Superior Court of the State of California
County of Orange

Tentative Rulings
Law and Motion Calendar
Department C23
Honorable David J. Hesseltine

Hearing Date and Time: April 22, 2024, at 11:00 a.m.

Court Reporters: Official court reporters (i.e., court reporters employed by the court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it is that party's responsibility to provide a court reporter, unless the party has a fee waiver and timely requests a court reporter in advance of the hearing (see link at end of this paragraph for further information). Parties must comply with the Court's policy on the use of privately retained court reporters, which may be found at the following link: **Civil Court Reporter Pooling**. For additional information regarding court reporter availability, please visit the court's website at **Court Reporter Interpreter Services**.

Tentative Rulings: The court endeavors to post tentative rulings on the court's website no later than 12:00 noon on the date of the afternoon hearing. Tentative rulings will be posted case by case on a rolling basis as they become available. Jury trials and other ongoing proceedings, however, may prevent the timely posting of tentative rulings, and a tentative ruling may not be posted in every case. Please do not call the department for tentative rulings if one has not been posted in your case. **The court will not entertain a request to continue a hearing or any document filed after the court has posted a tentative ruling.**

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 or courtroom attendant by calling (657) 622-5223. Please do not call the department unless **ALL** parties submit on the tentative ruling. If all sides submit on the tentative ruling and 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 California Rules of Court, rule 3.1312.

Non-Appearances: If no one appears for the 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 may make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Appearances: Department C23 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C23 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at

https://www.occourts.org/media-relations/civil.html before the designated hearing time. 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" and "Guidelines for Remote Appearances" also are available at **https://www.occourts.org/media-relations/aci.html**. Those procedures and guidelines will be strictly enforced.

Public Access: The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this department by either coming to the department at the designated hearing time or contacting the courtroom clerk at (657) 622-5223 to obtain login information. For remote appearances by the media or public, please contact the courtroom clerk 24 hours in advance so as not to interrupt the hearings.

NO FILMING, BROADCASTING, PHOTOGRAPHY, OR ELECTRONIC RECORDING IS PERMITTED OF THE VIDEO SESSION PURSUANT TO CALIFORNIA RULES OF COURT, RULE 1.150 AND ORANGE COUNTY SUPERIOR COURT RULE 180.

#	Case Name	Tentative
1.	Vann v. Capital One Auto Finance Co	Before the court is (1) the unopposed motion to dismiss filed by defendant Capital One Auto Finance, a division of Capital One, N.A. (Defendant) directed to the complaint of plaintiff Susie Vann (Plaintiff), and (2) a case management conference. **Motion to Dismiss** An action may be dismissed "after a demurrer to the complaint is sustained with leave to amend, and the plaintiff fails to amend within the time allowed by the court and either party moves for dismissal." (Code Civ. Proc., § 581(f)(2).) Dismissal under this section shall be with prejudice. (*Cano v. Glover* (2006) 143 Cal.App.4th 326, 331.) On September 11, 2013, the court sustained Defendant's demurrer to Plaintiff's entire complaint with 14 days leave to amend. Plaintiff has not filed an amended complaint. Plaintiff's failure to do so and the ramifications of the failure to do so were explained to Plaintiff at the December 15, 2023 case management conference. Nonetheless, to date, Plaintiff still has not filed an amended complaint nor sought additional leave to do so. Accordingly, the motion is **GRANTED** and Plaintiff's complaint is **DISMISSED WITH PREJUDICE**.

