

**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: 06-27-24 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 will call the cases of those who appear in person first. If you 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.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. You must use the current link.

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. **You may make an online reservation to 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. Go to the Court's website at www.scscourt.org to make the reservation.

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

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.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV416419 Motion for Order to dismiss	JEFF MEYERS ET AL VS PARK HILL LENDING, INC. ET AL	See Tentative Ruling. Court will prepare final order.
LINE 2	23CV416419 Motion: Quash	JEFF MEYERS ET AL VS PARK HILL LENDING, INC. ET AL	See Tentative Ruling. Court will prepare final order.

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LINE 3	23CV413337 Motion: Summary Judgment	AMERICAN EXPRESS NATIONAL BANK vs SHAUKAT SHAMIM ET AL	<p>Plaintiff moves for summary judgment. The “party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact...” (<i>Aguilar, supra</i>, 25 Cal.4th at p. 850; see Evid. Code, § 110.) If the moving party makes the necessary initial showing, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); see <i>Aguilar, supra</i>, 25 Cal.4th at p. 850.).</p> <p>Here, Plaintiff meets her burden. Defendant has failed to file an opposition. The failure to file a written opposition “creates an inference that the motion or demurrer is meritorious.” <i>Sexton v. Superior Court</i> (1997) 58 Cal.App.4th 1403, 1410. The motion is GRANTED. Plaintiff shall submit the final order within 10 days.</p>
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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 4	22CV397456 Motion: Compel	MARJORIE DULAY-AGUIRRE VS SAIKRUPA IYER	Notice appearing proper and good cause appearing, Defendant's unopposed motion to compel the medical examination of Plaintiff is GRANTED. Plaintiff shall appear at a medical examination within 60 days of receipt of the final order. Plaintiff must pay \$600 (for 2 hours) in sanctions to defense counsel. Plaintiff is also required to pay to defense counsel the Dr's cancellation fee of \$1075 (this is the amount indicated in Defendant's email and the Dr's list of expenses) and the Dr's travel expenses of \$1859. Sanctions and costs are due within 30 days of receipt of the final order. Defendant shall prepare the final order.
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LINE 5	23CV419350 Motion: Compel	MADONNA GALLIS VS FORD MOTOR COMPANY ET AL	<p>In lemon law cases, the primary focus for discovery is on the vehicle at issue in a particular case—not sweeping discovery. Plaintiffs’ citations to cases such as <i>Donlen v. Ford Motor Co.</i> (2013) 217 Cal.App.4th 138 and <i>Doppes v. Bently Motors, Inc.</i> (2009) 174 Cal.App.4th 967 do not change this analysis. Neither of those cases directly addressed a trial court’s discovery orders in a lemon law case.</p> <p>Issues of overbreadth plague all of the requests. Many of the requests are not limited in time, not limited to cars of similar make, model, or year, and/or not limited to the defect at issue in the case. Plaintiff simply asserts the relevance of the requests without any specification of particular things needed or how such things might be relevant to the claims made. That documents relate to the Vehicle, regardless of issue, or to a Ford transmission, regardless of make, model or year, is not enough. The Court has denied almost identical motions brought by counsel for Plaintiff in several other lemon law cases. The Court’s ruling is not going to change simply because Plaintiff brings the motion again.</p> <p>The motion is DENIED. Ford shall submit the final order.</p>
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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 6	23CV421206 Motion: Quash	VIVEK KOTHARI VS MICHELLE CHEN ET AL	<p>Defendant moves to quash a subpoena served on WFB for her financial records for the last 2 years. Defendant claims the subpoena is overbroad and irrelevant, and constitutes an invasion of her financial privacy. Where the right to privacy is asserted as a protection against discovery, the person raising the objection must establish: (1) a legally protected privacy interest, (2) an objectively reasonable expectation of privacy in the given circumstances, and (3) a threatened intrusion that is serious. (<i>Williams v. Super. Ct.</i> (2017) 3 Cal.5th 531, 552.) The party seeking protection may identify feasible alternatives that serve the same interests or protective measures that would diminish the loss of privacy. (<i>Id.</i>, at 557.) The party seeking information may raise in response whatever legitimate and important countervailing interests disclosure serves. <i>Id.</i></p> <p>Here, Defendant meets her burden. Plaintiff claims it is entitled to the information because if Plaintiff can show that the money provided to Defendant did not get spent as promised, it would demonstrate fraud, as well as money laundering. However, as Defendant points out, Plaintiff did not allege fraud from the fact that Defendant did not invest the money as promised and did not allege money laundering. Plaintiff's request for all WFB account records for the last 2 years is overbroad. The motion to quash is GRANTED. Defendant shall prepare the final order.</p>
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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

