

**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: 2/1//2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today 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 strongly 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	23CV409651	ROIC California, LLC vs Larry Nguyen et al	Motion: Compel Def Larry Nguyen production of documents, set One and for sanction by Plaintiff ROIC California, LLC. Ctrl Click (or scroll down) on Line 1 for tentative ruling. The court will prepare the order.

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LINE 2	23CV409651	ROIC California, LLC vs Larry Nguyen et al	<p>Motion: Compel Def Larry Nguyen in response to First Set of Form interrogatories, and for sanction by Plaintiff RIOC California, LLC.</p> <p>Ctrl click (or scroll down) on Line 2 for tentative ruling.</p> <p>The court will prepare the order.</p>
LINE 3	23CV423174	ARI LAW, P.C. vs Katalyst Development, LLC et al	<p>Motion: Quash the deposition subpoenas for the production of business records to Bank of America and First Republic Bank by Defs Katalyst Development LLC, Walid Mando, Forma, LLC, Museum Plaza LLC, Hado LLC, FDL LLC, and Forma DDM</p> <p>Ctrl click (or scroll down) on Line 3 for tentative ruling.</p> <p>The court will prepare the order.</p>
LINE 4	23CV413310	B.T. Laser, Inc vs Bossa Noca Robotics, Inc et al	<p>Motion: Withdraw as attorney Valerie Wagner to Defendant Bossa Nova Robotics.</p> <p>Unopposed and GRANTED.</p>
LINE 5	23CV418307	HOOMAN BOLANDI vs Sameer Saran et al	<p>Motion to stay all proceedings and for order to compel arbitration by Defendants Parkstash, Inc; and Sameer Saran.</p> <p>Unopposed and GRANTED.</p>
LINE 6	23CV423114	KEVIN MENDOZA vs JUAN TORRES et al	<p>Motion: Withdraw as attorney to Plaintiff by (Christopher C. Zhang).</p> <p>Unopposed and GRANTED.</p>

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LINE 7	23CV423174	ARI LAW, P.C. vs Katalyst Development, LLC et al	<p>Motion: Stay or Dismiss by Defs Katalyst Development LLC, Walid Mando, Forma, LLC, Museum Plaza LLC, Hado LLC, FDL LLC, and Forma DDM</p> <p>Ctrl click (or scroll down) on Line 7 for tentative ruling.</p> <p>The court will prepare the order.</p>
LINE 8	23CV423174	ARI LAW, P.C. vs Katalyst Development, LLC et al	<p>Hearing: Motion hearing To Change Venue by Defs Katalyst Development LLC, Walid Mando, Forma, LLC, Museum Plaza LLC, Hado LLC, FDL LLC, and Forma DDM</p> <p>Ctrl click (or scroll down) on Line 8 for tentative ruling.</p> <p>The court will prepare the order.</p>
LINE 9	71 22CV3983	CKS Prime Investments LLC vs Olga Dunster	<p>Motion: Set Aside Default/Judgment: motion to set aside default and to dismiss case due to statute of limitations by Olga Dunster *Pro Per*.</p> <p>OFF CALENDAR. The proof of service by mail filed 10/24/2023 does NOT show the moving papers were mailed to the address of record for Plaintiff's counsel.</p> <p>The address of record for Plaintiff's counsel is: Christopher D. Mandarich Mandarich Law Group, LLP P.O. Box 109032 Chicago IL 60610.</p>
LINE 10			
LINE 11			
LINE 12			

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Calendar Line 1

Case Name: RIO CALIFORNIA, LLC, et al. vs LARRY NGUYEN, et al.

Case No.: 23CV49651

Plaintiff RIO California, LLC (“Plaintiff”)’s motion to compel document production from defendant Larry Nguyen (“Defendant”) regarding request for production (“RPD”) set one, is GRANTED. Defendant shall produce all responsive documents in his possession, custody, or control to Plaintiff in accordance with Code of Civil Procedure (“CCP”)¹ section 2031.080 within 30 days of this order.

Each of Defendant’s verified responses to RPD set one, Nos. 1-28, dated July 10, 2023, included the statement “all relevant documents will be produced.”