		Counsel for Defendant is ordered to submit a proposed judgment and to give notice of this ruling. **Case Management Conference** Based on the foregoing ruling, the case management conference is ordered off calendar.
2.	Melendez v. East Los Angeles Doctors Hospital	**OFF CALENDAR** based on request for dismissal filed on March 27, 2024
3.	Kidan v. Chartwell Staffing Services Inc.	Before the court is the motion of nominal defendant Chartwell Staffing Services, Inc. (Chartwell) for judgment on the pleadings as to the second amended complaint (SAC) of plaintiff Adam R. Kidan (Plaintiff). The motion challenges the derivative aspect of each of the seven causes of action Plaintiff alleges in the SAC. The motion is **DENIED** as set forth below. Chartwell contends all Plaintiff's derivative claims fail because Plaintiff lacks standing to assert the claims due to the Divorce Decree issued by the Court of Common Pleas of Lancaster County, Pennsylvania, on September 29, 2023 (Divorce Decree). Specifically, Chartwell contends the Divorce Decree awarded the entire value of the "martial interest in Chartwell" to Tracy, Plaintiff's now ex-wife, and awarded Plaintiff nothing regarding the Chartwell shares. (See RJN, Exh. A, pp. 14, 18, 29.) Chartwell further contends, under New York law, Plaintiff no longer has standing because New York also requires a shareholder must maintain shareholder status throughout the pendency of the derivative action, without interruption. Chartwell previously demurred to the first amended complaint on the ground Plaintiff lacked standings to bring any derivative claims on Chartwell's behalf. The prior judicial officer assigned to this case overruled that demurrer, concluding "Plaintiff does have standing to assert claims on behalf of CHARTWELL as Plaintiff does allege a beneficial interest in CHARTWELL as required." (Mar. 1, 2022 Minute Order.) That Minute Order further explained, "Here, Plaintiff alleges that '[u]ntil 2020, all of the stock of Chartwell was nominally owned by his former wife, Tracy Kidan ("Tracy"), subject to [his] marital-property interest and an agreement between the two to hold the stock jointly'; that he was 'until Coast to Coast's acquisition the beneficial owner of 100% of the outstanding shares of Chartwell through his marital-property

		interest in those shares'; that '[d]espite Tracy having no involvement in the operations of Chartwell, she retained 100% of the outstanding stock, subject to Kidan's marital interest and pending division in the matrimonial case as well as her agreement to hold the stock for their joint benefit'; and '[f]ollowing the defective takeover by Madison, Kidan now has a beneficial interest in 25% of the outstanding shares of Chartwell' and the 'shares are currently subject to distribution in a Pennsylvania matrimonial proceeding.' (See FAC, ¶¶ 4, 29, and 58.) These allegations establish that although Plaintiff never held the shares of CHARTWELL in his name and his former-wife Tracy held 100% of the stock of CHARTWELL, her ownership rights are 'subject to' Plaintiff's 'marital interest and pending division in the matrimonial case' as well as their 'private agreement' that the stock be held jointly by them." (Mar. 1, 2022 Minute Order (underlying added).) Chartwell has failed to meet its burden to show Plaintiff lacks standing to bring the derivative claims as a matter of law. The Divorce Decree on which this motion is based did not making any findings or rulings regarding Plaintiff's status as a shareholder in Chartwell. It is clear the Divorce Decree merely valued and divided the 25% interest in Chartwell that remained in Tracy's name after the Stock Option Purchase Agreement. The Divorce Decree acknowledged Tracy had signed the Stock Option Purchase Agreement to sell 75% of her shares to Madison, that "Wife did not consult with Husband regarding the Option Agreement," and that "Husband testified that he would never have agreed to transfer of 75% of shares on the terms that Wife agreed to." (See RJN, Exh. A, pp. 13-14.) The Divorce Decree, however, made no ruling or findings regarding the validity of the Stock Option Purchase Agreement. Accordingly, the Divorce Decree only addressed the 25% interest Tracy held at the time the Decree was made. The Divorce Decree did not address the 75% that is the subject of the Stock Option Purchase Agreement. Plaintiff's SAC challenges the Stock Option Purchase Agreement and its transfer of 75% of the stock. (See, e.g., SAC, ¶¶93-98, 144 (Fourth Cause of Action for

		Aiding & Abetting Breach of Fiduciary Duties ["Tracy breached her duties by selling a 75% interest to Coast to Coast for direct, personal benefits not shared with Kidan, by abdicating her responsibilities as a company director despite actual or constructive knowledge that Madison (through Tierney and Chipman) intended to raid and was raiding Chartwell, and turned a blind eye to their fiduciary breaches alleged herein")]; 157 (Fifth Cause of Action for Tortious Interference with Contract and Prospective Economic Advantage) ["Kidan was harmed by . . . (c) loss of his beneficial interest in 75% of Chartwell's stock as alleged above"]); ¶ 161-166 (Sixth Cause of Action for Economic Duress) [coerced "Tracy to enter into the Option Agreement"].) The SAC's prayer for relief, at paragraph 4, seeks "a declaration that the Option Agreement, and stock transfer pursuant thereto, are void and unenforceable . . ." Accordingly, based on Plaintiff's allegations all the shares were nominally owned by Tracy subject to both Plaintiff's marital interest and the parties' agreement they jointly owned all the shares, the Divorce Decree not addressing the other 75% of the shares, and Plaintiff's challenges to Tracy's transfer of the 75%, Chartwell has failed to establish Plaintiff lacks standing. If Plaintiff is successful in his challenge to the Stock Purchase Agreement, then he will have standing, and therefore Plaintiff's standing cannot be determined at this time. (See, e.g., *Berstein v. Polo Fashion, Inc.* (1976) 55 A.D.2d 530, 531 [standing to bring derivative action cannot be decided until plaintiff's claim for reformation of stock purchase agreement resolved]; *Center v. Hampton Affiliates* (1985) 66 N.Y.2d 782785-786; *Serdaroglu v Serdaroglu* (1994) 209 A.D.2d 600, 603; *Hong Qin Jiang v Li Wan Wu* (2020) 179 A.D.3d 1035, 1037-1037.) Chartwell argues Plaintiff failed to present evidence to establish the family law court concluded it lacked jurisdiction to determine the validity of the Stock Option Purchase Agreement. This contention turns the burden on this motion on its head. It was not Plaintiff's burden to show the family law court ruled it lacked jurisdiction. Rather, it was Chartwell burden to establish, as a matter of law, the Divorce Decree deprives Plaintiff of standing to bring any derivative claims. As stated above, the Divorce Decree is clear it did not rule on the validity of the Stock Option

