

TENTATIVE RULINGS

DEPT C11

Judge Andre De La Cruz

Court Reporters: Official court reporters (*i.e.*, court reporters employed by the Court) are not provided for law and motion matters in this Department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters, which can be found at:

- [Civil Court Reporter Pooling](#); and
- [Court Reporter Interpreter Services](#).

Tentative rulings: The Court endeavors to post tentative rulings on the Court's website no later than Friday afternoon immediately preceding Monday's hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Moreover, tentative rulings may not be posted in every case.

Please do not call the department for tentative rulings if tentative rulings have not been posted.

The Court *will not* entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted. Further, a motion may not be taken off calendar once a tentative ruling has been posted unless the entire action has been dismissed.

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk by sending an email to: ctownsend@occourts.org and copied to eveloz@occourts.org. Please do not call the Department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the Court, the tentative ruling shall become the Court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the Court's signature if appropriate under Cal. R. Ct. 3.1312.

When a proposed order is required, even if motion is unopposed, the parties are ordered to submit it in two formats: (1) one draft in MS Word (*.doc or *.docx); and (2) one draft in PDF format with all attachments/exhibits attached thereto in accordance with Cal. R. Ct. 3.1312(c)(1) and (2).

Non-appearances: If nobody appears for a hearing and the Court has not been notified that all parties submit on the tentative ruling, the Court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. *See Lewis v. Fletcher Jones Motor Cars, Inc.*, 205 Cal. App. 4th 436, 442 (2012), fn. 1.

Appearances: Department C11 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference pursuant to Code of Civil Procedure § 367.75 and Orange County Local Rule (OCLR) 375. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's website at <https://www.occourts.org/media-relations/civil.html> prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing.

Check-in instructions and instructional video are available at <https://www.occourts.org/media-relations/aci.html>. The Court's "Appearance Procedures and Information—Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") will be strictly enforced. It is your responsibility to ensure that your *audio and video* are functioning properly prior to your hearing.

Parties preferring to appear in-person for law and motion hearings may do so pursuant to Code of Civil Procedure § 367.75 and OCLR 375.

Public Access: The courtroom remains open for all evidentiary and non-evidentiary proceedings.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and OCLR 180.

TENTATIVE RULINGS
April 29, 2024

| # | Case Name | Tentative |
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| 1 | Berumen Meza vs. Elmore Motors 2022-01298512 | <p data-bbox="607 413 1273 485">Motion to Compel Production filed by Jorge G. Berumen Meza on 1/24/24</p> <p data-bbox="607 539 1354 833">Plaintiff Jorge Gustavo Berumen Meza’s (“Plaintiff”) moves to compel Defendant Elmore Motors (“Defendant”) to respond to Plaintiff’s Requests for Production of Documents, Set Two, and Notice of Taking Deposition <i>Duces Tecum</i> for Elmore Motors’ person most qualified to testify regarding the subject purchase agreement.</p> <p data-bbox="607 888 1377 1182">Plaintiff improperly seeks relief as to two separate discovery mechanisms—a request for production and a notice of deposition. Instead of filing one joint motion, Plaintiff should have filed two separate motions. Thus, the Court will address the Motion only as to the requests for production and DENIES the Motion as to the notice of deposition.</p> <p data-bbox="607 1236 1382 1434">The Court notes that an Opposition was untimely filed and served on April 18, 2024. Any oppositions were due no later than April 16, 2024. <i>See</i> Code Civ. Proc. § 1005(b). The Court declines to consider the merits of the <i>late-filed</i> Opposition.</p> <p data-bbox="607 1488 1386 1902">As to the Requests for Production of Documents, Plaintiff seeks any and all asset purchase agreements or other purchase/sale agreements concerning Defendant’s sale of the dealership. Declaration of Kristin Kemnitzer, Ex. A. The discovery was served after Defendant informed Plaintiff that it sold all of its assets after the start of this litigation. Plaintiff contends that there is good cause for the discovery because Plaintiff must investigate whether the entity that purchased the dealership expressly assumed</p> |