Section 2031.280 prescribes the form in which items must be produced. As recently amended, it requires that a document “be identified with the specific request number to which the documents respond.” (*Id.*, subd. (a).) This replaces the prior requirement that documents “either be produced as they are kept in the usual course of business, or be organized and labeled to correspond with the categories in the demand.” (Former § 2031.280, subd. (a).)

(*Pollock v. Superior Court* (2023) 93 Cal.App.5th 1348, 1357-1358 (“*Pollock*”).)

Plaintiff’s counsel sent an email to Defendant’s counsel 7/25/2023 asking when the documents would be produced. Counsel exchanged additional meet and confer correspondence asking for the documents to be produced.

Defendant has failed to produce any documents despite his verified response that “all relevant documents will be produced.”

A party or attorney may be sanctioned for misusing the discovery process. (§ 2023.030.)

Misuse of the discovery process includes, as pertinent here, “[u]sing a discovery method in a manner that does not comply with its specified procedures” (§ 2023.010, subd. (b)) and unsuccessfully opposing a motion to compel without substantial justification (*id.*, subd. (h)).

To avoid sanctions, an unsuccessful opponent to a motion to compel may show “substantial justification” for his or her position—i.e., a rational basis to conclude that the party’s failure to fulfill its discovery obligations was justified. (*Foothill Properties v. Lyon/Copley Corona Associates*. (1996) 46 Cal.App.4th 1542, 1557 [54 Cal. Rptr. 2d 488] (*Foothill Properties*).) Substantial justification is justification that is “clearly reasonable because it is well grounded in both law and fact.” (*Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1434 [133 Cal. Rptr. 3d 465].)

(*Pollock v. Superior Court* (2023) 93 Cal.App.5th 1348, 1358.)

¹ All undesignated statutory references are to the Code of Civil Procedure.

Plaintiff's request for monetary sanctions is GRANTED IN PART. It is granted against Defendant and his counsel Alex Park (jointly and severally) in the reasonable amount of \$2,400. (This includes 3.5 hours at the rate of \$650 per hour, plus \$60 filing fee, for a total of \$2,400.) This amount shall be paid in full to Plaintiff's counsel within 30 days of this order.

The court will prepare the order.

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Calendar Line 2

Case Name: RIOCALIFORNIA, LLC, et al. vs LARRY NGUYEN, et al.

Case No.: 23CV49651

Plaintiff RIOCALIFORNIA, LLC ("Plaintiff")'s motion to compel document production from defendant Larry Nguyen ("Defendant") regarding form interrogatories ("FI") set one, is GRANTED.

On August 1, 2023, Plaintiff served Defendant with Plaintiff's FI, set one. No responses have been provided to date.

Where a party has failed to provide responses to interrogatories, Code of Civil Procedure ("CCP")² section 2030.090 provides, in pertinent part, that the propounding party may move of an order compelling responses to same.

Failure to respond to discovery requests constitutes a "misuse of the discovery process" within the meaning of section 2030.010. A propounding party may seek monetary sanctions in the form of reasonable expenses in enforcing discovery, including attorney's fees. (See §§ 2030, and 2030.290. Here, Defendant completely failed to respond to Plaintiff's FI, set one, despite being notified of the failure to respond in meet and confer correspondence.

A party or attorney may be sanctioned for misusing the discovery process. (§ 2030.030.)

Misuse of the discovery process includes, as pertinent here, "[u]sing a discovery method in a manner that does not comply with its specified procedures" (§ 2030.010, subd. (b)) and unsuccessfully opposing a motion to compel without substantial justification (*id.*, subd. (h)).

To avoid sanctions, an unsuccessful opponent to a motion to compel may show "substantial justification" for his or her position—i.e., a rational basis to conclude that the party's failure to fulfill its discovery obligations was justified. (*Foothill Properties v. Lyon/Copley Corona Associates*. (1996) 46 Cal.App.4th 1542, 1557 [54 Cal. Rptr. 2d 488] (*Foothill Properties*).) Substantial justification is justification that is "clearly reasonable because it is well grounded in both law and fact." (*Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1434 [133 Cal. Rptr. 3d 465].)

² All undesignated statutory references are to the Code of Civil Procedure.

(*Pollock, supra*, 93 Cal.App.5th at 1358.)

