

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

Department 3
Honorable William J. Monahan, Presiding
Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2130

DATE: 5/28//2024 TIME: 9:00 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. today (Friday 5/24/2024) you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling.
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

NOTE: Monday 5/27/24 is Memorial Day, a court holiday.

TO APPEAR AT THE HEARING: The Court prefers in-person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to **Department 3**.

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

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website here:

<https://reservations.sccscourt.org/>

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept., and line number.

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV422976	JPMorgan Chase Bank N.A. vs Thomas Wilkus	Motion: Judgment on Pleadings by plaintiff JPMorgan Chase Bank N.A (“Plaintiff”) and Request for Judicial Notice filed by Plaintiff Unopposed and GRANTED. Plaintiff to prepare order.

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LINE 2	24CV428864	GREGG COLLIE vs Meta Platforms, Inc et al	Hearing: Demurrer to complaint by defendant Meta Platforms, Inc. (“Defendant”) Unopposed and SUSTAINED WITH 15 DAYS LEAVE TO AMEND. Moving party (Defendant) to prepare order.
LINE 3	24CV431733	Spencer Nurse vs John Doe	Motion: Quash subpoena to Google and for sanctions OFF CALENDAR. Vacated per Notice of Withdrawal filed 5/13/2024.
LINE 4	24CV432378	Howard Young vs Pacifica Companies et al	Hearing: Demurrer by defendant Pacifica Companies (“Defendant”) Unopposed and SUSTAINED WITH 15 DAYS LEAVE TO AMEND. Moving party (Defendant) to prepare order.
LINE 5	24CV432378	Weiting Zhan vs Shuaiqi Ge	Motions: Compel defendant Shuaiqi Ge (“Defendant”)’s Responses to Requests for Production of Documents and Interrogatories and for Sanctions by plaintiff Weiting Zhan (“Plaintiff”) (In Pro Per) Ctrl. Click (or scroll down) on Line 5 for tentative ruling. The court will prepare the order.

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LINE 6	21CV391490	Gregory Steshenko vs PATRICK AHRENS et al	<p>Hearing: Other</p> <p>Notice of prefiling order and request for judicial notice filed on 12/8/2021 by defendant Foothill-De Anza Community College District.</p> <p>Amended motion for prefiling order for vexatious litigant and to require security [be furnished by plaintiff Gregory Steshenko ("Plaintiff")] filed on 4/19/2024 by defendants Foothill-De Anza Community College District, Board of Trustee of Foothill-De Anza Community College District and Shinny Dong.</p> <p>These motion(s) are continued to 6/13/2024 at 9am in Dept.3. The court needs more time to consider the voluminous papers and prepare a tentative ruling.</p> <p>The court requests additional papers limited to the following:</p> <ol style="list-style-type: none">(1) Moving parties must submit declarations regarding the calculation/amount of security they are each requesting and must serve and file the papers by 5/29/2024;(2) Plaintiff's objections/declarations regarding the calculation/amount of security must be served and filed by 6/5/2024; and(3) Moving parties' reply objections regarding the calculation/amount of security must be served and filed by 6/7/2024. <p>The court will prepare the order.</p>
LINE 7	22CV404456	Northeast Securities Co., Ltd. vs Que Wenbin et al	<p>Hearing: Pro Hac Vice Counsel</p> <p>Application for the admission of Rongping Wu as counsel <i>pro hac vice</i> for Plaintiff Northeast Securities Co., Ltd.</p> <p>Unopposed and GRANTED. Moving party to prepare order.</p>

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DATE: 5/28//2024 TIME: 9:00 A.M.

LINE 8	24CV430010	SBI Interiors, Inc. vs A-T.E.A.M. Contractors, Inc.	Hearing: Confirm Arbitration Award and issue judgment thereon against Respondent A-T.E.A.M. Contractors, Inc. in the amount of \$109,606.16 in favor of Petitioner SBI Interiors, Inc. Unopposed and GRANTED. Moving party to prepare order.
LINE 9	23CV421219	Subodh Banerjee vs Alifeleti Vaituulala	Hearing: Other in re petition to release property from mechanic's lien and for attorney fees by Petitioner Subodh Banerjee Unopposed and GRANTED. Moving party to prepare order.
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Case Name: *Weiting Zhan v. Shuaiqi Ge*

Case No.: 23-CV-427371

Plaintiff Weiting Zhan (“Plaintiff”)’s motions to compel and for monetary sanctions against Shuaiqi Ge (“Defendant”) filed on 3/28/2024 and 4/19/2024 are DENIED.

