

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

**Department 20, Honorable Socrates Peter Manoukian, Presiding**

**Courtroom Clerk: Hien-Trang Tran-Thien**

191 North First Street, San Jose, CA 95113

Telephone: 408.882.2320

Department20@scscourt.org

"Every case is important" . . . . "No case is more important than any other." —  
United States District Judge Edward Weinfeld (<https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html>)

"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the  
Biggest Case of Your Life." — Common Wisdom.

As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and  
drink as friends." (Shakespeare, *The Taming of the Shrew*, act I, scene ii.)" (*Gregori v. Bank of  
America* (1989) 207 Cal.App.3d 291, 309.)

Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.*  
(1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented  
by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)

By Standing Order of this Court, all parties appearing in this Court are expected to comply with the  
Code of Professionalism adopted by the Santa Clara County Bar Association:

<https://www.sccba.com/code-of-professional-conduct/>

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**DATE: Tuesday, 31 October 2023**

**TIME: 9:00 A.M.**

**Please note that for the indefinite future, all hearings will be conducted remotely as the Old  
Courthouse will be closed. This Department prefers that litigants use Zoom for Law and  
Motion and for Case Management Calendars. Please use the Zoom link below.**

"A person's name is to him or her the sweetest and most important sound in any language."—Dale Carnegie. All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try to be careful how I pronounce the names of others." Please inform the Court how you, or if your client is with you, you and your client prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers. You might also try [www.pronouncenames.com](http://www.pronouncenames.com) but that site mispronounces my name.

You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal  
Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.

Join Zoom Meeting  
<https://scu.zoom.us/j/96144427712?pwd=cW1JYmg5dTdsc3NKNFBpSjlEam5xUT09>  
Meeting ID: 961 4442 7712  
Password: 017350

Join by phone:  
+1 (669) 900-6833  
Meeting ID: 961 4442 7712

One tap mobile  
+16699006833,,961 4442 7712#

## APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in court appearances as well. If you do intend to appear in person, please advise us when you call to contest the tentative ruling so we can give you current instructions as to how to enter the building.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See *Jensen v. Superior Court (San Diego)* (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwidth. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California *Rules of Court*, rule 3.672.

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 8(E) and *California Rules of Court*, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

Please notify this Court immediately if the matter will not be heard on the scheduled date. *California Rules of Court*, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. *California Rules of Court*, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. *California Rules of Court*, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

**All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.**

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will be helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: **Line #/name/party**. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

## CIVILITY.

In the 48 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

This Court is aware of a study being undertaken led by Justice Brian Currey and involving various lawyer groups to redefine rules of civility. This Judge has told Justice Currey that the lack of civility is due more to the inability or unwillingness of judicial officers to enforce the existing rules.

The parties are forewarned that this Court may consider the imposition of sanctions against the party or attorney who engages in disruptive and discourteous behavior during the pendency of this litigation.

## COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); *California Rules of Court*, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if

any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

#### PROTOCOLS DURING THE HEARINGS.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with **California Rules of Court**, rule 3.1312.

#### TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the “Control” key and click. If you see last week’s tentative rulings, you have checked prior to the posting of the current week’s tentative rulings. You will need to either “REFRESH” or “QUIT” your browser and reopen it. Another suggestion is to “clean the cache” of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

**This Court’s tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court’s final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.**

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
<a href="#">LINE 1</a>	20CV369408	Anil Bhatnagar et al vs City of Milpitas et al	<b>Motion of Plaintiff to Enforce This Court’s Order of 17 August 2023.</b>  In an order filed on 18 August 2023, this Court ordered that defendant 200 Serra Way was to pay to counsel for plaintiff the amount of \$3,485.00 for the costs of canceled depositions (Ha Ly and Jyh-Chao Homg) and \$810.00 for the costs and attorney’s fees in the total amount of \$4,295.00. Said payment to be made within 20 days of the filing and service of this order.  This hearing was set by order filed on 03 October 2023 on the ex parte application of plaintiff. All remaining papers were to be filed and served per Code.  It seems that no additional papers have been filed. It is the matter MOOT?  By prior order of this Court, a Trial Setting Conference has been set for 23 January 2024 at 11:00 AM in this Department.  NO TENTATIVE RULING.
<a href="#">LINE 2</a>	2009-1-CV-155774	In re: Matter of Tyrese Burse	<b>Order on Ex Parte Application of Tyrese Burse Authorizing Withdrawal of Funds from Blocked Account.</b>  The application is GRANTED. Mr. Wiley is to prepare the final order for execution by this Court.  NO FORMAL TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 3	22CV407273	Rohno Geppart v. Doe 1, a Utah Corporation; et al.	<p><b>Motion of Defendant Doe 1 to Compel Plaintiff to Identify Doe Defendants.</b></p> <p>The motion of moving party defendant to compel plaintiff to identify all Doe defendants is GRANTED. Plaintiff shall file and serve a formal substitution of party pursuant to <b>Code of Civil Procedure</b>, §§ 473(a)(1) and 474 within two days of this hearing.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 4			SEE ATTACHED TENTATIVE RULING.
LINE 5			SEE ATTACHED TENTATIVE RULING.
LINE 6			SEE ATTACHED TENTATIVE RULING.
LINE 7			SEE ATTACHED TENTATIVE RULING.
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LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 24			SEE ATTACHED TENTATIVE RULING.
LINE 25			SEE ATTACHED TENTATIVE RULING.
LINE 26			SEE ATTACHED TENTATIVE RULING.
LINE 27			SEE ATTACHED TENTATIVE RULING.
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SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

DEPARTMENT 20

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(For Clerk's Use Only)

CASE 22CV407  
NO.: 273

Rohno Geppart v. Doe 1, a Utah Corporation; et al.

