**LAW & MOTION CALENDAR**
**TENTATIVE RULINGS**

**April 25, 2024**

**Judge R. Shawn Nelson**
**Department C19**

**Department C19 hears law and motion on Thursdays at 10:00 a.m. and 1:30 p.m.**

**Court reporters:** Official court reporters are not provided in this department for any proceedings. If the parties desire the services of a court reporter, the parties should follow the procedures set forth in the Privately Retained Court Reporter Policy on the court's website at www.occourts.org.

**Tentative rulings:** The court endeavors to post tentative rulings on the court's website by 9:00 a.m. the day of the hearing. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted. The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

**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) 622-5219. Please do not call the department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under Cal. R. Ct. 3.1312.

**Appearances and public access:** Appearances, whether in person or remote, must comply with Civil Procedure Code section 367.75, California Rule of Court 3.672, Orange County Superior Court Local Rule 375, and Orange County Superior Court Appearance Procedure and Information—Civil Unlimited and Complex (pub. 9/9/22).

Unless the court orders otherwise, remote appearances will be conducted via Zoom. All counsel and self-represented parties appearing via Zoom must check in through the court's civil remote appearance website before the hearing begins. Check-in instructions are available on the court's website.

The public may attend hearings by coming to court or via remote access as described above.

**Photographing, filming, recording, and/or broadcasting court proceedings are prohibited unless authorized pursuant to California Rule of Court 1.150 or Orange County Superior Court Local Rule 180.**

**Non-appearances:** If nobody 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.

| NO. | CASE NAME | MATTER |
|---|---|---|
| **10:00 a.m.** | | |
| 1 | Van Camp v. Yamaha Motor Corporation, U.S.A. | Attorney Jeffrey C. Warren's Verified Application for Permission to Appear as Counsel Pro Hac Vice for Defendants Yamaha Motor Corporation, U.S.A., Yamaha Motor Manufacturing Corporation of America, and Yamaha Motor Co., Ltd. is GRANTED.<br><br>The Court finds attorney Warren has complied with all of the requirements of rule 9.40 of the Rules of Court.<br><br>Moving party to give notice. |

| | | |
|---|---|---|
| | | |
| 2 | Nutrition Corp., Inc. v. Sun Basket, Inc. | Noel Cohen and Polsinelli LLP's motion to withdraw as counsel of record for Plaintiff Nutrition Corp., Inc. is CONTINUED to May 23, 2024 at 10:00 a.m.<br><br>The supporting declaration (Form MC-052) states that the client has been served by mail, but this attestation alone does not satisfy the requirements of Code Civ. Proc. § 1013(a) or Code Civ. Proc. § 1013a, and there is no proof of service by mail. Instead, the proof of service attests to electronic service, only. Counsel failed to comply with the requirements set forth under Cal. R. Ct., Rule 3.1362(d) for electronic service. Counsel must submit a proper proof of service within the next seven days.<br><br>Moving counsel shall give notice of the continued hearing date, including to his client and all other parties who have appeared in the action. |
| **1:30 p.m.** | | |
| 1 | Choe v. FCA US LLC | <u>Requests for Production</u><br><br>The burden first rests on Plaintiff to "set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310, subd. (b)(1).)<br><br>Plaintiff has shown good cause for the documents requested in Requests for Production Nos. 16-18, 20-21, 27, 41, and 56. These requests pertain to the Subject Vehicle and the defects Plaintiff alleges the Subject Vehicle to have. (See Beck Decl., ¶ 5, Exh. 1.) Request for Production No. 19, however, is overbroad. Plaintiff has not set forth good cause showing the relevance of documents that are not limited to the transmission defects identified in the repair history for the Subject Vehicle.<br><br>Because Plaintiff has made a showing fact-specific showing of good cause, the burden shifts to Defendant to justify any objections made to requests for production.<br><br>Defendant has not filed an opposition or response to the instant motion and failed to justify its objections. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255 [upon the filing of a timely motion to compel further responses, the burden is on the responding party to justify any objection or failure to fully answer the discovery].) Accordingly, the motion to strike Defendant's objections to Request for Production Nos. 16-21, 27, 41, and 56 is granted.<br><br>Additionally, Defendant has waived any arguments with respect to its responses. (See *Nazir v. United Airlines, Inc*. (2009) 178 Cal.App.4th 243, 288 [failure to address or oppose issue in motion constitutes waiver of that issue]; see also *Wright v. Fireman's Fund Ins. Companies* (1992) 11 Cal.App.4th 998, 1011 ["it is clear that a defendant may waive the right to raise an issue on appeal by failing to raise the issue in the pleadings or in opposition to a . . . motion"].)<br><br>Even if the court were to consider Defendant's objections, it would overrule them. Subject to the limitations identified by the court, the document requests are not vague, ambiguous, overbroad, irrelevant, not reasonably calculated to lead to the discovery of admissible |

