

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

Department 20, Honorable Socrates Peter Manoukian, Presiding

Courtroom Clerk: Hien-Trang Tran-Thien

191 North First Street, San Jose, CA 95113

Telephone: 408.882.2320

Department20@scscourt.org

"Every case is important" "No case is more important than any other." —
United States District Judge Edward Weinfeld (<https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html>)

"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the
Biggest Case of Your Life." — Common Wisdom.

As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and
drink as friends." (Shakespeare, *The Taming of the Shrew*, act I, scene ii.)" (*Gregori v. Bank of
America* (1989) 207 Cal.App.3d 291, 309.)

Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.*
(1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented
by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)

By Standing Order of this Court, all parties appearing in this Court are expected to comply with the
Code of Professionalism adopted by the Santa Clara County Bar Association:

<https://www.sccba.com/code-of-professional-conduct/>

---oooOooo---

DATE: Thursday, 12 October 2023

TIME: 9:00 A.M.

**Please note that for the indefinite future, all hearings will be conducted remotely as the Old
Courthouse will be closed. This Department prefers that litigants use Zoom for Law and
Motion and for Case Management Calendars. Please use the Zoom link below.**

"A person's name is to him or her the sweetest and most important sound in any language."—Dale Carnegie. All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try to be careful how I pronounce the names of others." Please inform the Court how you, or if your client is with you, you and your client prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers. You might also try www.pronouncenames.com but that site mispronounces my name.

You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.

Join Zoom Meeting
<https://scu.zoom.us/j/96144427712?pwd=cW1JYmg5dTdsc3NKNFBpSjJEam5xUT09>
Meeting ID: 961 4442 7712
Password: 017350

Join by phone:
+1 (669) 900-6833
Meeting ID: 961 4442 7712

One tap mobile
+16699006833,,961 4442 7712#

APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in court appearances as well. If you do intend to appear in person, please advise us when you call to contest the tentative ruling so we can give you current instructions as to how to enter the building.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See *Jensen v. Superior Court (San Diego)* (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwidth. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California *Rules of Court*, rule 3.672.

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 8(E) and *California Rules of Court*, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

Please notify this Court immediately if the matter will not be heard on the scheduled date. *California Rules of Court*, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. *California Rules of Court*, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. *California Rules of Court*, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will be helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: **Line #/name/party**. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

CIVILITY.

In the 48 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

This Court is aware of a study being undertaken led by Justice Brian Currey and involving various lawyer groups to redefine rules of civility. This Judge has told Justice Currey that the lack of civility is due more to the inability or unwillingness of judicial officers to enforce the existing rules.

The parties are forewarned that this Court may consider the imposition of sanctions against the party or attorney who engages in disruptive and discourteous behavior during the pendency of this litigation.

COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); *California Rules of Court*, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if

any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

PROTOCOLS DURING THE HEARINGS.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with **California Rules of Court**, rule 3.1312.

TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the “Control” key and click. If you see last week’s tentative rulings, you have checked prior to the posting of the current week’s tentative rulings. You will need to either “REFRESH” or “QUIT” your browser and reopen it. Another suggestion is to “clean the cache” of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