Plaintiff's request for monetary sanctions is GRANTED IN PART. It is granted against Defendant and his counsel Alex Park (jointly and severally) in the reasonable amount of \$2,400. (This includes 3.5 hours at the rate of \$650 per hour, plus \$60 filing fee, for a total of \$2,400.) They shall pay this amount in full to Plaintiff's counsel within 30 days of this order.

The court will prepare the order.

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Calendar Line 3

Case Name: *ARI LAW, P.C. vs Katalyst Development, LLC et al*

Case No.: 23CV423174

Defendants Katalyst Development LLC, Walid Mando, forma, LLC., Museum Plaza LLC, HADO LLC, FDL LLC and Forma DMD (collectively "Defendants") motion to quash the deposition subpoenas issued by plaintiff ARI LAW, P.C. ("Plaintiff") for the production of business records to Bank of America and First Republic Bank is MOOT. These subpoenas are withdrawn by Plaintiff. Bank of America and First Republic Bank shall NOT produce any records to Plaintiff regarding these subpoenas.

The court will prepare the order.

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Calendar Line 7

Case Name: *ARI LAW, P.C. vs Katalyst Development, LLC et al*

Case No.: 23CV423174

Defendants Katalyst Development LLC, Walid Mando, forma, LLC., Museum Plaza LLC, HADO LLC, FDL LLC and Forma DMD (collectively “Defendants”) motion for order staying or dismissing this action pending completion of non-binding arbitration.

Good cause appearing, Defendant’s motion for stay is GRANTED. This action shall be stayed until the award of the arbitrators is issued or the arbitration with the Palo Alto Bar Association between defendant Katalyst Development LLC and plaintiff ARI LAW, P.C. is otherwise terminated pursuant to Business and Professions Code section 6201, subsection (c).

Defendants’ alternative request for dismissal of this action is DENIED.

Plaintiff’s objections to new evidence submitted in reply to opposition to motion to stay or dismiss action filed 1/29/2024 are OVERRULED. The court exercises its discretion to consider this evidence.

The court will prepare the order.

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Calendar Line 8

Case Name: *ARI LAW, P.C. vs Katalyst Development, LLC et al*

Case No.: 23CV423174

Defendants Katalyst Development LLC (“Katalyst”), Walid Mando, forma, LLC., Museum Plaza LLC, HADO LLC, FDL LLC and Forma DMD (collectively “Defendants”)’ motion for change of venue to San Francisco County is DENIED.

In December 2020, Katalyst and Plaintiff Ari Law, P.C. (“Plaintiff”) entered into a written fee agreement pursuant to which Katalyst retained Plaintiff to represent it in a then-pending action in Santa Clara Superior Court entitled Katalyst Development, LLC v. Michel, et al. (“Underlying Action”). The subject matter of the lawsuit was real property located in Santa Clara County which was the subject of a purchase contract entered into by Forma, who assigned its rights to Katalyst. (Aalaei Decl., ¶¶ 3, 4 and Exhibit “1” attached thereto.)

When the fee agreement was entered into, Plaintiff had a San Francisco address, but then relocated to an address in Palo Alto (Santa Clara County), CA. All of the services provided to or for Katalyst, including trial of the Underlying Action, were performed from the Palo Alto location. All invoices for the services were prepared at and sent from Plaintiff’s Palo Alto office, and it was the Palo Alto office where Katslyst was required to and did make its payments to Plaintiff. (Aalaei Decl., ¶¶ 5, 6 and Exhibit “2” attached thereto.)

Pursuant to Code of Civil Procedure (“CCP”)³ section 395.5, “a corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs; or in the county where the principal place of business of such corporation is situated”.

In *Anaheim Extrusion Co. v. Superior Court* (1985) 170 Cal.App.3d 1201, the extrusion company filed a complaint in Orange County against a molding company for goods sold and delivered in Los Angeles County. The molding company filed a motion to change venue, claiming Los Angeles was the proper county for venue since that is where the goods were to be delivered, i.e., where plaintiff’s obligation was to be performed. The trial court rejected the extrusion company’s argument that the contract was to be performed in Orange County because that is where payments were to be made. (*Id.* at 1203.) The court of appeal “reversed” by issuing a writ of mandate directing the trial court to vacate the order granting the motion to change venue and to enter a new order denying the motion.

