

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

Department 18b
Honorable Shella Deen, Presiding
Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: September 26, 2024 TIME: 9:00 A.M.

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

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

FOR APPEARANCES: Department 18 is fully open for in-person hearings. The Court strongly prefers **in-person** appearances for all contested law and motion matters. For all other hearings, the Court strongly prefers either **in-person or video** appearances. If you must appear virtually, you must use video. Audio-only appearances are permitted, but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 18:

https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml

SCHEDULING MOTION HEARINGS: Please go to <https://reservations.scsccourt.org> or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion before you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

FOR COURT REPORTERS: The Court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If you want to have a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

https://www.scsccourt.org/general_info/court_reporters.shtml

RECORDING IS PROHIBITED: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
<u>LINE 1</u>	22CV399642	Can Capital, Inc. vs Gregory Draxton et al	Order of Examination (Gregory Martin Draxton aka Greg Draxton) No Proof of service on file. If there is no appearance, the matter will be ordered OFF CALENDAR.
<u>LINE 2</u>	24CV433194	David Yang vs Apple, Inc.	Demurrer A First Amended Complaint was filed on September 12, 2024. This Demurrer is therefore MOOT and ordered OFF CALENDAR.

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LAW AND MOTION TENTATIVE RULINGS

LINE 3	24CV435081	Michael Wang vs American Incorporated et al	Demurrer Defendants American Incorporated, Starr Indemnity & Liability Company, and Gerald Eschol Carter's Demurrer to and Motion to Strike Plaintiff Michael Wang's Complaint. Proofs of service of the Demurrer and Motion to Strike were filed on June 12, 2024, and June 20, 2024, respectively. Oppositions were due on September 13, 2024. Plaintiff failed to oppose the motions. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) Good cause appearing, Defendants' Demurrer is SUSTAINED WITHOUT LEAVE TO AMEND and the Motion to Strike is GRANTED. Moving parties to prepare the formal order.
LINE 4	24CV435081	Michael Wang vs American Incorporated et al	Motion to Strike See Tentative ruling for LINE 3
LINE 5	19CV358852	LSI Corporation, A Delaware corporation et al vs Kiran Gunnam et al	Motion to Compel (Plaintiff's) Scroll down to Lines 5, 6 and 7 for Tentative Ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 6	19CV358852	LSI Corporation, A Delaware corporation et al vs Kiran Gunnam et al	Motion to Compel (Defendant's) Scroll down to Lines 5, 6 and 7 for Tentative Ruling.
LINE 7	19CV358852	LSI Corporation, A Delaware corporation et al vs Kiran Gunnam et al	Motion to Quash (Google, Inc. Subpoena) Scroll down to Lines 5, 6 and 7 for Tentative Ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 8	22CV399500	VCBLA NIDO, LLC vs ARCH INSURANCE COMPANY	Motion to Compel (Discovery) Defendant Arch Insurance Company's motion to compel Plaintiff VCBLA Nido, LLC to produce all responsive documents consistent with its statement of compliance and request for sanction of \$1,890. Plaintiff opposes the motion and claims it has now produced documents responsive to the requests at issue in this motion. However, it is unclear to the Court if <i>all</i> responsive documents have been produced. Good cause appearing, Defendant's motion is GRANTED. Plaintiff shall provide a statement of compliance, verifying that <i>all</i> responsive documents have been produced. Further, all responsive documents that have not already been produced shall be produced by October 3, 2024. Sanctions of \$1,890 are also awarded against Plaintiff and its counsel and shall be paid to Defendant no later than October 3, 2024. (Code of Civil Procedure sections 2031.320, 2023.030(a), 2031.300(c), 2031.310(h) and 2031.320(b)). Moving party to prepare the formal order.
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LAW AND MOTION TENTATIVE RULINGS

LINE 9	24CV434204	Vinay Rajagopal vs Tesla Motors, Inc.	Petition to Compel Arbitration A Notice of Settlement was filed on September 17, 2024. This petition is therefore MOOT and ordered OFF CALENDAR. The Case Management Conference set for October 1, 2024, is VACATED and this matter is SET for Review re: Settlement/Dismissal on January 23, 2025 at 10 a.m. in Department 18b.
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LAW AND MOTION TENTATIVE RULINGS

LINE 10	18CV336139	Primitivo Medina vs David Villatoro et al	Motion to Set Lien Amount Lien Claimant Wesco Insurance Company's motion for an order setting the amount of the lien for workers' compensation benefits paid to and on behalf of Plaintiff Primitivo Parra-Medina, pursuant to the provisions of Labor Code §3850 et seq. The motion is opposed by Plaintiff. The motion is CONTINUED to October 31, 2024 at 9a.m. in Department 18b. By October 10, 2024. Plaintiff shall file: (1) a declaration describing the reasonableness of his attorneys' fees and costs; and (2) an offer of proof regarding the uncovered medical bills that Plaintiff claims total \$535,569.77. After receipt of the attorney's fees and uncovered medical bills briefing on October 10, 2024, the Parties are ordered to meet and confer in person, or by phone or video conference, no later than October 18, 2024, regarding the lien amount. The parties may submit supplemental briefing no later than October 24, 2024. Moving party to prepare formal order.
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LAW AND MOTION TENTATIVE RULINGS