This Court’s tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court’s final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	20CV371336	Horacio Gaona vs. Uriel Soto; Flagship Facility	Motion of Defendant to Compel Further Production of Documents. Is this motion going forward? NO TENTATIVE RULING. The parties are invited to appear at the hearing on this motion.
LINE 2	20CV371336	Horacio Gaona vs. Uriel Soto; Flagship Facility	OFF CALENDAR
LINE 3	20CV371336	Horacio Gaona vs. Uriel Soto; Flagship Facility	OFF CALENDAR
LINE 4	22CV399529	Lynette Fisher vs. Granite Rock Company; Joel Armando Medina.	Motion of Plaintiff to Compel Defendant Granite Rock Company to Produce Documents and Deposition Testimony of the Person Most Knowledgeable Etc. and for Monetary Sanctions. This Court has a couple of questions. 1. Notwithstanding that plaintiff designated this motion as one to compel etc., defendant has indicated that documents and individuals were produced for depositions, PMK or otherwise. To this Court, shouldn't plaintiff have filed a separate statement? 2. This accident has been described apart from the question of fault as two vehicles side swiping each other. Why is this discovery necessary in the first place? NO FORMAL TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 5	20CV374722	Donald C. Hacker; Catherine K. Hacker vs. Ford Motor Company; Theodore Robins Ford; Theodore Robins, Inc.	<p>Motion of Plaintiffs to Reconsider This Court's Order of 04 May 2021 Granting the Motion of Defendant Ford Motor Company to Compel Arbitration and Stay Proceedings.</p> <p>The motion of plaintiffs for reconsideration of this Court's order of 04 May 2021 is DENIED.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 6	21CV381984	Gavin Resendiz vs. FedEx Freight, Inc.; Anandjit Singh.	<p>Motion Of Defendant To Take Subsequent Deposition Of Plaintiff.</p> <p>Plaintiff opposes the motion as an attempt to take a second bite of the apple because of questions they forgot to ask. Defendants argue that Plaintiff was deposed on 23 May 2022, over one and a half years before trial, they should be entitled to a subsequent deposition.</p> <p>During Plaintiff's deposition, defense counsel attempted to ask questions regarding plaintiff's claimed head injury. Plaintiff's counsel indicated that a traumatic brain injury was not going to be part of Plaintiffs claim moving forward.</p> <p>On 26 July 2023, plaintiff's counsel served a settlement demand that included discussion of plaintiff's claimed traumatic brain injury and related treatment as part of his claim. The demand also included reference to and production of medical records related to treatment of his claimed traumatic brain injury, including a September 2020 MRI of the brain that was produced for the first time and a diagnosis of a mild traumatic brain injury.</p> <p>NO TENTATIVE RULING. The parties are invited to appear at the hearing on this motion.</p>
LINE 7	23 CV 416095	Santa Clara Valley Water District v. E Fuel Investments San José LLC; et al	<p>Motion of Plaintiff For Prejudgment Possession.</p> <p>Is this matter MOOT pursuant to the order by Judge Kulkarni?</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 8	2009-1-CV-155774	In re Matter of T.B.	<p>Motion of T.B. For Reassignment of Benefits.</p> <p>Passed to 2:00 PM in this department via the Zoom virtual platform.</p> <p>NO TENTATIVE RULING.</p>
LINE 9			SEE ATTACHED TENTATIVE RULING.
LINE 10			SEE ATTACHED TENTATIVE RULING.
LINE 11			SEE ATTACHED TENTATIVE RULING.
LINE 12			SEE ATTACHED TENTATIVE RULING.
LINE 13			SEE ATTACHED TENTATIVE RULING.
LINE 14			SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 15			SEE ATTACHED TENTATIVE RULING.
LINE 16			SEE ATTACHED TENTATIVE RULING.
LINE 17			SEE ATTACHED TENTATIVE RULING.
LINE 18			SEE ATTACHED TENTATIVE RULING.
LINE 19			SEE ATTACHED TENTATIVE RULING.
LINE 20			SEE ATTACHED TENTATIVE RULING.
LINE 21			SEE ATTACHED TENTATIVE RULING.
LINE 22			SEE ATTACHED TENTATIVE RULING.
LINE 23			SEE ATTACHED TENTATIVE RULING.
LINE 24			SEE ATTACHED TENTATIVE RULING.
LINE 25			SEE ATTACHED TENTATIVE RULING.
LINE 26			SEE ATTACHED TENTATIVE RULING.
LINE 27			SEE ATTACHED TENTATIVE RULING.
LINE 28			SEE ATTACHED TENTATIVE RULING.
LINE 29			SEE ATTACHED TENTATIVE RULING.
LINE 30			SEE ATTACHED TENTATIVE RULING.

---oooOooo---

Calendar Line 1

---oooOooo---

Calendar Line 2

---oooOooo---

Calendar Line 3

---oooOooo---

Calendar Line 4

---oooOooo---

Calendar Line 5

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

DEPARTMENT 20

161 North First Street, San Jose, CA 95113
408.882.2320 · 408.882.2296 (fax)
smanoukian@scscourt.org
http://www.scscourt.org

(For Clerk's Use Only)

CASE NO.: 20CV374722 Donald Hacker, Catherine K. Hacker v. Ford Motor Company, et al.

DATE: 12 October 2023 TIME: 9:00 am LINE NUMBER: 05

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 11 October 2023. Please specify the issue to be contested when calling the Court and Counsel.

---oooOooo---

**Order on Motion of Plaintiffs to Reconsider
This Court's Order of 04 May 2021
Granting the Motion of Defendant Ford Motor Company
to Compel Arbitration and Stay Proceedings.**

I. Statement of Facts.

Plaintiffs filed this complaint apparently on or around 19 February 2020 in the Superior Court for the County of Los Angeles. Defendants Ford Motor Company and Theodore Robins Ford, jointly represented by the same law firm, filed a motion for change of venue to Orange County, where both defendants were located, or to Santa Clara County, where Ford has its principal place of business in California. The case was transferred to this County on 23 November 2020 with the notice of transfer dated 5 January 2021.¹

Plaintiffs allege that on or about 16 January 2012, they purchased a 2012 Ford Escape from defendant Theodore Robins Ford in Orange County. The vehicle was manufactured by defendant Ford Motor Company. Plaintiffs received an express warranty, including at three year/36,000 mile express bumper-to-bumper warranty and a five year/60,000 mile powertrain warranty which covered the engine and transmission. During the warranty period, the vehicle contained or developed many defects (see Complaint, ¶ 10.)

