Superior Court of the State of California
County of Orange

TENTATIVE RULINGS FOR DEPARTMENT C32
JUDGE LEE L. GABRIEL, Dept. C32

Date: April 23, 2024

APPEARANCES: Department C32 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance 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. Check-in instructions and instructional video are available at https://www.occourts.org/mediarelations/aci.html. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") are also available at https://www.occourts.org/mediarelations/aci.html.

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.

All hearings are open to the public.

If you desire a transcript of the proceedings, you must provide your own court reporter (unless you have a fee waiver and request a court reporter in advance). 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

These are the Court's tentative rulings. They may become an order if the parties do not appear at the hearing. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

If the parties agree to submit on the Court's tentative rulings, please call the Court Clerk to inform the court that all parties submit on the Court's tentative ruling **(657-622-5232)**. The tentative ruling will then become the order of the Court upon a party or parties informing the Court that all parties submit to the Court's tentative ruling.

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
2	**Arora vs Anaheim Police 30-2023-01358961-CU-CR-CJC**	**Defendant's Demurrer to Complaint** Defendant City of Garden Grove's Demurrer is DENIED as moot. "In response to a demurrer and prior to the case being at issue, a complaint or cross-complaint shall not be amended more than three times, absent an offer to the trial court as to such additional facts to be pleaded that there is a reasonable possibility the defect can be cured to state a cause of action." (Code Civ. Proc., § 430.41(e)(1).) The Demurrer is moot because Plaintiff has filed an amended complaint. "The filing of the first amended complaint rendered the defendant's demurrer moot since an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading." (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1054, (cleaned up).) On 4/2/24, Plaintiff filed a First Amended Complaint. Thus, the Demurrer is moot.
3	**Curtin vs Mendoza 30-2022-01241781-CU-BC-CJC**	**1. Motion to be Relieved as Counsel of Record** The motion of attorney Franklin J. Contreras and Bryan Whitmer-Cabera of Shulman Bastian Friedman & Bui LLP to withdraw as attorney of record for Defendant Alexandra Mendoza is GRANTED. (Code Civ. Proc. § 284, CRC 3.1362.) Moving attorney is to give notice. **2. Plaintiff's Motion to Compel Responses to Form Interrogatories, Set One, and Request for Monetary Sanctions** **3. Plaintiff's Motion to Compel Responses to Special Interrogatories, Set One, and Request for Monetary Sanctions** Plaintiff Colleen Curtin's unopposed Motion to Compel Defendant Alexandra Mendoza's Initial Responses to Form Interrogatories, Set One and Special Interrogatories, Set One, is GRANTED. A party's failure to timely respond to interrogatories results in a waiver of any objections to the requests. (Code Civ. Proc. § 2030.290(a).) If a party to whom interrogatories fails to serve a

timely response, the propounding party may move for an order compelling responses and for a monetary sanction. (Code Civ. Proc § 2030.290(b).) With regard to sanctions, the court "shall" impose a monetary sanction against the losing party on a motion to compel unless it finds that party acted "with substantial justification" or other circumstances render the sanction "unjust." (Code Civ. Proc. § 2030.290.) No meet and confer is necessary when a party has failed to respond to the discovery.

Defendant failed to respond to Plaintiff's Form Interrogatories, Set One and Special Interrogatories, Set One, which were served on October 4, 2023. (Carlin Decl., ¶ 2, Ex. A.) Defendant has not opposed the motion or provided any reason for not responding to the discovery at issue.

Accordingly, the Motions are GRANTED. Defendant is ordered to provide responses without objections to Form Interrogatories, Set One and Special Interrogatories, Set One within twenty (20) days of this hearing.

Within twenty (20) days, Defendant shall pay sanctions to Plaintiff in the amount of $2,820 (6 hours @ $450 + (2x filing fee of $60).

4. Plaintiff's Motion to Compel Responses to Request for Production of Documents, Set One, and Request for Monetary Sanctions

Plaintiff Colleen Curtin's unopposed Motion to Compel Defendant Alexandra Mendoza's Initial Responses to Request for Production of Documents, Set One, is GRANTED.

When a party makes an inspection demand under Code of Civil Procedure section 2031.020 and the party to whom the demand is directed fails to respond, the demanding party may move for an Order compelling a response and for monetary sanctions pursuant to Code of Civil Procedure section 2031.300. The party who fails to respond waives any objection to the demand, including one based on privilege or on the protection for work product under Section 2018(a) of the Code of Civil Procedure. (Code Civ. Proc. § 2031.300(a).) No meet and confer is necessary when a party has failed to respond to the discovery.

Defendant failed to respond to Plaintiff's Request for Production of Documents, Set One, which were served on October 4, 2023.

(Carlin Decl., ¶ 2, Ex. A.) Defendant has not opposed the motion or provided any reason for not responding to the discovery at issue.

Accordingly, the Motion is GRANTED. Defendant is ordered to provide responses without objections to Plaintiff's Request for Production of Documents, Set One, within twenty (20) days of this hearing.

Within twenty (20) days, Defendant shall pay sanctions to Plaintiff in the amount of $1410 (3 hours @ $450 + $60 filing fee).

