Superior Court of the State of California
County of Orange

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

Date: May 14, 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
1	**KELLY VS. HYATT HOUSE CYPRESS/ANAHEIM CA 2023-01355495**	**DEMURRER TO COMPLAINT** Defendant Hyatt Corporation's Demurrer is SUSTAINED with leave to amend. Plaintiff's Complaint fails to state sufficient facts to constitute a cause of action. "If the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a demurrer. [W]e are not limited to plaintiffs' theory of recovery in testing the sufficiency of their complaint against a demurrer, but instead must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory." (Quelimane Co. v. Stewart Title Guaranty Co. (1998) 19 Cal.4th 26, 38 (cleaned up).) Here, Plaintiff has failed to state fact sufficient to constitute a cause of action. Plaintiff's stated causes of action for injuries received from sewage spill and return of rental monies are not recognized at law. Additionally, Plaintiff has not alleged all elements for a negligence. Negligence requires "(1) the defendant owed the plaintiff a legal duty, (2) the defendant breached the duty, and (3) the breach proximately or legally caused (4) the plaintiff's damages or injuries." (Thomas v. Stenberg (2012) 206 Cal.App.4th 654, 662.) Plaintiff has alleged some facts to support a negligence cause of action, even if he has mislabeled the cause of action. However, Plaintiff has failed to adequately allege that his damages are related to the alleged breach. Therefore, Defendant's Demurrer to the Complaint is sustained. Leave to amend should be liberally granted unless the complaint shows on its face that it is unable to be amended. (City of Stockton v. Superior Court (2007) 42 Cal.4th 730, 747.) Leave to amend is granted because the Complaint may be amended to adequately allege a cause of action.
3	**LYNN VS. DOES 1 THROUGH 20 2023-01350562**	**MOTION FOR DISCOVERY** Plaintiffs Brent Lynn and Maya Lynn's Motion for Limited-Expedited Discovery, filed on 12/3/2023 under ROA 12, is DENIED. As an initial matter, while Plaintiffs' motion is entitled "Motion for Limited-Expedited Discovery" and their Notice of Motion states they seek leave to "engage in limited-expedited discovery"

against LogicWeb, Inc. and Stripe, Inc. (Non-Party Deponents), the Court finds the instant motion to be a Motion to Compel Deposition of Non-Party Deponents. For example, Plaintiffs have already begun engaging in discovery by issuing business records subpoenas (Subpoenas) to Non-Party Deponents on 9/29/23 (Motion, at. p. 3:5-7, Exs. A, B), Plaintiffs have already tried to meet and confer with Non-Party Deponents without success (Motion, at. p. 3:8-11, Exs. A, B; see also Declaration of Salar Atrizadeh, ¶¶ 4, 9), Plaintiffs contend they "have the right to move for an order compelling production from the nonparty deponents under C.C.P. § 2025.480" (Motion, p. 5:20-21) and "Plaintiffs have moved to compel production of documents since the non-party deponents failed or refused to comply with the Subpoenas" (Motion, p. 5:27-6:2).

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 Non-Party Deponents with the Motion personally. The proof of service attached to the Motion represents that the Motion was served on Non-Party Deponents via email and US Mail. 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 Subpoenas before expiration of the 20-day deposition hold. Plaintiffs may not serve deposition notices until 20 days after service of summons on, or appearance by, 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 Cap.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, Plaintiffs served the Subpoenas on Non-Party Deponents on 9/29/23. 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. Therefore, the 20-day "hold" has not commenced to run and service of the Subpoenas prior to seeking leave to do so was improper. Yet Plaintiffs did not seek leave to serve the Subpoenas before expiration of the 20-day "hold". Plaintiffs contend that "courts have routinely ordered expedited discovery in similar cases where wrongdoing is alleged, and injunctive relief is sought in the pleadings." (Motion, p. 7:7-8.) However, Plaintiffs' have relied upon two federal cases for this proposition which are not binding on this Court. Further, in both cases, the parties seeking expedited discovery sought leave of court before conducting the requested discovery. (See *Apple Inc. v. Samsung Electronics Co., Ltd.* (N.D. Cal., May 18, 2011, No. 11-CV-01846-LHK) 2011 WL 1938154, at *1; *Semitool, Inc. v. Tokyo Electron America, Inc.* (N.D. Cal. 2002) 208 F.R.D. 273, 274; *American LegalNet, Inc. v. Davis* (C.D. Cal. 2009) 673 F.Supp.2d 1063, 1067.) Based on the foregoing, Plaintiffs Brent Lynn and Maya Lynn's Motion is DENIED. Plaintiffs to give notice.
4	**MENDEZ VS. BRITTCO WALL SYSTEMS, INC. 2023-01330398**	**1. MOTION TO DEEM FACTS ADMITTED** **2. MOTION TO DEEM FACTS ADMITTED** **3. MOTION TO DEEM FACTS ADMITTED** Plaintiff Johancel L. Mendez's Motion to Deem Request for Admissions, Set One, Admitted against defendants Omar Penaloza, Nathan Walker, and Lucian Daniel Tira is GRANTED. Defendants Penaloza, Walker, and Tira have failed to oppose the motion.