In so holding, the appellate court relied on *Hale v. Bohannon* (1952) 38 Cal.2d 458, in which the Supreme Court addressed the question of proper venue for an action on a contract that did not provide where payments were to be made. The *Hale* Court ruled that “this being the obligation the breach of which is pleaded as the cause of action, ... the place where it was

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

to be performed is the decisive factor insofar as venue is concerned.” (*Id.* at 466, italics added.). Relying on this holding, the court in *Anaheim Extrusion* stated: “In this case the performance allegedly breached was the payment for, not the delivery of, goods. Therefore, the place where payment was to be made is the place ‘where the contract [was] to be performed’ under section 395.5” (*Id.*, 170 Cal.App.3d at 1203.)

Here, Plaintiff’s legal services were rendered in Santa Clara County and Plaintiff’s invoices show an address in Palo Alto (Santa Clara County) where payment was due. Katalyst cannot escape this conclusion by arguing that there is no “special writing” that specifies it is to perform its payment obligation in Santa Clara County. This is because unlike section 395(a), section 395.5 allows suit to be brought in the county where the obligation is to be performed without imposing any condition that the county must be specified in the written contract. To conclude otherwise would effectively negate section 395.5. (*Hale v. Bohannon, supra*, 38 Cal.2d at 470-473.)

Because section 395.5 does not contain any provision requiring a special writing, in an action against a corporation on the contract, where no place of performance by the corporation is expressly stated, the obligation is to be performed at the place where payment is made, even if no such condition is stated in the contract. And, the failure to make the payment establishes the place where the breach occurs and where liability arises. (*Hale, supra*, at 479.)

Defendants fare no better with their argument that because the action is against several defendants, both corporate and individual, and was brought in a county in which none of the defendants reside, the individual defendant (Mando) has the right to change venue to the county of his residence.⁴ In making this assertion, Defendants ignore the alter ego allegations of the complaint: such allegations place “the individual in the same position as the corporation, as a party to the contract. Venue is then proper where the action could be laid for breach of contract against an individual or corporate defendant.” (*Lebastchi v. Superior Court* (1995) 33 Cal.App.4th 1465, 1467.) The effect of the alter ego allegations is to place Mando and each of the LLCs in the same position as Katalyst, responsible under the contract, and none of the Defendants declared otherwise or that they were improperly joined. (*Id.* at 1470.) Accordingly, venue in Santa Clara County being proper as to Katalyst, it also is proper as to each of the other defendants. (*Id.* at 1470-1471.)

Finally, as the parties moving to change venue, Defendants were required to show that contract was not to be performed in Santa Clara County, or that the obligation or liability

⁴ In support of this argument, Defendants rely on *Brown v. Superior Court* (1984) 37 Cal.3d 477, 488, n.6. Such reliance is misplaced. *Brown* involved claims for emotional distress, wrongful discharge and violation of the Fair Employment and Housing Act. The Court rejected the defendants’ (individual and corporate) claim that they were entitled to a change of venue to the county of their residence because of the countervailing policy of the FEHA which favors plaintiff’s choice of venue. There was no issue regarding the place of performance of a contractual obligation and the Court did not mention, let alone consider, whether the individual is to be treated the same as a corporation. No contractual obligation was in issue and the Court did not address the effect of alter ego allegations that require the individual to be treated the same as the corporation for venue purposes.

did not arise there or that there was no breach of the agreement in that county. (*Shores v. Chip Steak Co.* (1955) 130 Cal.App.2d 620, 623.). It is well established that a corporate defendant that seeks a change of venue “has the burden of negating the propriety of venue as laid on all possible grounds.” (*Karson Industries, Inc. v. Superior Court* (1969) 273 Cal.App.2d 7, 8-9; italics in original.). Here, Defendants failed to negate all possible grounds upon which venue is proper in Santa Clara County and thus Defendants failed to carry their burden of proof. (*Anaheim Extrusion, supra*, 170 Cal.App.3d at 1203.)

“A limited liability company is a hybrid business entity that combines aspects of both a partnership and a corporation. It is formed under the Corporations Code and consists of ‘members’ who own membership interests. Members may be individuals, corporations, partnerships, or other limited liability companies. [Citation.] [P] The company has a legal existence separate from its members. It provides members with limited liability to the same extent enjoyed by corporate shareholders, yet allows members to actively participate in management and control.” (*Warburton/Buttner v. Super. Ct.* (2002) 103 Cal.App.4th 1170, 1187-1188.)

