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 12, 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.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

SCHEDULING MOTION HEARINGS: Please go to https://reservations.scscourt.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.scscourt.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
LINE 1	21CV391881	Amir Weiner et al vs Matthew Carpenter et al	**Demurrer** Defendant and Cross-Defendant Matthew Ming Carpenter demurs to the Cross-Complaint of Defendant and Cross-Complainant Mohammad Yusuf Khattak. A notice of motion with the hearing date and time was electronically served on July 15, 2024. Any opposition was due on August 29, 2024. Cross-Complainant failed to oppose the motion. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) Good cause appearing, Cross-Defendant's demurrer is SUSTAINED WITH 15 DAYS' LEAVE TO AMEND. Moving party to prepare the formal order.
LINE 2	20CV373332	Benito Hernandez et al vs Robert Bortolotto et al	**Motion for Summary Judgment/Adjudication** Scroll down to Line 2 for Tentative Ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 3	21CV385759	BMC FUTURES, LLC vs Edic Sliva et al	**Motion for Summary Judgment/Adjudication** Cross-Defendants Colliers Parish International, Inc. Steve Hunt and John Machado's motion for summary judgment is unopposed. Cross-Defendants gave notice of the motion on March 12, 2024, and it was continued by stipulation and order on June 5, 2024. Any opposition was due on August 29, 2024 and no opposition was filed. A failure to oppose a motion may be deemed a consent to the granting of the motion. (California Rules of Court, Rule 8.54(c); *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.) Where a responding party does not file an opposition to a motion for summary judgment, the moving party must still meet its initial burden of proof. (*Thatcher v. Lucky Stores, Inc.* (2000) 79 Cal.App.4th 1081, 1086-1087, *CDF Firefighters v. Maldonado* (2008) 158 Cal.App.4th 1226, 1239). A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subdivision (c)). Cross-Defendants have shown sufficient evidence to justify the grant of summary judgment in their favor; the motion for summary judgment is GRANTED. Cross-Defendants to prepare formal order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 4	22CV404901	Tara Kumar, Trustee of the Anjali Kumar Trust dated 12/17/1997 et al vs T-Mobile West, LLC et al	**Motion to Compel** This motion is CONTINUED to November 21, 2024 at 9am in Department 18b. The parties are ordered to conduct good faith, reasonable and meaningful meet and confers, either in person, by phone or video conference, to try to narrow the issues in this motion. If any issues remain after the meet and confer efforts, which may span several sessions, the parties shall file a *joint* statement no later than November 5, 2024, which shall identify the remaining items in dispute and the reasons why further responses should/should not be compelled. Moving party to prepare formal order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 5	22CV404901	Tara Kumar, Trustee of the Anjali Kumar Trust dated 12/17/1997 et al vs T-Mobile West, LLC et al	**Motion to Compel** This motion is CONTINUED to November 21, 2024 at 9am in Department 18b. The parties are ordered to conduct good faith, reasonable and meaningful meet and confers, either in person, by phone or video conference, to try to narrow the issues in this motion. If any issues remain after the meet and confer efforts, which may span several sessions, the parties shall file a *joint* statement no later than November 5, 2024, which shall identify the remaining items in dispute and the reasons why further responses should/should not be compelled. Moving party to prepare formal order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 6	23CV412359	Jesus Torres vs ALVARADO CRISTIAN	**Motion to Compel (Discovery)** Plaintiff Jesus Torres' motion to compel responses to his first set of form interrogatories (general), form interrogatories (employment), requests for production, special interrogatories, and request for monetary sanctions of $5,530 against Defendant CA Transport, Inc., and defense counsel. The motion to compel was filed and served on July 15, 2024. No opposition to this motion was filed by Defendant. 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 Defendant 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. Defendant should have served a response within 30 days of service of the interrogatories (Code Civ. Proc., §2030.260 (a)) and document request. Moving party meets his burden of proof. Good cause appearing, the Motion is GRANTED. The request for sanctions is also GRANTED in the amount of $1,800. Defendant shall serve verified, code-compliant responses to all of the subject discovery and the sanctions shall be paid within 20 days of service of this order. Moving party shall prepare a formal order

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LAW AND MOTION TENTATIVE RULINGS

