

TENTATIVE RULINGS

DEPT C21

LAW AND MOTION CALENDAR

Judge Deborah C. Servino

Date: May 10, 2024

Please read the applicable rules carefully. Do not call the department unless submitting on the tentative.

The court will endeavor to post tentative rulings on the Court's website by 3 p.m. on the preceding Thursday. However, ongoing proceedings may prevent posting by that time. Do not call the department for tentative rulings if none are posted. The court will not entertain a request for continuance once a ruling has been posted and no additional papers will be considered once a ruling has been posted.

If you wish to submit on the tentative and do not want to appear, please inform the clerk by calling **(657) 622-5221**, and inform opposing counsel.

The Law and Motion Calendar is heard on Fridays at 10 a.m. All arguments will be heard at that time. Unless otherwise indicated in the tentative ruling, the prevailing party will give Notice of Ruling. If no one appears for the hearing, the court shall determine whether the matter is taken off calendar or whether the tentative ruling shall become the final ruling.

APPEARANCES: The Court offers remote appearances for the Law and Motion Calendar via Zoom. All counsel and self-represented parties appearing remotely for the Law and Motion Calendar must check-in online through the Court's website at <https://www.occourts.org/media-relations/civil.html>, then click on the gold ribbon that states "Click here to appear/check-in for civil small claims/limited/unlimited/complex remote proceedings", and then click on Department C21 (to check-in). However, counsel and self-represented parties preferring to appear in-person may do so. The Court's "Appearance Procedures and Information - Civil Unlimited," "Guidelines for Remote Appearances," remote video appearance instructions, Orange County Superior Court Local Rule 375 on Remote and In-Person Proceedings in Civil, Administrative Order No. 23/06 (Updated Remote Appearance Guidelines for Civil and Probate), and an instructional video are also available through the Court's website at [The Superior Court of California - County of Orange \(occourts.org\)](https://www.occourts.org). If you encounter difficulty checking-in online or connecting remotely, please call Department C21 for assistance at (657) 622-5221.

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. Please see the Court's website for further information. The Court's policy on privately-retained court reporters is available on the Court's website at: [Privately-Retained Court Reporter Policy](#).

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
50	Choi v. Hilton Hotels Corporation, et al. 30-2023-01267598	Hearing on demurrer to complaint and motion to strike off-calendar. Notices of withdrawal filed 5/1/2024.
51	Joharifard v. Bat Inc., et al. 30-2022-01286749	<p>DISCOVERY MOTIONS</p> <p>Plaintiff Mostafa Joharifard's moves to compel Defendant BAT, Inc. to provide responses to: (1) form interrogatories - general, set one; and (2) special interrogatories, set one. Plaintiff moves to compel Defendants Tony Diab and Mario Azevedo to each provide responses to request for production of documents, set one.</p> <p><u>Legal Standard</u></p> <p>A propounding party may move for an order compelling responses to interrogatories at any time “[i]f a party to whom interrogatories are directed fails to serve a timely response.” (Code Civ. Proc., § 2030.290, subd. (b).) By failing to serve timely responses, BAT, Inc. waived “any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product.” (Code Civ. Proc., § 2030.290, subd. (a).)</p> <p>A propounding party may move for an order compelling responses to a demand for inspection at any time “[i]f a party to whom a demand for inspection, copying, testing, or sampling is directed fails to serve a timely response.” (Code Civ. Proc., § 2031.300, subd. (b).) By failing to serve timely responses, Diab and Azevedo waived “any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010).” (Code Civ. Proc., § 2031.300, subd. (a).)</p> <p><u>Merits</u></p> <p>On September 15, 2023, Plaintiff properly served BAT, Inc. with the first sets of form interrogatories – general and special interrogatories. BAT, Inc. failed to timely serve responses. On the same date, Plaintiff properly served Diab and Azevedo with the first sets of request for production of documents. (Rasi Decls., at ¶ 4, Exhs. A.) Defense counsel confirmed receipt of the discovery at issue, but indicated that counsel intended to withdraw as counsel of record. Defense counsel also asserted that the case was stayed pending “the bankruptcy”. When Plaintiff's counsel noted that Defendant The Litigation Practice Group, P.C. had filed a bankruptcy petition, and inquired whether defense counsel was referring to that bankruptcy or whether BAT, Inc. was also filing a bankruptcy petition, defense counsel did not respond. (Rasi Decls., at ¶¶ 5-7, Exhs. B.) At the time that the motions</p>

