

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

**Department 3**

**Honorable William J. Monahan, Presiding**

Allison Croft, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: (408) 882-2130

**DATE: 2/8/2024 TIME: 9:00 A.M.**

**TO CONTEST THE RULING:** Before 4:00 p.m. today 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.)

**TO APPEAR AT THE HEARING:** The Court strongly 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](https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml)

**TO SET YOUR NEXT HEARING DATE:** You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: **408-882-2430** When you can call: **Monday to Friday, 8:30 am to 12:30 pm**

**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
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<a href="#">LINE 1</a>	19CV359049	Brandon Flora vs BASS PRO OUTDOOR WORLD, LLC	<p>Motion to compel plaintiff Brandon Flora (“Plaintiff”) to sign authorization for release of medical records from Kaiser Behavioral/Mental Health Department by defendant Bass Pro Outdoor World, LLC a Missouri Corp. dba Uncle Buck’s Fishbowl and Grill Shop (“Defendant”) and for an order that Plaintiff and his attorney of record, jointly and severally, pay moving party \$1,985 in monetary sanctions for the reasonable costs and expenses, including attorney’s fees, incurred in this proceeding.</p> <p>This motion is continued to May 16, 2024, at 9am in D24 and the CMC on 2/13/2024 at 10 am in Dept. 3 is continued to May 16, 2024, at 10 am in Dept. 3.</p>
<a href="#">LINE 2</a>	21CV390457	MIJA O’CONNOR vs MIRADRY, INC. et al	<p>Motion: Compel further responses by Miradry ,Inc to plaintiff’s requests for production (set 4) by Plaintiff</p> <p>OFF CALENDAR. Motion to compel has been withdrawn by the moving party.</p>
<a href="#">LINE 3</a>	19CV353588	AMERICAN EXPRESS NATIONAL BANK vs DELFINO CRUZ	<p>Motion to vacate the conditional dismissal and for entry of judgment of \$6,633.57 plus costs against defendant Delfino Cruz pursuant to Code of Civil Procedure Section 664.6 by Plaintiff American Express National Bank.</p> <p>Unopposed and GRANTED.</p>

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<a href="#">LINE 4</a>	22CV398136	WELLS FARGO BANK, N.A. vs RACHEL TORDA	<p>Hearing: Petition to compel arbitration</p> <p>Good cause appearing, the petition to compel arbitration with plaintiff Wells Fargo Bank, N.A. (“Plaintiff”) by defendant Rachel Torda (in Pro Per) (“Defendant”) and for stay [of the proceedings in this action pending the outcome of the arbitration] proceedings is GRANTED on the following conditions:</p> <ol style="list-style-type: none"><li>(1) Defendant, the party who wishes to engage in arbitration, is required to initiate the proceedings;</li><li>(2) Arbitration be conducted with the American Arbitration Association (“AAA”) pursuant to the agreement; and</li><li>(3) A time limit of ninety (90) days is imposed on the initiation of arbitration proceedings.</li></ol> <p>The court will prepare the order.</p>
<a href="#">LINE 5</a>	22CV400083	Realty One Group, Infinity, a Corporation vs Alexis Orosco et al.	<p>Amended Motion to withdraw as attorney for defendants Bunker Group Inc. and Alexis Orosco (by Jeffrey Mentzos). [**SPECIAL SET C/F 10/24/23 per Minute Order.]</p> <p>Unopposed and GRANTED.</p>
<a href="#">LINE 6</a>	22CV400281	Bizringer, Inc vs TRUCKX, INC., a Delaware corporation	<p>Motion for leave to file Second Amended Complaint (“SAC”) by plaintiff BIZRINGER, INC. (“Plaintiff”)</p> <p>Unopposed and GRANTED. Plaintiff shall have leave to file SAC within 20 days of the order.</p>
<a href="#">LINE 7</a>	23CV415644	David Chun vs ANYTIME MERCHANT SERVICES, INC.	<p>Motion for leave to file amended answer by defendant Anytime Merchant Services, Inc. (“Defendant”).</p> <p>Good cause appearing, GRANTED. Defendant shall have leave to file an amended answer within 20 days of order. The court will prepare the order.</p>

