

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

Department 6

Honorable Evette D. Pennypacker, Presiding

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

DATE: January 9, 2024 TIME: 9:00 A.M.

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: 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. Civil Local Rule 8C is in the amendment process and will be officially changed in January 2024.

Where to call: 408-882-2430

When to call: Monday through Friday, 8:30 am to 12:30 pm

| LINE | CASE NO. | CASE TITLE | TENTATIVE RULING |
|------|------------|---|--|
| 1 | 21CV392034 | UL LLC vs CORDOVA PRINTED CIRCUITS, INC. | The parties are ordered to appear for examination. |
| 2 | 22CV405290 | Scott Yu et al vs Eric Yuan et al | Pursuant to stipulation, this matter is continued to February 27, 2024. |
| 3 | 23CV412655 | Anh Phan et al vs Kim Mai | Defendant Kim Ngan Mai's Motion to Strike is CONTINUED to February 27, 2024 at 9 a.m. in Department 6. The Court is unable to locate a proof of service demonstrating that an amended notice of motion with this hearing date was served on Plaintiff. Defendant is ordered to serve an amended notice of motion with the February 27, 2024 hearing date. If a proof of service evincing such service is not filed, the Court will deny this motion without prejudice at the next hearing date. Court to prepare a formal order. |
| 4 | 21CV382625 | JOSE NIETO vs JJR CONSTRUCTION, INC. et al | Entire action dismissed with prejudice on December 28, 2023. |
| 5 | 20CV373361 | ROIC PINOLE VISTA, LLC vs Oscar Munoz et al | Defendant Oscar Munoz's Motion to Complete Verified Responses to Form Interrogatories, Special Interrogatories, and Requests for Admission and for sanctions is GRANTED, IN PART. Please scroll down to lines 5-6 for full tentative ruling. Court to prepare formal order. |
| 6 | 20CV373361 | ROIC PINOLE VISTA, LLC vs Oscar Munoz et al | Plaintiff's ROIC Pinole Vista Motion to Compel Further Responses from Oscar Munoz to Requests for Production (Set One) and for Sanctions is GRANTED, IN PART. Please scroll down to lines 5-6 for full tentative ruling. Court to prepare formal order. |
| 7 | 21CV382331 | Becky Edwards et al vs Tesla, Inc. et al | The Court is not going to order production of Tesla's proprietary software. However, Plaintiffs are entitled to receive complete discovery materials related to this crash and the subject vehicle they can review. The Court accordingly orders the parties to appear at the hearing to discuss a procedure for how this can be promptly accomplished without production of Tesla's proprietary software. |
| 8 | 23CV417104 | Danica Coriloni vs Porsche Cars North America, Inc. | Off calendar. |
| 9 | 23CV417104 | Danica Coriloni vs Porsche Cars North America, Inc. | Off calendar. |
| 10 | 23CV417104 | Danica Coriloni vs Porsche Cars North America, Inc. | Off calendar. |
| 11 | 23CV417104 | Danica Coriloni vs Porsche Cars North America, Inc. | Off calendar. |
| 12 | 23CV418077 | Evelyn Almeida vs Leslie Mulligan et al | Off calendar. |