	<p>were filed, Plaintiff had not received any responses to the discovery at issue. (Rasi Decls., at ¶ 8.) The day before the instant motions were filed, defense counsel filed and served motions to be relieved as counsel. (ROA 97, 102, 107, 112, 117, 122.)</p> <p>Oppositions were filed to all of the motions, except for the motion to compel BAT, Inc. to provide responses to the special interrogatories. (See ROA 196, 198, 200.) Even though defense counsel did not respond to Plaintiff's counsel asking for clarification regarding defense counsel's reference to a bankruptcy, Defendants argued in their oppositions that defense counsel "meant to state that as it pertains to the Litigation Practice Group the case against them was stayed pending bankruptcy, which should have been clear based on the only notice of stay filed on March 27, 2023 with regard to the Litigation Practice Group." (Opps., at p. 2.) But Plaintiff's counsel's email indicated that it was unclear. The notice of stay was filed approximately six months before defense counsel's September 26, 2023 email which stated, "Moreover, as it pertains BAT, Inc. the case is staying [sic] pending the bankruptcy." (Rasi Decls., Exhs. B; compare Notice of Stay of Proceedings [Box 2.b. marked that the case was stayed with regard to the party The Litigation Practice Group, P.C.]; see Cal. Rules of Court, rule 3.650(c) [requiring that a notice of stay must state whether the case is stayed with regard to all parties or only certain parties, and must specifically identify those parties].) Defense counsel's failure to respond to Plaintiff's counsel's email kept matters unclear.</p> <p>Contrary to Defendants' contention, Plaintiff was not required to meet and confer before filing these motions. (Code Civ. Proc., §§ 2030.290, 2031.300, 2033.280; <i>Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants</i> (2007) 148 Cal.App.4th 390, 411.) Nevertheless, a courtesy letter is considered good practice. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2021) ¶ 8:1143.)</p> <p>Accordingly, the court grants the motions to compel BAT, Inc. to provide responses to the first sets of form interrogatories - general and special interrogatories. The court also grants the motions to compel Diab and Azevedo to provide responses to the first sets of request for production of documents. BAT, Inc., Diab, and Azevedo are ordered to serve Code-compliant, verified responses, without objections, within 30 days of the notice of rulings.</p> <p>Plaintiff is awarded total sanctions of \$1,432.50 against Defendant BAT, Inc. Within 30 days of the notice of ruling, BAT, Inc. shall pay \$1,432.50 to Denis & Rasi, PC.</p>
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	<p>Plaintiff is awarded sanctions of \$585 against Diab. Within 30 days of the notice of ruling, Diab shall pay \$585 to Denis & Rasi, PC.</p> <p>Plaintiff is awarded \$585 against Azevedo. Within 30 days of the notice of ruling, Azevedo shall pay \$585 to Denis & Rasi, PC.</p> <p>Plaintiff shall give notice of the rulings on the discovery motions. Given that the court is granting defense counsel's motions to be relieved as counsel of record but the orders will not be effective until the filing of the proofs of service of the signed orders upon the clients and all parties, Plaintiff's counsel should consider serving both defense counsel and also sending a courtesy copy to the addresses on the order relieving counsel of record for BAT, Inc., Diaz, and Azevedo.</p> <p>MOTIONS TO BE RELIEVED AS COUNSEL OF RECORD</p> <p>The motions by Shane Singh and Genna Promnick-Pavolov, Lewis Brisbois Bisgaard & Smith LLP, to be relieved as counsel of record for Defendants Brian Reale, Daniel March, Arash Asante-Bayrooti, Bat Inc., Mario Azevedo, and Tony Diab, are granted.</p> <p>As an initial matter, Plaintiff named Brian Reale as a defendant in the Complaint. (See ROA 2.) An Answer to the Complaint was filed on behalf of Brial Reale, not Brian Reale. (ROA 15.) Defendants' case management conference also listed Brial Reale. (See ROA 18.) At the case management conference, the court pointed this out. Defense counsel indicated that they would confirm the name of their client who was named as Brian Reale and answered as Brial Reale. (See 3/24/2023 Minute Order.) Since then, Reale has not sought to amend the Answer. Defense counsel, however, seeks to be relieved as counsel for Brian Reale. (See ROA 97.) Because the court's records reflect that defense counsel represents Brial Reale, not Brian Reale, the court has construed the motion as one to be relieved as counsel of record for Brial Reale.</p> <p>Defense counsel did not provide the last known telephone numbers for Reale, March, Asante-Bayrooti, BAT Inc., Azevedo, and Diab on the proposed orders. Counsel should be prepared to provide the telephone numbers, so that the court can sign the proposed orders.</p> <p>BAT, Inc. cannot represent itself. It must seek legal representation immediately. Failure to retain an attorney may lead to striking the pleadings, among other things. The court therefore sets a status conference re: counsel for BAT, Inc. for July 12, 2024, at 9 am in Department C21.</p>
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