

TENTATIVE RULINGS**DEPT W15****JUDGE RICHARD Y. LEE**

Date: May 9, 2024

Civil Court Reporters: The Court does not provide court reporters for law and motion hearings. Please see the Court's website for rules and procedures for court reporters obtained by the Parties.

Tentative Rulings: The Court will endeavor to post tentative rulings on the Court's website by 5 p.m. on Wednesday. Do NOT call the Department for a tentative ruling if none is posted. **The Court will NOT entertain a request for continuance or the filing of further documents once a tentative ruling has been posted.**

Submitting on the Tentative Ruling: If ALL counsel intend to submit on the tentative ruling and do not wish oral argument, please advise the Court's clerk or courtroom attendant by calling (657) 622-5915. 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 Ruling and prepare an Order for the Court's signature if appropriate under CRC 3.1312. **Please do not call the Department unless ALL parties submit on the tentative ruling.**

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 whether the tentative ruling shall become the final ruling.

Remote Appearances: Department W15 generally conducts non-evidentiary proceedings, including law and motion, *remotely, by Zoom videoconference*: (1) All counsel and self-represented parties appearing for such hearings **must**, prior to 1:30 p.m. on Thursday, check-in online via the Court's civil video appearance website at <https://www.occourts.org/media-relations/civil.html>. (2) Participants will then be prompted to join the courtroom's Zoom hearing session. (3) The calendar will be displayed and participants will then be instructed to rename their Zoom name to include their hearing's calendar number. Check-in instructions and an instructional video are available on the court's website. All remote video participants shall comply with the Court's "Guidelines for Remote Appearances" posted online. In compliance with Local Rule 375, parties preferring to be heard in-person, instead of remotely, **shall** provide *notice of in-person appearance* to the court and all other parties five (5) days in advance of the hearing. (See the appropriate Local Form available at <https://www.occourts.org/forms/formslocal.html>).

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100	Cipriano Trujillo vs. General Motors, LLC. 22-01275123	Plaintiff moves this Court for orders compelling Connell Chevrolet to provide further responses to Plaintiff's Special Interrogatories, Set One

		<p>and Requests for Production, Set One, and for sanctions.</p> <p>As an initial issue, the Court notes Plaintiff fails to cite to any enabling authority for the requested relief. Nonetheless, a motion to compel lies where the party to whom the interrogatories or requests for production were directed gave responses deemed improper by the propounding party; e.g., objections, or evasive or incomplete answers. [Code Civ. Proc. §§ 2030.300; 2031.310.]</p> <p>Additionally, failing to respond to interrogatories or requests for production within the time limit waives most objections, including claims of privilege and “work product” protection. [Code Civ. Proc. §§ 2030.290(a); 2031.300(a).]</p> <p>In this instance, Plaintiff propounded Special Interrogatories and Requests for Production to Connell Chevrolet, Set One on April 18, 2023, by email. [Decls. of Klitzke ¶ 2, Ex. 1.] Responses were due approximately 30 days thereafter. [Code Civ. Proc. §§2030.260(a); 2031.260(a); Code Civ. Proc. §1010.6(a)(3).] Connell Chevrolet waited until August 28, 2023 to provide responses. [Id., Ex. 2.] As such, any objections are waived.</p> <p>Defendant did not oppose the motions.</p> <p>Accordingly, the motions are GRANTED. Further responses to Special Interrogatories, Set One, Nos. 1-5 and Requests for Production, Set One, Nos. 8 and 10, without objections, are due within 20 days.</p> <p>Plaintiff also requests that the Court “impose a terminating sanction against Connell Chevrolet or prohibit Connell Chevrolet and its attorneys from examining witnesses at trial.” [ROA 126 at 6:27-7:2; ROA 124 at 6:22-23.]</p> <p>However, “A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. The notice of motion shall be supported by a memorandum of points and authorities, and accompanied by a declaration setting forth</p>
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		<p>facts supporting the amount of any monetary sanction sought." [Code Civ. Proc. § 2023.040.]</p> <p>Here, the Notices merely seek "sanctions" and fail to put Defendant on notice of the type of sanction sought or against whom. Nor do the Notices cite to the enabling authority for the requested sanctions.</p> <p>As such, while some sanctions may be warranted here given Defense counsel's lack of attempt to meet and confer (See Decls. of Klitzke ¶¶6-10), as the requests for terminating sanctions were not properly noticed, they are DENIED.</p> <p><i>Moving party to give notice.</i></p>
102	ILYM Group, Inc. vs. Paul 22-01282835	<p>Cross-Defendants ILYM Group, Inc. and Lisa Mullins move for sanctions pursuant to Code Civ. Proc. §128.7 against Counsel for Cross-Complainants, Brent M. Douglas, Ethan Shakoori and Hahn Loeser & Parks LLP.</p> <p>Cross-Defendants contend that the First Amended Cross-Complaint is factually frivolous and interposed for an improper purpose.</p> <p>Under Code Civ. Proc. §128.7 a party moving for sanctions must serve the proposed motion on the allegedly offending party at least 21 days before the motion is filed. Section 128.7(c) reads, in pertinent part: "A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in section 1010, but shall not be filed with or presented to the court unless, within 21 days of service of the motion, or any other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected."</p> <p>A notice served on the party against whom sanctions is sought must comply with all of the requirements of Code Civ. Proc. §1010, including the time and place of the motion hearing. Otherwise, it does not satisfy the "safe harbor" requirement even if a second notice stating the time and place is served when the motion is filed. (<i>See Galleria Plus, Inc. v. Hanmi Bank</i> (2009) 179 Cal.App.4th 535, 538)</p>