LINE 7	22CV401581	Debra Lavin vs Anthony Alves et al	**Motion for Leave to Amend** Plaintiff Debra Lavin's motion for leave to amend the Complaint to add a claim for punitive damages against defendant Alves. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading." (Code of Civil Procedure, §§ 473 subd. (a)(1)). The California Supreme Court has held that under Code of Civil Procedure, §473 there is a "strong policy in favor of liberal allowance of amendments." (See *Klopstock v. Superior Court* (1941) 17 Cal.2d 13, 19.) This liberal policy of permitting amendments, however, is not without limitation or qualification. A proposed amendment should be timely made and should not be permitted where it will prejudice the opposing party (Id. at p. 530), or where other factors preclude a proposed amendment or otherwise render an amendment impermissible. The Court will exercise its discretion and will permit the amendment that Plaintiff seeks. The motion of Plaintiff for leave to file an amended Complaint is GRANTED. Plaintiff shall file her First Amended Complaint within 10 days of this order. Parties are to appear to argue Defendant's request for a continuation of the October 21, 2024 trial date. Counsel for Plaintiff to prepare the formal order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 8	24CV440630	Cavalry SPV I, LLC as assignee of Citibank vs Loan Duong	**Motion for Stay (Arbitration)** Defendant Loan T. Duong's motion to stay proceedings based on an arbitration clause requiring that the matter be arbitrated. Plaintiff does not oppose Defendants request (non-opposition filed August 22, 2024). This motion is CONTINUED to September 24, 2024 at 9a.m. to be heard with Defendant's pending Motion to set aside default.
LINE 9	24CV440901	MARIA LOPEZ vs ROY ABBOTT	**Motion for Interlocutory Judgment for partition and appointment of partition referee**. Scroll down to Line 9 for Tentative Ruling

Calendar Line 2
Case Name: *Benito Hernandez, et al. v. McKim Corporation, et al.*
Case No.: 20CV373332

Before the Court is the motion for summary judgment or, alternatively, summary adjudication, against plaintiffs Benito Hernandez and Monica Hernandez. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling as follows.

I. Background.

Plaintiffs Benito Hernandez, Monica Hernandez, and Esteban Gabriel Hernandez (collectively, "Plaintiffs") are construction workers who worked for defendant McKim Corporation ("McKim"). (Complaint, ¶6.) Defendant McKim performs on site construction and repair, specifically in the concrete and asphalt paving industry. (Complaint, ¶¶7 and 14.) Defendants Robert Anthony Bortolotto ("Bortolotto") and Santino Ricardo Orozco ("Orozco") are managers, corporate officers, and/or responsible individuals for purposes of licensing with the California State License Board ("CSLB"). (Complaint, ¶8.) Defendant Ricardo Ramirez is the owner of defendant McKim. (Complaint, ¶10.) Defendants Bortolotto, Orozco, Ricardo Ramirez, and Maria Ramirez are responsible for implementing and carrying out the unlawful labor, employment, and payroll policies and overseeing the day to day activities of the corporation. (Complaint, ¶¶8 – 10 and 16.)

Plaintiffs worked as laborers, operating engineers, and teamsters for defendants on multiple public works construction projects subject to the payment of prevailing wages. (Complaint, ¶15.)

Plaintiff Benito Hernandez was typically paid 32 hours a week despite routinely working 45 – 55 hours per week, five to six days per week. (Complaint, ¶17.) In summer when there was a push to finish school construction in a tight construction schedule, plaintiff Benito Hernandez could work seven days a week and over 55 hours a week. (*Id.*)

Plaintiff Monica Hernandez was never put on payroll and made substantially less than any recognizable prevailing wage to primarily drive a semitruck on both public work and private construction. (Complaint, ¶18.) Plaintiff Monica Hernandez would be paid by the hour without payroll deductions and without payment of overtime or prevailing wages when due and owing. (*Id.*)

Plaintiff Esteban Gabriel Hernandez was never put on payroll and made substantially less than any recognizable prevailing wage as a laborer in the summers and at times on weekends on both public work and private construction. (Complaint, ¶19.) Plaintiff Esteban Gabriel Hernandez would be paid by the hour without payroll deductions and without payment of overtime or prevailing wages when due and owing. (*Id.*)

Plaintiffs were not paid the correct prevailing wage for the work they discharged. (Complaint, ¶20.) The fringe benefits owed as part of various prevailing wage obligations were not properly funded to a third party fringe benefit trust fund based on prevailing wage laws of California. (*Id.*) The only fringe benefits funded were 32 hours for plaintiff Benito Hernandez. (*Id.*)

Defendants' failure to timely pay overtime wages in excess of eight (8) hours per day or forty (40) hours per week, or wages for all hours worked, was willful, intentional, and deliberate. (Complaint, ¶23.)

