SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: September 10, 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.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. 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.

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.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

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.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	24CV432129	Derek Daniel Bobadilla v. Loan Factory, Inc.	Motion to strike: this case has been reassigned to a complex litigation department. The motion will now be heard on October 9, 2024 at 1:30 p.m. in Department 19.
LINE 2	21CV375176	James Estrada v. City of San Jose	OFF CALENDAR
LINE 3	21CV376482	Fred Rassaii v. The Board of Trustees of the California State University	Click on LINE 3 or scroll down for ruling.
LINE 4	23CV427904	Eric F. Hartman v. Lynn Dornon Kuehn	Click on LINE 4 or scroll down for ruling.
LINE 5	2014-1-CV-273768	Paramount Maintenance, Inc. v. Dhyanesh Harshad Bagadia et al.	Motion to substitute Fidelity National Title Insurance Company in place of Dhyanesh H. Bagadia and Sweta K. Doshi: notice is proper, and the motion is unopposed. The court grants the request for judicial notice and finds good cause to GRANT the motion. Moving party will submit a proposed order for the court's signature.
LINE 6	19CV352403	Deanna Lacy et al. v. San Joaquin Regional Rail Commission et al.	Application of Nathan Karlin to appear pro hac vice: parties to appear. On August 8, 2024, the court advanced the hearing date on this motion, with the proviso that the moving party would provide notice to all parties and the State Bar of California. The court sees no further proof of service in the file, so it does not know whether notice is now proper for this application.

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LINE #	CASE #	CASE TITLE	RULING
LINE 7	22CV394614	Good Samaritan Hospital, L.P. v. MultiPlan, Inc. et al.	Application of Katherine C. Mannino to appear pro hac vice: notice is proper. If no party or third-party (*e.g.*, the State Bar of California) appears at the hearing to object to the application, the court will GRANT it.
LINE 8	22CV394614	Good Samaritan Hospital, L.P. v. MultiPlan, Inc. et al.	Application of Amber D. Reece to appear pro hac vice: parties to appear. It does not look like the moving party provided notice to the State Bar of California, as instructed by the court on August 20, 2024 and as required by CRC 9.40(c)(1). Accordingly, it appears that notice is still not proper for this application.
LINE 9	22CV397491	Barjinderpal Gill v. Amy Lui et al.	Application of Keith E. Edeus to appear pro hac vice: parties to appear. According to the proof of service filed on August 8, 2024, the moving party did not provide notice to the State Bar of California, as required by CRC 9.40(c)(1).
LINE 10	22CV402600	Bank of America, N.A. v. Khai H. Tran	Motion to set aside dismissal under CCP § 473(b): although plaintiff has shown "mistake" and "inadvertence" under § 473(b), the motion is not timely. It must be brought "within a reasonable time, in no case exceeding six months," and here, it was filed on July 8, 2024, seven and a half months after the dismissal on November 20, 2023. The motion is therefore DENIED.
LINE 11	24CV433838	Jill Stelfox et al. v. Panzura, LLC	Click on LINE 11 or scroll down for ruling.

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Calendar Line 3
Case Name: *Fred Rassaii v. The Board of Trustees of the California State University*
Case No.: 21CV376482

Defendant The Board of Trustees of the California State University ("CSU") moves to compel plaintiff Fred Rassaii to respond to questions that he refused to answer at a deposition on June 6, 2024. It appears that the primary basis upon which Rassaii refused to answer these questions was "relevance," because he believed that the questions were about a prior case between the parties (20CV374092) rather than the present case. The problem with Rassaii's position is that "relevance" is not a proper basis on which to refuse to answer deposition questions. Moreover, upon reviewing the questions, the court finds that they were potentially relevant, particularly given that the prior case and the present case are related to each other, contrary to Rassaii's contentions.

The court therefore GRANTS the motion as to Questions Nos. 1, 3, and 4 in CSU's Statement of Disputed Questions and Answers and orders Rassaii to answer them under oath. As for Question No. 2, the court finds that it was unnecessarily argumentative (and generally unnecessary), and so the court DENIES the motion as to that question.

In his opposition, Rassaii asks the court to make certain definitive rulings "once and for all" in this case, but these issues have not been properly raised, and so the court declines to do so. (Opposition, p. 7:13-17.)

CSU states that it has incurred $2,910 in bringing this motion, and it requests a monetary sanction of $290—less than 10% of its out-of-pocket cost—given that Rassaii claims that he is indigent. Although the court finds this request to be reasonable, the court declines to order sanctions for this particular motion.

It is so ordered.

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Calendar Line 4
Case Name: *Eric F. Hartman v. Lynn Dornon Kuehn*
Case No.: 23CV427904

This is a motion to compel further responses to form interrogatories and requests for production of documents, propounded by defendant and cross-complainant Lynn Kuehn on plaintiff Eric Hartman. Many of these discovery requests are based on Hartman's first amended cross-complaint ("FAXC"), which the court ordered stricken on August 29, 2024. The motion is therefore DENIED as to those requests that are expressly tied to the FAXC. On the other hand, the motion is GRANTED as to those requests that are not so limited in scope.