| | | |
|---|---|---|
| | | evidence, burdensome, oppressive, or unreasonably difficult or expensive.<br><br>Motion to Compel Further Responses to Requests for Production<br><br>Plaintiff Kim Suk Choe's unopposed **Motion to Compel Further Responses to Plaintiff's Request for Production of Documents, Set One is GRANTED**.<br><br>Defendant FCA US LLC is ordered to comply with its response to Request for Production No. 10 and to produce a copy of the Service Manual for the Subject Vehicle within 15 days of service of the notice of ruling.<br><br>Defendant is ordered to serve full, complete, and verified responses and responsive documents to Plaintiff's Request for Production Nos. 16-18, 20-21, 27, 41, and 56 within 15 days of service of the notice of ruling.<br><br>Defendant is ordered to serve full, complete, and verified responses and responsive documents to Plaintiff's Request for Production No. 19 within 15 days of service of the notice of ruling. Defendant's response shall be limited to documents concerning the Transmission Defect in vehicles of the same year, make, and model as the Subject Vehicle.<br><br>Should Defendant withhold any responsive documents based on any privilege, defendant shall also serve, within 15 days of service of the notice of ruling, a privilege log identifying all documents defendant has withheld from production on the basis of a privilege(s). The log shall identify the privilege and set forth sufficient information for plaintiff and the court, if necessary, to evaluate the privilege claims. Defendant sets forth no reasons its confidentiality concerns cannot be addressed by the stipulated protective order entered in this case on September 26, 2023. (ROA # 38.)<br><br>Plaintiff to give notice. |
| 2 | Clugston v. The City of Garden Grove | Demurrer<br><br>Defendants City of Garden Grove and Travis Hadden's **demurrer is SUSTAINED as to the second and third causes of action** with leave to amend, and **OVERRULED as to the first cause of action against** Hadden. (Code Civ. Proc., § 430.10).<br><br>Defendants' **request for judicial notice is GRANTED**. (Evid. Code § 452, subds. (c), (d)).<br><br>In ruling on a demurrer, a court must accept as true all allegations of fact contained in the complaint. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) A demurrer only tests the sufficiency of the pleadings (See *Satyadi v. West Contra Costa Healthcare District* (2014) 232 Cal.App.4th 1022, 1028 [in analyzing a demurrer, the court looks only to the face of the pleadings and to matters judicially noticeable]).<br><br>1st cause of action for wrongful death/negligence against Travis Hadden<br><br>An amendment filed after the statute of limitations has run will be deemed filed as of the date of the original complaint "provided recovery is sought in both pleadings on the same general set of facts." (*Austin v. Massachusetts Bonding & Insurance Co*. (1961) 56 Cal.2d 596, 600.) A newly pled cause of action rests upon the same facts when it involves |