	<p>(document served stating sanctions motion would be filed "on or after" specified date (more than 21 days later) did not provide notice of hearing date and thus did not satisfy "safe harbor" requirement).)</p> <p>The safe harbor notice provisions must be strictly complied with. This serves the statute's remedial purpose and underscores the seriousness of a motion for sanctions. (<i>Galleria Plus, supra</i>, 179 Cal.App.4th at p. 538.) This applies to both the 21-day safe harbor period and the contents of the notice to be served. "Section 128.7 mandates that notices of motion 'shall be served as provided in Section 1010.' . . . Section 128.7's incorporation of section 1010 is compulsory not permissive." (<i>Id.</i> (emphasis in original).)</p> <p>Here, Cross-Defendants did not include the hearing date when they served Cross-Complainants' counsel with the moving papers. Exhibit 8 to the declaration of Brooke L. Bove shows that Cross-Complainants' counsel acknowledged "I have not yet reserved a hearing date for this motion, so that information is not included in the notice at this time."</p> <p>Accordingly, on this ground the motion is DENIED.</p> <p>Even if the Court were to consider the merits of the motion, it would still be denied.</p> <p>The gist of Cross-Defendants' argument is that Cross-Complainants provided numerous verified written discovery responses in which they asserted that Ms. Paul was never an employee of ILYM Group, Inc. However, Ms. Paul's contentions in the FAXC are predicated on the allegation that she was an employee of ILYM Group, Inc.</p> <p>Cross-Defendants contend that the pleading violates the truthful pleading doctrine and judicial estoppel. "Under the doctrine of truthful pleading, the courts 'will not close their eyes to situations where a complaint contains allegations of fact inconsistent with attached documents, or allegations contrary to facts which are judicially noticed.'" (<i>Stella v. Asset Management Consultants, Inc.</i> (2017) 8</p>
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		<p>Cal.App.5th 181, 190-191, <i>quoting Hoffman v. Smithwoods RV Park, LLC</i> (2009) 179 Cal.App.4th 390, 400.)</p> <p>Judicial estoppel is an equitable doctrine designed to maintain the integrity of the courts and to protect the parties from unfair strategies. (<i>Owens v. Cnty. of Los Angeles</i> (2013) 220 Cal.App.4th 107, 121.) The elements of judicial estoppel are "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." (<i>Ibid.</i>)</p> <p>The determination of whether an individual was an employee involves the consideration of and balancing of numerous factors, and in this case, as acknowledged in Cross-Defendants' motion, Ms. Paul's "position, title and duties related to work she performed for ILYM are confusing and hotly contested." (Mtn. at 6:5-6; see also <i>Dynamex Operations W. v. Sup. Ct.</i> (2018) 4 Cal.5th 903.) Thus, the filing of the FAXC is not objectively unreasonable, and does not clearly violate the truthful pleading doctrine or doctrine of judicial estoppel. As such, the court does not find that the FAXC was presented for an improper purpose or lacking in evidentiary support so as to violate CCP §128.7.</p> <p>Accordingly, Cross-Defendants' motion is DENIED.</p> <p>In opposition, Cross-Complainants request that the Court award their fees for prevailing on the motion, pursuant to CCP §128.7(c)(1). Such an award is discretionary and only available "if warranted." The Court does not find that such an award is warranted here and the request is DENIED.</p> <p>The Court DENIES Cross-Defendants' requests for judicial notice as superfluous, since Cross-Defendants already submitted the same exhibits by way of the declaration of Brooke L. Bove.</p>
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		<i>Cross-Defendants to give notice.</i>
103	Reddy vs. Park Regency Care, LLC 23-01302625	<p>Plaintiff Fatima Reddy, by and through her successor in interest, Schuyler Dunk, and Schuyler Dunk filed two discovery motions: (1) Motion to Compel Defendant Sun Mar Management Services to provide Further Responses to Form Interrogatories, see ROA 87, and (2) Motion to Compel Defendant Park Regency Care, LLC dba Park Regency Care Center to provide Further Responses to Requests for Production, see ROA 132. In both motions, Plaintiff seeks \$4,020 in sanctions.</p> <p><i>Motion to Compel Defendant Sun Mar Management Services to provide Further Responses to Form Interrogatories (ROA 87)</i></p> <p>In its opposition, Defendant Sun Mar Management Services provided evidence that it provided supplemental responses to the form interrogatories on 03/11/2024 and second supplemental responses on 04/11/2024. Accordingly, the motion is MOOT as to the form interrogatories.</p> <p>The only issue that is remains is whether Plaintiff is entitled to sanctions for Defendant's conduct. The court finds sanctions appropriate in the amount of \$850. As such, the request for sanctions is GRANTED in the reduced amount of \$850.</p> <p><i>Motion to Compel Defendant Park Regency Care, LLC dba Park Regency Care Center to provide Further Responses to Requests for Production (ROA 132)</i></p> <p>In opposition, Defendant Park Regency Care, LLC dba Park Regency Care Center provided evidence that it provided supplemental responses to requests for production on 03/11/2024. Accordingly, the motion is MOOT as to the requests for production.</p> <p>The only issue that is remains is whether Plaintiff is entitled to sanctions for Defendant's conduct. The court finds sanctions appropriate in the amount of \$850. As such, the request for sanctions is GRANTED in the reduced amount of \$850.</p>