During their employment with defendants, only plaintiff Benito Hernandez received wage statements and those statements did not list all hours worked. (Complaint, ¶24.) The other plaintiffs did not receive any wage statements. (*Id.*)

At the end of their employment with defendants, Plaintiffs were not paid all wages in a timely manner and more than 30 days have passed since their separation from employment. (Complaint, ¶25.)

On November 10, 2020, Plaintiffs filed a complaint against defendants McKim, Bortolotto, Orozco, Maria Ramirez, and Ricardo Ramirez asserting causes of action for:

(1) Violation of California Labor Code sections 218.5, 1194, 1194.2, 1771, 1774

(2) Violation of California Labor Code section 226 – Failure to Provide an Itemized Wage Statement (against all defendants except Bartolotto)

(3) Violation of California Labor Code section 203 – Waiting Time Penalties

(4) Failure to Pay Minimum Wages, California Labor Code sections 1194 et seq.

(5) Failure to Pay Overtime Compensation (Labor Code sections 510 and 1194)

(6) Unfair Business Practices (Business and Professions Code sections 17200 et seq.)

On March 5, 2021, defendants McKim, Bortolotto, Orozco, Maria Ramirez, and Ricardo Ramirez jointly filed an answer to the Plaintiffs' complaint.

On May 11, 2023, Plaintiffs filed an amendment to the complaint substituting McKim Inc. for Doe defendant 1 and substituting S and R Materials Handling LLC ("SRMH") for Doe defendant 2.

On June 26, 2023, defendant SRMH filed an answer to Plaintiffs' complaint.

On February 8, 2024, defendants McKim, Bortolotto, Orozco, Maria Ramirez, and Ricardo Ramirez ("Moving Defendants") filed a motion for summary judgment/ adjudication of the complaint against plaintiffs Benito Hernandez and Monica Hernandez.

A May 16, 2024 minute order reflects the court (Hon. Manoukian) denied Moving Defendants' motion for summary judgment/ adjudication.

To facilitate further mediation between the parties and pursuant to their stipulation, the court (Hon. Pennypacker) issued an order on June 13, 2024 continuing hearing on the aforementioned motion for summary judgment/ adjudication to September 12, 2024 as Judge Manoukian's ruling "did not reach the merits of a discrete legal issue of preemption under Federal law of Plaintiff BENITO HERNANDEZ'S claims because of issues with the filing of a declaration and the attached exhibits." As the parties desire a ruling on the Preemption issue to guide the parties' settlement positions, Judge Pennypacker order allowed [Moving] Defendants to refile a corrected declaration and exhibits, Plaintiffs "to file a supplemental opposition memorandum, of no more than [seven] pages, with new legal authority or new arguments two weeks before the hearing," and Moving Defendants "to file a supplemental reply memorandum, of no more than [seven] pages, which addresses any arguments made by Plaintiffs."

On July 2, 2024, Moving Defendants filed corrected declarations in support of their motion for summary judgment/ adjudication.

On August 28, 2024, Plaintiffs filed a supplemental opposition.

II. Moving Defendants' motion for summary judgment of the complaint against plaintiff Benito Hernandez is DENIED.

Moving Defendants argue initially that all of the claims asserted by plaintiff Benito Hernandez in the complaint fail because he failed to exhaust the mandatory grievance procedure under a collective bargaining agreement ("CBA"). Moving Defendants rely on *Soremekun v. Thrifty Payless, Inc.* (9th Cir. 2007) 509 F.3d 978, 985-986 (*Soremekun*), where the court wrote:

> Prior to bringing suit, an employee seeking to vindicate personal rights under a collective bargaining agreement must first attempt to exhaust any mandatory or exclusive grievance procedures provided in the agreement. See *United Paperworkers Int'l. Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 37, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987) ("The courts have jurisdiction to enforce collective bargaining contracts; but where the contract provides grievance and arbitration procedures, those procedures must first be exhausted and courts must order resort to the private settlement mechanisms without dealing with the merits of the dispute"); *Del Costello*, *supra*, 462 U.S. at 163 ("Ordinarily, however, an employee is required to attempt to exhaust any grievance or arbitration remedies provided in the collective bargaining agreement. Subject to very limited judicial review, he will be bound by the result according to the finality provisions of the agreement" (citations omitted)). [Footnote.] Thus, in the ordinary case, an employee's failure to exhaust contractually mandated procedures precludes judicial relief for breach of the collective bargaining agreement and related claims.

