

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

**Department 20 (will be heard in Department 6)
Honorable Evette D. Pennypacker, Presiding (for Hon. Socrates Manoukian)**

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: April 11, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

THIS CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE.

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

FOR ORAL ARGUMENT: Before 4:00 PM 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 at the hearing to contest the ruling**
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:

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

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want 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

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.

| LINE # | CASE # | CASE TITLE | RULING |
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| LINE 1-2 | 23CV427685 | <i>Michael Leonard vs General Motors, LLC</i> | Plaintiff filed a first amended complaint on March 28, 2024. Thus, these motions are moot. |
| LINE 3 | 23CV416185 | <i>ODK Capital, LLC vs. Keith Kim</i> | Default judgment entered January 19, 2024; off calendar. |
| LINE 4 | 20CV369499 | <i>Eric Kutcher et al vs Vahe Tashjian et al</i> | This motion is continued to April 18, 2024 at 9 a.m. in Department 20 to be heard with the parties' other pending motions on that same date. |
| LINE 5-6 | 22CV395429 | <i>Melissa Pocek vs Apple, Inc.</i> | This matter has resolved; these motions are off calendar. |
| LINE 7 | 23CV417952 | <i>Sang Xie vs Kyle Koshiyama</i> | <p>THIS CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE.</p> <p>https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml</p> <p>Defendant Kyle Koshiyama's motion to compel Plaintiff Sang Xie's further responses to form interrogatories (set one) nos. 12.2 and 12.3 and request for production (set one) no. 7 and request for sanctions is GRANTED, IN PART. First, it is clear from the opposition and reply that Plaintiff has now provided the identities and contact information for witnesses Plaintiff's counsel interviewed as part of Plaintiff's pre-filing investigation. Thus, that portion of Defendant's motion is moot. Next, under <i>Coito v. Superior Court</i> (2012) 54 Cal. 4th 480, the witness statements are subject to at least qualified work product protection under Code of Civil Procedure section (b) which requires production only where "denial of discovery will unfairly prejudice [the requesting party] in preparing [their] claim . . . or will result in an injustice." (Code Civ. Pro. § 2018.030 (b).) Here, even if Plaintiff's pre-litigation statements do not qualify for absolute protection under section 2018.030 (a) because the statements do not contain counsel's mental impressions (a conclusion the Court cannot make on this record) Plaintiff could only be compelled to produce the witness statements if Defendant demonstrated unfair prejudice or injustice. Defendant fails to meet this burden. There is no evidence that Defendant has contacted these witnesses to test their memory or current understanding of the event or to determine if they have any documentation or recordings of their own. Thus, the Court cannot conclude that prejudice or injustice will ensue absent an order compelling Plaintiff to produce the statements. Accordingly, Defendant's motion to compel production of witness statements in response to request for production no. 7 is DENIED. The Court does find that Plaintiff would not have produced the names and contact information for the witnesses absent this motion practice, and given the analysis in <i>Coito</i>, that information should have been produced. However, Plaintiff's opposition to producing the witness statements themselves was substantially justified. Accordingly, Plaintiff is ordered to pay Defendant \$1353 in attorney fees and costs incurred in bringing this motion to compel, representing half of the reasonable fees incurred in preparing this motion. Court to prepare formal order.</p> |
| LINE 8 | 23CV418644 | <i>ADOLFO MORA vs ETEUATI LEVI</i> | Off calendar. |

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| LINE 9 | 22CV409322 | <i>RAJIV BEHL vs SPECIALIZED LOAN SERVICING, LLC et al</i> | Defendants' motion to dismiss pursuant to Code of Civil Procedure section 581(f)(2) is GRANTED. A notice of motion with this hearing date and time was served on Plaintiff by U.S. mail on March 13, 2024. Plaintiff did not oppose the motion. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant this motion. Plaintiff failed to file an amended complaint after the Court (Hon. Socrates Manoukian) sustained Defendants' demurrer with 20 days leave to amend. This case is therefore dismissed with prejudice. This order will be reflected in the minutes. |
| LINE 10 | 23CV417176 | <i>Audrey Kallander vs Ningbo Vontone Stationery Co.</i> | Plaintiff's motion to approve settlement pursuant to health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6 is GRANTED. Moving party to submit form of judgment to Department 6 for review and approval. |
| LINE 11 | 23CV421023 | <i>Lee Vien et al vs CHUNG-CHE CHARLES WANG, M.D.</i> | Plaintiff's unopposed motion for leave to file a first amended complaint is GRANTED. A notice of motion with this hearing date and time was served on Plaintiff by electronic mail on March 18, 2024. Defendant did not oppose the motion. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant this motion. "[T]he trial court has wide discretion in allowing the amendment of any pleading". (<i>Bedolla v. Logan & Frazer</i> (1975) 52 Cal. App. 3d 118, 135-136.) If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (<i>Nelson v. Superior Court</i> , 97 Cal.App.2d 78; <i>Estate of Herbst</i> , 26 Cal.App.2d 249; <i>Norton v. Bassett</i> , 158 Cal. 425, 427.)" (<i>Morgan v. Superior Court of Los Angeles County</i> (1959) 172 Cal. App. 2d 527, 530-531 (error for trial court to fail to give leave to amend). Here, it is very early in the case, and there is no prejudice to the defense. Accordingly, Plaintiff's motion is granted. Plaintiff is ordered to file the amended complaint within 10 days of service of this formal order, which order the moving party is ordered to prepare. |

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| LINE 12-13 | 2015-1-CV-279969 | <i>T. Schweikert vs Las Brisas Homewowners Association (HOA), et al</i> | <p>THE CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE.</p> <p>https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml</p> <p>Plaintiff’s motion for clarification of Judge Manoukian’s May 1, 2023 order setting a trial setting conference (“Order”) or, alternatively, to reopen discovery is GRANTED. First, the Order does not unambiguously close discovery; it sets a trial setting conference and orders the parties to meet and confer regarding a trial date in advance of that conference. Next, while a new trial date does not extend discovery deadlines, the parties’ stipulation identifies a “potentially significant geotechnical-soils issue” and “an obstruction in the common area plumbing located below Plaintiff’s condominium” that required further investigation by all parties and a desire by the parties “to set a trial date with sufficient time to complete expert depositions in an orderly fashion, [and] allow the HOA time to complete its investigation and repairs”, which suggests the parties did contemplate conducting additional discovery at least with respect to these areas. The Court also finds that the Special Master’s order clearly required the HOA to produce its persons most knowledgeable for deposition, and that the HOA did not do so. The HOA’s argument that the deposition was not noticed is not supported by the evidence, which demonstrates the depositions were noticed and ordered to go forward. (See Reply Declaration of Brian M. Affrunti.) Accordingly, (1) to the extent not already complete, discovery regarding the “geotechnical-soils issue” and “an obstruction in the common area plumbing located below Plaintiff’s condominium” referenced in the parties’ stipulation may be completed and (2) the PMK depositions ordered by the Special Master shall be completed. The parties are ordered to meet and confer regarding a mutually agreeable schedule by which to complete this discovery in time to timely complete expert discovery. Fact discovery is otherwise closed.</p> <p>Plaintiff’s motion for contempt is continued to May 30, 2024 at 9 a.m. in Department 20. The Court has reviewed the record and finds that the HOA at least failed to comply with the order that it produce its PMK witnesses for deposition. An evidentiary hearing may be necessary to determine whether other areas of potential contempt have occurred. The Court is ordering these depositions to go forward. Thus, the contempt motion is continued to May 30, 2024 for further assessment of the merits.</p> <p>Court to prepare a formal order.</p> |
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