

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

Department 18b
Honorable Shella Deen, Presiding
Farris Bryant, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: June 25, 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	2005-1-CV-039140	G. GRELLAS vs D. CHONG, et al	Order of Examination. Acknowledgment of Satisfaction of Judgment in Full was filed June 12, 2024, therefore this hearing is OFF CALENDAR.
LINE 2	24CV429766	Jamal Ramses Looking El Bay vs EDWARD A. O HARA, M.D	Demurrer. Scroll down to Line 2 for Tentative Ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 3	19CV360733	Edward Kellar et al vs Central Investments et al	<p>Motion to Compel Payment of Receiver's and his Counsel's Fees. Receiver David P. Stapleton, who was appointed on August 8, 2022, brings a motion to compel payment of his fees of \$68,462.14 and his counsel's fees of \$103,835.21, pursuant to the court's July 5, 2023 order. The order from the motion to settle accounting was filed on May 15, 2023 and Receiver's counsel (Bitan) was directed to submit a final order (Line#8 of May 15, 2023 order). The order granting motion for an order settling and approving Receiver's final report and accounting, terminating receivership, discharging Receiver, exonerating bonds, awarding Receiver's fees, awarding Receiver's legal fees and dissolving injunction was signed by the court on July 5, 2023, and filed on July 12, 2023. Defendant Accounting Data Associates, Inc. appealed the May 15 order and filed an amended appeal to also appeal the July 12, 2023 order. Plaintiffs also filed a cross appeal. This Court has no jurisdiction to hear this motion, as the appeals are still pending, and the instant motion by the Receiver seeks a ruling on issues that are directly embraced by, or affected by, these orders, in particular the July 12, 2023 order. (Code Civ. Proc., §916 subd. (a); <i>Lee law Corp. v. Superior Court</i> (2012) 204 Cal.App.4th 1375, 1383.) As such, the motion is DENIED, without prejudice, until after the appeals have been decided.</p> <p>Opposing party to prepare the formal order.</p>
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LAW AND MOTION TENTATIVE RULINGS

LINE 4	23CV416611	BLUE ARC ELECTRIC, INC. vs FERHAT ATAS et al	Motion to Compel Further Responses without Objections and Responsive Documents. Scroll down to Line 4 for Tentative Ruling
LINE 5	23CV416611	BLUE ARC ELECTRIC, INC. vs FERHAT ATAS et al	Motion for Nunc Pro Tunc Order (for Motion to Compel). Defendant and Cross-Complainant Atash Energy LLC electronically filed and served its Motion to Compel on March 26, 2024 and attempted to obtain a motion reservation on that same date. The filing was rejected by the court on April 4, 2024; the motion was refiled on May 31, 2024, with the appropriate reservation. No good cause shown for failure to follow this court's motion filing requirements and local rules. The motion is therefore DENIED. See also Tentative Ruling on Line 4 . Plaintiff to prepare formal order following hearing.

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LAW AND MOTION TENTATIVE RULINGS

LINE 6	23CV423546	Irina Buckvar et al vs Bernard Buckvar et al	<p>Motion to Compel (Irina). Defendant and Cross-Complainant Bernard Buckvar's Motion to Compel further responses and responsive documents from Plaintiff and Cross-Defendant Irina Buckvar from a request for production of documents attached to an Amended Notice of Deposition (Requests 1 through 19). Some one and a half months <i>after</i> this motion was filed, Plaintiff served Defendant with further responses and documents on June 11, 2024. Plaintiff's opposition was filed the next day. Defendant and Cross-Complainant Bernard Buckvar's request for monetary sanctions is GRANTED. The motion was made with substantial justification and the meet and confer efforts by Plaintiff were neither in good faith, nor reasonable. Plaintiff's request for sanctions is not well taken and is DENIED; sanctions are not warranted in favor of Plaintiff. (Code Civ. Proc., §§2025.280 (a), 2025.450 (a), (g) (1) and (j)).</p> <p>Plaintiff and Cross-Defendant Irina Buckvar shall pay monetary sanctions in the amount of \$3,210 to Defendant and Cross-Complainant Bernard Buckvar within 10 days of this order.</p> <p>Moving party to prepare the formal order after hearing.</p>
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LAW AND MOTION TENTATIVE RULINGS