<u>LINE 11</u>	24CV430363	Marie Arnold vs California Public Employee Retirement System (CALPERS)	<p>Petition Compel Arbitration</p> <p>Plaintiff Marie Encar Arnold's "Motion" to Compel Arbitration against Defendant California Public Employee Retirement System (CalPERS). Plaintiff seeks to compel CalPERS to participate in arbitration concerning her alleged entitlement to death and survivor benefits from her stepfather, Harry William Arnold, a deceased CalPERS member. The motion is opposed by Defendant. Good cause has not been shown, Plaintiff has not met her burden, and the Motion is procedurally defective. Accordingly the Motion is DENIED: the Motion was improperly noticed (Civ. Code Proc. §1005 (b)), Plaintiff has not identified any arbitration agreement between Plaintiff and CalPERS that would permit this Court to compel arbitration, and Plaintiff has not completed the mandatory administrative process required under the Public Employees' Retirement Law (PERL). Defendant's request for attorney's fees is DENIED, but Plaintiff is cautioned that the Court will take Plaintiff's unmeritorious and frivolous filings into consideration for any future requests for fees by Defendant.</p> <p>Defendant to prepare formal order.</p>
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Calendar Lines 5, 6 and 7

Case Name: *LSI Corporation, A Delaware corporation et al vs Kiran Gunnam et al*

Case No.: 19CV358852

I. PLAINTIFF'S MOTION TO COMPEL

Before the Court is Plaintiff LSI Corporation's Motion to Compel three discovery requests. Plaintiff claims that Defendant, Kiran Kumar Gunnam, has refused to produce any documents responsive to two document requests and any response to one interrogatory. Defendant opposes the Motion.

The Court has reviewed all of the briefing and rules as follows:

Requests For Production

Request No. 51: This request sought "Any and all COMMUNICATIONS involving YOU and Dr. Tummala Surya Narayana Murthy, or anyone affiliated with him." Defendant responded: "Dr. Gunnam responds that he will not be producing any documents responsive to this request."

GRANTED IN PART. Defendant shall provide a verified, further response and produce responsive documents, but the request is limited in time from January 1, 2020 to the present, and limited to those documents that relate to the claims set forth in Plaintiff's Complaint, LSI, Gunnam's truthfulness, and this litigation.

Request No. 54: This request sought: "Any and DOCUMENTS or COMMUNICATIONS related to YOUR or YARLAGADDA's assets located in the United States of America, including but not limited to, bank statements, brokerage statements, tax returns, real estate holdings etc.". Defendant responded: "Dr. Gunnam responds that he will not product any records, but he is willing to meet and confer with LSI to discuss reasonable, non-objectionable alternatives to this Request, if any, that see relevant, non-cumulative information that is not otherwise available to LSI."

DENIED: Plaintiff has not made the appropriate showing and not met its burden, as it does not demonstrate that LSI has a substantial probability of prevailing on its punitive damages claim (Civil Code § 3295). Further, Plaintiff has not met its burden to show why non-party Yarlagadda's privileged financial information should be produced.

Special Interrogatory No. 15

Plaintiff asked Defendant to "Describe in detail the nature of YOUR relationship with Dr. Tummala Surya Narayana Murthy. A response to this Interrogatory should include, at a minimum, a description of the circumstances surrounding the start of YOUR relationship, a timeline of YOUR communications and interactions including any transfers of code, and any exchanges of financial or other tangible assets between [You] and Dr. Murthy". Defendant asserted objections and did not provide any substantive response.

GRANTED IN PART. The information requested is relevant and reasonably calculated to lead to the discovery of admissible evidence. A party is entitled obtain discovery regarding any matter, not privileged, that is relevant and reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc., § 2017.010). Defendant shall provide a verified, further response to this interrogatory, but the interrogatory is limited in time from January 1, 2020, to the present.

Given the proximity of trial, all ordered verified, further responses, responsive documents and any privilege log shall be served no later than noon on October 4, 2024, by both electronic and mail service.

II. DEFENDANT'S MOTION TO COMPEL

Before the Court is Defendant's voluminous motion to compel Plaintiff to respond to discovery. Whist the Court has addressed this voluminous discovery for this motion, the parties are cautioned that the Court may refer this matter to a discovery referee for any future discovery disputes.