| | | |
|---|---|---|
| | | the same accident and the same offending instrumentality. (*Goldman v. Wilsey Foods, Inc*. (1989) 216 Cal.App.3d 1085, 1094.)<br><br>The relation back doctrine "focuses on factual similarity rather than rights or obligations arising from the facts, and permits added causes of action to relate back to the initial complaint so long as they arise factually from the same injury." (*Dudley v. Department of Transportation* (2001) 90 Cal.App.4th 255, 266) [internal citations omitted].).<br><br>Defendant Hadden was named as a defendant in the federal action *Clugston v. City of Garden Grove et al.*, case no. 8:1-cv-01832-JVS-ADS. (RJN, Ex. A). In that action, Plaintiffs asserted a cause of action for violation of 42 U.S.C. § 1983, alleging as follows: "[b]y engaging in an unjustified high-speed pursuit in a densely populated area without reasonable belief that the suspect drivers committed anything other than a traffic infraction or otherwise posed an immediate threat to public safety Defendant Hadden was deliberately indifferent and demonstrated a reckless disregard to Mr. Clugston's constitutional and other rights." (RJN, Ex. A, p. 9). These are the same facts and injuries alleged against Defendant Hadden in the instant action. Therefore, the first and second causes of action against Defendant Hadden relate back to the federal action.<br><br><u>2nd cause of action for violation of the Bane Act (Civ. Code § 52.1)</u><br><br>Plaintiffs failed to state a claim against Defendants for violation of the Bane Act.<br><br>Civil Code § 52.1 (the "Bane Act") allows an individual to sue for damages if a person or persons "interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state…." (Civ. Code, § 52.1, subd. (b).). Plaintiffs have not alleged any facts amounting to threat, intimidation or coercion. Nor have Plaintiffs alleged any facts amounting to a reckless disregard of the constitutional rights of Mr. Clugston. (See *Cornell v. City and County of San Francisco* (2017) 17 Cal. App. 5th 766, 804).<br><br><u>3rd cause of action for injunctive relief under Code Civ. Proc. § 526a</u><br><br>Plaintiffs have not alleged any facts demonstrating standing to sue for injunctive relief under Code of Civil Procedure § 526a. (See Code Civ. Proc. § 526a, subd. (d)(2) [definition of "resident"]; *Irwin v. Manhattan Beach* (1966) 65 Cal. 2d 13, 19 [nonresident taxpayer standing]; RJN, Exs. D and F.)<br><br><u>Motion to strike</u><br><br>To the extent it is not moot, **Defendants' motion to strike is GRANTED**.<br><br>A court may strike out any irrelevant, false, or improper matter inserted in any pleading or strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule or an order of the court. (Code Civ. Proc., § 436). |

| | | |
|---|---|---|
| | | A complaint including a request for punitive damages must include allegations showing that the plaintiff is entitled to an award of punitive damages. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255). Plaintiffs seek punitive damages under the Bane Act. However, Plaintiffs have failed to state a claim under this statute. Additionally, Plaintiffs have not plead facts demonstrating oppression, fraud or malice. (Civ. Code § 3294).<br><br>Plaintiffs request attorneys' fees pursuant to Code Civ. Proc. §1021.5, and Civ. Code § 52.1. As previously discussed, Plaintiffs failed to state a claim under Civ. Code § 52.1. Plaintiffs' request for attorneys' fees under Code Civ. Proc. §1021.5 appears to be based on Plaintiffs' request for injunctive relief pursuant to Code Civ. Proc. § 526a. However, Plaintiffs have failed to state a cause of action for injunctive relief under this statute.<br><br>Should Plaintiffs desire to file an amended complaint, Plaintiffs must file and serve it within 15 days of service of notice of ruling.<br><br>Defendants shall give notice. |
| 3 | Crosby v. State Farm General Insurance Company | Plaintiff's Motion for New Trial and Motion for JNOV are **denied.**<br><br>On March 21, 2024 Plaintiffs served their Notice of Intent to Move for New Trial and Judgment Notwithstanding the Verdict. Within 10 days of such service, the moving party was required to serve and file a memorandum in support of the motion. (CRC 3.1600 (a); Code of Civil Procedure §§ 629(b), 659a.) Plaintiffs did not do so until April 3, 2024. Thus, Plaintiffs' motion is untimely.<br><br>As to the merits, Plaintiffs received a fair trial and an independent assessment by a jury who found Plaintiffs failed to carry the burden of proof for their claims. The evidence supported the jury findings and should be respected. The jury was also properly instructed on the respective parties' burden. |
| 4 | Kelley v. New Method Wellness, Inc. | Matter Is Settled. Pursuant to the terms of the Settlement Agreement, Defendant will make 18 monthly installment payments to Plaintiff. Given the installment payment schedule, the parties anticipate filing a Request for Dismissal in late 2025.<br><br>**Dismiss pursuant to CCP 664.6**? |
| 5 | Kirchner v. Smith | **Motion to Compel Responses to Form Interrogatories**<br><br>Defendant Charles Ernest Smith's motion to compel Plaintiff Debra Kirchner to provide responses to Defendant Smith's Form Interrogatories, Set One is **GRANTED**.<br><br>When a party properly propounds interrogatories and the party receiving the interrogatories fails to respond, "[t]he party propounding the interrogatories may move for an order compelling response to the interrogatories." (Code Civ. Proc., § 2030.290, subd. (b).)<br><br>Further, the propounding party is not required to file a meet and confer declaration prior to filing its motion to compel, and there is no time limit |

for the propounding party to file its motion. (Code Civ. Proc., § 2030.290; *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404.)