LINE 7	23CV423546	Irina Buckvar et al vs Bernard Buckvar et al	<p>Motion to Compel (Owen). Defendant and Cross-Complainant Bernard Buckvar's Motion to Compel further responses and responsive documents from Plaintiff and Cross-Defendant Owen Buckvar from a request for production of documents attached to an Amended Notice of Deposition (Requests 1 through 19). Some one and a half months <i>after</i> this motion was filed, Plaintiff served Defendant with further responses and documents on June 11, 2024. Plaintiff's opposition was filed the next day. Defendant and Cross-Complainant Bernard Buckvar's request for monetary sanctions is GRANTED. The motion was made with substantial justification and the meet and confer efforts by Plaintiff were neither in good faith, nor reasonable. Plaintiff's request for sanctions is not well taken and is DENIED; sanctions are not warranted in favor of Plaintiff. (Code Civ. Proc., §§2025.280 (a), 2025.450 (a), (g) (1) and (j)).</p> <p>Plaintiff and Cross-Defendant Owen Buckvar shall pay monetary sanctions in the amount of \$3,210 to Defendant and Cross-Complainant Bernard Buckvar within 10 days of this order.</p> <p>Moving party to prepare the formal order after hearing.</p>
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LAW AND MOTION TENTATIVE RULINGS

LINE 8	20CV374451	Guadalupe Chavez vs FCA US LLC et al	Motion for Attorney's Fees. Plaintiff's motion was filed on May 8, 2024. There is no proof of service of the motion. Absent a proof of service showing that notice of hearing was given, the hearing will not go forward. If no appearance is made by the moving party the matter will be ordered OFF CALENDAR.
LINE 9	23CV409917	Blossom Hill Estates Homeowners Association vs Louise Wollert et al	Motion for Leave to Amend Judgment. The motion is DENIED, without prejudice. The moving papers and supporting declaration do not provide sufficient prove up to amend the judgment to include the foreclosure of the lien or permit the sale of the Subject Property. Moving party to prepare formal order after hearing.
LINE 10	23CV417948	Joely Moreno vs David Freudenstein et al	Motion for Leave to Intervene. OFF CALENDAR.

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LAW AND MOTION TENTATIVE RULINGS

<u>LINE 11</u>	23CV417955	Lightpost Holdings, LLC vs Windermere Holdings, LLC et al	<p>Motion to Withdraw as Attorney. Motion of Attorney David B. Parker of Parker Shaffie, LLP. to be relieved as counsel for Defendant Windermere Holdings, LLC. Notice of hearing was given to Defendant Windermere Holdings, LLC., by mail service and email on May 14, 2024 at Defendant Windermere Holdings, LLC.'s last known address. 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 client has no meritorious arguments. (See <i>Laguna Auto Body v. Farmers Ins. Exchange</i> (1991) 231 Cal. App. 3d 481, 489.) Moving party has met his burden of proof. Good cause appearing, the Motion is GRANTED. The Order will take effect upon the filing and service of the executed order of this Court. David B. Parker remains as counsel for defendant Art Brand Studios, LLC.</p> <p>Moving party to prepare the formal order after hearing, to include the upcoming August 6, 2024 Further Case Management Conference and Motion to Compel.</p>
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LAW AND MOTION TENTATIVE RULINGS

LINE 12	23CV421116	Daniel Mays et. al V. Got Kickz, LLc et al	Motion Requiring Security Undertaking. Motion brought by Defendants Got Kickz, LLC., Joseph Louis and Aiden Louis pursuant to Code of Civil Procedure §1030. Plaintiff Daniel Mays opposes the motion. Defendants have not met their burden to show that there is a reasonable possible possibility that they will obtain a judgment in this action. Plaintiff's evidentiary objections are SUSTAINED. The Motion is DENIED. (Code Civ. Proc., §§1030 and 995.240, <i>Alshafie v. Lallande</i> (2009) 171 Cal.App.4th 421). Plaintiff to prepare the formal order after hearing.
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Calendar Line 2

