

**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: 11/5/2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (11/4/2024) 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
LINE 1	23CV413944	Xiufeng Xie vs Silin Chen et al	Motion: Quash Ctrl Click (or scroll down) on Line 1 for tentative ruling. The court will prepare the order.
LINE 2	24CV432378	Howard Young vs Pacifica Companies et al	Motion: Strike See Line 3 below for tentative ruling. The moving party to prepare the order for signature by court.

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LINE 3	24CV432378	Howard Young vs Pacifica Companies et al	<p>Hearing: Demurrer</p> <p>Demurrer to the First Amended Complaint is UNOPPOSED. Notice of Non-Opposition filed to Demurrer and Motion to Strike on 10/29/2024. This is the second demurrer in the case and plaintiff Howard Young ("Plaintiff") has again failed to file opposition to the motion. Therefore, the demurrer is SUSTAINED WITHOUT LEAVE TO AMEND. Motion to Strike is MOOT.</p> <p>Moving party to prepare order for signature by court.</p> <p>Note: Moving party should also prepare a judgment for signature by court.</p>
LINE 4	24CV440229	CREDITORS ADJUSTMENT BUREAU, INC., vs JR TREE SERVICE PROS	<p>Hearing: Motion to Strike</p> <p>Plaintiff Creditors Adjustment Bureau, Inc. ("Plaintiff")'s motion to strike defendant JR Tre Service Pros aka JR Tree service Pros aka JR Tree Service Pros, a corporation ("Defendant")'s Answer to Plaintiff's complaint pursuant to Code of Civil Procedure section 436. Defendant, a corporation cannot represent itself in pro per, it may only appear through counsel in this action.</p> <p>Motion to Strike the Answer is Unopposed and GRANTED WITH 15 DAYS LEAVE TO AMEND.</p> <p>Moving party to prepare order for signature by court.</p>
LINE 5	24CV439615	AWOENAM WOANYA vs LYFT, INC. et al	<p>Motion: Compel</p> <p>OFF CALENDAR.</p> <p>[Notice of Settlement of Entire Case filed on 10/30/2024.]</p>

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DATE: 11/5/2024 TIME: 9:00 A.M.

LINE 6	18CV323337	Durvalino Sarmiento vs Bank of New York Mellon et al	Hearing: Motion Defendant's motion to dismiss for lack of prosecution— Plaintiff did not bring action to trial within 5 years Continued to 12/5/2024 at 9:00 AM in Dept. 3 (the original noticed hearing date). Opposition and reply papers shall be filed and served based on the original noticed hearing date of 12/5/2024. There is no notice of entry nor proof of service of the ex parte order filed 10/12/2024 advancing the hearing to 11/5/2024. The court will prepare the order.
LINE 7	21CV392455	Advoque Safeguard LLC et al vs Benham Pourdeyhimi et al	Hearing: Motion for sanctions Ctrl Click (or scroll down) on Line 7 for tentative ruling. The court will prepare the order.
LINE 8	23CV420588	Michelle Ferkel et al vs Syed Farhan et al	Motion: Leave to File Second Amended Answer Defendants Santa Clara Valley Transportation Authority and Syed Ali Farhan (collectively "Defendants")' Motion for Leave to File Second Amended Answer ("SAA") to the First Amended Complaint ("FAC") of Plaintiffs Michelle Ferkel, by and through her successors in interest Danielle Ferkel; Joseph Ferkel; Danielle Ferkel, an individual; and Joseph Ferkel, an individual (collectively "Plaintiffs"). Unopposed and GRANTED WITH 15 DAYS LEAVE TO FILE SECOND AMENDED ANSWER. Moving party to draft the order.
LINE 9	24CV430597	Marybeth Lakso et al vs GARY LYNN, MD et al	Hearing: Motion preferential trial setting Good cause appearing, plaintiff Marybeth Lasko ("Plaintiff")'s motion/application for preferential trial setting pursuant to Code of Civil Procedure section 36 is GRANTED the court will set the matter for trial not sooner than six months and not later than nine months from the date of this order. A Trial Setting Conference is hereby set for 12/3/2024 at 11:00 AM in Dept. 3. The court will prepare the order.
LINE 10			
LINE 11			

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DATE: 11/5/2024 TIME: 9:00 A.M.

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Calendar Line 1

Case Name: *Xiufeng Xie v. Silin Chen et al.*

Case No.: 23CV413944

I. Factual and Procedural Background

This case arises from a contract dispute between plaintiff Xiufeng Xie (“Plaintiff”) and defendants Silin Chen (“Chen”), individually and doing business as Simorphy Home and Beyond; Simorphy Design and Investment, LLC (“LLC”); and Guang Chen (collectively, “Defendants”).¹

LLC is a single-member LLC owned by Chen, who also serves as its registered agent. Plaintiff brought suit against Defendants on April 3, 2023. On December 5, 2023, a process server left some papers with Chen’s minor child and elderly, non-English speaking nanny when Chen was not home. Chen eventually found the papers in her home and therefore, she waived service and filed a response as an individual defendant, but the LLC was never served, and Chen did not become aware of the LLC’s status as a defendant until Chen received notice of default entered on January 30, 2024.