5. Plaintiff's Motion to Deem Facts in Requests for Admissions, Set One, Admitted, and Request for Monetary Sanctions

Plaintiff Colleen Curtin's unopposed Motion to Deem Admitted Defendant Alexandra Mendoza's Responses to Request for Admissions, Set One, is GRANTED.

"If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply: . . . (b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the request be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010.)" Code Civ. Proc. § 2033.280. It is mandatory that the court impose a monetary sanction on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion. (Code Civ. Proc. § 2033.280(c).)

Defendant failed to respond to Plaintiff's Request for Admissions, Set One which were served on October 4, 2023. Carlin Decl., ¶ 2, Ex. A.).

Accordingly, the Motion is GRANTED. Defendant's responses to Plaintiff's Request for Admissions, Set One are deemed admitted.
Within twenty (20) days, Defendant shall pay sanctions to Plaintiff in the amount of $1410 (3 hours @ $450 + $60 filing fee).

Moving party to give notice.

4	**Sarkisyan vs JLR Newport Beach LLC 30-2023-01328543-CU-FR-CJC**	**Motion to Compel Responses to Requests for Production of Documents, Set One, and Request for Monetary Sanctions** Defendant JLR Newport Beach LLC's Motion to Compel Plaintiff Alexander Levonovich Sarkisyan's Further Responses to Request for Production of Documents, Set One is DENIED as MOOT. Just prior to this hearing, Plaintiff served further responses to Defendant's Request for Production of Documents, Set One. Therefore, because there is no separate statement as to those issues, and no meet and confer, the Court cannot rule on the motion. If Defendant finds Plaintiff's further responses to be deficient, it must bring another motion to compel. However, "[t]he court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though…the requested discovery was provided to the moving party after the motion was filed." (CRC Rule 3.1348.) Here, Plaintiff waited almost five months after the filing of this motion to provide further responses. Plaintiff offers no explanation for this delay. Accordingly, the Court grants Defendant's request for sanctions in the amount of $1,062.50. Moving party to give notice.
5	**Asoau vs Tran 30-2023-01305906-CU-PO-CJC**	**Motion to Compel Responses to Requests for Production of Documents, Set One, and Request for Monetary Sanctions** Plaintiff Lucy Utu, by and through her successor in interest, Elva Utu's Motion to Compel Defendant Manor Care Health Services' Further Responses to Request for Production of Documents, Set One is DENIED as MOOT. Defendant Manor Care served supplemental responses to the document request at issue on October 2, 2023, and further supplemental responses on April 10, 2024. (Daveler Decl., ¶ F.) The further supplemental responses were to Request Nos. 13-20, 22-28, 31, 32, 39-41, 49, 50, 51, 54, and 55 – the same requests at issue in this motion. However, Plaintiffs' motion and separate statement addresses Manor Care's initial responses to the document requests and not the further supplemental responses. Therefore, because there is no separate statement as to those issues, and no meet and confer, the Court cannot rule on the motion. If Plaintiff finds Manor Care's further supplemental

		responses to be deficient, Plaintiff must bring another motion to compel. However, "[t]he court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though…the requested discovery was provided to the moving party after the motion was filed." (CRC Rule 3.1348.) Here, it appears the Defendant has been providing supplemental responses and responsive documents to Plaintiff in an attempt to resolve the dispute. Thus, the Court declines to award sanctions at this time. However, the Court strongly encourages the parties to resolve their discovery disputes informally. Future motions to compel before this Court may result in the issuance of sanctions. Moving party to give notice.
6	**Lynn vs Does 1-20 30-2023-01350562-CU-DF-CJC**	**Motion to Compel Deposition and Production of Documents** Plaintiffs Brent Lynn and Maya Lynn's Motion to Compel third-party Verizon Wireless Services to comply with the Deposition Subpoena for Personal Appearance and Production of Documents and Things ("Subpoena"), filed on 3/5/2024 under ROA 38, is DENIED. A motion to compel a third party to comply with a deposition subpoena must be personally served on the third-party deponent. California Rules of Court, rule 3.1346 provides: > 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. A proof of service must be filed with the court clerk at least 5 court days before the hearing. (California Rules of Court, rule 3.1300.) Here, Plaintiffs did not serve the nonparty with the Motion personally, or at all. The proof of service attached to the Motion only represents that Plaintiffs' original counsel of record – Law