This Court granted the motion to compel arbitration in its written order of 04 May 2021, about 2 ½ years ago. This Court stated "This Court observes plaintiff's argument that the language cannot be construed to give a third-party the right to demand arbitration. But thus spake Felisilda. . . . Plaintiffs' Song-Beverly warranty cause of action for breach of the implied warranty of merchantability is alleged against both signatory Robins and nonsignatory Ford. (See Complaint, ¶¶ 30-34.) Plaintiffs' statutory claims under the Song-Beverly Act are "intimately founded in and intertwined" with the underlying RISC.

¹ This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (**Government Code**, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (**Ca. St. Civil Rules of Court**, Rule 3.714(b)(1)(C) and (b)(2)(C).

Specifically, Plaintiffs allege[] that Ford and Robins implicitly warranted that their Escape must “pass without

objection in the trade under the contract description.” (See Complaint, ¶ 32.) Plaintiffs also allege that each and every reference to “Defendant” pertains to Ford and Robins. (Complaint, ¶ 3.) The fifth cause of action is alleged against both defendants.

II. Motion For Reconsideration.

Plaintiffs argue that this “court should reconsider and reverse its [04 May 2021] order [because] this court’s ruling is counter to the holdings in *Ochoa v. Ford* [89 Cal.App.5th 1324²].”

III. Analysis.

A. Stare Decisis.

Is this Court required to follow the case of *Ochoa v. Ford*? No.

“Where Courts of Appeal have rendered conflicting decisions, what is the trial court to do? ‘As a practical matter, a superior court ordinarily will follow an appellate opinion emanating from its own district even though it is not bound to do so. Superior courts in other appellate districts may pick and choose between conflicting lines of authority. This dilemma will endure until the Supreme Court resolves the conflict, or the Legislature clears up the uncertainty by legislation.’ (*McCallum v. McCallum* (1987) 190 Cal.App.3d 308, footnote 4.)” (9 Witkin, *California Procedure* (4th Ed.), Appeal § 933.)

In its written order, this Court made clear that it was following the decision in *Felisilda v. FCA US LLC* (2020) 53 Cal.App.5th 486, notwithstanding appellate authority in federal cases which might have found to the contrary.

Plaintiffs take the position that the holding in *Felisilda* was dicta. This Court concludes otherwise. Whether the issue is raised by the dealer or the manufacturer is, in the mind of this Court, not pertinent because of the issue of intertwineation as noted in this Court’s initial order.

B. Reconsideration.

Code of Civil Procedure, § 1008(a) states:

“When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.”

In this matter, plaintiffs have not alleged new facts. These facts were in existence at the time of the original application. To move for reconsideration of a prior court order on the basis of “new or different facts” or newly discovered evidence, plaintiffs must provide a satisfactory explanation for the failure to produce that evidence at an earlier time. (*Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 255.)

² See *Ford Motor Warranty Cases* (1989) 89 Cal.App.5th 1324; Review granted by, Request granted, Review pending at *Ochoa v. Ford Motor Co. (In re Ford Motor Warranty Cases)*, 532 P.3d 270, 2023 Cal. LEXIS 4235, 2023 WL 4630837 (Cal., July 19, 2023)

This Court will leave open the question of whether a change in law 2 ½ years after this Court's order constitutes good cause for granting reconsideration. This Court generally agrees with the discussion raised by plaintiffs in their moving papers.

Plaintiffs invite the Court to reconsider its decision on its own motion pursuant to the doctrine of ***Le Francois v. Goel*** (2005) 35 Cal.4th 1094 but this Court declines to do so.

V. Case Management.

This Court will ask counsel what has transpired in the 2 ½ years since this matter was referred to arbitration. This Court would have expected to have this matter resolved by now.

VI. Conclusion and Order.

This Court notes that the opposition papers were filed two days before the hearing and thus plaintiffs may not have had sufficient opportunity to reply. That can be addressed should this matter proceed to a hearing. In the interim, the motion of plaintiffs for reconsideration of this Court's order of 04 May 2021 is DENIED.

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

---oooOooo---

Calendar Line 6

---oooOooo---

Calendar Line 7

---oooOooo---

Calendar Line 8

---oooOooo---

Calendar Line 9

---oooOooo---

Calendar Line 10

---oooOooo---

Calendar Line 11

---oooOooo---

Calendar Line 12

---oooOooo---

Calendar Line 13

---oooOooo---

Calendar Line 14

---oooOooo---

Calendar Line 15

---oooOooo---

Calendar Line 16

---oooOooo---

Calendar Line 17

---oooOooo---

Calendar Line 18

---oooOooo---

Calendar Line 19

---oooOooo---

Calendar Line 20

---oooOooo---

Calendar Line 21

---oooOooo---

Calendar Line 22

---oooOooo---

Calendar Line 23

---oooOooo---

Calendar Line 24

---oooOooo---

Calendar Line 25

---oooOooo---

Calendar Line 26

---oooOooo---

Calendar Line 27

---oooOooo---

Calendar Line 28

---oooOooo---

Calendar Line 29

---oooOooo---

Calendar Line 30

---oooOooo---