In addition, "[t]he party to whom the interrogatories are directed waives 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).)

Defendant Smith has presented evidence that he served Form Interrogatories, Set One on Plaintiff on November 30, 2023. (Toepel Decl. ¶ 2, Exh. A.)

Plaintiff has not provided any responses to the interrogatories. (Toepel Decl. ¶ 3.)

Plaintiff opposes the motion to compel on the basis that she was never served with the interrogatories at issue. Defendant Smith's counsel is insistent that he personally delivered the interrogatories to Plaintiff's counsel's receptionist. Plaintiff's counsel is equally insistent that he did not receive them. Plaintiff does not dispute that she received the interrogatories in connection with the instant motion and could have responded to them in the three months since the motion was filed on January 10, 2024. Plaintiff shall provide verified responses, without objections, to Defendant Smith's Form Interrogatories, Set One no later than 30 days from service of the notice of ruling.

Defendant Smith's request for sanctions is denied. The court finds that the circumstances make the imposition of sanctions unjust.

Defendant Smith to give notice.

**Motion to Compel Responses to Special Interrogatories**

Defendant Charles Ernest Smith's motion to compel Plaintiff Debra Kirchner to provide responses to Defendant Smith's Special Interrogatories, Set One is GRANTED.

When a party properly propounds interrogatories and the party receiving the interrogatories fails to respond, "[t]he party propounding the interrogatories may move for an order compelling response to the interrogatories." (Code Civ. Proc., § 2030.290, subd. (b).)

Further, the propounding party is not required to file a meet and confer declaration prior to filing its motion to compel, and there is no time limit for the propounding party to file its motion. (Code Civ. Proc., § 2030.290; *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404.)

In addition, "[t]he party to whom the interrogatories are directed waives 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).)

Defendant Smith has presented evidence that he served Special Interrogatories, Set One on Plaintiff on November 30, 2023. (Toepel Decl. ¶ 2, Exh. A.)

| | | |
|---|---|---|
| | | Plaintiff has not provided any responses to the interrogatories. (Toepel Decl., ¶ 3.)<br><br>Plaintiff opposes the motion to compel on the basis that she was never served with the interrogatories at issue. Defendant Smith's counsel is insistent that he personally delivered the interrogatories to Plaintiff's counsel's receptionist. Plaintiff's counsel is equally insistent that he did not receive them. Plaintiff does not dispute that she received the interrogatories in connection with the instant motion and could have responded to them in the three months since the motion was filed on January 10, 2024. Plaintiff shall provide verified responses, without objections, to Defendant Smith's Special Interrogatories, Set One no later than 30 days from service of the notice of ruling.<br><br>Defendant Smith's request for sanctions is denied. The court finds that the circumstances make the imposition of sanctions unjust.<br><br>Defendant Smith to give notice.<br><br>**Motion to Deem Requests for Admission Admitted**<br><br>When a party properly propounds requests for admission and the party receiving the requests fails to respond, "[t]he 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 . . . ." (Code Civ. Proc., § 2033.280, subd. (b).)<br><br>The court is required to grant this order, "unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220." (Code Civ. Proc., § 2033.280, subd. (c).)<br><br>Further, "[t]he party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product<br>. . . ." (Code Civ. Proc., § 2033.280, subd. (a).)<br><br>Defendant Charles Ernest Smith motion to deem admitted the truth of all specified matters and genuineness of all specified documents in Defendant Smith's Request for Admissions, Set One is **Granted**.<br><br>Defendant Smith's request for sanctions is denied. The court finds that the circumstances make the imposition of sanctions unjust.<br><br>Defendant Smith to give notice. |
| 6 | Ohmer v. Focus Signs and Graphics, Inc. | Plaintiff Gerald Ohmer moves to compel Defendant Cogent Signs & Graphics, Inc. to provide further responses to form interrogatories (set one). For the following reasons, the **motion is GRANTED IN PART and DENIED IN PART.**<br><br>After Plaintiff filed these motions, Defendants evidently served supplemental responses to the discovery requests at issue in this motion. (Fink Dec., ¶ 3.) Plaintiff does not appear to take issue with the adequacy of those responses. (See Reply.) Thus, the only remaining issue is Plaintiff's request for sanctions. |