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| | | <p>Defendant's liabilities, agreed to indemnify Defendant, or is merely carrying on Defendant's business under a new name to avoid liability in the instant matter.</p> <p>The Court finds that Plaintiff has shown good cause for the production of the requested documents. The terms and circumstances surrounding the sale of Defendant's assets are relevant to determining Defendant's continued liability and whether a new party could or should be added to this action.</p> <p>Accordingly, the Motion to Compel is GRANTED. Code Civ. Proc., § 2031.310(a). Further responses and production shall be made within fifteen (15) calendar days.</p> <p>Plaintiff to give notice.</p> |
| 2 | <p>DTT Equipment Trading, Co. vs. Yeates Equipment Sales, Inc.</p> <p>2023-01344107</p> | <p>1. Motion to Quash filed by Yeates Equipment Sales, Inc. on 2/20/24</p> <p>2. Case Management Conference</p> <p>Defendant Yeates Equipment Sales, Inc. ("Defendant") moves to quash service of the summons for lack of personal jurisdiction. The Motion is GRANTED.</p> <p>Based on the evidence before the Court, the Court finds that it lacks general and specific jurisdiction over Defendant because it does not have the requisite minimum contacts.</p> <p>A court acquires personal jurisdiction over a nonresident defendant through either general or specific jurisdiction. The "defendant may be subject to the general jurisdiction of the forum if his or her contacts in the forum state are 'substantial . . . continuous and systematic.'" <i>Vons Companies, Inc. v. Seabest Foods, Inc.</i>, 14 Cal. 4th 434, 445 (1996).</p> |

To determine whether specific jurisdiction exists, courts consider the relationship among the defendant, the forum, and the litigation. *Strathvale Holdings v. E.B.H.*, 126 Cal. App. 4th 1241, 1250 (2005). "A court may exercise specific jurisdiction over a nonresident defendant only if: (1) the defendant has purposefully availed himself or herself of forum benefits; (2) the controversy is related to or arises out of [the] defendant's contacts with the forum; and (3) the assertion of personal jurisdiction would comport with fair play and substantial justice." *Id.* (internal quotes and citations omitted).

"The minimum contacts requirement prevents nonresident defendants from being subjected to California jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts." *Cassiar Min. Corp. v. Superior Court*, 66 Cal. App. 4th 550, 554 (1998). "This affords nonresidents some degree of predictability and certainty about when they will be subjected to the jurisdiction of the forum state." *Id.* "California's long-arm statute is intended to provide the broadest possible jurisdiction subject only to federal constitutional limitations." *Id.*

Even if the out of state defendant "severed any California connections long before the time of suit, it still may be subject to the state's specific jurisdiction if it has: (1) purposefully derived benefits from California activities; and (2) the subject lawsuit is 'related to' or 'arises out' of its California contacts." *Cassiar Min. Corp. v. Superior Court*, 66 Cal. App. 4th 550, 555 (1998) (internal quotations omitted).

"Merely knowing the product will enter California' does not comply with constitutional minimum contacts requirements; instead, the foreign defendant must have 'some control over [the] ultimate destination' in California." *Cassiar Min. Corp. v.*

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| | | <p><i>Superior Court</i>, 66 Cal. App. 4th 550, 555 (1998). “Neither is jurisdiction invoked solely because of conclusory allegations in an unverified complaint.” <i>Id.</i></p> <p>Here, Plaintiff relies only on the fact that Plaintiff paid the money owed under the contract from a bank in California. This is insufficient to establish personal jurisdiction. This one purchase is insufficient to establish that Defendant’s contacts with California are substantial, continuous, and systematic. Similarly, this fact does not establish that Defendant purposefully availed himself or herself of forum benefits or that the controversy is related to or arises out of the defendant’s contacts with California. In fact, other than the Plaintiff’s payment to Defendant from a California bank, <i>all facts related to or giving rise to the claims occurred in Mississippi.</i></p> <p>The Motion to Quash is GRANTED.</p> <p>Defendant to give notice.</p> |
| 3 | Hamidi vs. Manheim Investments, Inc. 2020-01145159 | Motion to Tax Costs filed by Khalil R. Hamidi on 1/19/24 Continued to 7/29/2024 |
| 4 | O’Kane vs. Radovich 2022-01276312 | Motion to Quash Discovery Subpoena filed by Advanced Combustion Technologies, Inc. on 11/14/23 Nominal Defendant Advanced Combustion Technologies, Inc. moves pursuant to California Code of Civil Procedure sections 1985(b), 1987.1, 1987.5, 2017.010, 2017.020, 2023.010(a) & (c), and 2025.410 for an order quashing Requests Nos. 1(b), 1(c), and 1(e) of the deposition subpoena that Plaintiff Kevin O’Kane issued to North American Energy Resources, Inc. Nominal Defendant Advanced Combustion |