		Purchase Agreement. Chartwell's reliance on the general effect of a divorce decree is not sufficient to meet its burden because the Divorce Decree acknowledged the Stock Option Purchase Agreement and we are unaware what, if any, other rulings the court may have made. Moreover, the authorities Chartwell cites do not establish Plaintiff would lack standing if he is successful in setting aside the Stock Option Purchase Agreement. Chartwell also argues Plaintiff does not allege his challenges to the Stock Option Purchase Agreement as a basis for his standing. Although the allegation could be clearer, when the SAC is read in its entirety, the SAC sufficiently alleges his challenges to the Stock Option Purchase Agreement as a basis for standing to bring derivative claims. Based on the foregoing, the motion is **DENIED,** and the court need not address any of the parties' other challenges or arguments. The Court **GRANTS** Chartwell's request for judicial notice of Exhibit A (Opinion, Order and Decree dated Sept. 29, 2023 in the Pennsylvania Court for Adam R. Kidan v. Tracy Schneider-Kidan, Case No. CI-17-05950) pursuant to Evidence Code section 452(d). Plaintiff is ordered to give notice.
4.	Iger v. Costco Wholesale	Before the court is the unopposed motion of defendant Costco Wholesale (Defendant) to compel plaintiff Linda Iger (Plaintiff) to respond to supplemental requests for production. The motion is **GRANTED** as set forth below. The requests for production have been properly served on Plaintiff, but Plaintiff failed to serve any responses prior to the motion being filed. Plaintiff therefore waived any objections to the requests. (Code Civ. Proc., § 2031.300(a).) Plaintiff is ordered to serve objection-free responses within 10 days of written notice of the court's ruling. (Code Civ. Proc., § 2031.300(b).) Defendant also requests monetary sanctions against Plaintiff and her counsel of record, which are **GRANTED** in a lowered amount as no opposition or reply briefs were filed, and the motion was not particularly difficult. (Code Civ. Proc., §§ 2023.010, 2031.300(d).) Defendant is awarded $735 in monetary sanctions, which comes from

		three hours at the reasonable hourly rate of $225 plus a $60 filing fee. Monetary sanctions shall be paid to Defendant, through its counsel, within 30 days of notice of this ruling. Defendant ordered to give notice.
5.	Bane v. Perez	**OFF CALENDAR** based on the notice filed on April 15, 2024
6.	Pursley v. Fountain Valley Regional Hospital and Medical Center	Before the court is the motion of defendant Edmond Chu, M.D., named as Doe No. 3 (Defendant),to compel further responses from plaintiff Joyce Ann Pursley (Plaintiff) to form interrogatories (set one). Specifically, form interrogatory no. 17.1 as it relates to request for admission nos. 1-6 and 7. The request to compel further responses is **DENIED AS MOOT**. Plaintiff filed a notice of non-opposition stating she served amended, verified responses, and the reply acknowledges those further responses. Defendant's request for monetary sanctions, however, is **GRANTED**. Plaintiff failed to demonstrate she acted with substantial justification, or the imposition of sanctions would be unjust. Plaintiff did not show she took any steps to resolve the discovery dispute between September 2023 to April 9, 2024, the time she finally served the amended responses. Moreover, "[t]he court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed." (Cal. Rules of Ct. rule 3.1348(a).) Based on the foregoing, monetary sanctions in the amount of $1,185 are awarded against Plaintiff and her counsel of record. Plaintiff and her counsel of record are ordered to pay the sanctions to Defendant, through his counsel of record (Creason Tucker & Associates LLP) within 30 days of service of the notice of ruling. Defendant's objection to Libbey's declaration is **OVERRULED**. Defendant shall serve notice of ruling.