		<i>Plaintiff to give notice.</i>
104	Lutz vs. Raccoon Transportation LLC 23-01362192	<p>Plaintiffs Lynda Lutz, Erika Stewart, and Donald Gene Mosier ("Plaintiffs") move this Court for an Order correcting the clerical error pertaining to the filing of Plaintiffs' initial summons and complaint and, more specifically, deeming Plaintiff's Summons and Complaint to have been filed when originally presented on October 9, 2023.</p> <p>Plaintiffs attempted to file their Complaint, Summons, and Civil Case Cover Sheet (the "Initial Filings") in this action on October 9, 2023. (Muhtar Decl. ¶¶ 4–5; and Exhibit 'B'– 'E' thereto.) The Clerk of the Court rejected Plaintiffs' Initial Filings because the header of the Complaint truncated Defendants' names using the abbreviation "et al.". (See Id.) Ultimately the Summons and Complaint were stamped with a date of November 8, 2023, which is after the applicable statute of limitations. (Muhtar Decl. ¶ 6.)</p> <p>As such, Plaintiffs move pursuant to Code Civ. Proc. §128 and other authorities to correct this error and deem Plaintiff's Complaint filed on 10/9/2023.</p> <p>Code Civ. Proc. §128(a)(8) provides that, "Every court shall have the power to ...amend and control its process and orders so as to make them conform to law and justice."</p> <p>However, the court clerk will not accept for filing or file papers that do not comply with the Rules of Court, except upon a court order based on good cause shown. (CRC, Rule 2.118(c)) However, the clerk may not reject papers solely on the ground they are (1) handwritten or hand-printed, or (2) the writing is in a color other than blue-black or black, or (3) the font size is not exactly the point size required by Rules 2.104 and 2.110 on papers submitted electronically in portable document format (PDF), or (4) the papers do not contain an attorney's or party's fax number or e-mail address on the first page. (CRC, Rule 2.118(a), (b)) Additionally, the rule does not apply except as otherwise provided to Judicial Council forms or local court forms. (CRC, Rule 2.119)</p>