		Offices of Salar Atrizadeh – was served via email. Thus, there is no evidence that Plaintiffs complied with California Rules of Court, rule 3.1346. In addition, the record indicates Plaintiffs failed to seek leave of Court to serve the Subpoena before expiration of the 20-day deposition hold. Plaintiffs may not serve deposition notices until 20 days after service of summons or appearance of any defendant. (Code Civ. Proc., § 2025.210(b).) The deposition "hold" applies to all discovery by deposition, including business records subpoenas to nonparties (*California Shellfish, Inc. v. United Shellfish Co.* (1997) 56 Capp.App.4th 16, 21 [improper to serve business records subpoena before serving any defendant with summons and complaint].) The California Supreme Court has suggested that if the complaint names only "Doe" defendants and is not served on anyone, the deposition "hold" may not commence running until someone is served. (See *Bernson v. Browning-Ferris Indus. of Calif., Inc.* (1994) 7 Cal.4th 926, 930, fn. 2.) The court may authorize plaintiff to serve a deposition notice before expiration of the "hold" for good cause shown. (Code Civ. Proc., § 2025.210(b).) Such relief may be granted via *ex parte* application. (*Id*.) Here, since Plaintiffs have not filed a proof of service of summons with the Court it appears the Complaint has not been served on any defendant. Yet Plaintiffs did not seek leave to serve the Subpoena before expiration of the 20-day "hold". The only *ex parte* relief Plaintiffs have sought in this action was to advance and specially set the hearing date for the instant Motion. Based on the foregoing, Plaintiffs Brent Lynn and Maya Lynn's Motion to Compel third party Verizon Wireless Services' Attendance at Deposition and Document Production is DENIED. Plaintiffs to give notice.
7	**Quiroz vs American Honda Motor Co. Inc. 30-2023-01334288-CU-CO-CJC**	**Defendant's Motion to Compel Arbitration and Stay Proceedings** Defendants American Honda Motor Co., Inc. ("Manufacturer") and DWWSA, Inc. dba Freeway Honda ("Dealer") Motion to Compel Arbitration is GRANTED in part and DENIED in part. Under Code of Civil Procedure section 1281.2, a party to an arbitration agreement may move to compel arbitration if another party to the agreement refuses to arbitrate. A party moving to compel arbitration under Section 1281.2 must prove by a

		preponderance of the evidence that: (1) The parties entered into a written agreement to arbitrate; and (2) one or more of the claims at issue are covered by that agreement. (Code Civ. Proc., § 1281.2; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.) If the moving party meets this burden, the burden shifts to the resisting party to prove by a preponderance of evidence a defense to enforcement of the agreement. (*Villacreses, supra*, 132 Cal.App.4th at p. 1230.) Although the motion is unopposed, Defendants still maintain the burden of establishing that a valid arbitration agreement covers the claims asserted by Plaintiffs against both Defendants in this case. Here, to establish the existence of an arbitration agreement, Defendants submitted the RISC. (Fisch Decl., A.) The RISC is also attached to the Complaint. (Compl., Ex. A.) The first page of the RISC includes a box entitled "Agreement to Arbitrate." The box contains Plaintiffs' signatures below a paragraph stating: **Agreement to Arbitrate:** By signing below, you agree that pursuant to the Arbitration Provision on page 5 of this contract, you or we may elect to resolve any dispute by neutral, binding arbitration and not by a court action. See the Arbitration Provision for additional information concerning the agreement to arbitrate. The Arbitration Agreement is on page 5 of the RISC and sets forth, in pertinent part: **ARBITRATION PROVISION PLEASE REVIEW - IMPORTANT - AFFECTS YOUR LEGAL RIGHTS 1. EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY JURY TRIAL. 2. IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS. 3. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY**

		NOT BE AVAILABLE IN ARBITRATION. Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this Arbitration Provision, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to your credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship (including any such relationship with third parties who do not sign this contract) shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action. If federal law provides that a claim or dispute is not subject to binding arbitration, this Arbitration Provision shall not apply to such claim or dispute. Any claim or dispute is to be arbitrated by a single arbitrator on an individual basis and not as a class action. You expressly waive any right you may have to arbitrate a class action. You may choose the American Arbitration Association, 1633 Broadway, 10th Floor, New York, New York 10019 (www.adr.org), or any other organization to conduct the arbitration subject to our approval. You may get a copy of the rules of an arbitration organization by contacting the organization or visiting its website. The RISC also states that Dealer is the "Seller-Creditor," and that Plaintiff is the Buyer. Specifically, the RISC includes the following definition on the first page of the contract: "You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on all pages of this contract. You agree to pay the Seller- Creditor (sometimes "we or "us" in this contract) the Amount Financed and Finances Charges in U.S. funds according to the payment schedule below." Defendants contend that an order compelling arbitration is warranted because the Retail Installment Sales Contract ("RISC") Plaintiffs signed to purchase a 2022 Honda Pilot ("Vehicle") contains an arbitration provision ("Arbitration Provision") which applies to Plaintiffs' claims against both Defendants since Plaintiffs affirmatively allege having had sufficient dealings with Manufacturer, among other assertions for which Plaintiffs are estopped from contradicting *ex post*. Defendants alternatively assert that Manufacturer is a third-party signatory who made express warranty promises to Plaintiffs and the Dealer's presence is required in those claims that name Manufacturer only, but which seek to dispose of Dealer's interest in the RISC.

DWWSA, INC. DBA FREEWAY HONDA

Dealer has established that an Arbitration Agreement exists between it and Plaintiffs. The Dealer has also established that at least one or more of the claims between Plaintiffs and Dealer are covered by the Arbitration Agreement. For example, Plaintiff alleges they brought the Vehicle to Dealer for repair of various defects, Dealer was unable to repair the defects after a reasonable number of repair attempts, and Dealer's negligent repairs caused Plaintiffs' harm. (See Compl., ¶¶ 12-17,124-132.)

AMERICAN HONDA MOTOR CO., INC.