<u>LINE 7</u>	20CV375037 Order Motion pre Judgment Interest	NATASHA DOUBSON VS FYODOR KONKOV	Plaintiff's moves for prejudgment interest under CCP § 3287(a). That provision is not discretionary as Defendant claims. "Under section 3287, subdivision (a) the court has no discretion, but must award prejudgment interest upon request, from the first day there exists both a breach and a liquidated claim." <i>North Oakland Medical Clinic v. Rogers</i> (1998) 65 Cal.App.4th 824, 828. However, Plaintiff seeks interest from July 2017 when the money was first given as a purported gift. Plaintiff did not request the money back until September 8, 2020. See Complaint, paragraph 27. Defendant had no obligation to return the money until September 8, 2020. Accordingly, Defendant must pay to Plaintiff prejudgment interest of \$3,825.86. Plaintiff shall submit the final order and judgment.
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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 8	2012-1-CV-220303 Motion: to Enter Renewal of Judgment	CAVALRY SPV I, LLC VS O. WILLIAMS	This was originally set for 11/24/23. At that time, the tentative ruling was to GRANT the unopposed motion. Since that time, Plaintiff has indicated it was investigating Defendant's claim of fraud. The Court orders both parties to appear at the hearing and orders Plaintiff to provide the result of its investigation. If Plaintiff can show no fraud occurred, the motion will be GRANTED. If Plaintiff has found fraud, or has failed to investigate and can show no good cause for having failed to do so, the motion will be DENIED.
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			
LINE 14			
LINE 15			
LINE 16			
LINE 17			

Calendar Lines 1 and 2

Case Name: *Meyers, et al. v. Park Hill Lending, Inc., et al.*

Case No.: 23CV416419

Before the Court are two motions filed by Alesia Palma, aka Alesia Palmier, (“Defendant”): (1) a motion to quash service of summons; and (2) a motion to dismiss.

I. Background

A. Facts

This is an action for breach of contract, fraud, and unjust enrichment, among other things, arising out of a “sham” business deal. (Complaint, ¶ 13.) According to the operative Complaint, Defendant, a resident of Schenectady County, New York, was a shareholder/promoter/subscriber of alleged stock at Park Hill Lending, Inc. (“Park Hill”), a California corporation with its principal place of business in San Luis Obispo. (Complaint, ¶¶ 4, 6, 12.) Defendant, among other shareholders, had a “unity of interest” with Park Hill, who acted as an alter ego of Defendant. (Complaint, ¶¶ 12, 15.) Quanten Consortium Aruba, LLC (“Quanten”), a Texas corporation with its principal place of business in Santa Clara County, and Jeff Meyers (“Meyers”), a resident of Santa Clara County (collectively, “Plaintiffs”) claim Park Hill was a “sham” corporation “without capital, assets...or stockholders” and used Defendant as a “device” to avoid individual liability. (Complaint, ¶ 13.)