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<a href="#">LINE 8</a>	23CV415644	David Chun vs ANYTIME MERCHANT SERVICES, INC.	<p>Motion: Order for Terminating Sanctions by David Chun (Pro Per) **Set per 1/31/2024 Order and 1/30/2024 MO**</p> <p>Ctrl click (or scroll down) on Line 8 for tentative ruling. The court will prepare the order.</p>
<a href="#">LINE 9</a>	23CV415644	David Chun vs ANYTIME MERCHANT SERVICES, INC.	<p>Motion: Order to withdraw or amend deemed admissions by Defendant Anytime Merchant Services, Inc.</p> <p>Ctrl click (or scroll down) on Line 9 for tentative ruling. The court will prepare the order.</p>
<a href="#">LINE 10</a>	23CV423490	Javier Rocha vs Greenwaste of Palo Alto, LLC	<p>Motion: Order for approval of PAGA settlement by plaintiff Javier Rocha.</p> <p>Good cause appearing, GRANTED. The court finds that the proposed settlement is fair, reasonable, and adequate in relation to “PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal.App.5th 56, 60.) The requested attorney’s fees, costs and enhancement award are reasonable. Phoenix Settlement Administrators (“Phoenix”) should be appointed as the settlement administrator. Phoenix’s fees and costs shall not exceed \$2,150, which shall be deducted from the Gross Settlement Sum.</p>
<a href="#">LINE 11</a>	23CV415644	David Chun vs ANYTIME MERCHANT SERVICES, INC.	<p>Motion for leave to file Cross-Complaint by defendant Anytime Merchant Services, Inc. (“Defendant”)</p> <p>Good cause appearing, GRANTED. Defendant shall have leave to file the cross-complaint within 20 days of this order. The court will prepare the order.</p>

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<a href="#">LINE 12</a>			
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## **Calendar Line 8**

Case name: David Chun vs. ANYTIME SERVICES, INC.

Case No.: 23CV415644

Plaintiff David Chun (“Plaintiff”)’s motion for terminating sanctions or issue preclusion sanctions (“Motion”) on defendant Anytime Services, Inc. (“Defendant”) regarding form interrogatories (“FI”) set one, is DENIED.

### **I. Summary**

Plaintiff’s Motion for Compelling Responses to Form Interrogatories (Set One) was granted on October 25, 2023, and both parties were served with the relevant Order on the same day. (Chun Decl. Exhibit “7”.) Defendant served its response to Plaintiff in compliance with the Order on November 22. (Chun Decl. Exhibit “8”.) Defendant changed representation during the litigation, and its initial answer was improperly submitted *in pro per*, which it is seeking to amend. (Def. Sep. Statement ¶ 5.)

### **II. Legal Standard**

The court may impose sanctions against anyone engaging in conduct that is a misuse of discovery under Code of Civil Procedure (“CCP”) section 2023.030. A court may only impose termination as a sanction under CCP § 2023.030(d) after (1) a court order has been issued that compels the party to comply with a discovery request; (2) the party has disobeyed the order; and (2) the party has been given an opportunity to be heard regarding their disobedience. (*J.W. v. Watchtower Bible & Tract Soc’y of New York, Inc.* (2018) 29 Cal.App.5th 1142, 1166-1171.)

Terminating sanctions must be used sparingly due to the drastic effect of their application. (*Dep’t of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154, 191.) Sanctions generally ought to be incrementally imposed, with terminating sanctions acting as a last resort. (*Creed-21 v. City of Wildomar* (2017) 18 Cal.App.5th 690, 701-702.)

The court may forbid the party who committed discovery misuse from supporting or opposing designated claims or defenses, or it may order that designated facts shall be taken as established by the party adversely affected by the misuse. (CCP § 2023.030(b).)