Case Name: *Jamal Ramses Eagle Comes Looking El Bey v. Dr. Edward O'Hara*

Case No.: 24CV429766

Before the court is defendant Edward A. O'Hara, M.D.'s (erroneously sued as Dr. Edward O'Hara; hereafter, "Dr. O'Hara") demurrer to plaintiff's complaint. Pursuant to California Rule of Court 3.1308, the court issues its tentative ruling as follows.

I. Background.

On January 25, 2024, plaintiff Jamal Ramses Eagle Comes Looking El Bey ("Plaintiff"), a self-represented litigant¹, filed a Judicial Council form complaint against defendant Dr. O'Hara. Paragraph 10 of the form complaint states, "The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached): ... General Negligence [and] Intentional Tort." However, Plaintiff's complaint does not attach either cause of action.

On April 24, 2024, defendant Dr. O'Hara filed the motion now before the court, a demurrer to Plaintiff's complaint.

II. Defendant Dr. O'Hara's demurrer to Plaintiff's complaint is SUSTAINED.

A. General negligence.

To be actionable, a claim of negligence must be based on the existence of a legal duty to exercise due care. (*Peter W. v. San Francisco Unified Sch. Dist.* (1976) 60 Cal.App.3d 814, 820.) The existence of the requisite 'duty of care' is a question of law. (*Thompson v. County of Alameda* (1980) 27 Cal.3d 741, 750.) "The allegations requisite to a cause of action for negligence are *facts* showing a duty of care in the defendant, negligence constituting a breach of duty, and injury to the plaintiff as a proximate result." (*Keech v. Berkeley Unified School Dist.* (1984) 162 Cal.App.3d 464, 468; emphasis added.)

¹ Although a judge should ensure that self-represented litigants are not being misled or unfairly treated (see *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284), self-represented litigants are not entitled to special treatment with regard to the Rules of Court or Code of Civil Procedure. "[W]e cannot disregard the applicable principles of law and accord defendant any special treatment because he instead elected to proceed in propria persona. [Citations.]" (*Stein v. Hassen* (1973) 34 Cal. App. 3d 294, 303.) "A litigant has a right to act as his own attorney [citation] 'but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts.'" (*Lombardi v. Citizens Nat'l Trust & Sav. Bank* (1955) 137 Cal.App.2d 206, 208-209.)

Here, Plaintiff has not set forth any facts from which the court can determine the existence of a legal duty owed by defendant to Plaintiff. Plaintiff's reliance on *Donnelly v. Southern Pacific Co.* (1941) 18 Cal.2d 863 since it does not contain the quote that Plaintiff asserts is found therein and because *Donnelly* did not concern the sufficiency of pleading as it addressed the propriety of a judgment following a jury trial.

Plaintiff, in opposition, also invites this court to consider extrinsic material in determining the sufficiency of his complaint. The court declines to do so. "In reviewing the sufficiency of a complaint against a general demurer, we are guided by long settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which may be judicially noticed.'" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213 – 214.)

Accordingly, defendant Dr. O'Hara's demurrer to the first cause of action in Plaintiff's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for general negligence is SUSTAINED with 10 days' leave to amend.

B. Intentional tort.

There are a myriad of potential claims Plaintiff may be asserting as an "Intentional Tort." Defendant and this court should not be required to surmise. For the same reason explained above, defendant Dr. O'Hara's demurrer to the second cause of action in Plaintiff's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for intentional tort is SUSTAINED with 10 days' leave to amend.

The Court will prepare the order after hearing.