		<p>The above notwithstanding, the court clerk has no discretion to refuse for filing a pleading that substantially conforms to the Rules of Court. Instead, the clerk should file the complaint and then notify the attorney or party to correct the defect. If the clerk refuses to file papers due to minor defects, the papers are deemed filed for statute of limitations purposes on the day they were first presented for filing. (<i>Rojas v. Cutsforth</i> (1998) 67 Cal. App. 4th 774, 778; <i>Voit v. Superior Court</i> (2011) 201 Cal. App. 4th 1285, 1287.)</p> <p>The court clerk may not refuse to file a complaint for noncompliance with a local rule. (<i>Carlson v. State of California Department of Fish & Game</i> (1998) 68 Cal. App. 4th 1268, 1272.)</p> <p>Here, the reasons for rejection appear to be as follows:</p> <p>"All defendants must be listed in the header of the complaint, if there is not enough space in the box, please use an attachment to list the additional parties, excluding the parties already listed. *Note: Parties listed on the summons must match the complaint exactly."</p> <p>[Decl. of Muhtar ¶5, Ex. E.]</p> <p>Attached to the Declaration of Muhtar as Exhibit B is the Initial Complaint which was rejected. In the Judicial Form Caption, Plaintiff apparently failed to list all of the Defendants, instead using "et al." However, further down on the Complaint, at ¶1, all the Defendants are listed. Plus, these Defendants are properly listed on the Summons. (Id., Ex. C.) As to the Civil Case Cover Sheet, in the caption for "Case Name", Plaintiff states: "Lynda Lutz, et al. v. Raccoon Transportation LLC, et al."</p> <p>Code Civ. Proc. §412.20(a)(2) provides "Except as otherwise required by statute, a summons shall be directed to the defendant, signed by the clerk and issued under the seal of the court in which the action is pending, and it shall contain...(2) The names of the parties to the action."</p>
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105	Beznos vs. Horizon Construction & Remodeling, Inc. 21-01228661	<p>PLAINTIFF EITAN BEZNOS moves for an Order deeming admitted his Requests for Admission [Set Three] to DEFENDANT MARK BESNOS. (ROA 138.) Plaintiff moves for an order that Defendant Besnos and his counsel of record Fred Hayes and Rogers, MacLeith & Stolp, LLP jointly and severally pay a monetary sanction to Plaintiff in the amount of \$2,818.60 for the reasonable expenses and attorneys' fees incurred in connection with this Motion pursuant to C.C.P. §§ 2023.010, 2023.030, 2033.280(b).</p> <p>PLAINTIFF also moves for an Order compelling DEFENDANT HORIZON CONSTRUCTION & REMODELING, INC. to serve verified responses, without objection, to Plaintiff's Form Interrogatories - Employment [Set Three], within ten (10) calendar days of the hearing on this Motion. (ROA 144.) Plaintiff moves for an order that Defendant Horizon and its counsel of record Fred Hayes and Rogers, MacLeith & Stolp, LLP jointly and severally pay a monetary sanction to Plaintiff in the amount of \$2,818.60 for the reasonable expenses and attorneys' fees incurred in connection with this Motion pursuant to C.C.P. §§ 2023.010, 2023.030, 2030.290(c)</p> <p>Finally, PLAINTIFF moves for an Order deeming admitted his Requests for Admission [Set Three] to DEFENDANT HORIZON CONSTRUCTION & REMODELING, INC. Plaintiff moves for an order that Defendant Horizon and its counsel of record Fred Hayes and Rogers,</p>