The Court has reviewed all of the briefing and rules as follows:

Form Interrogatories

Interrogatory No. 9.1 GRANTED. This is a Judicial Council form interrogatory. Plaintiff has failed to answer each subpart of the interrogatory and fully answer the interrogatory as posed. Plaintiff shall provide a further code-complaint, verified response to this interrogatory.

Interrogatory No. 9.2 GRANTED. The response is not code-complaint. Plaintiff shall provide a verified further response that describes each document that supports the existence or amount of any item of damages claimed in interrogatory 9.1, as well as the name, address, and telephone number of the person who has each document.

Interrogatory No. 12.2 GRANTED. Plaintiff shall provide a code compliant, verified response to this form interrogatory. Referring to depositions is not a complete or acceptable response. This interrogatory seeks non-privileged information – that is, it seeks the identity of individuals that have been interviewed, not including Plaintiff. Notably the work product doctrine has not been asserted by Plaintiff as an objection.

Interrogatory No. 12.3 GRANTED. Plaintiff shall provide a code compliant, verified response to this form interrogatory. Referring to depositions is not a complete or acceptable response. This interrogatory seeks non privileged information – that is it seeks the identity of individuals that have been interviewed, not including Plaintiff. Notably the work product doctrine has not been asserted by Plaintiff as an objection. Further, the response does not comply with Code of Civil Procedure section 2030.230 in that the response must “specify the writings from which the answer may be derived or ascertained.”

Interrogatory No. 12.6: GRANTED. The response is not code complaint. Plaintiff shall provide a further verified code compliant response.

Special Interrogatories

Interrogatory No. 1. GRANTED. “LSI is willing to meet and confer with Gunnam regarding narrowed parameters for this Interrogatory” is not a code compliant response. LSI has alleged that Defendant copied documents from the TWiki server and then posted them online, the identities of all individuals with access to the server and the document purportedly stored on it before the posting, is relevant or reasonably calculated to lead to the discovery of admissible evidence. Plaintiff shall provide a further verified, code compliant response to this interrogatory

Interrogatory No. 2. GRANTED IN PART. This interrogatory is compound. LSI response that it is willing to meet and confer with Gunnam regarding narrowed parameters for this interrogatory is not a code compliant response. Plaintiff shall provide a further verified code-compliant response to this interrogatory as amended by the Court: IDENTIFY all PERSONS who were managed either directly or indirectly by Mr. Joe Garofalo while Mr. Garofalo was an employee of LSI or any related company.

Interrogatory No. 3. GRANTED. The response merely provides vague references to documents that are not specifically identified and is therefore not code complaint. Plaintiff shall provide a further verified code compliant response that identifies documents LSI asserts were improperly disclosed by Dr. Gunnam.

Interrogatory No. 4. GRANTED. The response to this interrogatory is not code compliant and refers to responses to form interrogatories that were also not code complaint. Plaintiff shall provide a verified code compliant further response.

Interrogatory No. 5. GRANTED. The response to this interrogatory is not code compliant and Plaintiff must identify any such information and/or documents known. Plaintiff cannot expect Defendant to hunt down information. Instead, Plaintiff must provide that information in a verified, code complaint further response.

Interrogatory No. 6. GRANTED. The response merely provides vague references to documents that are not specifically identified and is not code complaint. Plaintiff shall provide a further verified code compliant response to this interrogatory

Interrogatory No. 7. GRANTED. The response merely provides vague references to documents that are not specifically identified and is not code complaint. Plaintiff shall provide a further verified code compliant response to this interrogatory

Interrogatory No. 8. GRANTED IN PART. This interrogatory is compound. Plaintiff’s response is not code compliant. Plaintiff shall provide a further verified code compliant response to this interrogatory: List any access of the TWiki server by (a) Dr. Gunnam between February 1, 2008 and January 1, 2015.

Interrogatory No. 9. GRANTED: This is not a code compliant response – it is not complete or straightforward as required. Plaintiff shall provide a further verified code compliant response to this interrogatory

Request For Production Of Documents

Request Nos. 1 and 2: DENIED. The request is non-sensical as Plaintiff did not respond to discovery that it propounded.

Request Nos. 3, 4, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 25, 34, 35 and 36: GRANTED. The objections are overruled, except those based on privilege. Plaintiff shall provide verified, code compliant further responses to these requests, in particular, Plaintiff shall state that a diligent search and reasonable inquiry has been made and that *all* non-privileged documents in its possession, custody and control have been produced or code compliant reasons why they have not been produced. Plaintiff shall provide a privilege log, in the Federal format, for any document that it asserts are protected from disclosure by the attorney/client privilege or work product doctrine. Plaintiff shall provide all responsive, non-privileged documents; referring to documents produced in a different litigation does not absolve Plaintiff of its obligation in this litigation.