7.	City of Garden Grove v. Rodriguez	Before the court is the motion of court-appointed receiver Richardson Griswold (Receiver) for order distributing remaining funds in the receivership, discharging the receiver, and exonerating the Receiver's surety bond. Receiver states there is a total of $102,672.65 remaining in the receivership following the sale of the real property at issue in this case. The court notes the costs of Receiver (aside from the below) and plaintiff City of Garden Grove have already been paid in this action. No objections were made to those payments. Receiver requests $6,700 be set aside for final receivership fees and costs, and the balance of $95,972.65 be distributed to Angel Gonzales (Gonzales) for partial satisfaction of a prior judgement Gonzales has against defendant Shaqwita Rodriguez (Defendant). The court questions how the $6,700 in reserves request for Receiver costs was calculated. That amounts to over 20 additional hours of work on the case based on the highest recent hourly billed rate of $325. Following a discharge, there should be little to no additional work necessary on this matter, let alone over 20 hours of work. Receiver failed to produce any information regarding the need for the $6,700. (CRC Rule 3.1184(d).) The court requests Receiver appear at the hearing to discuss a lowered reserve amount that is more realistically necessary. The court approve the distribution of the balance to Gonzales, but the final amount of that distribution cannot be set until the amount of reserve is fixed. The court will order distribution of the amounts to be set at the hearing within five days of the hearing. The court also orders Receiver to file a brief declaration within five-days of the hearing apprising the court the funds have been distributed as ordered. Once the court receives notification the funds have been distributed, the court will discharge the receiver and order Receiver's $10,000 surety (ROA #65) to be exonerated as there will no longer be any liabilities in this matter. (Code Civ. Proc., § 567(b); CRC Rule 3.1184(a)(3); *Hanno v. Superior Ct. of Santa Barbara Cnty.* (1939)

		30 Cal.App.2d 639, 641; *City of Chula Vista v. Gutierrez* (2012) 207 Cal.App.4th 681, 685–86.) Receiver to give notice.
8.	Thomas v. Thomas	Before the court are the following two discovery motions filed by plaintiff Denise Thomas (Thomas) against defendant Gary Thomas II (Gary II): (1) motion to compel Gary II to comply with notice of deposition and for monetary sanctions, and (2) motion to compel Gary II to provide further responses to special interrogatories, set one, and for monetary sanctions. [Note: The notices for both motions state they are brought by "Plaintiffs," which would mean Thomas as well as Ernest Calhoon, but both the underlying discovery requests were served on Thomas's behalf only.] Initially, the court notes Thomas timely filed a proof of service relating to both motions, but the proof is for electronic service only. Gary II is self-represented, and therefore may be served electronically only if he has expressly consented to electronic service, and electronic filing does not constitute express consent to electronic service. (Code Civ. Proc., § 1010.6, subd. (c); Cal. Rules of Court, rule 2.251(b) & (c)(3)(B).) Gary II has not filed any opposition to these motions or otherwise waived any defect in service. This constitutes sufficient grounds to deny the motions, but the court nonetheless will proceed to address the merits. **Motion No. 1: Deposition Motion** By this motion, Thomas seeks an order compelling Gary II to produce documents listed in requests nos. 1-8 in the deposition notice attached as Exhibit A. Thomas brings this motion pursuant to Code of Civil Procedure section 2025.480. Section 2025.480(b) provides, the motion "shall be made no later than 60 days after the completion of the record of the deposition." Thomas has lodged a portion of the deposition transcript which shows it was taken on October 26, 2023, but the portions Thomas lodge do not include the reporter's certification and therefore the court cannot determine when the record of the deposition was completed. The motion was filed on January 23, 2024, which is nearly 90 days after the deposition. Accordingly, based on the current record, the court