Requests for Production Nos. 31-37: these requests focus on the "Stafford Court Homeowners Association," which is the subject of the FAXC but is also the subject of Hartman's complaint and Kuehn's cross-complaint. The only basis for Hartman's objections and opposition to these requests is that his original cross-complaint was "super[s]eded" by the FAXC. This fails to address how the information is relevant to the other pleadings, and so the court GRANTS the motion as to these requests.

Requests for Production Nos. 38-40: these requests are limited to the allegations of Hartman's cross-complaint or FAXC, and so the motion is DENIED as to these requests.

Form Interrogatories Nos. 1.1, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, and 12.7: DENIED. These interrogatories are limited to FAXC cross-complaint and FAXC.

Form Interrogatory No. 17.1: GRANTED as to **RFAs Nos. 1-13 and 15-17**, which are broader than the FAXC; DENIED as to **RFA No. 18**, which is limited to the FAXC. (And the motion does not seek to compel a further answer as to **RFA No. 14**.)

For those requests or interrogatories as to which the court is granting the motion, Hartman must serve supplemental responses within 20 days of notice of entry of this order.

The court denies Kuehn's request for monetary sanctions, given that so much of this motion to compel was ultimately rendered moot by the August 29, 2024 motion to strike.

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Calendar Line 11
Case Name: *Jill Stelfox et al. v. Panzura, LLC*
Case No.: 24CV433838

This is a motion to stay or dismiss the action based on the doctrine of inconvenient forum (a.k.a., "forum non conveniens"), filed by defendant Panzura, LLC ("Panzura"). Panzura argues that Texas is a "far more suitable forum than California to adjudicate Plaintiffs' claims." (Memorandum, p. 7:17-18.) The court finds that Panzura has not met its burden of showing that California would be an inconvenient forum and therefore DENIES the motion.

1. The Legal Standard

As both sides acknowledge, the relevant legal standard on a forum non conveniens motion is set forth in *Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751:

> In determining whether to grant a motion based on forum non conveniens, a court must first determine whether the alternate forum is a "suitable" place for trial. If it is, the next step is to consider the private interests of the litigants and the interests of the public in retaining the action for trial in California. The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation.

2. Suitability of the Forum

Here, Panzura has shown that Texas would be a "suitable" forum. No one disputes that Texas—just like California—has jurisdiction over the parties. In addition, there is apparently no statute of limitations bar to the case being filed and heard in Texas. Although Plaintiffs argue that the choice-of-law clause in their employment agreements specifies that California law applies, they do not make any showing that the Texas courts would be incapable of applying California law. As a consequence, the court finds that Panzura has satisfied the first part of the analysis.

3. The Private Interests of the Parties and the Interests of the Public

As for whether the private interests of the litigants or the interests of the public favor Texas over California, the court concludes that the answer is not so clear cut.

First, it appears that because Panzura had a "remote-first" work culture, employees of the company—and even office addresses—frequently moved.[1] Although plaintiffs Jill Stelfox

[1] Panzura does not dispute Plaintiffs' claim that it was a largely remote workplace. In fact, its supporting declarations appear to confirm it.

and Steven Stelfox were Texas residents at the time this case was filed (March 25, 2024), it now appears that they are Oregon residents. In addition, they were apparently Texas residents for only two years (2022-2024), and it is not exactly clear where they resided before that, though they claim that they spent most of their time in California. Although Panzura allegedly had its corporate headquarters in San Jose, California at the time this case was filed (Amended Complaint, ¶ 4), Panzura now claims that its "principal office" is in Plano, Texas. Many of the other employees or former employees of Panzura who are named in the amended complaint or in the parties' papers apparently resided in various different states, as well. In addition to California and Texas, various officers and board members reside, or resided, in Illinois, South Carolina, and Alabama. It appears that many of these individuals traveled frequently for work.

Second, although only one of the three plaintiffs (Shelby Stelfox) resides in California, it is ordinarily the case that a California plaintiff's choice of forum is accorded a "strong presumption." (*Fox Factory, Inc. v. Superior Court* (2017) 11 Cal.App.5th 197, 204-207.) Panzura argues that Shelby Stelfox's causes of action are merely "derivative" of Jill Stelfox's causes of action, and so the presumption should not be so strong in this particular instance. The court finds that it does not have enough information about the facts of this case to make a conclusive determination about the extent to which Shelby has standalone claims or whether they are purely "derivative." Nevertheless, even if the court were to find that only a "normal" presumption applied to the Plaintiffs' choice of forum here, the court would still determine that Panzura has not met its burden of overcoming that presumption with respect to the private interests of the litigants:

- As noted above, the party witnesses currently reside in Oregon (Jill and Steven), California (Shelby), and Texas (Panzura), but they recently resided in Texas, California, and California, respectively, and at some point in the past, it appears that they all resided in California.