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| | | <p>Technologies, Inc., and also seeks sanctions amount of \$3,600.</p> <p>The Motion is unopposed and the Court may construe the failure to oppose the motion as a concession that the motion may be granted. Even so, the Court finds that the three requests at issue are overbroad as written and should be quashed. Plaintiff proffers no argument or evidence as to why such requests are appropriate.</p> <p>The Motion to Quash is GRANTED.</p> <p>The request for sanctions is GRANTED in the amount of \$600, payable within 45 days to Nominal Defendant Advanced Combustion Technologies, Inc.</p> <p>Moving party to give notice.</p> |
| 5 | <p>Ramakrishnan vs. Chen</p> <p>2023-01338944</p> | <ol style="list-style-type: none"> 1. Demurrer to Amended Complaint 2. Motion to Strike Portions of Complaint filed by Long Beach Memorial Medical Center on 12/14/23 3. Case Management Conference <p>In light of the pending appeal, the hearings on Defendant Long Beach Memorial Medical Center's Demurrer to the First Amended Complaint and Motion to Strike are CONTINUED to August 26, 2024 at 9:00 a.m. in Department C11.</p> <p>Moving Party to give notice.</p> |
| 6 | <p>Roe vs. Grant</p> <p>2023-01307367</p> | <ol style="list-style-type: none"> 1. Motion to Set Aside/Vacate Default filed by Joshua Schuette, Kara Grant and Kara Grant Law PC on 12/15/23 2. Motion to Set Aside/Vacate Default filed by Kathleen Germane on 12/15/23 3. Case Management Conference |

Defendant KATHLEEN GERMANE ("Ms. Germane") moves the Court for an order setting aside entry of default/default judgment entered against her on October 26, 2023 as requested by Plaintiff JOHN ROE ("Plaintiff").

Defendants Kara Grant ("Grant"), JOSHUA SCHUETTE ("Schuette"), and KARA GRANT LAW ("KGL"), move the Court for an order pursuant to California Code of Civil Procedure §§ 473, *et seq.*, to set aside and vacate the October 26, 2023 Defaults taken against Defendants Grant, Schuette, and KATHLEEN GERMANE ("Germane") and the September 19, 2023 Default taken against KGL.

Motions are **GRANTED**. Sanctions against Attorney Jacobson in the amount of \$500 to be paid within thirty (30) calendar days.

The Court deems the Oppositions untimely and will not consider them. *Pro pers* must also abide by the same procedural rules—*e.g.*, the Code of Civil Procedure and the California Rules of Court. *See Gamet v. Blanchard*, 91 Cal. App. 4th 1276, 1284 (2001) ("pro per litigants are not entitled to special exemptions from the California Rules of Court or Code of Civil Procedure"); *Nwosu v. Uba*, 122 Cal. App. 4th 1229, 1246-1247 (2004) ("Under the law, a party may choose to act as his or her own attorney. Such a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. Thus, as is the case with attorneys, pro per litigants must follow correct rules of procedure.") (internal citations and quotations omitted).

As to Defendants Grant, Schuette, KGL, Attorney Paul Jacobson's Declaration compels the Court to grant mandatory relief. Code Civ. Proc. § 473(b). An attorney "affidavit of fault" also compels relief from defaults

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| | | <p>entered by court order. <i>Lorenz v. Commercial Accept. Ins. Co.</i>, 40 Cal. App. 4th 981, 991 (1995).</p> <p><i>Defendants ordered to file a proposed Answer prior to the hearing.</i></p> <p>Furthermore, pursuant to the Declaration of Kathleen Germane, she believed Attorney Jacobson was filing a demurrer on her behalf, which is sufficient to establish surprise.</p> <p>Responsive pleadings to be separately filed and served.</p> <p>Further, payment of the other side’s attorneys’ fees and costs is <i>mandatory</i> where relief from default is based on an “attorney affidavit of fault”: “The court shall . . . direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties.” Code Civ. Proc. § 473(b).</p> <p>Moreover, a Notice of Related cases was filed herein on August 14, 2023. It appears through a review of the First Amended Complaint that most of this case involves issues that overlap family law issues. Accordingly, the <i>Court will stay this action until the conclusion of those family law actions.</i> As such, Plaintiff’s discovery motions filed on April 22, 2024 are ordered vacated.</p> <p>Case Management Conference ordered off calendar.</p> <p>Court to give notice.</p> |
| 7 | <p>Sanchez vs. FCA US, LLC</p> <p>2022-01249246</p> | <p>Motion to Compel Deposition (Oral or Written)</p> <p>Off Calendar</p> |

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Sandoval vs.
BMW of North
America, LLC

2022-01257134

Motion Compelling Compliance with Court Order
filed by Tammy M. Sandoval on 12/18/23

Plaintiff Tammy Sandoval's ("Plaintiff") Motion for an Order: (1) Compelling Compliance with the Court's August 14, 2023 Discovery Order; or in the Alternative (2) Prospective Sanctions of \$500 per day, Terminating, Issue and/or Evidentiary Sanctions is granted in part and denied in part.

On August 14, 2023, this Court granted Plaintiff's motion to compel further responses to Requests for Production Set One, Nos. 1-7, 16-21, 34-40, 43, 51 and 60-63. Defendant BMW of North America, LLC ("Defendant") was ordered to provide further responses, without objection within 15 calendar days of notice of the ruling.