| | | |
|---|---|---|
| | | The fact that responses were belatedly served does not divest the Court of jurisdiction to rule on this motion and award sanctions. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 405; see also Code Civ. Proc. § 2030.300.)<br><br>Defendants are ordered to pay sanctions of $735 (1.5 hours at $450 per hour, plus $60 filing fee) for each of the four motions, for a total of $2,940, by May 30, 2024. The sanctions amount requested by Plaintiff has been reduced because the motions were largely duplicative and related to only one interrogatory.<br><br>Plaintiff to give notice. |
| 7 | Starlink Technology Co v. N&J USA Inc | Defendants N&J USA Inc. and Tianyu Ning's **Petition to Compel Arbitration and Stay Judicail Proceedings is DENIED.**<br><br>Plaintiff Starlink Technology Co., Limited's **evidentiary objections are OVERRULED.**<br><br>In *Titan Group, Inc. v. Sonoma Valley County Sanitation Dist.* (1985) 164 Cal.App.3d 1122, plaintiff and defendant entered into a construction contract that included an arbitration clause stating, in relevant part, "All questions or controversies which may arise between the Contractor [Titan] and the Owner [District], under or in reference to this contract, *may* be subject to the decision of some competent person to be agreed upon by the Owner and the Contractor who shall act as referee, and his decisions shall be final and conclusive upon both parties." (*Titan Group, Inc. v. Sonoma Valley County Sanitation Dist.* (1985) 164 Cal.App.3d 1122, 1125.) The trial court denied the plaintiff's motion to compel arbitration. (*Id.* at p. 1126.)<br><br>On appeal, the *Titan Group* court explained, "the interpretation of a contract becomes a question of law and an appellate court 'must make an independent determination of the meaning of the contract.' [Citation.]" (*Titan Group*, *supra*, 164 Cal.App.3d 1122, 1127.) "It is the objective intent, as evidenced by the words of the contract, rather than the subjective intent of one of the parties, that controls interpretation. '[I]t is now a settled principle of the law of contract that the undisclosed intentions of the parties are ... immaterial; and that the outward manifestation or expression of assent is controlling.' [Citations.]" (*Ibid*.)<br><br>While the *Titan Group* court acknowledged that contractual arbitration was the favored method of resolving disputes, such that " 'every intendment will be indulged to give effect to such proceedings,' " it was "also mindful of the constitutional right to trial by jury. [Citation.] 'The right to trial by jury is a basic and fundamental part of our system of jurisprudence. [Citations.] As such, it should be zealously guarded by the courts. [Citations.] In case of doubt, therefore, the issue should be resolved in favor of preserving a litigant's right to trial by jury. [Citations.]' [Citation.]" (*Titan Group*, *supra*, 164 Cal.App.3d at pp. 1127-1128.)<br><br>The *Titan Group* court concluded, "In light of the importance of the jury trial in our system of jurisprudence, any waiver thereof should appear in clear and unmistakable form. This agreement does not present such a waiver. We cannot elevate judicial expediency over access to the courts and the right to jury trial in the absence of a clear waiver." (*Titan* |