### **III. Request for Judicial Notice**

Defendant’s request for judicial notice in opposition to Plaintiff’s motion for terminating or issue preclusion sanctions is GRANTED.

Defendant requests judicial notice of the following records under Evidence Code section 452(d):

1. The Answer to Complaint filed by Defendant on May 19, 2023;
2. Defendant’s Motion to Withdraw of Amend Deemed Admissions filed by Defendant on December 18, 2023;
3. Defendant’s Motion for Leave to File Cross-Complaint filed by Defendant on December 7, 2023;
4. Defendant’s Motion for Leave to File Amended Answer filed by Defendant on December 7, 2023

Evidence Code section 452(d) permits a court to take judicial notice of records of any court of this state. The existence of any document in a court file may be judicially noticed, but the truth of the matters asserted in those documents, including the factual findings of the judge who was sitting as the trier of fact, is not entitled to notice. (*Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112,121.)

### **IV. Discussion**

Here, Plaintiff's objections regarding Defendant's responses to these FI's do not rise to the level of necessitating terminating or issue preclusion sanctions. Defendant served its responses in accordance with the Order and provided answers without objection to the relevant FI's. This does not constitute a misuse of the discovery process so egregious as to require terminating sanctions. The record does not suggest that Defendant misused the discovery process, therefore issue sanctions are improper as well. Plaintiff's Motion is DENIED.

The court will prepare the order.

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**Calendar line 9**

Case name: David Chun vs. ANYTIME SERVICES, INC.

Case No.: 23CV415644

Good cause appearing, defendant Anytime Services, Inc. (“Defendant”)’s motion to withdraw or amend deemed admissions to request for admissions (“RFA”) set one, is GRANTED. Defendant shall serve amended responses within 20 days of this order.

**I. Legal Standard**

Admissions deemed admitted for failure to respond can be withdrawn or amended under Code of Civil Procedure (“CCP”) section 2030.300. (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 975.) The court may grant a motion for withdrawing or amending deemed responses if (1) the admission was the result of mistake, inadvertence, or excusable neglect, and (2) the party that made the requests for admission will not be substantially prejudiced if the motion is granted. (CCP § 2033.300(b).)

The law strongly favors a disposition on the merits and disfavors undeserved windfalls obtained through requests for admission, so any doubts in granting such a motion should be resolved in favor of the party seeking relief. (*New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1420.)

**II. Discussion**

Here, Defendant’s responses were deemed admitted when it failed to respond without representation. The record suggests that Defendant did not understand what was required of them at that time, further suggesting that the admission was a result of inadvertence.

There are doubts as to why Defendant took months to substitute counsel, but these are resolved in favor of Defendant under the Code to promote a resolution on the merits. Whatever prejudice Plaintiff may sustain as a result is not substantial enough to override the law’s preference for disposition on the merits.

Plaintiff’s request that the costs of any additional discovery be borne in whole or in part by the party withdrawing or amending the admission is DENIED. Plaintiff is representing himself *in pro per*.

Plaintiff will not be substantially prejudiced in maintaining that party’s action or defense on the merits. No additional discovery requests have been conducted by either party since the RFA’s were propounded. No depositions have been taken.

Plaintiff is permitted to pursue additional discovery related to the matter involved in the withdrawn or amended admission. The action is not yet set for trial.

**III. Request for Judicial Notice**

Defendant’s request for judicial notice in opposition to Plaintiff’s motion for terminating or issue preclusion sanctions is GRANTED.

Defendant requests judicial notice of the following records under Evidence Code section 452(d):

1. The Answer to Complaint filed by Defendant on May 19, 2023;
2. Defendant’s Motion to Withdraw of Amend Deemed Admissions filed by Defendant on December 18, 2023;
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#### **IV. Conclusion**

Defendant's motion to withdraw or amend deemed admissions to RFA, set one, pursuant to CCP section 2033.300 is GRANTED and Defendant is ordered to serve amended responses within 20 days of this order.

The court will prepare the order.

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