The Court recognizes there is currently a split of authority Defendants failed to mention regarding whether manufacturers' express or implied warranties that accompany a vehicle at the time of sale constitute obligations arising from the sale contract, permitting manufacturers to enforce an arbitration agreement in the contract. (Compare *Felisilda v. FCA US LLC* (2020), 53 Cal. App. 5th 486 (*Felisilda*) with *In Re Ford Motor Warranty Cases* (2003) 89 Cal.App.5th 1324 (*Ochoa*).)

Felisilda involved Plaintiffs suing for violation of the Song-Beverly Act against the dealer and manufacturer. (*Felisilda, supra*, 53 Cal.App.5th 4 at 489.) The dealer moved to compel arbitration relying on the RISC signed by Plaintiffs and the manufacturer filed a notice of non-opposition. (*Id*.) The trial court ordered Plaintiffs to arbitrate against both parties and Plaintiffs dismissed the dealer. (*Id*.) The arbitrator then found in favor of the manufacturer, and Plaintiffs appealed, contending that the trial court lacked discretion to order Plaintiffs to arbitrate against the manufacturer, a non-signatory to the RISC. (*Id*.) The Court of Appeal concluded that the trial court correctly ordered arbitration as to the manufacturer, reasoning: "Based on language in the sales contract and the nature of the Felisildas' claim against FCA, we conclude the trial court correctly ordered that the entire matter be submitted to arbitration. In signing the sales contract, the Felisildas agreed that "[a]ny claim or dispute, whether in contract, tort, statute or otherwise ... between you and us ... which arises out of or relates to ... [the] condition of this vehicle ... shall ... be resolved by neutral, binding arbitration and not by a court action." (Italics added.) Here, the Felisildas' claim against FCA relates directly to the condition of the vehicle." (italics in original) Because the Felisildas expressly agreed to arbitrate claims arising out of the condition of the vehicle – even

		against third party nonsignatories to the sales contract – they are estopped from refusing to arbitrate their claim against FCA. Consequently, the trial court properly ordered the Felisildas to arbitrate their claim against FCA." (*Felisilda* at 496-497.) In *Ochoa*, vehicle owners brought an action against the manufacturer asserting claims for breach of warranty, fraudulent inducement and concealment relating to transmission defects in vehicles. (*Ochoa, supra*, 89 Cal.App.5th at 1329-1330.) The trial court denied the manufacturer's motion to compel arbitration and the manufacturer appealed. (*Id*. at 1331.) The Court of Appeal reasoned that equitable estoppel did not apply because the plaintiffs' claims were not intertwined with the RISC. (*Id*. at 1332-1334.) *Ochoa* expressly declined to follow *Felisilda*, holding: "We respectfully disagree with Felisilda's analysis for the following reasons. [¶] That the Felisilda plaintiffs and the dealer agreed in their sale contract to arbitrate disputes between them about the condition of the vehicle does not equitably estop the plaintiffs from asserting FCA has no right to demand arbitration. Equitable estoppel would apply if the plaintiffs had sued FCA based on the terms of the sale contract yet denied FCA could enforce the arbitration clause in that contract. [Citation] That is not what the plaintiffs did in Felisilda." (*Id*. at 1334, footnote omitted.) [M]anufacturer vehicle warranties that accompany the sale of motor vehicles without regard to the terms of the sale contract between the purchaser and the dealer are independent of the sale contract." (*Ibid*.) Further, the *Ochoa* court found the language of the RISC stating, "including any such relationship with third parties who do not sign this contract" did not mean the RISC was intended to permit third parties such as the manufacturer to move to compel arbitration. (*Id*. at 1334-1335.) Finally, the *Ochoa* court reasoned the plaintiffs' claims were not based on the RISC but "based on FMC's statutory obligations to reimburse consumers or replace their vehicles when unable to repair in accordance with its warranty." (*Id*. at 1335.) As to the third-party beneficiary issue, the *Ochoa* court "agree[d] with Ngo that the sale contracts reflect no intention to benefit a vehicle manufacturer under Goonewardene." (*Id*. at 1338). "First, nothing in the sale contracts or their arbitration provision offers any direct 'benefit' to FMC [citation]." (*Ibid*.) "Second, there is no indication that a benefit to FMC was the signatories' 'motivating purpose' [citation] in contracting for the sale and purchase of a Ford vehicle." (*Id*. at 1338-1339.) "Finally, allowing FMC to enforce the arbitration provision as a third

party beneficiary would be inconsistent with the 'reasonable expectations of the contracting parties' [citation] where they twice specifically vested the right of enforcement in the purchaser and the dealer only." (*Id.* at 1340.)

As of July 19, 2023, Supreme Court review has been granted on *Ochoa*. The order granting review, 532 P.3d 270, states the following:

> "The issue to be briefed and argued is limited to the following: Do manufacturers' express or implied warranties that accompany a vehicle at the time of sale constitute obligations arising from the sale contract, permitting manufacturers to enforce an arbitration agreement in the contract pursuant to equitable estoppel?
>
> Pending review, the opinion of the Court of Appeal, which is currently published at 89 Cal.App.5th 1324, 306 Cal.Rptr.3d 611, may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority that would in turn allow trial courts to exercise discretion under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456, 20 Cal.Rptr. 321, 369 P.2d 937, to choose between sides of any such conflict. (See Standing Order Exercising Authority Under California Rules of Court, Rule 8.1115(e)(3), Upon Grant of Review or Transfer of a Matter with an Underlying Published Court of Appeal Opinion, Administrative Order 2021-04-21; Cal. Rules of Court, rule 8.1115(e)(3) and corresponding Comment, par. 2.)"