| | | |
|---|---|---|
| | | *Group, Inc. v. Sonoma Valley County Sanitation Dist.* (1985) 164 Cal.App.3d 1122, 1129.)<br><br>Relying on *Titan Group*, the District Court for the Northern District held that an arbitration agreement that uses the word "may" does not evince a "clear and unmistakable" waiver of a jury trial, as the use of the word "may" suggests a permissive dispute resolution process, rather than a mandatory one, and such language might lead a reasonable person to believe the arbitration provision was optional. (*Milliner v. Bock Evans Financial Counsel, Ltd.* (N.D. Cal. 2015) 114 F.Supp.3d 871, 877.)<br><br>Defendants' Motion is based on the parties' "Cooperation Agreement," which, according to the translation, includes the following arbitration clause in Article Three, Section Five:<br><br>> Disputes arising out of this agreement should be resolved through amicable negotiations. If negotiations fails, either party ***may*** submit the dispute to Shenzhen International arbitration tribunal for arbitration.<br><br>(Exhibit A to Li Declaration, emphasis added.)<br><br>As in *Titan Group, Inc. v. Sonoma Valley County Sanitation Dist.* (1985) 164 Cal.App.3d 1122 and *Milliner v. Bock Evans Financial Counsel, Ltd.* (N.D. Cal. 2015) 114 F.Supp.3d 871, 877.), Plaintiff's waiver of a jury trial is not "clear and unmistakable." First, and as in *Milliner*, the arbitration clause is "poorly constructed, and contain[s] language that might lead a reasonable person to believe that the arbitration provision was optional." (*Milliner*, *supra*, 114 F.Supp. at p. 877.) In fact, the language of the arbitration clause, *supra*, might lead a reasonable person to believe the entire dispute resolution process was optional.<br><br>Further, it is unclear from the Cooperation Agreement whether either party signed it. In its Opposition, Plaintiff's representative states, under penalty of perjury, the Cooperation Agreement "remained unsigned," that it did not sign the Cooperation Agreement, and that it "did not consent to submission of arbitration with Shenzhen International arbitration tribunal." (Declaration of Huang Jie, ¶¶ 3-4.) Defendant has presented no evidence to the contrary.<br><br>In their Reply, Defendants contend Plaintiff affirmed the written contract by suing on it. Defendants' argument misses the mark. While Plaintiff's lawsuit against Defendants may be based on the Cooperation Agreement, whether or not the matter can be compelled to arbitration still requires an evaluation of the arbitration clause itself. As discussed, the arbitration clause does not support a finding that Plaintiff had clearly and unmistakably waived its right to a jury trial.<br><br>Plaintiff to give notice. |
| 8 | Urbina v. General Motors LLC | Off calendar. |
| 9 | Whetham v. Allison Properties, L.P. | In general, the prevailing party is entitled as a matter of right to recover costs for suit in any action or proceeding. (Cal. Civ. Proc. Code §1032(b); *Santisas v. Goodin* (1998) 17 Cal.4th 599, 606; *Scott Co. Of Calif. v. Blount, Inc.* (1999) 20 Cal.4th 1103, 1108.) Allowable costs under Code of Civil Procedure section 1033.5 must be reasonably necessary to the conduct of the litigation, rather than merely convenient or beneficial to its |

| | | |
|---|---|---|
| | | preparation, and must be reasonable in amount. An item not specifically allowable under section 1033.5(a) nor prohibited under subdivision (b) may nevertheless be recoverable in the discretion of the court if they meet the above requirements (i.e., reasonably necessary and reasonable in amount). (*Ladas v. California State Automotive Assoc.* (1993) 19 Cal.App.4th 761, 773-774.) If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they were not reasonable or necessary. *Id.* at 773-774. On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs. *Id.*<br><br>Under this standard, the court rules on each of Defendant's objections to Plaintiff's memorandum of costs as follows:<br><br>• ***Item No. 1 Filing Fees***: Defendant argues that filing and motion fees should be reduced from $946.50 to $759.75. Defendant argues that these costs reflect fees for three ex parte applications to continue the trial for Plaintiff to undergo endoscopic surgery, all of which were denied. Despite this, Plaintiff appeared at trial without any bandages post-surgery and participated in her trial. The court finds that Defendant has met its initial burden. In Plaintiff's opposition, Plaintiff explains that Plaintiff filed these ex parte applications in good faith. Plaintiff had a surgery scheduled and her doctor advised her to ask for a trial continuance. The court finds that these costs were convenient and beneficial to Plaintiff, but not reasonably necessary to the conduct of the litigation. There is no admissible evidence in the record to support Plaintiff's contention that the surgery was already schedule before Plaintiff filed the ex parte applications. The court taxes $186.75 from item no. 1.<br><br>• ***Item No. 4 Deposition Costs***: Defendant argues that deposition costs should be reduced from $10,438.72 to $1,351.30 because these costs exceed the amount allowed by statute. Defendant argues that these costs are not recoverable because Plaintiff seeks costs for both a transcript and videorecording, costs for multiple copies, and/or costs for depositions that were not read or used at trial. California Civil Code section 1033.5(a)(3)(A), however, allows for costs for "taking, video recording, *and* transcribing necessary depositions, including an original *and one copy* of those taken by the claimant and one copy of depositions taken by the party against whom costs are allowed." That Plaintiff did not use these depositions at trial does not mean that they were not reasonable and necessary for the conduct of litigation. At the discovery stage, parties are still discovering the evidence that they will eventually narrow down and use for trial. Defendant does not offer any authority for the proposition that only deposition costs that are used at trial are recoverable. The court finds that all of Plaintiff's deposition costs are recoverable except those related to expert witnesses. As such, the court taxes the $1,472 deposition costs related to Brian Daly, the $1,745.36 deposition costs related to Marc Kayem, and the $2,454.46 costs related to John Taylor.<br><br>• ***Item No. 5 Service of Process Costs:*** Defendant seeks to tax $580 in costs related to service of a deposition and trial subpoena to Mark Westfall. Defendant contends that the invoices appear high and that Plaintiff did not use this witness at trial. The court finds that Defendant has not met its burden of negating the |