On 3/28/2024 Plaintiff filed a motion to compel responses to request for production (“RPD”) [and some interrogatories] and for monetary sanctions with a hearing date of 4/16/2024 (“Motion #1”). Plaintiff’s moving papers were served less than 16 court days before the initial hearing date of 4/16/2024.

Unless otherwise provided by law, all moving papers shall be served and filed at least 16 court days before the hearing. (Cal. Code Civ. Proc. (“CCP”) § 1005(b).) A “court day” for purposes of CCP section 1005 is any day where the court is not closed due to a judicial holiday. (CCP § 133, 134, Cal. Gov. Code § 6701.)

Here, Plaintiff electronically served Defendant with Motion #1 on 3/28/2024. (Plaintiff’s Notice of Motion, Proof of Service.) The hearing for this motion was scheduled for 4/16/2024. (Plaintiff’s Notice of Motion, p. 1.) This was only 13 court days before the hearing was scheduled to take place. Therefore, the 16-court day minimum under CCP section 1005 was not met.

On 4/16/2024, there was a hearing before Judge Pennypacker on Plaintiff’s Motion #1. According to the court clerk’s Minutes, Defendant contested the Tentative Ruling, and the Court said it would issue an order.

On 4/19/2024, Plaintiff filed another motion to compel responses to RPD [and some interrogatories] and monetary sanctions for hearing on 5/28/2024 (“Motion #2”). Motion #2 cites CCP section **2030.300** which deals with **motions to compel further responses to interrogatories** (not document requests).

On 5/6/2024, Judge Pennypacker continued the 4/16/2024 motion to compel “to May 28, 2024, at 9 a.m. in department 3 when it appears Plaintiff has noticed another motion to compel to be heard.” (Order Continuing Motion to Compel to May 28, 2024, filed May 6, 2024.)

The court exercised its discretion and considered Plaintiff’s moving papers filed 3/28/2024 and 4/19/2024, Defendant’s opposition papers filed 5/14/2024 and 5/17/2024, and Plaintiff’s response filed 5/16/2024.

Defendant’s Request for Judicial Notice (“RJN”) filed 5/14/2024 is DENIED. It is unclear what the relevance of other Complaints by Plaintiff has with respect to these motions to compel, and Defendants failed to attach any complaints to the RJN. Footnote 2 in Defendant’s opposition papers filed 5/14/2023 mentions these other complaints, without explaining their relevance to this discovery motion.

Plaintiff's Motion #1 states:

When a party makes an inspection demand under Section 2031.101 of the Code of Civil Procedure and the party to whom the demand is directed **fails to respond**, the demanding party may move for an order compelling response and for a monetary sanction under Section 2031.030 of the Code of Civil Procedure (Code Civ. Proc. § **2031.300.**)

(Plaintiff's Motion to Compel filed 3/28/2024, p. 3 [emphasis added].)

However, CCP section **2031.300** deals with the effect of failure to serve a "timely response" and motions to compel a "response to the demand." (*Id.*) Plaintiff failed to show that there were any untimely responses so her motion to compel under CCP section 2031.300 is DENIED.

Instead, it appears in Motion #1 that Plaintiff is seeking motion to compel a **further** response to RPD No. 1 [and to some interrogatories] but cited no law in support of that type of motion in Motion #1. Accordingly, Plaintiff's Motion #1 to compel is DENIED.

Plaintiff's Motion #2 cites CCP section **2030.300** which deals with **motions to compel further responses to interrogatories** (not document requests). Accordingly, Plaintiff's Motion #2 to compel RPD No.1 or further responses to RPD No. 1 is DENIED.