	<p>MacLeith & Stolp, LLP jointly and severally pay a monetary sanction to Plaintiff in the amount of \$2,818.60 for the reasonable expenses and attorneys' fees incurred in connection with this Motion pursuant to C.C.P. §§ 2023.010, 2023.030, 2033.280(b). (ROA 150.)</p> <p>If a party to whom requests for admission are directed fails to serve a timely response, "The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction...." [C.C.P. § 2033.280.]</p> <p>If a party to whom interrogatories are directed fails to serve a timely response, "The party propounding the interrogatories may move for an order compelling response to the interrogatories." [C.C.P. § 2030.290(b).] Additionally, "The court shall impose a monetary sanction ...against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." [C.C.P. § 2030.290(c).]</p> <p>Here, Plaintiff Beznos served RFAs Set 3 to Defendants Mark Besnos and Defendant Horizon Construction & Remodeling, Inc. on August 31, 2023. [Decl. Muller ¶ 19.] Plaintiff also served Form Rogs (Employment), Set 3 on Defendant Horizon Construction & Remodeling, Inc. on the same date. Despite promises to provide responses, as of the date of filing these motions (10/24/2023), no responses have been received. [Id. ¶ 21.]</p> <p>As such, motions are GRANTED. Requests for Admission, Set Three are deemed admitted as Defendant Mark Besnos and Horizon Construction & Remodeling, Inc.</p> <p>Defendant Horizon Construction & Remodeling, Inc. is ordered to provide Verified responses to Form Rogs (Employment), Set 3, without objections, within 20 days.</p> <p>As to these three, simple, cut and paste, unopposed discovery motions, Plaintiff seeks</p>
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		<p>\$8,455.80 in sanctions. While this Court has previously awarded Attorney Muller's billable rate of \$829 an hour (see ROA 178), this Court finds that the total fee sought is excessive. Court will allow 3 hours attorney time at \$829 an hour + \$184.95 (sum representing \$61.65 X 3 for filing fees) = \$2,671.95. Sanctions against Defendants and their attorneys of record, jointly and severally, to be paid within 20 days.</p> <p><i>Plaintiff to give notice.</i></p>
106	State Farm General Insurance Company vs. Eden Centers for Advanced Fertility 21-01198546	<p>Defendant/Cross-Complainant, Craig Mechanical, Inc. ("Craig"), moves for an order granting summary judgment in its favor, and (1) against Plaintiff, State Farm General Insurance Company, and (2) against "each of the other defendants, cross-complaints, intervenors and cross-defendants in this action."</p> <p>Alternatively, Craig moves for summary adjudication.</p> <p>The hearing is CONTINUED to July 11, 2024 at 1:30 p.m. in Department W15.</p> <p>No additional filings are permitted.</p> <p><i>Clerk to give notice.</i></p>
107	Valley Forge Insurance Company vs. CRH California Water 22-01274880	<p>Defendant/Cross-Complainant, Craig Mechanical, Inc. ("Craig"), moves for an order granting summary judgment in its favor, and (1) against Plaintiff, Valley Forge Insurance Company ("Valley Forge"), and (2) against "each of the other defendants, cross-complaints, intervenors and cross-defendants in this action." Alternatively, Craig moves for summary adjudication as the first cause of action for negligence and second cause of action for strict products liability.</p> <p><i>Request for Continuance</i></p> <p>In the alternative, Valley Forge contends that the hearing should be continued under Code of Civil Procedure section 437c(h) as additional facts regarding the purchase, installation, and failure of the Culligan System will be revealed through additional discovery including the deposition of Defendant, Morris Inc.'s PMK which has not yet been taken; and which has been revealed through the deposition of Defendant, CRH California Water, Inc.'s</p>