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| 13 | 23CV421366 | Wells Fargo Bank, N.A. vs Bertha Barron | Wells Fargo Bank, N.A.'s Motion for an Order Deeming the Truth of Matters Specified in Plaintiff's Requests for Admissions as Admitted is GRANTED. An amended notice of the motion with this hearing date was served on Defendant by regular mail on December 8, 2023. Plaintiff failed to file an opposition. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) Further, Plaintiff served its first set of requests for admission on Defendant by mail on October 10, 2023. To date, Defendant has served no responses. A party served with Requests for Admission must serve a response within 30 days. (Code of Civ. Pro. §2033.250.) When a party fails to respond—even in the face of a motion to have the matters in the Requests for Admission deemed admitted—as Defendant has done here, the Court must order the Requests for Admission deemed admitted. (Code of Civ. Pro. §2033.280(c); <i>St. Mary v. Superior Court</i> (2014) 223 Cal.App.4 th 762, 775-776.) Such a “deemed admitted” order establishes that the nonresponding party has responded to the requests for admission by admitting the truth of the matters contained in the requests. (<i>Id.</i>) Moving party to prepare formal order. |
| 14 | 16CV291442 | Crispin Cortes et al vs Leticia Sandoval Gonzalez et al | Crispin Calleros Cortes' Motion to amend and for attorneys' fees is GRANTED. An amended notice of motion with this hearing date was served on October 7, 2023. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) There is also good cause to grant this motion, as it does not add new parties but amends, nunc pro tunc, to add judgment debtors' newly acquired aliases. The Court also finds the amount of attorneys' fees and costs reasonable and awards judgment creditors \$1,666.00. Moving party to prepare formal order. |
| 15 | 18CV335549 | American Express National Bank vs Oyewunmi Hassan | Oyewunmi Hassan's claim of exemption is MOOT. Plaintiff failed to timely notice the levying officer of its opposition, thus the levying officer modified the Earnings Withholding Order to \$100.00 as debtor requested. No further action required. |
| 16 | 19CV353862 | David Feldman vs Robert Machado et al | This motion was previously addressed by the Court and DENIED by order dated November 22, 2023. |
| 17 | 20CV373187 | Austin Erlich et al vs Wahid Shah | James C. Hann's motion to withdraw as counsel for Wahid Shah is GRANTED. Court to use form of order on file. |

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| 18 | 21CV375332 | Chris Wilson vs SoundHound Inc. et al | SoundHound Inc.'s Motion for Reconsideration is DENIED. Even assuming this motion is timely (the clerk of court served the order by U.S. mail on June 2, 2023) and the Court were to consider new material improperly submitted on reply (see <i>Jay v. Mahaffey</i> (2013) 218 Cal. App. 4th 1522, 1538), the motion is not supported by competent evidence showing that SoundHound was completely unaware of its discovery obligations or this Court's discovery orders and must be denied. Plaintiff's objections to the declarations of Madonna Herman and Warren Heit are well taken and sustained. Ms. Herman has no personal knowledge of what SoundHound's prior counsel communicated to SoundHound, and there is no foundation in Mr. Heit's declaration to support that he has personal knowledge regarding SoundHound's prior counsel's communications with "anyone at SoundHound involved in the litigation", including Defendant Keyvan Mohajer. Further, while the Court understands that clients are not "required to act as 'hawklike inquisitor' of his own counsel", this case has been pending for three years, and the Court's order striking the affirmative defense came after significant discovery motion practice, including Plaintiff's motion to compel PMK deposition dates. The declaration and evidence submitted in the context of this motion practice demonstrates that at least some client communication was occurring. The materials submitted with this motion for reconsideration do not address those communications or otherwise imply that no communication at all regarding discovery took place between SoundHound and its prior counsel. Court to prepare formal order. |
| 19 | 22CV405430 | Alison Perea vs Sidney Flores et al | Plaintiff's Motion for Terminating Sanctions is CONTINUED to February 22, 2024 at 9 a.m. in Department 6. The parties are ordered to meet and confer in person or by video conference—phone, letter, or email are <u>not</u> sufficient—at least once (more is preferable) to discuss any remaining discovery issues on or before February 2, 2024 and to submit a joint statement succinctly listing any remaining discovery issues the parties seek to have the Court resolve on or before February 16, 2024. The Court expects the parties to engage in robust meet and confer to finally resolve all outstanding discovery issues to facilitate potential mediation and trial setting. |
| 20 | 23CV415872 | Rigoberto Hernandez vs Ford Motor Company et al | Pursuant to Plaintiff's request, Plaintiff's Motion to Enforce Settlement and For Attorneys' Fees is off calendar. |
| 21 | 23CV416577 | Ana Guerrero et al vs Rosa Navarrete | Malek H. Shraibati's Motion to Withdraw as Counsel is GRANTED. Court to use form of order on file. |
| 22 | 23CV416577 | Ana Guerrero et al vs Rosa Navarrete | Malek H. Shraibati's Motion to Withdraw as Counsel is GRANTED. Court to use form of order on file. |