A motion to compel further responses to interrogatories requires a separate statement listing each interrogatory to which a further response is requested, the response given, and the factual and legal reasons for compelling it. Nothing may be incorporated by reference. (Cal. Rules of Ct. ("CRC") 3.1345(a)(2).) A judge may also allow the moving party to submit a concise outline of the discovery request and each response that is in dispute instead of a separate statement. (CCP § 2030.300(b)(2).)

Next, Plaintiff seeks a further response to special interrogatory ("SI") set one [however the interrogatory number is not specified]:

As of March 19, 2021, can you specify the number of text messages you received from Ms. Jianing Tang prior to your decision to contact 911?

According to Plaintiff's moving papers, Defendant's response was "A total of 13 messages." This is a proper response.

Next, according to Plaintiff's papers, Defendant's response to SI #1 and SI # 2 was "I do not recall." However, it is unclear from Plaintiff's moving papers what set number of interrogatories Plaintiff is referring to.

According to Defendant's opposition: Plaintiff propounded 4 sets of special interrogatories and started each set with interrogatory number 1. Plaintiff's SI sets one and two totaled 33 interrogatories. Defendant responded to the first 2 interrogatories in Plaintiff's SI set three, while objecting to the remaining 11 interrogatories. As Plaintiff did not provide any declaration to support excess interrogatories contained in Plaintiff's SI set 3 Nos. 3 to 13 (which were actually SI Nos. 36 to 46. (See CCP § 2030.030(c) ["Unless a declaration as

described in [CCP] Section 2030.050 has been made, a party need only respond to the first 35 specially prepared interrogatories served, if that party states an objection to the balance, under [CCP] Section 2030.240, on the ground that the limit has been exceeded.”)]

Next, Plaintiff’s papers propose to rephrase 8 interrogatory questions that Defendant had objected to as vague. Apparently, Plaintiff concedes the Defendant’s vague objection was valid, because the original questions and responses are not included (indeed the court cannot even tell what their original numbers or set numbers were by looking at page 6 of Plaintiff’s motion). The motion to compel a response to these 8 rephrased questions is DENIED.

For a motion to compel discovery responses to be properly submitted, the moving party must have filed an accompanying meet and confer declaration. (CCP §2025.480(b).) Such a declaration must provide facts which demonstrate a reasonable and good faith attempt to informally resolve discovery disputes leading to the motion to compel. (CCP §2016.040.) The intent of the legislature with regards to motions to compel discovery responses has been interpreted to be that the notice of motion must be accompanied by a meet and confer declaration. (*Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal. App. 5th 127, 138.) Generally, consideration of motions to compel discovery responses must first be paired with the question of whether a serious effort has been made at an informal resolution of the discovery dispute. (*Clement v. Alegre* (2009) 177 Cal. App. 4th 1277.) A motion to compel further discovery responses must also be attached to a meet and confer declaration. (CCP §2030(b)(1).) Plaintiff contends that Plaintiff complied with this statutory requirement through the provision of exhibit attachments. (Plaintiff’s Motions, Ex. 3.)

The Court is afforded discretion in determining the sufficiency of the Plaintiff’s declaration in complying with statutory meet and confer obligations. (*Obregon v. Superior Court* (1998) 67 Cal. App. 4th 424, 431.) In exercising that discretion, the Court may look to the circumstances surrounding a case and the relative complexity of the dispute at issue to determine sufficiency of “reasonable” efforts. (*Id.*) The basis of the dispute, history of the litigation, type and scope of discovery are all factors that may prove relevant in the determination of whether efforts aimed at an informal resolution were sufficient. (*Id.*)

Observation of the two electronic letters submitted to counsel for the Defendant does not support the notion that reasonable efforts were made. Plaintiff sent two letters proposing that counsel for the two parties meet and confer, and then filed these motions to compel. Several actions could have been taken beyond that of simply sending two letters, to include an attempt to contact counsel for the Defendant via a phone call to discuss all the issues in these motions, before filing any motion to compel requesting the court to resolve this discovery dispute.

Plaintiff’s motions to compel (Motion #1 and Motion #2) are DENIED.

Plaintiff’s requests for monetary sanctions are DENIED. Plaintiff did not prevail on either motion. The person(s) subject to sanction acted with substantial justification or other circumstances make the imposition of sanctions unjust.

The court will prepare the order.

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