| | | |
|---|---|---|
| | | presumption that these costs were valid. The standard is not what is used for trial, but what was necessary and reasonable for the conduct of litigation. As Westfall was a percipient witness relating to roof repairs, potentially calling him as a witness and preparing for such is reasonable and necessary. The court declines to tax these costs.<br><br>• ***Item No. 8(a) Witness Fees***: Defendant seeks to tax $35 in witness fees. Plaintiff has not provided evidence that the witness was paid $35 to appear. While the memorandum of costs contains receipts for the subpoenas, there were no receipts showing that Westfall actually was paid the $35. These costs are taxed.<br><br>• ***Item No. 8(b) Expert Fees***: Defendant seeks to tax $79,892.12 in expert fees. In Plaintiff's opposition, Plaintiff withdraws Plaintiff's expert fees request. $76,927.18 in expert fees is taxed (both motion and opposition state $76,892.12, but memorandum of costs state $76,927.18).<br><br>• ***Item No. 11 Court Reporter Fees***: Defendant seeks to tax $12,551.29 in court reporter fees, thereby reducing Plaintiff's requested $14,871.29 to $2,320.00. In Plaintiff's opposition, Plaintiff agrees to such a reduction. $12,551.29 is taxed.<br><br>• ***Item No. 14 Filing Fees***: Defendant seeks to tax the electronic filing fees for the three ex parte applications to continue the trial. For the same reasons as Item No. 1, the court taxes $40.54 in electronic filing fees from this item.<br><br>• ***Item No. 16 Othe***r: Defendant seeks to tax the entirety of the $329,382.77 in this category. Defendant contends that attorneys' fees are not recoverable here. Given the court's order denying Plaintiff's motion for attorney's fees, the court agrees. Further, Plaintiff seeks $670.77 in "subpoenaed records" relating to Plaintiff's own medical records. Plaintiff has failed to explain why she was not able to obtain these medical records without a subpoena and, therefore, how these costs were reasonable and necessary, rather than merely convenient and beneficial. The court taxes $329,382.77 from this item.<br><br>To summarize:<br><br>• Total Requested: $437,241.63 (erroneously calculated as $421,857.63 on memorandum of cost)<br><br>• Total Taxed: $424,795.35<br>o Item 1: $186.75<br>o Item 4: $1,472 + $1,745.36 + $2,454.46<br>o Item 8a: $35<br>o Item 8b: $76,927.18<br>o Item 11: $12,551.29<br>o Item 14: $40.54<br>o Item 16: $329,382.77<br><br>Plaintiff is awarded $12,446.28 in costs. |
| 10 | White v. Gilliam | Defendant asks that the court quash service of summons on the ground that the court lacks jurisdiction over Defendant, asserting that |