		"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).) Defendants Penaloza, Walker, and Tira failed to respond to Plaintiff's Request for Admissions, Set One which were served on October 27, 2023. (Moon Decl., ¶ 2, Exs. A-C.). Defendants have not opposed the motion or offered any explanation for not responding to the RFAs. Accordingly, Defendants Penaloza, Walker, and Tira responses to Defendant's Requests for Admissions, Set One are deemed admitted. With regard to sanctions, the Court awards sanctions of $825.00 ($550/hr. x 1.5 hours) in favor of moving Plaintiff and against Penaloza ($275), Walker ($275), and Tira ($275). Sanctions to be paid within 30 days' notice of this ruling. Plaintiff is also ordered to pay two additional motion fees of $60. Plaintiff filed one motion as to all three defendants, but should have filed and paid for three separate motions. Plaintiff is ordered to pay $120 in filing fees before this order becomes effective.
6	**QUEZADA VS. STERLING MOTORS, LTD. 2023-01338219**	**MOTION TO COMPEL PRODUCTION** Defendant Sterling Motors, LTD's Motion to Compel Further Responses to Requests for Production of Documents, Set One, is MOOT in light of Plaintiff's counsel's declaration that further responses were served on 4/22/24. Defendant's request for sanctions is granted in the amount of $2,325.00 against Plaintiff only, payable within 30 days of this order. (Code Civ. Proc. §2031.300(c). *See also* Code Civ. Proc. §2023.040; *Blumenthal v. Sup.Ct. (Corey)* (1980) 103 Cal.App.3d 317, 320 [when sanctions are sought against a party's attorney, the notice of motion must identify the attorney and state that sanctions are being sought against the attorney personally].)

8	**JOHER VS. JOHER 2021-01231084**	**1. MOTION TO COMPEL PRODUCTION** Plaintiffs Hassan S. Joher and Mike A. Johar's motion to compel defendant Chade M. Joher to: (1) Produce documents in response to Plaintiffs' Requests for Production Nos. 130, 131, 132, 133, 134, 135, 136, 137, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 154, and 165; and (2) Produce documents in accordance with his statement of compliance to Plaintiffs' Requests for Production Nos. 138, 151, 158, 161, and 166 is CONTINUED to 06/25/2024 at 9:00am in Dept. C32. Code of Civil Procedure section 2031.310 provides: "(a) On receipt of a response to a demand for inspection, copying, testing, or sampling, the demanding party may move for an order compelling further response to the demand if the demanding party deems that any of the following apply: [¶] (1) A statement of compliance with the demand is incomplete. [¶] (2) A representation of inability to comply is inadequate, incomplete, or evasive. [¶] (3) An objection in the response is without merit or too general. (b) A motion under subdivision (a) shall comply with each of the following: . . . (2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040." Section 2016.040 provides: "A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." The rule requiring a good faith effort to meet and confer about discovery disputes "is designed to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order . . . [t]his, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes." (*Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1016.) Plaintiffs filed this Motion after a breakdown in the meet-and-confer process with Defendant's prior counsel. Defendant's current counsel substituted into the case on February 6, 2024, after Plaintiffs had already filed this Motion. (Dunn III Decl., ¶ 4.) Since Defendant's current counsel substituted into the case, the parties have resumed the meet and confer process. (Dunn III Decl., ¶¶ 11-13.) Defendant's counsel asks that the court "take the Motion under submission and order the parties to continue

meeting and conferring, as the parties have made substantial progress since Defendants hired new counsel." (Opp., 2:21-23.)

The court agrees that a further meet and confer regarding the discovery requests at issue will facilitate the resolution of the discovery dispute.

The parties are ORDERED to further meet and confer telephonically or in person regarding the issues raised in the Motion within 15 days of the notice of this order. The parties are to file a joint statement of items still in dispute and their respective positions at least 5 court days prior to the continued hearing. No other briefing is permitted.

Plaintiffs to give notice.