Moving Defendants proffer the following facts to support this argument: The CBAs in effect during Benito Hernandez's employment by McKim Corporation included specific grievance procedures applicable to the employment claims of Benito Hernandez.[1] The grievance procedures set forth in the CBAs to which Benito Hernandez was bound include the requirement that written notice of a grievance be provided to the employer and/or the union

[1] See Separate Statement Supporting Motion for Summary Judgment or, Alternatively, for Summary Adjudication ("Moving Defendants' SS"), Fact No. 10.

within ten days of the event triggering the grievance.[2] Benito Hernandez failed to provide such 10-day notice in regard to any of the claims made in this lawsuit.[3]

In his tentative ruling, Judge Manoukian found the underlying evidence in support of these factual assertions deficient because the declaration was incomplete. For that reason, Judge Manoukian determined Moving Defendants had not met their initial burden "of showing that a cause of action has no merit if the [Moving Defendants have] shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., §437c, subd. (p)(2).)

Moving Defendants have now corrected the evidentiary defects.

In opposition, Plaintiffs characterize Moving Defendants' argument as one of federal preemption and argues preemption does not apply here because it does not require interpretation of the CBA. Moving Defendants rely principally on *Melendez v. San Francisco Baseball Associates LLC* (2019) 7 Cal.5th 1, 5-8 (*Melenedez*) where the Court,

> conclude[d] that, although the agreement between the union and the Giants may be relevant to this lawsuit and may need to be consulted to resolve it, the parties' dispute turns on an interpretation of state law—namely, the meaning of "discharge" under Labor Code section 201—rather than an interpretation of the agreement itself. Because no party has identified any provision of the agreement whose meaning is uncertain and that must be interpreted to resolve plaintiffs' claim, this lawsuit is not preempted and state courts may decide it on the merits.
>
> …
>
> Section 301(a) of the Labor Management Relations Act, 1947 (29 U.S.C. § 185(a)) (hereafter section 301(a)) provides: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." (See *Lingle v. Norge*

[2] See Moving Defendants' SS, Fact No. 11.
[3] See Moving Defendants' SS, Fact No. 12.

Division of Magic Chef, Inc. (1988) 486 U.S. 399, 403 [100 L. Ed. 2d 410, 108 S. Ct. 1877] (*Lingle*).) "Courts typically refer to the statutory provisions at issue as 'section 301(a)' rather than by citation to the United States Code." (*Knutsson v. KTLA, LLC* (2014) 228 Cal.App.4th 1118, 1126 [176 Cal. Rptr. 3d 376].)

"In a series of opinions, the Supreme Court concluded that § 301's jurisdictional grant required the 'complete preemption' of state law claims brought to enforce collective bargaining agreements." (*Balcorta v. Twentieth Century-Fox Film Corp.* (9th Cir. 2000) 208 F.3d 1102, 1107 (*Balcorta*).) The main policies behind this preemption rule are to "ensure nationwide uniformity with respect to the interpretation of collective bargaining agreements and preserve arbitration as the primary means of resolving disputes over the meaning of collective bargaining agreements." (*Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1163 [140 Cal. Rptr. 3d 808] (*Sciborski*), citing *Lingle, supra*, 486 U.S. at p. 404, *Allis-Chalmers Corp. v. Lueck* (1985) 471 U.S. 202, 211, 219 [85 L. Ed. 2d 206, 105 S. Ct. 1904] (*Allis-Chalmers*).)

Now, in supplemental opposition, Plaintiffs rely upon *Zavala v. Scott Brothers Dairy, Inc.* (2006) 143 Cal.App.4th 585 (*Zavala*) to support their assertion that statutory claims of workers cannot be waived by the collective bargaining process. Plaintiffs again miss the mark. As Plaintiffs themselves acknowledge, in *Zavala*, "the Union had already grieved the very same rest period issue on behalf of all of its members, including plaintiffs." (*Zavala, supra*, 143 Cal.App.4th at p. 589.) Thus, *Zavala* does not even address the Moving Defendants' argument that an employee seeking to vindicate personal rights under a collective bargaining agreement must first attempt to exhaust any mandatory or exclusive grievance procedures provided in the agreement.