- As for the potential third-party witnesses in this case, most of whom are either current or former employees of Panzura, they are literally all over the map:

    - Of the individuals identified in the amended complaint, Dan Waldschmidt is a resident of South Carolina, Ben Chereskin is a resident of Illinois, Ryan Varavadekar is a resident of Illinois, "Junior Female Employee" ("JFE") is a resident of California, Brett McClure is a resident of Alabama, Brian Jorgensen is a resident of Texas, and Joel Clark is a resident of Texas.[2] The home states of the remaining individuals in the amended complaint (Patrick Harr, Sara Waldschmidt, Brian Cook, William Sidel, Toby McCullough, Mike Glaser, Nathan Smith, Matt Richards, Robin McCaffrey, and Jeff Craven) are unknown.

[2] Panzura's opening papers are artfully phrased to say that Waldschmidt "has an apartment in Texas," without stating definitively that Texas is his primary residence. In Panzura's reply papers, Waldschmidt's supplemental declaration is again ambiguously phrased to state that he "leased a townhome in Texas," even while acknowledging that his family lives in Greenville, South Carolina. The court finds that Waldschmidt's supplemental declaration is evasive and characterized by circumlocution rather than a clear and definitive identification of his primary residence.

- In addition, Plaintiffs contend that there are additional "key" witnesses, not named in the amended complaint, who have percipient testimony to offer in this case: Ed Peters (Texas), Darrin Shimizu (California), Sundar Kanthadai (California), Julia Cu (California), James Saey (California), Don Foster (Texas), Nishita Cummings (California), Julie Parrish (California), Stephen Singh (Massachusetts), Bruce Haemmerle (California), Michelle Benton (California), Lindsey Torres (California), and Dave East (California).

- Although it is difficult for the court to believe that all of these individuals will be needed to testify, or even to provide discovery, in this case, it is also difficult to see how the convenience of witnesses necessarily weighs in favor of a Texas forum. At the very least, many of the supposedly key third-party witnesses (Waldschmidt, Chereskin, Varvadekar, JFE, McClure, Jorgensen, and Clark) reside in all different states.

- It is also apparent that the parties and key witnesses were constantly traveling or appearing remotely as part of their day-to-day duties at Panzura. Given the constant travel that appears to have been a feature of Panzura's work "culture," it is difficult to see how a California forum would be any more inconvenient than a Texas forum for the individuals who would ultimately be called to serve as witnesses. As far as the court can tell, both California and Texas would be equally convenient or inconvenient for a similar number of party and non-party witnesses.

- Panzura argues that the "pivotal 'confrontation' of Dan Waldschmidt—the supposed impetus behind Waldschmidt's alleged unlawful retaliation—occurred in Texas," (Reply, p. 10:23-25), but the court finds that this event was just one of a series of events giving rise to this lawsuit, some of which occurred in Texas, but some of which occurred in California, Illinois, and elsewhere. (Amended Complaint, ¶¶ 19-20, 25, 30, 33, 38, 40-41, 42, 44-45, 46-60, 64-65.)

Finally, for similar reasons, the court finds that the interests of the public do not obviously weigh in favor of Texas over California. On these facts, the court has no basis for concluding that Texas has a stronger interest in adjudicating this matter than California. Indeed, because California law indisputably applies to the terms of Plaintiffs' employment agreements, California does have an interest in applying its own law to regulate the conduct at issue here. (See *Great Northern Railway Co. v. Superior Court* (1970) 12 Cal.App.3d 105, 114.)

For these reasons, the court finds that the motion must be denied.

4. Evidentiary Objections

Both sides have objected to evidence submitted by the other. The court finds that most of the objections are directed to relatively unimportant evidence. Nevertheless, the court rules as follows:

- The court SUSTAINS Panzura's objections to the statements in Shelby Stelfox's declaration regarding Panzura's current operations (as of January 2024).

- The court OVERRULES Panzura's objections to the statements in Shelby Stelfox's declaration regarding Daniel Waldschmidt's alleged improprieties and whereabouts, finding that these objections go primarily to the weight of the evidence, rather than its admissibility.

- The court SUSTAINS Panzura's objections to the statements in Jill Stelfox's declaration regarding Panzura's current operations (as of January 2024).

- The court OVERRULES Panzura's objections to the statements in Jill Stelfox's declaration regarding Waldschmidt's alleged improprieties, whereabouts, qualifications for his job, and alleged animus toward Jill Stelfox.

- The court SUSTAINS Panzura's objections to the statements in Steven Stelfox's declaration regarding Panzura's current operations (as of January 2024).

- The court OVERRULES Panzura's objections to the exhibits attached to Plaintiffs' declarations. Again, these objections go to weight rather than admissibility.

- The court OVERRULES Plaintiffs' objections to the supplemental declaration of Joel Clark, as well as Exhibit A to that declaration. The court finds that the statements and exhibit at issue are directly responsive to the arguments raised in Plaintiffs' opposition. The court also OVERRULES Plaintiffs' objection to Exhibit A to the Waldschmidt declaration, finding that the arguments go to the weight of the evidence.

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