On June 6, 2024, Plaintiff filed a first amended complaint (“FAC”), mooted the entry of default. Plaintiff’s counsel then mailed a copy of the FAC to Chen as an individual but failed to mail anything to the LLC or otherwise serve the LLC. Plaintiff’s counsel then mailed a copy of the FAC to Chen as an individual but failed to mail anything to the LLC or otherwise serve the LLC.

On July 23, 2024, Chen’s aunt was allegedly served at Chen’s home by a process server who stated that the documents were for three defendants. The aunt indicated she knew Chen but did not know the other two defendants. According to Defendants, the LLC was never properly served.

On August 30, 2024, LLC moved to quash service of summons on the ground the Court lacks personal jurisdiction because it was not properly served. Plaintiff opposes the motion.

II. Motion to Quash Legal Standard

“A defendant . . . may serve and file a notice of motion for one or more of the following purposes: (1) to quash a service of summons on the lack of jurisdiction of the court over him or her” (Code Civ. Proc., § 418.10, subd. (a).)

Where a defendant moves to quash based on improper service of the summons and complaint, the burden is on the plaintiff to prove the validity of service by a preponderance of the evidence. (See *Boliah v. Superior Court (Bijan Fragrances, Inc.)* (1999) 74 Cal.App.4th 984, 991.) The filing of a proof of service creates a rebuttable presumption that service was proper, so long as the proof of service complies with applicable statutory requirements. (*Dill v.*

¹ Chen has filed several documents as Doe defendant, also referring to the LLC as Doe LLC. Chen and the LLC are named in both the complaint and FAC. It is unclear why she is now filing documents under a pseudonym.

Berquist Construction Co. (1994) 24 Cal.App.4th 1426, 1442 (*Dill*); see also *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1205.)

“A defendant is under no duty to respond in any way to a defectively served summons. It makes no difference that defendant had actual knowledge of the action. Such knowledge does not dispense with statutory requirements for service of summons.” (*Kappel v. Bartlett* (1988) 200 Cal.App.3d 1457, 1466.) Notice does not substitute for proper service; until statutory requirements are satisfied, the court lacks jurisdiction over a defendant. (*Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 808.) The statutory provisions regarding service of process are liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant; substantial compliance is sufficient. (*Dill, supra*, 24 Cal.App.4th at p. 1436.) Substantial compliance means actual compliance in respect to the substance essential to every reasonable objective of the statute. (*Id.* at p. 1439.)

III. Analysis

Defendant LLC argues that it was never properly served Plaintiff’s summons and first amended complaint as a limited liability company and that substitute service was not compliant with Code of Civil Procedure section 415.20. LLC asserts that Plaintiff’s proof of service alleges substitute service on the LLC at its “home” with a competent member of the household but that the description of the person is not Chen, the LLC’s representative. (Motion, p. 7:6-7.) Finally, LLC argues that service by mail was improper and, even if it were proper, Plaintiff’s efforts at service by mail were defective. (See Motion, p. 8:4-5, 21-23.)

In opposition, Plaintiff asserts two arguments: 1) LLC made a general appearance by filing a fee waiver application on January 31, 2024; and 2) LLC was properly serviced at its principle office.

a. General Appearance

Plaintiff asserts that by filing a fee waiver, LLC made a general appearance in this action because it was seeking relief and therefore conferring personal jurisdiction. (Opposition, p. 3:21-25, citing *Factor Health Management v. Superior Court* (2005) 132 Cal.App.4th 246, 250 [“If the defendant raises an issue for resolution or seeks relief available only if the court has jurisdiction over the defendant, then the appearance is a general one.”].) Plaintiff cites no authority that holds that the filing of a fee waiver constitutes a general appearance.

“Appearance” is defined in Code of Civil Procedure section 1014: “A defendant appears in an action when he answers, demurs, files a notice of motion to strike, files a notice of motion to transfer pursuant to Section 396b, gives the plaintiff written notice of his appearance or when an attorney gives notice of appearance for him.”

Courts have generally agreed that this definition is not exclusive. (*General Ins. Co. v. Superior Court* (1975) 15 Cal.3d 449, 453 [124 Cal.Rptr. 745, 541 P.2d 289].) Thus a general appearance need not be “a formal, technical step or act. . .” (*O’Keefe v. Miller* (1965) 231 Cal.App.2d 920, 921 [42 Cal.Rptr. 343]); rather the term may apply to various acts which, under all of the circumstances, are deemed to confer jurisdiction of the person. (*Botsford v. Pascoe, supra* 94 Cal.App.3d 62, 67.) What is determinative is whether defendant takes a part in

the particular action which in some manner recognizes the authority of the court to proceed. (*RCA Corp. v. Superior Court* (1975) 47 Cal.App.3d 1007, 1009 [121 Cal.Rptr. 441]; 2 Witkin, Cal. Procedure (3d ed. 1985) Jurisdiction, § 141.)