Calendar Line 4

Case Name: *Blue Arc Electric, Inc. vs Ferhat Atas et al*

Case No.: 23CV416611

Before the Court is Defendant and Cross-Complainant Atash Energy LLC's ("Atash Energy") motion to compel further responses without objections and production of documents to its first set of requests for production to Plaintiff and Cross-Defendant Blue Arc Electric, Inc. ("Blue Arc") (Requests 1-35). Atash Energy's sole argument on its motion is that all objections have been waived and Blue Arc should be compelled to provide responses and produce all documents, both without objections.

Blue Arc served verified responses with objections and produced documents after the deadline to respond, on February 8, 2024. Any motion to compel relating to the responses should have been filed on or before March 26, 2024. Due to an admitted calendaring mistake Blue Arc did not calendar the January 22, 2024, deadline to respond to Atash Energy's document request. Upon learning of its mistake, Blue Arc attempted, but failed to get an extension to respond. Given that Blue Arc's counsel declares in his supporting declaration that he made a calendaring *mistake*, and Blue Arc served a response that *substantially complied with the requirements of responses to inspection demands*, this Court considers this grounds for, and grants, relief to Blue Arc – as such, no objections have been waived. (Code Civ. Proc., §2031.300 (a)).

At 10:57 am on March 26, 2024, Atash Energy wrote a letter to Blue Arc demanding responses and documents without objections and requested an extension to file a motion to compel by close of business that same day. No response was received from Blue Arc to the request for an extension to file a motion to compel. Atash Energy proceeded to attempt to file its motion to compel on March 26, 2024 at 11:34pm. The motion was rejected by the court as Atash Energy had failed to obtain a necessary reservation for filing the motion. Atash Energy eventually filed its motion to compel on May 31, 2024, without any further good faith meet and confer effort.

Atash Energy's motion to compel *further responses* was filed more than 45 days after the service of Blue Arc's responses; this Court lacks authority to extend this deadline. (Code Civ. Proc., §2031.310 (c). *Sexton v. Sup.Ct. (Mullikin Med. Ctr.)* (1997) 58 Cal.App.4th 1403) and there also appears to have been a lack of any good faith meet and confer by Atash Energy. (Code Civ. Proc., §2031.310). In its papers and supporting declaration, Atash Energy provides a chronology of what occurred in its late filing, and it also filed a request for a *nunc pro tunc* order to allow the filing dated to be deemed timely. However, it merely details a chronology of events, nowhere does Atash Energy's counsel affirmatively declare any mistake, or reason why it failed to adhere to this court's motion filing requirements. As such, no relief for the late filing is warranted here.

With respect to the motion to compel *further production of documents*, there is no meet and confer requirement and no time limit for filing a motion for compliance. (Code Civ. Proc., §2031.320 and 2031.320 (a)). Atash Energy appears to have limited its motion for compliance to Requests 1-14 and 17-35. Blue Arc's counsel Mr. Rossi's declaration in opposition states at paragraph 5 that he "understand[s] that no documents were withheld on the basis of any

objection.” The Blue Arc verified response states that all documents to which an objection has *not* been asserted *have been produced*. Atash Energy’s reason why documents should be compelled is identical for all 35 requests in its Separate Statement. It does not identify documents or categories of documents it believes should have been produced, but only seeks privileged documents or documents that objections were asserted for to be produced. As this Court has ruled that Blue Arc’s objections stand, there does not appear to be any further documents to be produced based on the verified responses themselves and counsel’s declaration.

The Court will not address the service issue as it appears that Blue Arc’s counsel received Atash Energy’s motion and timely filed its opposition to the motion. However, in the future Atash Energy shall serve Blue Arc at its East Bay address.

For these reasons:

- (1) Atash Energy’s motion to deem all of Blue Arc’s objections waived and to compel further responses to the document request, without objections, is DENIED; and
- (2) Atash Energy’s motion to compel production of documents is DENIED; there was no good faith meet and confer, objections have not deemed waived and the verified responses state that all documents to which no objection has been asserted, have been produced.

Blue Arc to prepare the formal order after hearing.

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