finds Plaintiffs are entitled to liquidated damages of \$3,000 for a third violation by Defendants under paragraph 11 of the Agreement payable to the Plaintiffs, and that the correspondence between Plaintiffs' and Defendants' counsel (in Exhibits D and E to the Gregory C. Simonian Declaration ) and the communications between their counsel by phone and email are a good faith meet and confer as required by sections 9 and 11 of the Agreement to recover liquidated damages for this third violation.

Defendants' argument that the good faith meet and confer requirement under the Agreement is *not* satisfied by the good faith meet and confer between their respective counsel is *unpersuasive*. Indeed, Defendants' counsel's declaration admitted in a phone conversation with Plaintiffs' counsel on July 9, 2024, that "I agreed that we had made as much progress as possible through the meet and confer process...." (Decl. Curtis E. Allen, ¶ 8.)

Defendants' request for attorney's fees and costs is DENIED. Their attorney requested 8.4 hours at \$375 per hour for a total of \$3,150. They are *not* the prevailing parties under the Agreement on this motion.

Plaintiffs' request for attorney's fees and costs is GRANTED IN PART. Plaintiffs are the prevailing parties under the Agreement on this motion. Their attorney requested 15 hours at \$545 per hour plus \$60 filing fee for a total of \$8,235. While the court agrees with Defendants' argument that Plaintiffs' counsel did not break down the 15 hours of time requested for this motion, the court notes that Defendants requested 8.4 hours for their attorney's time opposing this motion, and exercises its discretion to award Plaintiff this reasonable amount of time. The court finds that Plaintiffs are entitled to recover their attorney's fees in the reasonable amount of \$4,578 (8.4 hours times \$545 per hour) plus costs in the amount of \$60 for a total of **\$4,638** as the prevailing parties against Defendants pursuant to section 11 of the Agreement.

Accordingly, Defendants shall pay Plaintiffs a total of **\$7,638** within 90 days of this order.

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<sup>1</sup> If this was the *sole* violation, the court may *not* have found it was egregious enough to justify a third violation for \$3,000 of liquidated damages. However, the parties should clearly understand what the Agreement provides going forward.

Defendants' objections to evidence (filed 9/18/2024) Nos. 1-8 are OVERRULLED.

The court exercised its discretion to overrule Defendant's evidence objection No. 8 and consider Plaintiff's Request for Judicial Notice ("RJN") filed with their reply papers. Plaintiffs' RJN is GRANTED. It relates to an argument made in the Defendants' opposition about good faith meet and confer under the Agreement and simply requests taking judicial notice of a document filed by Defendants in the court's own file. In any event, the court notes that the outcome of this motion would be the same even if the RJN had not been GRANTED or considered.

The court will prepare the order.

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