

**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: October 15, 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.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml

SCHEDULING MOTION HEARINGS: Please go to <https://reservations.scsccourt.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.scsccourt.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
<u>LINE 1</u>	2002-7-CV-425584	National Credit Acceptance Vs Larijani Mayam	Order of Examination (L. Mayam) OFF CALENDAR per moving party.
<u>LINE 2</u>	2008-1-CV-111840	Columbia Credit Services, Inc. vs T. Hickey	Order of Examination (Timothy F. Hickey aka F. Timothy Hickey) A judgment creditor may apply to the proper court for an order requiring the judgment debtor to appear before the court, or before a court-appointed referee, and furnish information to aid in enforcement of the money judgment. (Code of Civil Procedure, § 708.110(a).) Information to aid in enforcement of the judgment may include information concerning future employment prospects. The debtor may not be ordered to appear if the judgment is no longer enforceable. (Law Revision Comment to Code of Civil Procedure, § 708.110.) The Order of Examination is to be conducted pursuant to Code of Civil Procedure, §§ 491.110, 708.110, 708.120, and 708.170. Unless the parties agree otherwise, all parties are to appear in Department 18b at 9:00 a.m.

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LAW AND MOTION TENTATIVE RULINGS

LINE 3	24CV438239	HOWARD YOUNG vs HYATT REGENCY HOTEL SANTA CLARA et al	Demurrer Defendants Hyatt Regency Santa Clara, Mike McClatchy, and Ruby Roberts demur to each cause of action of Plaintiff Howard Young's Complaint. A notice of motion with the hearing date and time was served by first class mail was filed on June 18, 2024. A proof of service by first class mail of service of an amended notice was filed on July 18, 2024. Any opposition was due on October 2, 2024. Plaintiff failed to oppose the motion. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (<i>Sexton v. Superior Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) Good cause appearing, Defendants' demurrer is SUSTAINED WITH 15 DAYS' LEAVE TO AMEND. Moving parties to prepare the formal order.
LINE 4	24CV441593	Fuheng, Inc. et al vs Zihan Liu	Demurrer A Cross-complaint was filed on July 29, 2024, by Defendant/Cross-complainant Liu. Cross-defendants filed a demurrer to the Liu Cross-complaint on August 14, 2024. A proof of first-class mail service of the demurrer was filed on August 14, 2024. A First Amended Cross-Complaint was filed on September 30, 2024, thereby rendering Cross-defendants' demurrer MOOT.

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LAW AND MOTION TENTATIVE RULINGS

LINE 5	23CV426976	Fidel Lopez vs BMW of North America, LLC et al	Motion to Compel (Form Interrogatories) Plaintiff Fidel Lopez’s motion to compel Defendant BMW of North America, LLC, to further respond to Form Interrogatories, 12.1, 15.1 and 17.1 (Set One), to remove all general objections made in a preliminary statement, to sign all responses under oath, to overrule improper objections, and for sanctions of \$2,150. Defendant opposes the motion. Good cause appearing, the motion is GRANTED. Responses must be under oath Code Civ. Proc., §§ 2030.010 (a) and 2030.210 (a). An unsworn response is tantamount to no response for purposes of a motion to compel. This discovery was propounded some ten months ago. The Court is not persuaded by Defendant’s reason for failing to meet and confer, particularly given that once counsel reengaged with this case, there was still no effort to meet and confer to try to resolve this discovery dispute. Defendant shall provide verified, further code-compliant responses to all parts of Form Interrogatories 12.1, 15.1 and 17.1 (except for RFA number 5), without objections by October 31, 2024. These interrogatories are approved by Judicial Council and Defendant’s objections are not well taken. A request may ask a party for a legal conclusion (<i>Grace v. Mansoorian</i> (2105) 240 CA4th 523, Code Civ. Proc., §§2030.010 (b) and 2033.010)). Sanctions in the amount of \$1,770 are awarded to Plaintiff against Defendant and shall be paid by October 31, 2024. Moving party to prepare the formal order.
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LAW AND MOTION TENTATIVE RULINGS

LINE 6	23CV426976	Fidel Lopez vs BMW of North America, LLC et al	Motion to Compel (Requests for Admission) Plaintiff Fidel Lopez's motion to compel Defendant BMW of North America, LLC, to further respond to Requests for Admission numbers 1, 2, 6 and 9-15 (Set One) and request for sanctions. This discovery was propounded some ten months ago. The Court is not persuaded by Defendant's reason for failing to meet and confer, particularly given that once counsel reengaged with this case, there was still no effort to meet and confer and try to resolve this discovery dispute. Defendant opposes the motion. Good cause appearing, the motion is GRANTED. Defendant shall provide verified, further code-compliant responses to all of the requests at issue by October 31, 2024. Defendant's objections are not well taken. A request may ask a party for a legal conclusion (<i>Grace v. Mansoorian</i> (2105) 240 CA4th 523, Code Civ. Proc., §2033.010)). Sanctions in the amount of \$582.50 are awarded to Plaintiff against Defendant and shall be paid by October 31, 2024. Moving party to prepare the formal order.
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LAW AND MOTION TENTATIVE RULINGS