(*Sanchez v. Superior Court* (1988) 203 Cal.App.3d 1391, 1397.)

The Court is not persuaded that the filing of a fee waiver constitutes a general appearance and the Court declines to deny the motion to quash on the ground LLC generally appeared.

b. Proper Service

Plaintiff next argues that the proof of service reflects a proper substitute service on the LLC's agent, Chen. (Opposition, p. 4:10-11, citing Elliot Decl., ¶ 5, Ex. 4.) Plaintiff contends that Chen was served by handing the papers to a person matching her physical appearance in her driveway, which is also the address the LLC has designated for service and its principle address and thereafter, the papers were mailed to the address. (*Ibid.*)

Pursuant to California Rules of Court, rule 3.110, subdivision (b), a complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint. (Cal. Rules of Court, rule 3.110(b).) Here, there are three named defendants, thus, Plaintiff must have served each defendant. Service on a limited liability company may be made by personal service of a copy of any process against the limited liability company by delivery to any individual designated by it as agent. (See Cal. Corp. Code, § 17701.16, subd. (b).) The designated agent may be served by either personal service or substitute service.

“If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served . . . a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address . . . , in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address . . . , at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail[.]” (Code Civ. Proc., § 415.20, subd. (b).) To obtain jurisdiction through substitute service, there must be strict compliance with the statutory requirements. (See e.g., *Stamps v. Superior Court* (1971) 14 Cal.App.3d 108, 110.)

Here, the proof of service proffered by Plaintiff indicates that multiple attempts at personal service were made. (See Elliot Decl., Ex. 1, p. 3 [declaration of due diligence showing three attempts at service].) Plaintiff proffers further evidence that Chen's residence is the listed address for the LLC. (See *Id.* at Ex. 4 [indicating LLC's address and Chen's address are the same].) Thereafter, Plaintiff attempted service nine additional times at the LLC's address and eventually, on July 23, 2024, effectuated service on a woman matching the description of Chen, and not an elderly aunt, child, or babysitter, at Chen's address. (*Ibid.*) Finally, Plaintiff provides evidence that a day after Chen was served, Plaintiff mailed summons on the first amended complaint to that same address. (See Elliot Decl., Ex. 4, p. 6.) A registered process server's declaration of service establishes a presumption affecting the burden of producing evidence of the facts stated in the declaration. (*Floveyor Internat., Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 795 [“filing of a proof of service creates a rebuttable

presumption that the service was proper.”].) Thus, the burden shifts to the LLC to show it was not served. In reply, Chen submits a declaration stating she was not served and that instead, her aunt was served. (See Reply, p. 6:4-7, 11-13, citing Doe Decl., ¶¶ 2-3.) A trial court is not required to accept a self-serving declaration that purports to contradict the process server’s declaration or proof of service. (See *American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 390; see also *Rodriguez v. Cho* (2015) 236 Cal.App.4th 742, 751.) LLC has therefore not met its burden of establishing that it was not properly served.

Accordingly, the motion to quash service of summons is DENIED.

The Court will prepare the final order.

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Case Name: Advoque Safeguard, LLC, et al. vs Sanctuary Systems, LLC, et al.

Case No.: 21CV392445

Defendant Sanctuary Systems, LLC (“Defendant”)’s motion for sanctions against Plaintiffs Advoque Safeguard, LLC and Ciasom LLC (“Plaintiffs”) and their counsel of record, Christian P. Lucia and Justin M. Graham, pursuant to Code of Civil Procedure (“CCP”) sections 2023.010(g), 2023.030, and 2023.050 is GRANTED IN PART.

Defendant’s request for sanctions against Plaintiffs’ counsel is DENIED. Other circumstances make the imposition of sanctions unjust against Plaintiffs’ counsel.

Defendant’s request for monetary sanctions against Plaintiffs for Plaintiffs’ failure to comply with this Court’s July 18, 2024 discovery order is GRANTED in the amount of **\$6,060** for the reasonable attorney’s fees and expenses incurred for this motion. Plaintiff shall pay this amount in full to Defendant with 15 days of this order.

In addition, Defendant’s request for **\$1000** sanction against Plaintiffs pursuant to CCP section 2023.050(a)(1) is DENIED WITHOUT PREJUDICE.

Defendant’s request for daily sanction of \$500 per day until Plaintiffs comply with the Court’s July 18, 2024, Order is DENIED WITHOUT PREJUDICE.

Within 15 days of this order, Plaintiffs shall complete compliance with all 6 court ordered categories of items on page 2 of the Court’s July 18, 2024 Order and serve Defendant with a verification they have fully complied. If any of these 6 court ordered categories of items have not been fully completed within 15 days of this order, the verification by Plaintiffs must identify those items and state why they have not been complied with.

The court will prepare the order.

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