Here, this Court will exercise its discretion and follow *Ochoa*, as it finds that *Ochoa* is more persuasive.

Under *Ochoa*, the RISC cannot be read to allow non-signatories a right to invoke the arbitration provision, or treated as the basis for warranty claims against the manufacturer, where the sales contract itself is not the basis for the claim. Therefore, under *Ochoa*, the Court must analyze whether the Complaint's allegations arise out of the RISC.
Here, Plaintiffs' claims against the Manufacturer do not arise out of the RISC itself, i.e., Plaintiffs' "credit application, purchase or condition of this vehicle, this contract or any resulting transaction or relationship" under the RISC. Rather, Plaintiffs' claims are based on Manufacturer's alleged warranty obligations.

		(See, e.g. Complaint, ¶¶ 9-18.) The Complaint also alleges causes of action for fraud, violations of Bus. & Prof. Code §§ 17200, et seq. and 17500, et seq., Negligence, and Strict Liability against Manufacturer and Dealer. (Complaint, ¶¶ 26-33, 87-140.) Even assuming the claims relate to Plaintiffs' purchase of the Vehicle, as stated in *Ochoa*, Manufacturer has not shown that it is a party to the RISC or that it may compel arbitration under theories of third-party beneficiary or equitable estoppel. Thus, because Plaintiffs' claims against Manufacturer do not arise out of the RISC itself, pursuant to *Ochoa*, the Court declines to compel arbitration against Manufacturer, as it is not a signatory to the RISC. Therefore, Defendants American Honda Motor Co., Inc. and DWWSA, Inc. dba Freeway Honda's Motion to Compel Arbitration is GRANTED in part and DENIED in part. Defendants' Motion is GRANTED as to the request for order compelling arbitration against Defendant DWWSA, Inc. dba Freeway Honda. Plaintiffs are ordered to arbitrate their claims against Defendant, DWWSA, Inc. dba Freeway Honda. Defendants' Motion is DENIED as to the request for order compelling arbitration against Defendant American Honda Motor Co., Inc. The Court stays this action pending completion of arbitration against DWWSA, Inc. dba Freeway Honda. The Court will set a Status Conference re: Arbitration at the hearing. Defendants are to give notice.
9	**Geng vs Han 30-2023-01320032-CU-DF-CJ**	**1. Motion to Compel Responses to Form Interrogatories, Set One, and Request for Monetary Sanctions** **2. Plaintiff's Motion to Compel Responses to Special Interrogatories, Set One, and Request for Monetary Sanctions** Plaintiff Ivy Zihan Geng's unopposed Motion to Compel Defendant Feijuan Xiong's Initial Responses to Form Interrogatories, Set One and Special Interrogatories, Set One, is GRANTED. A party's failure to timely respond to interrogatories results in a waiver of any objections to the requests. (Code Civ. Proc. § 2030.290(a).) If a party to whom interrogatories fails to serve a timely response, the propounding party may move for an order compelling responses and for a monetary sanction. (Code Civ.

		Proc § 2030.290(b).) With regard to sanctions, the court "shall" impose a monetary sanction against the losing party on a motion to compel unless it finds that party acted "with substantial justification" or other circumstances render the sanction "unjust." (Code Civ. Proc. § 2030.290.) No meet and confer is necessary when a party has failed to respond to the discovery. Defendant failed to respond to Plaintiff's Form Interrogatories, Set One and Special Interrogatories, Set One, which were served on August 29, 2023. (Stewart Decl., ¶ 4, Ex. A.) Defendant has not opposed the motion or provided any reason for not responding to the discovery at issue. Accordingly, the Motions are GRANTED. Defendant is ordered to provide responses without objections to Form Interrogatories, Set One and Special Interrogatories, Set One within twenty (20) days of this hearing. Within twenty (20) days, Defendant shall pay sanctions to Plaintiff in the amount of $1,470. **3. Plaintiff's Motion to Compel Responses to Requests for Production of Documents, Set One, and Request for Monetary Sanctions** Plaintiff Ivy Zihan Geng's unopposed Motion to Compel Defendant Feijuan Xiong's Initial Responses to Request for Production of Documents, Set One, is GRANTED. When a party makes an inspection demand under Code of Civil Procedure section 2031.020 and the party to whom the demand is directed fails to respond, the demanding party may move for an Order compelling a response and for monetary sanctions pursuant to Code of Civil Procedure section 2031.300. The party who fails to respond waives any objection to the demand, including one based on privilege or on the protection for work product under Section 2018(a) of the Code of Civil Procedure. (Code Civ. Proc. § 2031.300(a).) No meet and confer is necessary when a party has failed to respond to the discovery. Defendant failed to respond to Plaintiff's Request for Production of Documents, Set One, which were served on August 29, 2023. (Stewart Decl., ¶ 4, Ex. A.) Defendant has not opposed the motion or provided any reason for not responding to the discovery at issue.

