

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

**Department 16**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 03-21-24    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

**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 16.

[https://www.sccscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](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.)

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**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>	19CV357268 Motion: Compel	Keith Wong et al vs Phuong Ho et al	Notice appearing proper and good cause appearing, Defendant's motion to compel (RFP set one and SI set one) is GRANTED. The failure to file an opposition “creates an inference that the motion or demurrer is meritorious.” <i>Sexton v. Superior Court</i> (1997) 58 Cal.App.4th 1403, 1410. Sanctions are granted in the amount of \$928 (4 hours + \$60 filing fee) Plaintiff shall provide code compliant responses and sanctions within 20 days of final order. Defendant shall submit the final order within 10 days.
<a href="#">LINE 2</a>	20CV369513 Motion: Compel	Stephanie Chapa vs Howard Frank	Off calendar.

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**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

<a href="#">LINE 3</a>	21CV385112 Motion: Compel	Quintara Biosciences, Inc. vs Gangyou Wang et al	Notice appearing proper and good cause appearing, Plaintiff's motion to compel (further responses from Ruifeng Biztech Inc. to RFP set one) is GRANTED. The failure to file an opposition “creates an inference that the motion or demurrer is meritorious.” <i>Sexton v. Superior Court</i> (1997) 58 Cal.App.4th 1403, 1410. Sanctions are granted in the amount of \$860 (2 hours + \$60 filing fee). Defendant Ruifeng Biztech shall provide code compliant responses and sanctions within 20 days of final order. Defendant shall submit the final order within 10 days.
<a href="#">LINE 4</a>	19CV342125 Motion to Approve Prop 65	Safe Products for Californians, LLC vs Amazon.com, Inc.	Withdrawn by Plaintiff.
<a href="#">LINE 5</a>	20CV369516 Motion to Dismiss action	Mark Esquibel vs Marie Rios	While the court would normally grant an unopposed motion, here there does not appear to be good cause as the case was set for trial in July 2023, and is now set for trial in August. Accordingly, the motion is DENIED. Plaintiff shall file the final order.

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**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

<a href="#">LINE 6</a>	20CV373685 Motion: Bifurcate	Shirley King et al vs Ross Stores, Inc. et al	The issue of bifurcation is one that should be addressed to the trial court. While it may make sense to hear the issue of liability first, even if the trial were bifurcated, the issue of damages would simply trail the liability trial and be tried immediately following a finding of liability. The issued is deferred to the trial court.
<a href="#">LINE 7</a>	23CV410476 Hearing: Petition Compel Arbitration	John Jaimes vs American First Finance, LLC	Motion continued to June 27, 2024 at 9 a.m.
<a href="#">LINE 8</a>	23CV424747 Motion: Change of Venue	Sean Kameli vs Peter Goldscheider et al	See tentative ruling. Plaintiff shall submit the final order.
<a href="#">LINE 9</a>			
<a href="#">LINE 10</a>			
<a href="#">LINE 11</a>			
<a href="#">LINE 12</a>			
<a href="#">LINE 13</a>			
<a href="#">LINE 14</a>			
<a href="#">LINE 15</a>			
<a href="#">LINE 16</a>			

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<a href="#">LINE 17</a>			
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## Calendar Line 8

**Case Name: Sean Kameli v. Peter Goldscheider et al.**

**Case No.: 23CV424747**

This is an action for professional negligence. Peter Goldscheider, an attorney, and his law firm, Law Offices of Peter F. Goldscheider (collectively, “Defendants”) are in San Mateo County. Sean Kameli, an individual (“Plaintiff,”) resides in Santa Clara County.