DATE: 26 October 2023

TIME: 9:00 am

LINE NUMBER: 03

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2<sup>nd</sup> Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 30 October 2023. Please specify the issue to be contested when calling the Court and Counsel.

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Order on Motion of Defendant Doe 1  
to Compel Plaintiff to Identify Doe Defendants.

The complaint in this matter was filed on 09 November 2022. Plaintiff contends that in 1974 when he was a minor child and a member and parishioner of Doe defendants 1-10 in Milpitas, California, he was sexually molested by defendants' Bishop who defendants knew or should have known was a danger to plaintiff and other minor children and failed to take reasonable steps to protect plaintiff from the danger of being sexually abused by the Bishop. The complaint alleges causes of action for negligence and intentional infliction of emotional distress.

In this motion, defendant Doe 1 seeks an order to Compel Plaintiff to Identify all of the fictitiously-named Doe Defendants.

On 30 June 2023, defense counsel for Doe 2 ("a Utah corporation sole")<sup>1</sup> filed a notice of removal to federal court, appended to which is purportedly a removal petition filed in Federal District Court on 29 June 2023. In a remand order filed on 13 September 2023, the District Court granted the motion of plaintiff to remand the matter back to this Court, finding that there was no authority for the proposition that diversity exists where only fictitious defendants are named.

In an order filed on 16 October 2023, this Court denied the ex parte application of plaintiff Doe 1 for an order identifying other fictitiously-named defendants. This Court stated that a notice motion would be required. In the order denying the application, the Court set a briefing schedule.

Plaintiff has not filed opposition to this motion. It may well be that plaintiff filed a timely opposition to this motion but the papers have not as yet been entered into Odyssey.

Defendant Doe 1 claims that all fictitiously-named defendants have waived the protection of **Code of Civil Procedure**, § 340.1, which requires that the identity of fictitiously-named defendants be kept confidential.

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<sup>1</sup> This Court may have questions about which Doe is the moving party in this motion and in the removal petition.



The parties have stipulated that Does 1 and 2 are out-of-state entities based in Utah. Plaintiff has agreed to stipulate to the names of the three fictitiously-named defendants but has not responded to the proposed stipulation offered by defendants.

The only dispute raised by moving party Doe 1 is about the time for filing the amended complaint. Moving party claims that its right to remove the case to federal court expires on 09 November, 2023. Moving party claims that plaintiff seeks to delay the amendment past that date in order to avoid removal to federal court

According to the email threads attached as Exhibit 1 to the Declaration of Elizabeth Pipkin, plaintiff does not oppose naming all three of the Defendants but does oppose naming only DOE 1 and DOE 2.

The provisions by way defendants in actions of this type may be identified by fictitious names is explained in **Code of Civil Procedure**, § 340.(m).

“Every court shall have the power to do all of the following: . . . . To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein.” (**Code of Civil Procedure**, § 128(a)(4).)

“Variance between the allegation in a pleading and the proof shall not be deemed material, unless it has actually misled the adverse party to his or her prejudice in maintaining his or her action or defense upon the merits. If it appears that a party has been so misled, the court may order the pleading to be amended, upon such terms as may be just.” (**Code of Civil Procedure**, § 469.) “Where the variance is not material, as provided in Section 469 the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.” (**Code of Civil Procedure**, § 470; **Burrows v. Burrows** (1936) 18 Cal. App. 2d 275, 279.)

The power to order an amendment should be exercised when amendment will assist the parties in a fair determination of the merits. (See **Diamond v. Grath** (1941) 46 Cal.App.2d 443.)

As noted above, plaintiff commenced this action on 09 November 2022.

A motion to substitute the true name of a fictitiously named defendant is an ancillary step authorized by **Code of Civil Procedure**, § 474, and determining the propriety of the substitution is incidental to consideration of a prior motion by other defendants to change venue. (See **Gutierrez v. Superior Court of San Francisco** (1966) 243 Cal.App.2d 710, 723-724 (superseded by statute on other grounds, see **Rosas v. Superior Court** (1994) 25 Cal.App.4th 671.)

According to 28 U.S.C. section 1446(c)(1), there is a one year deadline within which moving party defendant may seek to remove this action to federal court. Moving party demonstrates a prima facie showing of “prejudice in maintaining [its] action or defense upon the merits.”

Good cause appearing, the motion of moving party defendant to compel plaintiff to identify all Doe defendants is GRANTED. Plaintiff shall file and serve a formal substitution of party pursuant to **Code of Civil Procedure**, §§ 473(a)(1) and 474 within two days of this hearing.

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DATED:

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HON. SOCRATES PETER MANOUKIAN  
*Judge of the Superior Court  
County of Santa Clara*

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