Request Nos. 10, 11, 12, 21, 22, 24, 26, 27, 28, 29, 30, 31, 32 and 33: GRANTED. The objections are overruled, except those based on privilege. The requests seek documents that are relevant or reasonably calculated to lead to the discovery of admissible evidence and that relate to the claims set forth in Plaintiff's Complaint. Plaintiff shall provide verified, code compliant further responses to these requests, particularly stating that a diligent search and reasonable inquiry has been made and that all non-privileged documents in its possession, custody and control have been produced or code-compliant reasons why they have not been produced. Plaintiff shall provide all responsive, non-privileged documents. Plaintiff shall provide a privilege log, in the Federal format, for any documents that it is asserts are protected by the attorney/client privilege or work product doctrine.

Request No. 23: DENIED. This request is not relevant or reasonably calculated to lead to the discovery of admissible evidence and is overbroad and unduly burdensome.

Given the proximity of trial, all ordered verified, further responses, responsive documents and any privilege log shall be served no later than noon PST on October 4, 2024, by both electronic and mail service.

III. DEFENDANT'S MOTION TO QUASH (SUBPOENA TO GOOGLE, INC.)

Also before the Court is Defendant Kiran Kumar Gunnam's motion to quash the subpoena for the production of business records that Plaintiff LSI Corporation served on Google, Inc. via personal service on June 25, 2024. The motion is based upon Code of Civil Procedure Sections 1985.3 and 2023.010, and upon the grounds that Plaintiff's subpoena is in violation of the Stored Communications Act, 18 U.S.C. §§ 2701–12, and invasive of the attorney-client privilege between Dr. Gunnam and his counsel (in this case and other matters).

No opposition to this motion was filed by Plaintiff, nor is any opposition visible in the court's docket or e-filing system, although Defendant's reply brief responds to an apparent

opposition filed by Plaintiff. A failure to oppose a motion may be deemed a consent to the granting of the motion. CRC Rule 8.54c. Failure to oppose a motion leads to the presumption that Plaintiff has no meritorious arguments. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489.) There is also good cause to grant this motion, in part.

Plaintiff served a subpoena on Google requesting “[a]ll DOCUMENTS, including emails, Google Docs, and Google Drive files, associated with” Gmail addresses associated with Defendant, including non-party accounts. The Court notes that Defendant’s accounts, including his Google account(s) which are the subject of this motion, have already undergone exhaustive forensic imaging and investigation, which presumably would have provided Plaintiff with the exact same documents that it seeks by this subpoena to Google.

This Court finds that the subpoena for the most part should be quashed for several reasons including that a number of the requests violate the Stored Communications Act, 18 U.S.C. §§ 2701–12, the requests are impermissibly overbroad in that they seek privileged attorney/client communications (“[i]f a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client, . . . the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.” Evid. Code §917) and the work product doctrine (“a writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.” Civ. Proc. Code § 2018.030(a).)

Good cause appearing, the Court rules as follows:

1. As a party and as the holder of the account(s) Defendant has standing to bring this motion. Code Civ. Proc., § 1987.1(b).
2. The Motion to Quash requests 5, 10, 15, 20, 25, and 30 is GRANTED, as these requests are governed by, and discovery is prohibited by, the Stored Communications Act, 18 U.S.C. §§ 2701–12 (subpoena directed to all email and documents stored on the Google platform.)
3. The Court agrees that the requests that seek all “account activity” (requests 2, 7, 11, 16, 21, and 27), the requests directed to “data,” “metadata,” “logs,” and “reports” regarding use of the various email accounts (requests 3, 8, 12, 17, 22, and 28) as well as requests relating to the “use of Google Drive and Google Docs” (requests 4, 9, 13, 18, 23, and 29) would probably involve the production of the *content* of communications, as Google would in all likelihood produce whole documents without separating out permissible data from protected data. The Motion to Quash is therefore GRANTED as to these requests.
4. Requests 1, 6, 11, 16, 21, and 26, which are directed to the “ownership” or “control” of accounts, do not on their face violate the Stored Communications Act. However, as noted previously, the Court is unclear why Plaintiff needs what appears to be a duplicative cull of documents given that a thorough forensic impression of Defendant’s accounts has already been taken. Further, it is unclear if the custodian, Google, has the ability, or is willing, to separate out the permissible information from its search. Thus, the Motion to Quash is DENIED, *but only if*

Google is able to separate out ownership and control information, without compromising other quashed information and without breaching the Stored Communications Act. To the extent Google is not able to separate out the permissible information, the Motion is GRANTED.

5. In addition, the Motion to Quash with respect to requests 16-30 is GRANTED to the extent that these requests seek privileged attorney/client information or work product. Given the timeframe requested and that Defendant has used these accounts for some 15 years, it appears to the Court that any review for privilege is cost prohibitive. Moreso, again, as Plaintiff has already undertaken an extensive forensic review of these accounts these requests appear duplicate.

Defendant to prepare the formal order for these motions.

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