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| 23 | 23CV417015 | Keep America Safe and Beautiful vs Selini New York, Inc | Defendant's Motion to Approve Consent Judgment is CONTINUED to February 27, 2024 at 9 a.m. in Department 6. The Court was unable to locate proof of service of an amended notice of motion with this hearing date. Although this is a motion to approve a consent judgment, Health & Safety Code section 25249.7(f)(4) requires a noticed motion and appears to contemplate the ability of third parties to object. Defendant is therefore ordered to serve an amended notice of motion with the February 27, 2024 hearing date. If a proof of service demonstrating such service is not filed, the Court will deny this motion without prejudice at the next hearing date. |
| 24 | 23CV423245 | CITY OF CAMPBELL, a Municipal Corporation vs KEVIN HOFF | Resolved pursuant to stipulation. |
| 25 | 2002-1-CV-808259 | WEST PALMS LANDSCAPING INC. VS NAMRATA PATNAIK et al | West Palms Landscaping, Inc.'s motion for judgment sale pursuant to Code of Civil Procedure section 716.010(c) is GRANTED. An amended notice of motion with this hearing date was served on October 17, 2023. No opposition was filed. Failure to oppose a motion may be deemed consent to the motion being granted. (Cal. Rule of Court, 8.54(c).) There is also good cause to grant this motion, as all required steps were followed by the creditor. Moving party to prepare formal order. |
| 26 | 2008-1-CV-109986 | Wells Fargo Bank, National Association vs B. Holes | Holes' claim of exemption is DENIED. It is Holes' burden of proof to show that the cash is exempt from levy under the cited statutes. Holes offers no evidence to show that the cash qualifies as exempt. Court to prepare formal order. |

Calendar Lines 5-6

Case Name: *ROIC PINOLE VISTA, LLC vs Oscar Munoz et al*

Case No.: 20CV373361

Before the Court is (1) Defendant Oscar Munoz’s Motion to Complete Verified Responses to Form Interrogatories, Special Interrogatories, and Requests for Admission and for Sanctions and (2) Plaintiff’s ROIC Pinole Vista Motion to Compel Further Responses from Oscar Munoz to Requests for Production (Set One) and for Sanctions. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This action arises out of a tenant’s purported failure to pay rent and other amounts due under a commercial lease. According to the Complaint, Plaintiff owns property located at 580-K N. Rengstorff Avenue in Mountain View (the “Premises”). (Complaint, ¶1.) On September 15, 2016, Plaintiff ROIC Pinole Vista, LLC’s (“ROIC”) predecessor-in-interest and Defendants Oscar Munoz, Raquel Munoz and Taqueria La Bamba, LCC (the “Taqueria”) entered a written lease agreement (the “Lease”) whereby the Premises were leased to Defendants for five years with minimum monthly base rents due for the purpose of operating a restaurant. (Complaint, ¶¶5, 8, Ex. A.) Under the Lease terms, Defendants were also required to make payments for property taxes and maintenance and insurance costs. (Complaint, ¶¶9-11.)

On March 2, 2020 and thereafter, Defendants allegedly breached the Lease by failing to pay the amounts due. (Complaint, ¶12.) Defendant Raquel Munoz filed a Cross-Complaint alleging the Taqueria is solely responsible for payments under the Lease terms, and that Plaintiff is expressly prohibited from seeking recourse against the personal assets of any shareholder, member, officer, director, or employee of the Taqueria. (Cross-Complaint, ¶12.)

Plaintiff filed this action on November 12, 2020, asserting (1) breach of lease and (2) open book account. Raquel Munoz filed the Cross-Complaint on October 21, 2021, and the Court denied Plaintiff’s motion to strike on April 14, 2022. The Court also struck the Taqueria’s answer on August 11, 2022.

Now before the Court are cross motions to compel between ROIC and Oscar Munoz. Mr. Munoz filed his motion first, seeking to compel further responses to Form Interrogatories, Special

Interrogatories, and Requests for Admission. ROIC moves to compel further responses and production of documents in response to its September 13, 2021 requests for production.

II. Legal Standard

Discovery is generally permitted “regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.” (Cal. Code Civ. Pro. § 2017.010.) Everything that is relevant to the subject matter is presumed to be discoverable. (*Id.*) The Discovery Act further declares that “the court shall limit the scope of discovery” if it determines that the burden, expense, or intrusiveness of that discovery “clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.” (Code Civ. Pro. § 2017.020(a); *Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385.) The California Supreme Court teaches in *Greyhound* that the judge exercising discretion to limit discovery should construe disputed facts liberally in favor of discovery; reject objections such as hearsay that only apply at trial; permit fishing expeditions (within limits), avoid extending limitations on discovery, such as privileges; and, whenever possible, impose only partial limitations rather than denying discovery entirely. (*Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385; *see also Tylo v. Superior Court* (1997) 55 Cal.App.4th 1379, 1386.)