Park Hill and Plaintiffs entered into a written contract (“Agreement”) whereby Park Hill agreed to procure “proof of funds” of up to \$3.5 billion dollars for Plaintiffs. (Complaint, ¶ 25.) As part of the Agreement, Plaintiffs paid Park Hill \$25,000 to travel to Aruba and conduct a “proof of funds” meeting. (Complaint, ¶¶ 27, 31.) Upon Park Hill’s request, Plaintiffs paid an additional \$26,250 because Park Hill needed “to use someone else’s proof of funds” given their failed attempt to procure “proof of funds” with “the party [they] were hoping.” (Complaint, ¶ 31.) Both Defendant and Park Hill ultimately breached the terms of the Agreement by failing to procure the promised “proof of funds.” (Complaint, ¶¶ 39-40.) Despite breaching the Agreement, Park Hill and Defendant failed to return the money provided by Plaintiffs for business and travel costs. (Complaint, ¶¶ 39-40.)

B. Procedural

The Complaint, filed on May 17, 2023, asserts four causes of action: (1) breach of contract; (2) money had and received; (3) fraud; and (4) unjust enrichment.

On January 16, 2024, Defendant, a self-represented litigant, filed a motion to quash service of summons asserting that Plaintiffs’ “attempted service” on December 18, 2023, was defective pursuant to Code of Civil Procedure section 583.210, subdivision (b)¹, because Defendant was personally served “216 days after the Case was filed, which was 156 days beyond the time period permitted to obtain service of process.” (Defendant’s Motion to Quash Service of Summons (“MPA MTQ,”) p. 3.) That same day, Defendant filed a motion to dismiss

¹ In support of her motion to quash, Defendant cites “CCP § 583.210 Article 2 (b),” but this appears to be a mistake as “Article 2” does not exist under Code of Civil Procedure section 583.210, subdivision (b). Accordingly, this Court will assume Defendant is relying on Code of Civil Procedure section 583.210, subdivision (b).

Plaintiffs' Complaint on similar grounds, namely, Plaintiffs failed to "obtain service of process consistent with" Code of Civil Procedure sections 583.210, 583.240, and 583.250. (Defendant's Motion to Dismiss Complaint ("MPA MTD,") p. 3:9-11.)

On June 13, 2024, Plaintiffs opposed both motions. That same day, Plaintiffs filed a proof of service indicating that on December 18, 2023, at 10:14 a.m., Defendant was personally served the summons and complaint by a registered New York process server at 188 Greenlawn Avenue, Schenectady, New York, 12306. (See Plaintiffs' Proof of Service of Summons filed June 13, 2024, ¶¶ 4-5.)

Defendant did not file a reply.

II. Defendant's Motion to Quash Service of Summons

A. Legal Standard

Code of Civil Procedure section 418.10, subdivision (a)(1) authorizes a defendant to file a motion to quash service of summons "on the ground of lack of jurisdiction of the court over him or her." (Code Civ. Proc. § 418.10, subd. (a)(1).) "[A] motion to quash under section 418.10, subdivision (a)(1) is a limited procedural tool to contest personal jurisdiction over the defendant where the statutory requirements for service of process are not fulfilled." (*Stancil v. Superior Court* (2021) 11 Cal.5th 381, 390.)

Personal jurisdiction will be deemed lacking where service of the summons and complaint fails to comply with the statutory procedures regarding the manner of service of process. (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1444 (*Dill*).) However, minor deficiencies do not defeat service of process. (*Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 184.)

"When a defendant argues that service of summons did not bring him or her within the trial court's jurisdiction, the plaintiff has 'the burden of proving the facts that did give the court jurisdiction, that is the facts requisite to an effective service.'" (*American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 387, citing *Coulston v. Cooper* (1966) 245 Cal.App.2d 866, 868; see also *HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160, 1167 ["A plaintiff opposing a motion to quash service of process for lack of personal jurisdiction has the initial burden to demonstrate facts establishing a basis for personal jurisdiction"].)

The plaintiff must demonstrate by a preponderance of the evidence that proper service of the summons and complaint was effectuated. (*Boliah v. Superior Court* (1999) 74 Cal.App.4th 984, 991.) The filing of a proof of service that complies with applicable statutory requirements by itself creates a rebuttable presumption that service was proper. (*Dill, supra*, 24 Cal.App.4th at p. 1441.) Additionally, a declaration of service by a registered process server establishes a presumption that the facts stated in the declaration are true. (Evid. Code, § 647; *Rodriguez v. Cho* (2015) 236 Cal.App.4th 742, 750.)