As stated above, a limited liability company (“LLC”) is neither a corporation nor a partnership but a hybrid of both. For venue purposes here, the question is whether an LLC may be considered an unincorporated association. The parties agree, there does not appear to be any California state court authority directly on point addressing this issue for purposes of venue. *Buran Equip. Co v. Sup. Ct.* (1987) 190 Cal.App.3d 1662, 1665-1666 (cited by Plaintiff in opposition) considered only a law partnership as an unincorporated association, not an LLC.

But, a number of federal circuit court cases, while not binding on this court, have considered LLC’s to be unincorporated associations.

-*Ferrell v. Express Check Advance of SC LLC* (4th Cir. 2010) 591 F.3d 698, 702-703 [US Supreme Court has often characterized any business entity that is not a corporation as an “unincorporated association”]

-*Siloam Springs Hotel, L.L.C. v. Century Sur. Co.* (10th Cir. 2015) 781 F.3d 1233, 1234 [“Like every other circuit to consider this question, this court concludes an LLC, as an unincorporated association, takes the citizenship of all its members.”]

-*Gen. Tech. App, Inc. v. Extro Ltda* (4th Cir. 2004) 388 F.3d 114, 121 [“A limited liability company organized under the laws of a state is not a corporation ... It is an unincorporated association, akin to a partnership for diversity purposes...”]

-*Thomas v. Guardsmark, LLC* (7th Cir. 2007) 487 F.3d 531, 534 [as an unincorporated association, an LLC has the state citizenship of its members for purposes of federal diversity jurisdiction]

-*Zambelli Fireworks Mfg. Co. v. Wood* (3rd Cir. 2010) 592 F.3d 412, 419-420 [citing cases from eight circuits for the proposition that “every federal court of appeals to

address the question has concluded that a limited liability company, as an unincorporated business entity, should be treated as a partnership for purposes of establishing citizenship”]

To be clear, these federal cases addressed LLCs as unincorporated associations in connection with issues of federal court jurisdiction as opposed to venue. Nevertheless, these cases, while not binding, are at least persuasive on the issue of why LLCs should be considered as unincorporated associations and thus subject to the venue statute under CCP section 395.5. (See *People v. Uribe* (2011) 199 Cal.App.4th 836, 875 [federal authority may be regarded as persuasive by California state courts].) Furthermore, as stated above, the fact that an LLC essentially combines the aspects of a partnership and a corporation also weighs in favor of applying section 395.5 as opposed to the general statute under section 395.

Although there is no case on point, the court agrees with the Plaintiff’s argument that an LLC is treated as an “association” under CCP section 395.5. Here, the preponderance of the evidence showed that Plaintiff’s performance of legal services was rendered in Santa Clara County, and that Plaintiff’s address for payment on the outstanding invoices was in Palo Alto (Santa Clara County). The Underlying Action that Plaintiff was hired for was in Santa Clara County.

Where an individual is sued as the alter ego of the corporation, the effect is to make the individual a co-obligor on the claim against the corporation. Venue is thus proper where the action could be commenced for breach of contract against an individual or corporate defendant. (*Lebastchi v Superior Court, supra*, 33 Cal.App.4th at 1470.)

Here, all the other named defendants (Walid Mando, forma, LLC., Museum Plaza LLC, HADO LLC, FDL LLC and Forma DMD) are alleged in the complaint to be the alter ego of defendant Katalyst, accordingly venue is proper in Santa Clara County, where Katalyst may be sued.

Defendants’ written objections to language in paragraphs 9, 12, 13, and 14 of the declaration of Ali Aalaei are SUSTAINED. The statements (regarding purported evidence of alter ego) are irrelevant to the outcome of the motion to change venue.

Here, the complaint on its face has allegations of alter ego. All the other named defendants (Walid Mando, forma, LLC., Museum Plaza LLC, HADO LLC, FDL LLC and Forma DMD) are alleged to be the alter ego of defendant Katalyst in the complaint.

Defendant’s request for judicial notice is granted.

The court will prepare the order.

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