LINE 7	23CV426976	Fidel Lopez vs BMW of North America, LLC et al	Motion to Compel (Request for Production of Documents) Plaintiff Fidel Lopez's motion to compel Defendant BMW of North America, LLC, to further respond to, and produce responsive documents to request numbers 1, 2, 3, 4, 6, 8, 9, 10, 13-29, 32-40 (Set One) and request for sanctions of \$2,577. The motion to compel is CONTINUED to December 12, 2024, at 9 a.m. in Department 18b. The parties are ordered to meet and confer in good faith, in person, by phone or video conference regarding the discovery in dispute in as many sessions as is necessary to address all the discovery in dispute. In the meet and confer(s), counsel shall address <i>all</i> the requests that are in dispute. The parties shall file a <i>joint</i> statement by noon on November 12, 2024, as to the status of the further meet and confer efforts and shall identify which discovery requests and issues remain in dispute and the reasons why responses and/or documents should be compelled or why not. Moving party to prepare a formal order.
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LAW AND MOTION TENTATIVE RULINGS

LINE 8	23CV426976	Fidel Lopez vs BMW of North America, LLC et al	Motion to Compel (Special Interrogatories) Plaintiff Fidel Lopez's motion to compel Defendant BMW of North America, LLC, to further respond to Special Interrogatory numbers 1-42 (Set One) and request for sanction of \$2,435. The motion to compel is CONTINUED to December 12, 2024, at 9 a.m. in Department 18b. The parties are ordered to meet and confer in good faith, in person, by phone or video conference regarding the discovery in dispute in as many sessions as is necessary to address all the discovery in dispute. In the meet and confer(s), counsel shall address <i>all</i> the interrogatories that are in dispute. The parties shall file a <i>joint</i> statement by noon on November 12, 2024, as to the status of the further meet and confer efforts and shall identify which interrogatories remain in dispute and the reasons why further responses should be compelled or why not. Moving party to prepare a formal order.
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LAW AND MOTION TENTATIVE RULINGS

LINE 9	17CV320282	Barbara Holdings, Inc vs Tracy Smith et al	Motion for Reconsideration Motion for reconsideration by Third-party claimant Global Quest, Inc. of the ruling on its ownership claim and opposition to judgment creditor assignee Paul Kalra's petition for hearing on third-party ownership claim. Global Quest argues that it was not allowed to contest this Court's tentative ruling, and the Court should reconsider its ruling as this equates to "new facts and circumstances." The Court disagrees. Code of Civil Procedure section 1008 section 1008, subdivision (a), "requires that any such motion be (1) filed within 10 days after service upon the party of written notice of entry of the order of which reconsideration is sought, (2) supported by new additional facts, circumstances or law, and (3) accompanied by an affidavit detailing the circumstances of the first motion and the respects in which the new motion differs from it." (<i>Id.</i>) The legislative intent was to restrict motions for reconsideration to circumstances where a party offers the court some fact or circumstance not previously considered, and some valid reason for not offering it earlier. (<i>Gilberd v. AC Transit</i> (1995) 32 Cal.App.4 th 1494, 1500; see <i>Baldwin v. Home Sav. Of America</i> (1997) 59 Cal.App.4 th 1192, 1198.) The burden under Section 1008 "is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial." (<i>New York Times Co. v. Superior Court</i> (2005) 135 Cal.App.4 th 206, 212-213. Third-party claimant Global Quest fully briefed its ownership claim, but both failed to appear at the hearing of the petition and failed to present any "new facts and circumstances" in its motion for reconsideration. As such, Third-party claimant Global Quest's motion for reconsideration is DENIED. This Court's July 25, 2024 order shall remain as ordered. The 5318 Messing Road, Valley Springs, California property is subject to Kalra's senior lien and this court's June 4, 2024 order for sale of real property remains in full force and effect. Kalra to prepare formal order.
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LAW AND MOTION TENTATIVE RULINGS

LINE 10	21CV387995	Los Gatos Trade Line Corporation, a California corporation vs Jacqueline Chartier et al	<p>Motion to Compel Judicial Reference and Request for Stay</p> <p>Defendants Cupertino Dev. Corp., Los Gatos Blvd., LLC, Jacqueline Chartier, Chartier Property Mgt., Charles Ott, Stanley Howard, and Robert Kahn's motion to stay proceedings and compel a judicial reference. This motion was originally heard on April 4, 2024, and continued. The motion is made pursuant to paragraph 17 of the Azure Agreement, attached as Exhibit B to the compliant and as Exhibit A to the Declaration of Stanley Howard, and Code of Civil Procedure §638. Paragraphs 16 and 17 of the Azure Agreement, on which Defendants rely provide that the "parties agree to mediate any dispute or claim arising between them out of this Agreement or any resulting transaction before resorting to any other action" (para. 16). And "<i>In the event mediation is not successful</i>, any dispute or claim arising out of this Agreement, or any resulting transaction may at the sole election of CDC be sent to a judicial reference". (para. 17, emphasis added.) Moving parties' Amended notice filed July 22, 2024, brings the motion "requiring plaintiff Los Gatos Trade Line Corporation to participate in a judicial reference should the presently agreed to mediation be unsuccessful in resolving all of the disputes between the parties". As with the April 4, 2024, hearing, this motion is still premature. The parties appear to still be in mediation. If the reference clause in the agreement is effective and not waived, it provides that a reference be made <i>only if mediation is unsuccessful</i>. There is no evidence currently before the Court indicating that the parties' ongoing mediation has been unsuccessful. Thus, this motion is DENIED WITHOUT PREJUDICE to being renewed if the parties determine mediation has not been successful.</p> <p>Moving parties to prepare the formal order.</p>
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LAW AND MOTION TENTATIVE RULINGS

LINE 11	24CV430688	Galina Zybina vs Linh Ngo	Compromise of Minor's Claim. No Proof of service on file for Petition for Approval of Compromise of Claim. The hearing of this Petition is continued to October 24, 2024 at 9 a.m. in Department 18b to allow Petitioner to file Proof of Service. Moving party to prepare the formal order after hearing.
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