The party to whom a request for production of documents has been directed can make one of three responses: (1) a statement that the party will comply with the demand, (2) a representation that the party lacks the ability to comply, or (3) an objection. (Code Civ. Pro. §2031.210(a).) A party may move for an order compelling a further response to a document demand on the ground that (1) an objection is without merit or too general, (2) a statement of compliance with the demand is incomplete, or (3) a representation of inability to comply is inadequate, incomplete, or evasive. (Code Civ. Pro. §2031.210(a).) A party seeking to compel is required to “set forth specific facts showing good cause justifying the discovery sought by the demand.” (Code Civ. Pro. §2031.210(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) This burden may be satisfied by a fact-specific showing of relevance. (*TBG Ins. Services Corp. v. Superior Court* (2002) 96 Cal.App.4th 443, 448.) Information is relevant to the subject matter of the action if it might reasonably assist a party in evaluating the case,

preparing for trial, or facilitating settlement. (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.)

A party responding to interrogatories must respond in writing, under oath separately to each interrogatory with an answer that contains the information sought, an exercise of the party's option to produce writings from which the answer can be determined, or an objection to the interrogatory. (Code Civ. Pro. §2030.210(a).) The responding party must make a reasonable, good faith effort to obtain information to provide a response and generally may not respond to the interrogatory by simply stating it cannot respond. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 406; Code Civ. Pro. §2030.210(c).)

A party responding to a request for admission may answer by objecting or that the party admits or denies the matter. (Code of Civ. Proc. § 2033.210(b).) If party of a request for admission is objectionable, the responding party must answer the unobjectionable part. (Code of Civ. Proc. § 2033.230(a).) The denial of all or a portion of a request must be unequivocal. (*Id.*; *American Fed'n of State, County & Mun. Employees v. Metropolitan Water Dist.* (2005) 126 CalApp.4th 247, 268.)

If information is not produced during discovery, it will be excluded at trial. (*Deeter v. Angus* (1986) 179 Cal. App. 3d 241; see also *Thoren v. Johnston & Washer* (1972) 29 Cal.App.3d 270.)

III. Analysis: Oscar Munoz's Motion to Compel Further Responses from ROIC

ROIC's first complaint that Mr. Munoz did not submit a separate statement is incorrect. The separate statement is at the end of Mr. Munoz's filing, after the last exhibit to his declaration. The Court notes that many of Mr. Munoz's complaints about ROIC's responses relate to the merits, i.e., whether Mr. Munoz can be personally liable under the Lease. The Court is not making merits determinations at this stage of the proceedings; this is a discovery motion. However, certain of ROIC's discovery responses do not answer the questions posed. The Court accordingly makes the following rulings.

Form Interrogatory No. 50.2: GRANTED. ROIC's response appears to relate to Ms. Raquel Munoz. ROIC is ordered to supplement this response to make clear whether it has the same or different allegations against Mr. Oscar Munoz.

Special Interrogatory No. 1: GRANTED. If there is more than one place on page 27 Oscar Munoz singed the lease in his personal capacity rather than “For Taqueria La Bamba”, ROIC must supplement to identify each place and otherwise clarify its response.

Special Interrogatory Nos. 2, 3: DENIED. This response appears to contain ROIC’s position in the case.

Special Interrogatory No. 4, 5: GRANTED. In meet and confer correspondence, ROIC states it does not contend the tenant was a partnership. ROIC is ordered to supplement its response to this interrogatory to so state.

Special Interrogatory No. 6: GRANTED. This matter is in its fourth year of litigation; ROIC either has an answer to this question or it does not, and it is ordered to supplement to identify that answer or to state it does not know.

Special Interrogatory Nos. 7, 8: GRANTED. ROIC’s response does not answer the questions asked.

Special Interrogatory No. 9: DENIED.

Special Interrogatory Nos. 10, 11: DENIED.

Special Interrogatory Nos. 16, 17: DENIED.

Special Interrogatory Nos. 18, 19: DENIED.

Special Interrogatory Nos. 22, 23: DENIED.

Special Interrogatory Nos. 24, 25: DENIED.