Plaintiff has demonstrated that Defendant served further responses *without* verifications, which still include objections. In addition, to date, Defendant has not produced a single document in this case. Crandall Decl. ¶¶ 15-19; 23. Defendant did not file an opposition to this motion.

Defendant is **ORDERED** to serve *verified* responses *without* objection and a corresponding production within ten (10) days of notice of this Order.

The remainder of the motion is **DENIED**.

The Court warns Defendant that any further failure to comply with the Court's discovery orders could result in further monetary sanctions, issue sanctions, evidentiary sanctions, or even *terminating* sanctions.

Plaintiff to give notice.

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| 9 | <p>State Farm General Insurance Company vs. JWR Property Management, LLC</p> <p>2020-01148414</p> | <p>Demurrer to Amended Complaint filed by George R. Caro Jr. on 11/9/23</p> <p>Off Calendar</p> |
| 10 | <p>V. vs. Valenzuela</p> <p>2022-01271939</p> | <p>1. Motion to Compel Production filed by R. V. on 1/2/24</p> <p>2. Joinder filed by Huntington Beach Union School District on 2/27/24</p> <p>Plaintiff R.V., by and through her Guardian <i>Ad Litem</i>, M.A. ("Plaintiff") moves for an order compelling non-party Westminster Police Department ("WPD") to release the investigation file, reports, and evidence from the criminal case in <i>People v. Zackary Joseph Valenzuela</i> (OCSC Case No. 22WF0724), which is in the possession of the WPD. Plaintiff also requests the imposition of \$1,500 in monetary sanctions against WPD, defendants and their attorneys, if any such party opposes this motion.</p> <p>"A written notice and all moving papers supporting a motion to compel an answer to a deposition question or to compel production of a document or tangible thing from a nonparty deponent must be personally served on the nonparty deponent unless the nonparty deponent agrees to accept service by mail or electronic service at an address or electronic service address specified on the deposition record." California Rules of Court, rule 3.1346.</p> <p>The proof of service attached to the moving papers indicate that a courtesy copy of the moving papers were served by U.S. Mail and email on WPD, and <i>not</i> by personal service. Although the email dated December 28, 2023, indicates that Plaintiff's counsel asked whether Lucy Gevorgyan, Records Supervisor</p> |

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| | | <p>for WPD, would accept the moving papers via electronic service, there is no evidence of a response or agreement to accept service by mail or electronic service.</p> <p>In addition, according to the proof of service attached to the Joinder filed by Defendant/Cross-Complainant Huntington Beach Union School District (the "District"), it does not appear that the Joinder was served on the WPD.</p> <p>Based on the foregoing service issues, the hearing is CONTINUED to June 3, 2024 at 9:00 a.m. in Department C11.</p> <p>Plaintiff and the District to file proofs of service showing proper service of the moving papers and Joinder, respectively, on the WPD.</p> <p>Plaintiff to give notice.</p> |
| 11 | <p>Verkuyl vs. FCA US, LLC</p> <p>2022-01297073</p> | <p>Motion to Compel Production filed by Gerald Verkuyl on 2/28/24</p> <p>Plaintiff Gerald Verkuyl ("Plaintiff") moves for an order compelling Defendant FCA US LLC ("Defendant") to produce documents in response to Request for Production of Documents (Set One) and monetary sanctions in the sum of \$6,810.00.</p> <p>Defendant served responses to the Requests for Production on August 10, 2023, but did not produce any documents related to the prior owner's service history or lemon law buyback process. Declaration of Ray Naderi, ¶¶ 3, 5. The parties participated in an Informal Discovery Conference with the Court and signed the Song-Beverly Litigation stipulation with an agreement that the prior owner documents would be produced within 60 days. <i>Id.</i> ¶¶ 6-7. However,</p> |

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| | | <p>Defendant has failed to produce the promised documents. <i>Id.</i> ¶ 8.</p> <p>Plaintiff has shown good cause for the production of the requested documents and no opposition has been filed to dispute that showing. Accordingly, the Motion to Compel is GRANTED. Code Civ. Proc. § 2031.310(a). Defendant is ordered to provide further responses and produce the promised documents within fifteen (15) days.</p> <p>There is <i>no substantial justification</i> for Defendant's failure to provide responses as agreed. Accordingly, the request for monetary sanctions is also GRANTED against Defendant and its counsel, jointly and severally, in the amount of \$5,010.00. Code Civ. Proc., § 2031.310(h). Sanctions are to be paid within thirty (30) days.</p> <p>Plaintiff to give notice.</p> |
| 12 | Desi Pro, LLC vs. Global Alarm Protection, Inc. 2023-01356218 | 1. Order to Show Cause re: Preliminary Injunction filed by Desi Pro, LLC on 10/23/23 2. OSC re: Bankruptcy 3. Case Management Conference Continued to July 1, 2014 by Stipulation and Order thereon. |