		Accordingly, the Motion is GRANTED. Defendant is ordered to provide responses without objections to Plaintiff's Request for Production of Documents, Set One, within twenty (20) days of this hearing. Within twenty (20) days, Defendant shall pay sanctions to Plaintiff in the amount of $735. Moving party to give notice.
11	**Merrill vs Santa Ana River Lakes 30-2022-01271512-CU-PO-CJC**	**Plaintiff's Motion for an Order Relieving Plaintiff from Provisions** The Petition for Order Relieving Plaintiff/Petitioner from Provisions of Government Code section 945.4 is DENIED. <u>Procedural History</u> The complaint alleges Plaintiff, a minor, was injured by falling into a fire pit and landing on hot coals on 1/8/22. Plaintiff's complaint named Santa Ana River Lakes and Colby Elliott as Defendants. In Doe Amendments filed on 10/6/22, Plaintiff named Corona Recreation, Inc. and Craig Elliott as Does 1 and 2. On 2/24/23, Plaintiff was served with responses to special interrogatories from Defendant Corona Recreation Inc., which included the following statement in response to interrogatory no. 18: "The Orange County Water District is responsible for any maintenance and upkeep related to the land and the water." (Bedirian Decl., Ex. A.) Plaintiff sent an Application to File a Late Claim to Orange County Water District (OCWD), a public entity, on 10/9/23, which was rejected by OCWD on 10/12/24. (Bedirian Decl., Exs. B and C.) <u>Legal Standard</u> The Government Claims Act generally requires the plaintiff to file a government claim within six months of the incident before filing suit against a public entity. (Gov. Code § 945.4.) Government Code section 946.6(c) states in part: "(c) The court shall relieve the petitioner from the requirements of Section 945.4 if the court finds that the application to the

		board under Section 911.4 was made within a reasonable time not to exceed that specified in subdivision (b) of Section 911.4 and was denied or deemed denied pursuant to Section 911.6 and that one or more of the following is applicable: (1) The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes that it would be prejudiced in the defense of the claim if the court relieves the petitioner from the requirements of Section 945.4. (2) The person who sustained the alleged injury, damage, or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim." An application to file a late claim must be filed "within a reasonable time <u>not to exceed one year</u> after the accrual of the cause of action." (Gov. Code § 911.4(b), emphasis added.) The one-year deadline is not extended or tolled while the petitioner is a minor. (Gov. Code § 911.4(c)(1).) "[F]iling a late-claim application within one year after the accrual of a cause of action is a jurisdictional prerequisite to a claim-relief petition. When the underlying application to file a late claim is filed more than one year after the accrual of the cause of action, the court is without jurisdiction to grant relief under Government Code section 946.6." (*J.J. v. County of San Diego* (2014) 223 Cal.App.4th 1214, 1221 [cleaned up].) <u>Application</u> Here, Plaintiff does not dispute that the claim accrued on 1/8/22 when Plaintiff was injured on Defendants' premises. However, Plaintiff's counsel did not submit the application to file a late claim to OCWD until 10/9/23, over one year after the claim accrued. Therefore, the Court cannot grant relief from the claim presentation requirement under Government Code sections 911.4 and 946.6, which impose a one-year limit on the Court's ability to grant relief from the claim presentation requirement to a minor claimant.
12	**Seaphan vs AOCL, LLC 30-2023-01350506-CU-MC-CJC**	**Plaintiff's Motion to Appoint Successor in Interest** Plaintiff's unopposed Motion to Appoint James Saephan as Successor in Interest to Plaintiff Chiem Saephan is GRANTED. James Saephan has submitted a declaration which satisfies the requirements of Code Civ. Proc., § 377.32. He states in his declaration that there is no proceeding for administration of

		Plaintiff's estate, he is authorized to act as successor in interest, and no other person has a superior right and attached Plaintiff's death certificate. Further, the Motion is unopposed. Plaintiff to give notice.
13	**Bynes vs Santiago 30-2021-01213345-CU-PA-CJC**	**Defendants' Motion to Contest Application for Good Faith Settlement** Defendants Fredy Alexander Santiago, Sophia Laura Heredia, and Sophie's Trucking's Motion to Contest Good Faith Settlement is GRANTED. "To determine whether a settlement is in good faith, a trial court must inquire 'whether the amount of the settlement is within the reasonable range of the settling tortfeasor's proportional share of comparative liability for the plaintiff's injuries.' [Citation.]" (*PacifiCare of California v. Bright Medical Associates, Inc.* (2011) 198 Cal.App.4th 1451, 1464 (*PacifiCare*.) The California Supreme Court in *Tech-Bilt v. Woodward-Clyde & Assoc.* (1985) 38 Cal. 3d 488 (*Tech-Bilt*), set forth the factors to consider. The factors are: (1) a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability; (2) the amount paid in settlement; (3) the allocation of settlement proceeds among plaintiffs; (4) the recognition that a settlor should pay less in settlement than he would if he were found liable after a trial; (5) the financial conditions and insurance policy limits of settling defendants; (6) the existence of collusion, fraud or tortious conduct aimed to injure the interests of non-settling defendants. (*Tech-Bilt, supra*, 38 Cal.3d at pp. 499-500.) "The Tech–Bilt factors are nonexhaustive and 'may not apply in all cases.' [Citation.]" (*Dole Food Co., Inc. v. Superior Court* (2015) 242 Cal.App.4th 894, 909.) Courts evaluate the factors at the time the settlement was entered into. (*Mattco Forge, Inc. v. Arthur Young & Co.* (1995) 38 Cal.App.4th 1337, 1349 (*Mattco Forge*).) "In the end, '[t]he ultimate determinant of good faith is whether the settlement is grossly disproportionate to what a reasonable person at the time of settlement would estimate the settlor's liability to be.' [Citation.] '[A] "good faith" settlement does not call for perfect or even nearly perfect apportionment of liability. In order to encourage settlement, it is quite proper for a settling defendant to pay less than his proportionate share of the anticipated damages. What is required is simply that the settlement not be grossly disproportionate to the settlor's fair share.' [Citation.]" (*PacifiCare, supra*, 198 Cal.App.4th at p. 1465; see *Mattco Forge, supra*, 38 Cal.App.4th 1337, 1350 [the