	<p>employee, Felipe Aleman, whose deposition testimony is not yet available.</p> <p>"If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just." (Code Civ. Proc. § 437c(h).)</p> <p>A continuance is a matter within the broad discretion of the court but is "virtually mandated `upon a good faith showing by affidavit that a continuance is needed to obtain facts essential to justify opposition to the motion." [Citation.]' [Citation.]" (<i>Bahl v. Bank of America</i> (2001) 89 Cal.App.4th 389, 395.) Continuances are to be liberally granted." (<i>Ibid.</i>) "Where the opposing party submits an adequate affidavit showing that essential facts may exist but cannot be presented timely, the court must either deny summary judgment or grant a continuance. [Citation.]" (<i>Dee v. Vintage Petroleum, Inc.</i> (2003) 106 Cal.App.4th 30, 34-35.) "The nonmoving party seeking a continuance `must show: (1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts. [Citations.]' [Citation.]" (<i>Frazee v. Seely</i> (2002) 95 Cal.App.4th 627, 633.) "[T]he affiant is not required to show that essential evidence does exist, but only that it may exist." (<i>Id.</i> at p. 634.)</p> <p>"The affidavit or declaration in support of the continuance request must detail the specific facts that would show the existence of controverting evidence. [Citations.]" (<i>Lerma v. County of Orange</i> (2004) 120 Cal.App.4th 709, 715 ("<i>Lerma</i>").) "The party seeking the continuance must justify the need, by detailing both the particular essential facts that may exist and the specific reasons why they cannot then be presented." (<i>Ibid.</i>)</p> <p>The declaration should also provide an estimate of the time necessary to obtain such evidence,</p>
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	<p>and the specific steps or procedures the opposing party intends to utilize to obtain such evidence. (CCP § 437c(h); <i>see Granadino v. Wells Fargo Bank, N.A.</i> (2015) 236 Cal.App.4th 411, 420 [declaration that “additional information and testimony” required to “adequately respond to Defendant's Motion” insufficient]; <i>Cooksey v. Alexakis</i> (2004) 123 Cal.App.4th 246, 254 [merely stating “further discovery or investigation is contemplated” not sufficient].)</p> <p>Valley Forge’s counsel, Brian T. Bailey, provides that the deposition of Felipe Aleman was conducted on April 19, 2024, and that it provided relevant information for the purposes of this motion as it provided information about Mr. Aleman’s first-hand knowledge of interactions with Craig personnel relating to the Culligan System at issue, and what he saw at the Eden facility, but that as of the date of filing counsel’s declaration, the transcript is not yet available. (Declaration of Brian T. Bailey, ¶¶ 3, 4.) Attorney Bailey also provides that it is anticipated that the deposition of Morris, Inc.’s PMK will take place within the next three weeks, and that it is anticipated that the deposition of Morris, Inc.’s PMK will provide relevant information for the purposes of this motion as to the nature of the subcontract between Morris, Inc. and Craig. (Ibid.)</p> <p>Based on the foregoing, Valley Forge shows that facts essential to justify opposition to the motion may exist such that a continuance for depositions is justified under Code of Civil Procedure section 437c(h).</p> <p>The Court CONTINUES the hearing to July 11, 2024 at 1:30 p.m. in Department W15. Opposition briefs are due June 13, 2024 and reply briefs, if any are due per code.</p> <p><i>Craig to give notice.</i></p>
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