Defendants bring a motion to transfer venue to San Mateo County. “The term ‘venue’ denotes the particular county within the state where a case is to be heard. [Citation.] In [determining] the county (or counties) where venue is proper, the courts generally look to the main relief sought, as determined from the complaint as it stands at the time of the motion for change of venue. [Citation.]” (*K.R.L. Partnership v. Superior Court* (2004) 120 Cal.App.4th 490, 496-497.) “‘It is a long established rule that a motion for change of venue must satisfy two requirements: (1) It must be shown the action is proper in the county to which the movant seeks transfer; *and* (2) it must be shown the county in which the action was filed was improper under any applicable theory (Citation).’” (*Easton v. Superior Court* (1970) 12 Cal.App.3d 243, 245-246.) A plaintiff’s choice of venue is “presumptively correct.” (*Id.* at p. 247.) The burden of proof is on the defendant moving to change venue. (See *Black Diamond Asphalt, Inc. v. Super. Ct.* (2003) 109 Cal.App.4th 166, 170.)

Defendants meet the first test in that venue is proper in San Mateo County since that is where they reside. (See Declaration of Peter F. Goldscheider in Support of his Motion, Exh. 1.) Defendants must also show that Santa Clara County is improper under any applicable theory. This they cannot do.

Plaintiff claims that venue is proper in Santa Clara County under Code of Civil Procedure section 395, subdivision (b) (“395(b)”). That statute states “in an action arising from an offer or provision of goods, services, loans or extensions of credit intended primarily for personal, family or household use, other than an obligation described in Section 1812.10 or Section 2984.4 of the Civil Code . . . the superior court in the county where . . . the buyer or lessee resides at the commencement of the action is the proper court for the trial of the action.”

Plaintiff correctly relies on *Fontaine v. Superior Court* (2008) 175 Cal.App.4th 830, 838 (*Fontaine*) to argue venue is proper in Santa Clara County. In *Fontaine*, the Sixth District Court of Appeal held “section 395, subdivision (b) provides a statutory exception to the general venue rule, by authorizing venue in the county where a consumer plaintiff resides at the commencement of his or her action arising from a consumer transaction as specified in the statute.” (*Fontaine, supra*, at p. 839.) The court ultimately held that because the plaintiff’s action arose from a loan that he obtained primarily for personal use, it was a consumer transaction specified in section 395, subdivision (b), and thus, venue was proper in Santa Clara County, where the plaintiff resided. (*Ibid.*)

While Defendants claim that the provision of their legal services does not fall within the scope of 395(b), they cite no legal authority for this claim. To the extent there exists legal authority on this point it suggests that legal services for personal use do come within the parameters of 395(b). (See, e.g. *Leonard v. Slade*, 55 Cal.App.3d Supp. 1 [medical services

within 395(b)].); and *Lawman Group v. Cal. Lawyers Group*, 2023 Cal.Super.LEXIS 30499 (Cal. Super. Ct., 23SMCV00668, May 9, 2023) (*Lawman*) [legal services fall within 395(b)].<sup>1</sup>

In their reply, Defendants argue the complaint must be verified under Code of Civil Procedure 396a, but Plaintiff provided a “verification of pleading” subsequent to filing his opposition. Consequently, Plaintiff has fulfilled his procedural requirements in filing under a consumer action.

Plaintiff has established that he resided in Santa Clara County at the commencement of this action. (See Declaration of Sean Kameli in Support of Opposition, Exh. E.) Because Defendants fail to meet their burden to show that venue is not proper in Santa Clara County, the motion is DENIED.

Both Parties request sanctions under Code of Civil Procedure section 396b, subdivision (b), which provides that, in its discretion, the court may award attorney fees to the party prevailing in connection with a motion to transfer venue. “In determining whether that order for expenses and fees shall be made, the court shall take into consideration (1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether the motion or selection of venue was made in good faith given the facts and law the party making the motion or selecting the venue knew or should have known.” (*Ibid.*)

Here, Plaintiff’s opposition to the motion was successful, but the Court finds no evidence that Defendants filed this motion in bad faith. Both parties’ requests for sanctions are DENIED.

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<sup>1</sup> The Court acknowledges that orders of other California trial courts have “at most, some persuasive value.” (*Becerra v. McClatchy Co.* (2021) 69 Cal.App.5th 913, 929 [the Court of Appeal took judicial notice of a trial court decision despite indicating that it had, “at most, some persuasive value” and therefore was of “limited relevance”].)

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