		cannot tell if the motion is timely. Compliance with the motion deadlines in the Civil Discovery Act is jurisdictional in the sense that "it renders the court without authority to rule on motions to compel other than to deny them." (*Sexton v. Superior Ct.* (1997) 58 Cal.App.4th 1403, 1410.) Assuming the motion is timely, Thomas has failed to establish good cause for the document production sought. Any motion to compel production of documents described in a deposition notice must be accompanied by a showing of good cause of the production. (Code Civ. Proc., § 2025.450, subd. (b)(1); Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (The Rutter Group 2023) 8:801.2.) In the context of a motion to compel the production of documents under Code of Civil Procedure section 20231.310, subdivision (b)(1), this good cause showing requirement has been construed to require the moving papers set forth specific facts showing good cause justifying the discovery sought by the document requests. To establish good cause, "the burden is on the moving party to show both: (1) relevance to the subject matter (e.g., how the information in the document would tend to prove or disprove some issue in the case); and (2) specific facts justifying discovery (e.g., why such information is necessary for trial preparation or to prevent surprise at trial)." (*Glenfed Develop. Corp. v. Superior Court (National Union Fire Ins. Co. of Pittsburgh, Pa.)* (1997) 53 Cal.App.4th 1113, 1117.) As stated by the Fourth District Court of Appeal, Division three, this "requires a party seeking to compel such production to 'set forth specific facts showing good cause justifying the discovery sought by the inspection demand.' . . . In law and motion practice, factual evidence is supplied to the court by way of declarations." (*Calcor Space Facility, Inc. v. Super. Ct.* (1997) 53 Cal.App.4th 216, 223-224.) In *Calcor*, the appellate court reversed the trial court's order granting plaintiff's motion to compel production. There, the moving plaintiff provided argument regarding good cause via its separate statement and opposition, but failed to submit admissible evidence in the form of a declaration. The court held "Neither document is verified, and

		thus they do not constitute evidence." (*Calcor Space Facility, Inc. v. Super. Ct.* (1997) 53 Cal.App.4th 216, 224.) Here, there is no declaration establishing good cause. Thomas' attorney submitted a declaration, but it makes no attempt to establish the required good cause. Further, the motion and separate statement do not establish good cause for the very broad requests. Accordingly, the motion is **DENIED** for failure to establish good cause. As to the eight individual requests for production, request nos. 1 and 8 seek all writings with or concerning any family member of Gary II during the past ten years. Request nos. 2 and 3 seek all communications or documents concerning Laia Thomas or litigation with any party. Request no. 4 asks for all telephone records for the past 10 years, without limitation. Requests 5 and 6 ask for all credit card charges and bank records for the past ten years. Request no. 7 asks for all airline tickets Gary II has purchased for any person during the past 10 years. The court finds request numbers 1-8 are overbroad, not reasonably calculated to lead to discovery of admissible evidence and potentially invade the right to privacy of Gary II or third persons. In addition, requests numbers 2 and 3 seek to invade the attorney client privilege and seek work product. Accordingly, the motion to compel Gary II to produce documents identified in the deposition notice is **DENIED**. **Motion No. 2: Special Interrogatory Motion** In this motion, Thomas seeks an order compelling Gary II to answer special interrogatories, set one, without objection. Specifically, Thomas seeks to compel further responses to interrogatory nos. 1-5. Thomas brings the motion pursuant to Code of Civil Procedure section 2030.290 based on the assertion the responses were not timely served. The responses were signed and verified on the date the responses were due—i.e., December 27, 2023. Thomas asserts she did not receive the responses until several days later, but this does not establish the date the responses were served. Accordingly, to the extent the motion is brought pursuant to

		Code of Civil Procedure section 2030.290, it is **DENIED**. Regarding the five individual interrogatories, Code of Civil Procedure section 2030.300, states, in part, "(a) On receipt of a response to interrogatories the propounding party may move for an order compelling a further response if the propounding party deems that any of the following apply: . . . [¶] (3) An objection to an interrogatory is without merit or too general. . . ." Here, interrogatory no. 1 seeks a list of every document Gary II has filed in this court since 2015. The court finds this request is overbroad, overly burdensome, and not reasonably calculated to lead to discovery of admissible evidence. In interrogatories 2-5, Thomas seeks billing information relating to Booker Burney's representation of Gary II, without limit as to scope or time. The motion contains no evidence as to how Mr. Burney's billing records are relevant to the instant action. The court finds the Gary II's objections to these interrogatories on the grounds they are overbroad, not reasonably calculated to lead to discovery of admissible evidence, and seek information protected by the attorney client privilege to be well taken. Accordingly, the motion is **DENIED**. The clerk is directed to give notice of these rulings.
9.	West v. Zacky	**CONTINUED** to May 28, 2024
10.	Woodworth v. City of Laguna Beach	**OFF CALENDAR** based on notice of withdrawal filed on March 26, 2024
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