B. Analysis

1) Timeliness of Personal Service

Defendant insists Plaintiffs' personal service attempt was improper because Plaintiffs' summons and complaint was not served on Defendant within 60 days of filing the Complaint. (MPA MTQ, p. 3.)

In opposition, Plaintiffs argue that Defendant's motion to quash is premised on "her mistaken belief" that Code of Civil Procedure section 583.210, subdivision (b) requires the summons and complaint to be served within six months of filing Plaintiffs' Complaint. (Plaintiffs' Opposition to MPA MTQ and MPA MTD ("Opp.," pp. 3:23-24-4:12-16.) Plaintiffs further assert the timeframes outlined in subdivision (b) pertain to the filing of a proof of service of the summons and complaint. (*Ibid.*) Plaintiffs conclude there is no "60-day period" in which a complaint must be served. (*Ibid.*)

Plaintiffs' argument is well taken. Code of Civil Procedure section 583.210, subdivision (a) provides: "The summons and complaint shall be served upon a defendant *within three years* after the action is commenced against the defendant. For the purpose of this subdivision *an action is commenced at the time the complaint is filed.*" (Code Civ. Proc., § 583.210, subd., (a), italics added).

Here, the statutory period of three years began running when Plaintiffs' action was filed on May 17, 2023. Defendant concedes she was personally served on December 18, 2023. (MPA MTQ, p. 3:4-9.) As Plaintiffs correctly state, Defendant was served seven months after the operative Complaint was filed. (Opp., p. 2:1-4.) This is well within the required statutory period. Defendant relies on Code of Civil Procedure section 583.210, subdivision (b), for the mistaken proposition that she must have been personally served within 60 days of the filing of Plaintiff's Complaint. This is simply a misstatement of the statute. Code of Civil Procedure section 583.210, subdivision (b), states: "[p]roof of service of the summons shall be filed *within 60 days* after the time the summons and complaint must be served upon a defendant." Code of Civil Procedure section 583.210, *subdivision (a)* governs the statutory period for service of process. Therefore, Defendant's position is meritless.

Accordingly, Defendant's motion to quash is DENIED.

II. Motion to Dismiss for Failure to Serve

Code of Civil Procedure section 583.250 requires a court, on its own motion or the motion of any party or interested person, to dismiss an action when service is not timely made. Defendant insists this Court should grant her motion to dismiss because Plaintiffs failed to timely serve her within *60 days* of commencing the action. (MPA MTD, p. 3:15-18.) As noted above, Defendant misstates the law. In light of this Court's ruling above, Defendant has failed to demonstrate defective service pursuant to Code of Civil Procedure sections 583.210, subdivision (b), and 583.250, and her motion to dismiss for failure to serve is DENIED on those grounds.

Defendant's motion to dismiss is also made pursuant to Code of Civil Procedure section 583.240. (MPA MTD, p. 3:18-20.) Specifically, under Code of Civil Procedure section 583.240, certain timeframes are excluded from the computation of the three-year deadline, particularly times when the defendant is not amenable to process, prosecution is

stayed, service is litigated, and “[s]ervice, for any other reason, was impossible, impracticable, or futile due to causes beyond the plaintiff’s control.” (Code Civ. Proc., § 583.240.) In her motion, Defendant asserts none of these exceptions apply because she was amenable to the Court’s process, Plaintiffs’ service *was not impracticable*, and Plaintiffs have not alleged discovery of relevant facts. (MPA MTD, pp. 3-5.) But, Defendant’s detailed discussion of section 583.240 is irrelevant here as service of summons was timely. Again, Plaintiffs served Defendant well within the three-year statutory period outlined in Code of Civil Procedure section 583.210, subdivision (a).

Accordingly, Defendant’s motion to dismiss is DENIED.

III. Conclusion

Defendant’s motion to quash service of summons and complaint is DENIED.

Defendant’s motion to dismiss is DENIED. The Court will prepare the final order.

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