		most important factor is the settling party's proportionate liability].) If a proposed settlement is contested, the settling party seeking approval must make a sufficient showing of the *Tech-Bilt* factors. (Code Civ Proc., § 877.6, subd. (b); *Mattco Forge, supra*, 38 Cal.App.4th at 1350, fn.6; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group (2022), ¶ 12:872.) The settling party must present competent evidence, i.e., declarations or other means, that the settlement is within the ballpark. (*Mattco Forge, supra*, 38 Cal.App.4th at 1350, fn.6.) Conclusory declarations, without evidentiary facts, are insufficient. (G*reshko v. County of Los Angeles* (1987) 194 Cal.App.3d 822, 834.) If the settling party makes the requisite showing of the *Tech-Bilt* factors, the opposing party has the burden of proving lack of good faith, i.e., that the settlement is so far out of the ballpark as to be inconsistent with the equitable objective of Code of Civil Procedure § 877.6. (Code. Civ. Proc., § 877.6, subd. (d); *Tech-Bilt, supra*, 38 Cal. 3d at pp. 499-500.) The Lamping Defendants' settlement does not meet the requirements of Code of Civil Procedure section 877.6 or *Tech-Bilt*. Whether settling defendant pays his proportionate share is the most important factor in determining good faith and here, the Lampings are not paying anything. There is no showing of Plaintiff's total potential recovery including economic and non-economic damages and only a conclusory statement that the Lampings should pay nothing because they are not at fault. Plaintiff has already provided discovery responses demonstrating that his damages are at a minimum $100,000. Similarly, the Lampings failed to provide evidence about their financial condition or insurance, as was required. Finally, the Lampings' application only relies on the police report, which is not properly authenticated by declaration, thus, it cannot be considered by this Court. Further, the traffic collision report is not admissible evidence at trial to determine fault. (*Sherrell v. Kelso* (1981) 116 Cal.App.3d Supp. 22, 31.) Thus, the Lampings have failed to adequately show that there was in good faith. Therefore, Defendants Santiago, Heredia, and Sophie's Trucking's Motion is granted.

15	**Margineanu vs Cidar, Inc. 30-2022-01246583-CU-BC-CJC**	**Plaintiff's Motion for Summary Judgment Adjudication** Plaintiff/Cross-Defendant Aurelian Margineanu (Plaintiff) Motion for Summary Adjudication is GRANTED. <u>Legal Standard</u> Code of Civil Procedure section 437c states in part: "(o) A cause of action has no merit if either of the following exists: (1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded. (2) A defendant establishes an affirmative defense to that cause of action. (p) For purposes of motions for summary judgment and summary adjudication: (1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant or cross-defendant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto. (2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." <u>Application</u>

		Plaintiff seeks summary adjudication of (1) Plaintiff's third cause of action for disgorgement and (2) the first, second, third, and fourth causes of action against Plaintiff in Defendant's Cross-Complaint. The issue raised by Plaintiff's motion is whether Defendant was a licensed contractor. Business & Professions Code section 7048 provides that in order to perform construction or remodeling in excess of $500, one must be a licensed contractor. Under Business & Professions Code sections 7125 and 7125.2, a contractor's license is automatically suspended if they have employees but fail to carry workers compensation insurance. And under Business & Professions Code section 7031, if a contractor performs work requiring a license without a valid license, they are not entitled to compensation. Here, Plaintiff contends that because Defendant did not have workers compensation insurance, its contractor's license was invalid at all relevant times. If proven, this issue would require summary adjudication of Plaintiff's claims for disgorgement of prior payments as well as Defendant's claims in the Cross-Complaint alleging that Plaintiff owes Defendant further payment for contractor services. The parties do not dispute that Defendant performed work requiring a contractor's license and that Defendant did not carry workers compensation insurance at relevant times. Rather, the dispute is over whether Defendant employed Pedro Figueroa, who performed work on the project on Defendant's behalf, as an employee or independent contractor. The Court finds that Plaintiff has met its burden to show that Mr. Figueroa was an employee and that Defendant failed to carry workers compensation insurance, rendering Defendant's contractor's license automatically suspended as a matter of law. Defendant has not met its responsive burden of demonstrating that Mr. Figueroa was an independent contractor rather than an employee. Plaintiff relies on Labor Code section 2750.5, which creates "a rebuttable presumption affecting the burden of proof that a worker performing" services for which a contractor's license is required is an employee rather than an independent contractor.