Special Interrogatory Nos. 26, 27: DENIED.

Request for Admission No. 2: GRANTED. ROIC’s response appears to admit a portion of the request but is not unequivocal as to what it denies about this request, if anything.

Request for Admission No. 3: GRANTED. ROIC’s response appears to admit a portion of the request but is not unequivocal as to what it denies about this request, if anything.

Request for Admission No. 4: GRANTED. ROIC’s response appears to admit a portion of the request but is not unequivocal as to what it denies about this request, if anything.

IV. Analysis: ROIC's Motion to Compel Further Responses from Oscar Munoz

The Court notes it has taken significant efforts from both the Court and Plaintiff to compel Mr. Munoz to comply with his discovery obligations. At this point in the litigation, and after so much time has been given to Mr. Munoz to comply, all documents responsive to these requests should have already been produced. If Mr. Munoz cannot afford to copy the documents and seeks to have an inspection, that inspection, with the option of ROIC making copies of the documents, should have already taken place. The Court accordingly rules as follows:

Request for Production No. 1: GRANTED. Mr. Munoz states he “will comply by permitting inspection of the documents”, thus he is ordered to produce all documents responsive to this request.

Request for Production No. 2: GRANTED. Mr. Munoz states he “will comply by permitting inspection of the documents”, thus he is ordered to produce all documents responsive to this request.

Request for Production No. 3: GRANTED. Mr. Munoz states he “will comply by permitting inspection of the documents”, thus he is ordered to produce all documents responsive to this request.

Request for Production No. 4: GRANTED. Mr. Munoz states he “will comply by permitting inspection of the documents”, thus he is ordered to produce all documents responsive to this request.

Request for Production No. 5: GRANTED. Mr. Munoz is ordered to supplement his written response to this request to explain why he has no responsive documents in his possession, custody, or control after a diligent search.

Request for Production No. 6: GRANTED. Mr. Munoz states he “will comply by permitting inspection of the documents”, thus he is ordered to produce all documents responsive to this request.

Request for Production No. 7: GRANTED. Mr. Munoz states he “will comply by permitting inspection of the documents”, thus he is ordered to produce all documents responsive to this request.

Request for Production No. 8: GRANTED. Mr. Munoz is ordered to produce documents sufficient to show “the managers, owners, shareholders, executives, and officers of any business under [his] control from January 1, 2017, to present.”

Request for Production Nos. 9-14: GRANTED. Mr. Munoz is ordered to supplement his written response to this request to explain why he has no responsive documents in his possession, custody, or control after a diligent search (for example, his email has been purged, he does not believe any such

documents ever existed, he did not maintain paper files, or other applicable reason Mr. Munoz believes no documents are in his possession, custody, or control). Mr. Munoz should note that even if ROIC has copies of documents it may have sent to Mr. Munoz, the fact that Mr. Munoz also has copies of those documents may lead to the discovery of admissible evidence, thus even if Mr. Munoz had not previously waived his objections for failure to timely produce discovery response, this is not a valid objection to production.

Request for Production No. 15: GRANTED. Mr. Munoz is ordered to supplement his written response to this request to explain why he has no responsive documents in his possession, custody, or control after a diligent search (for example, his email has been purged, he does not believe any such documents ever existed, he did not maintain paper files, or other applicable reason Mr. Munoz believes no documents are in his possession, custody, or control).

Request for Production No. 16: GRANTED. Mr. Munoz states he “will comply by permitting inspection of the documents”, thus he is ordered to produce all documents responsive to this request.

V. Sanctions and Conclusions

Mr. Munoz’s request for sanctions is DENIED. The Court finds that Plaintiff substantially changed its discovery approach since the last motion to compel and did attempt to engage in meaningful meet and confer by requesting a telephone call. Mr. Munoz did not take that opportunity for discussion, which could have avoided this motion practice.

ROIC’s motion for sanctions is GRANTED. Mr. Munoz (through Mr. Rosenbaum) failed to produce any documents since 2021 and again refused to engage in meaningful meet and confer. The Court accordingly sanctions Mr. Munoz and Mr. Rosenbaum jointly and severally in the sum of \$4,260, to be paid to Plaintiff within 60 days of service of this formal order.

The above-ordered verified supplemental responses and documents shall be produced within 20 days of service of this formal order.