Plaintiffs' reliance on *Zavala* aside, the court need not look further than *Soremekun* itself to reach the conclusion that not all of Plaintiff's claims are barred simply because plaintiff failed to follow the grievance procedure set forth in the CBA. As the *Soremekun* court observed and treated various claims differently, there are claims which are subject to the

CBA's grievance procedure and there are other claims such as claims based upon statutorily conferred rights such as Labor Code sections 202 and 203.

> These sections create "nonnegotiable state-law rights . . . independent of any right established by contract." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 213, 105 S. Ct. 1904, 85 L. Ed. 2d 206 (1985); see CAL. LAB. CODE § 219 (no provision in the article, including sections 202 and 203, "can in any way be contravened or set aside by a private agreement, whether written, oral, or implied"); *id.*, § 222 ("It shall be unlawful, in case of any wage agreement arrived at through collective bargaining, either willfully or unlawfully or with intent to defraud an employee, a competitor, or any other person, to withhold from said employee any part of the wage agreed upon").
>
> If a state law cannot be waived or modified by private contract, and if the rights it creates can be enforced without resort to the particular terms, express or implied, of the labor contract, the LMRA does not preempt a claim for violation of the law. *Miller v. AT&T Network Systems*, 850 F.2d 543, 545-46 (9th Cir. 1988). Stated otherwise, section 301 of the LMRA does not "grant the parties to a collective-bargaining agreement the ability to contract for what is illegal under state law. . . ." *Allis-Chalmers*, *supra*, 471 U.S. at 212; see also *Hayden v. Reickerd*, 957 F.2d 1506, 1509 (9th Cir. 1992).

(*Soremekun*, *supra*, 509 F.3d at p. 990.)

Since plaintiff Benito Hernandez's claims (or a significant portion of them) are premised on state Labor Code violations, it is this court's opinion in reading *Soremekun* that they cannot be waived or modified by the CBA and, particularly, the specific grievance procedures.

Accordingly, Moving Defendants' motion for summary judgment of the complaint against plaintiff Benito Hernandez is DENIED.

This court's review of Moving Defendants' motion for summary judgment/ adjudication is limited to the "Preemption issue." Thus, this court otherwise adopts the ruling

issued by Judge Manoukian on or about May 16, 2024 with regard to Moving Defendants' motion for summary judgment/ adjudication.

The Court will prepare the formal order.

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Calendar Line 9
Case Name: *Maria Lopez v. Roy Abbott*
Case No.: 24CV440901

Before the Court is Plaintiff Maria E. Lopez's motion for an interlocutory judgment of partition and appointment of referee for the single-family residence located at 1906 Somersworth Drive, San Jose, CA 95124, Assessor's Parcel Number 442-18-064 (the "Property"). The motion is made pursuant to Code Civ. Proc., §§ 872.720, 873.070, and 873.060 and on the grounds that Plaintiff is entitled to partition since there is no waiver, the interests of the parties in the Property are undisputed with each holding a 50% interest as tenants-in-common and the manner of partition is by sale because the Property is a single-family residence that cannot be divided, and Plaintiff does not consent to partition by appraisal. The appointment of a referee to facilitate the sale is required by statute. Plaintiff seeks to appoint Attorney Stan Smith as the Partition Referee.

The motion was filed and served on Officer Hummel for Defendant on June 17, 2024. Service may be effectuated on a prisoner by serving process on the sheriff or jailer who has custody of the prisoner. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2008) ¶ 4:132, p. 4-20.) This rule is derived from Code Civ. Proc., §416.90 and Penal Code section 4013. Plaintiff has provided a proof of service for both the summons and complaint and a separate proof of service for the instant motion, both indicating that the documents were personally served by providing them to a Sheriff's deputy at the Elmwood facility. It is presumed that the Sheriff completed their duty to provide the documents to the defendant under Evidence Code section 664. (*Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852, 859.)

No opposition to this motion was filed by Defendant for the original hearing date of July 30, 2004. The motion was continued to September 12, 2024. No opposition was filed. 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 Defendant 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. The motion is GRANTED.

Plaintiff to prepare formal order, proposed Interlocutory Judgment and any necessary appointment papers for the Referee. This matter is set for Status Review on January 16, 2025, at 10 a.m. in Department 18b.

Moving party to prepare formal order.

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