		The presumption may be rebutted based on evidence of the following: "(a) That the individual has the right to control and discretion as to the manner of performance of the contract for services in that the result of the work and not the means by which it is accomplished is the primary factor bargained for. (b) That the individual is customarily engaged in an independently established business. (c) That the individual's independent contractor status is bona fide and not a subterfuge to avoid employee status. A bona fide independent contractor status is further evidenced by the presence of cumulative factors such as substantial investment other than personal services in the business, holding out to be in business for oneself, bargaining for a contract to complete a specific project for compensation by project rather than by time, control over the time and place the work is performed, supplying the tools or instrumentalities used in the work other than tools and instrumentalities normally and customarily provided by employees, hiring employees, performing work that is not ordinarily in the course of the principal's work, performing work that requires a particular skill, holding a license pursuant to the Business and Professions Code, the intent by the parties that the work relationship is of an independent contractor status, or that the relationship is not severable or terminable at will by the principal but gives rise to an action for breach of contract. In addition to the factors contained in subdivisions (a), (b), and (c), any person performing any function or activity for which a license is required pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code shall hold a valid contractors' license as a condition of having independent contractor status." As for the final condition – that the independent contractor hold their own contractor's license, "the presumption of employee status can be rebutted only as to persons who hold a valid contractor's license; the presumption cannot be rebutted as to persons who do not hold a valid contractor's license." (*Chin v. Namvar* (2008) 166 Cal.App.4th 994, 1004.) Defendant cites *Fillmore v. Irvine* (1983) 146 Cal.App.3d 649, 657 (*Fillmore*), in which the court declines to apply the section 2750.5 presumption in the context of determining whether an unlicensed person could recover payment under section 7031. In *Fillmore*, an unlicensed drywall worker was seeking to recover wages from the subcontractor who hired him. The Court found

		that section 2750.5 and section 7031 were conflicting in this context, because if every unlicensed person working on a job were presumed to be an employee, then section 7031's disgorgement remedy against unlicensed contractors would effectively be repealed. *Fillmore* concluded, "We hold that Labor Code section 2750.5 is not applicable to determinations of whether one is an employee or unlicensed contractor under Business and Professions Code sections 7031 and 7053." (*Id*. at 657.) Plaintiff does not address *Fillmore* in reply, and neither party has cited case law discussing the application of *Fillmore* where the dispute is between the contractor and the person who hired them (as is the case here), rather than the contractor/subcontractor and a wage worker (as in *Fillmore*). Despite *Fillmore*'s broad language, it is distinguishable here. "The holding of a decision is limited by the facts of the case being decided, notwithstanding the use of overly broad language by the court in stating the issue before it or its holding or in its reasoning." (*McGee v. Superior Court* (1985) 176 Cal.App.3d 221, 226.) Here, unlike in *Fillmore*, the dispute is not between a low-level wage worker and the subcontractor who hired them, but rather between the contractor and the person who hired the contractor. The purpose of section 7031 is to ensure that contractors comply with licensing laws. The purpose of section 7125.2 is to protect workers by ensuring contractors carry workers compensation insurance for individuals who qualify as employees. Unlike in *Fillmore*, applying the section 2750.5 presumption as to the contractor's employee in this context seems consistent with the legislature's intent because it ensures that contractors cannot circumvent such protections by inappropriately classifying employees as independent contractors. Unlike *Fillmore*, applying section 2750.5 in the context of the present case which turns on application of section 7125.2 would not effectively repeal section 7031 but would further the legislature's apparent goal of incentivizing employers to hold workers compensation insurance. Here, it is undisputed that Mr. Figueroa was not licensed. Therefore, applying the presumption under Labor Code section 2750.5, Mr. Figueroa cannot be considered an independent contractor of Defendant. However, even if the Court does not apply the presumption under section 2750.5, Defendant has not demonstrated a triable issue as

		to whether Mr. Figueroa was an independent contractor. In 2020, the legislature adopted the "ABC" test for independent contractor status, which states the employer must meet all of the following conditions to demonstrate independent contractor status: "(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact. (B) The person performs work that is outside the usual course of the hiring entity's business. (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed." Here, Defendant has submitted evidence consisting of a generalized declaration of its principal which shows, at most, (A) is in dispute. However, as to element (B), Plaintiff has submitted evidence that Mr. Figueroa performed manual labor including excavation of dirt, constructing retaining walls, and concrete work. Such work appears to be well within the usual course of Defendant's business as a contractor, as demonstrated by the fact that Defendant contracted to build the wall that Mr. Figueroa helped construct. (Creanga Decl., ¶ 8.) Defendant has also failed to submit evidence that Mr. Figueroa was customarily engaged in an independently established trade. Therefore, Plaintiff has established that Mr. Figueroa was Defendant's employee and Defendant failed to carry workers compensation insurance at relevant times, rendering its contractor's license invalid. The motion is therefore granted.