| | | |
|---|---|---|
| | | Defendant's debt had been discharged in bankruptcy. For the reasons below, the **motion is DENIED.**<br><br>"California courts may exercise jurisdiction on any basis that is not inconsistent with the state and federal Constitutions." (*In re Auto. Antitrust Cases I & II* (2005) 135 Cal. App. 4th 100, 107.) "By imposing only these constitutional limitations, our Legislature has authorized the broadest possible exercise of jurisdiction." (*Id*. at 108.)<br><br>"When a debtor files a Chapter 7 petition, the debtor lists each of his creditors." (*In re McGhan* (9th Cir. 2002) 288 F.3d 1172, 1176.) "The appointed bankruptcy trustee convenes a meeting of these creditors pursuant to 11 U.S.C. § 341(a)." (*Id*.) "All creditors must receive at least 30 days' advance notice of the creditors' meeting." (*Id*.) "Within 60 days after the date first set for that meeting, any creditor wishing to have a debt characterized as nondischargeable must file a complaint alleging nondischargeability of the debt." (*Id.)* "If the creditor has adequate notice of the meeting but fails to make a timely complaint, his claim is automatically discharged pursuant to § 523(c)(1)." (*Id*.) Even non-dischargeable debts under § 523(a)(6) will be discharged automatically if the listed creditor fails to make a timely objection. (*Id*.) "When a debtor is discharged under the Bankruptcy Code, the discharge 'operates as a permanent injunction against any attempt to collect or recover on a ... debt.'" (*Id*.)<br><br>"A different provision of the code is implicated when the creditor was not listed on the bankruptcy petition." (*Id*.) "An unlisted creditor's claim ordinarily is not discharged." (*Id*.)<br><br>A state courts lack jurisdiction to modify a bankruptcy court's discharge order. (*Id*. at 1179-1180.) A state court, however, is not divested of jurisdiction to construe or determine the applicability of a discharge order when discharge in bankruptcy is raised as a defense to a state cause of action filed in state court by a listed creditor." (*Id*. at 1180.) "[S]tate courts have the power to construe the discharge and determine whether a particular debt is or is not within the discharge" because "discharge in bankruptcy is a recognized defense under state law." (*Id*.)<br><br>A state court may take judicial notice of bankruptcy proceedings and, if it can be determined that plaintiff was a listed creditor, that plaintiff was a listed creditor, and that Plaintiff was enjoined from taking any action to collect on the debt, the state court should give effect to the bankruptcy court's orders. (*Id*. at 1180.)<br><br>With this standard in mind, the court finds that Defendant has not met his burden of establishing that Plaintiff's claim was subject to the bankruptcy court's discharge order:<br><br>First, the court grants Defendant's request for judicial notice. The documents attached to the request for judicial notice, however, contradict Defendant's arguments. The discharge order is dated March 9, 2009. [See Mvg. RJN, Ex. 2]. The "amended schedules," which lists Barbara White as a creditor, is dated August 8, 2011—over two years later. [Mvg. RJN, Ex. 1 at pp. 1 & 4.] There is no explanation whether or not the bankruptcy was reopened after March 9, 2009 and/or why amended schedules would need to be filed two years after a bankruptcy had already entered a discharge order. There is no evidence in the record that, as of the time of the discharge order, March 9, 2009, Barbara White was listed |

| | | |
|---|---|---|
| | | as a creditor on Defendant's schedules and/or had notice that of Defendant's bankruptcy.<br><br>Further, in Plaintiff's complaint, Plaintiff alleges that within the ***last two years***, Plaintiff lent money to defendant. [See Complaint, at p. 4 [Third Cause of Action for Common Counts at § CC-1(b)]. Plaintiff filed the complaint on December 11, 2023, which means that the alleged loan (and the basis of Plaintiff's claim against Defendant), occurred between December 2021 and December 2023—i.e., long after the March 2009 discharge. The complaint alleges a new debt and new claim that could not have existed at the time of Defendant's March 2009 discharge or bankruptcy.<br><br>Accordingly, the court finds that Defendant has not met its burden of establishing that Plaintiff's claims are subject to the March 2009 bankruptcy discharge order.<br><br>Defendant's **motion to quash is DENIED**. Plaintiff's request for a **continuance is DENIED** as unnecessary.<br><br>Defendant to give notice.<br>NOTE: Venue for Unlimited Cases is $35,000 and above |