2. MOTION TO COMPEL PRODUCTION

Plaintiffs Hassan S. Joher and Mike A. Johar's motion to compel defendant Hussam H. Joher to: (1) Produce documents in response to Plaintiffs' Requests for Production Nos. 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 152, and 160; (2) Produce documents in accordance with his statement of compliance to Plaintiffs' Requests for Production Nos. 150, 154, and 166; and (3) Provide a response to Plaintiffs' Request for Production No. 171 is CONTINUED to 06/25/2024 at 9:00 am in Dept. C32.

Plaintiffs filed this Motion after a breakdown in the meet-and-confer process with Defendant's prior counsel. Defendant's current counsel substituted into this case on February 6, 2024, after Plaintiffs had already filed this Motion. (Dunn III Decl., ¶ 4.) Since Defendant's current counsel substituted into the case, the parties have resumed the meet and confer process. (Dunn III Decl., ¶¶ 11-13.) Defendant's counsel asks that the court "take the Motion under submission and order the parties to continue meeting and conferring, as the parties have made substantial progress since Defendants hired new counsel." (Opp., 1:26-28.)

The court agrees that a further meet and confer regarding the discovery requests at issue will facilitate the resolution of the discovery dispute.

The parties are ORDERED to further meet and confer telephonically or in person regarding the issues raised in the

		Motion within 15 days of the notice of this order. The parties are to file a joint statement of items still in dispute and their respective positions at least 5 court days prior to the continued hearing. No other briefing is permitted. Plaintiffs to give notice.
9	**SAEPHAN VS. AOCL, LLC 2023-01350506**	**1. MOTION TO COMPEL DEPOSITION (ORAL OR WRITTEN)** **2. MOTION TO COMPEL DEPOSITION (ORAL OR WRITTEN)** The Court intends to stay all pending motions in this matter, including the Motions to Compel Deposition filed under ROAs 102 and 103, and the Motion to Appoint Successor in Interest filed under ROA 238, taking such motions off calendar. On 2/7/24, the Court entered a stipulated order appointing a referee under Code of Civil Procedure section 638, which provides in part: "A referee may be appointed upon the agreement of the parties filed with the clerk, or judge, or entered in the minutes, or upon the motion of a party to a written contract or lease that provides that any controversy arising therefrom shall be heard by a referee if the court finds a reference agreement exists between the parties: (a) To hear and determine any or all of the issues in an action or proceeding, whether of fact or of law, and to report a statement of decision. (b) To ascertain a fact necessary to enable the court to determine an action or proceeding." Here, the stipulated order stated the referee, Hon. David Chaffee (Ret.) shall "hear and determine any or all of the issues in the action or proceeding, whether of fact or of law, and to report a statement of decision." Therefore, it appears the referee should hear all pending motions in this case. If the parties believe this Court, rather than the appointed referee, should hear any of the currently pending motions, the parties shall appear at the hearing to discuss the scope of the matters to be heard by this Court and the scheduling of such hearings.

10	**ONE LLP VS. MOSES 2019-01086815**	**MOTION TO SET ASIDE/VACATE DEFAULT AND JUDGMENT** Defendant's Motion to Set Aside Default is GRANTED. There is a presumption of proper service when the party files a proof of service that complies with the statutory requirements for proofs. (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1441.) Thus, there is a statutory presumption of service because the proof of service complies with the statutory requirements. (Code Civ. Proc. § 415.10.) Defendant has overcome his burden to show that he was not properly served. Plaintiff argues that it served Defendant on 3/2/20 at 925 Canterbury Road, Apt. 405, Atlanta, GA. However, Defendant's Exhibits 2 and 3 demonstrate that he moved from 925 Canterbury Road, Apt. 808, Atlanta, GA to 36 Pitt St., Apt. 4, Charleston, SC, on 2/25/20. Exhibit 2 is a move out notice which includes the move out date for Apt. 808 and notes the forwarding address as 36 Pitt St., Apt. 4, Charleston, SC. Exhibit 3 is a Penske truck rental agreement and also notes a drop-off location of Charleston, SC. Thus, Defendant has submitted satisfactory evidence to rebut the presumption of valid service on 3/2/20. Therefore, the judgment is set aside for lack of proper service. Defendant to give notice.
11	**BEEHIVE.COM, LLC VS. GLESINGER 2023-01348798**	**DEMURRER TO CROSS-COMPLAINT** Plaintiff/Cross-Defendant Beehive.com, LLC's (Movant) Demurrer to the Cross-Complaint of Joseph Allan Gleisinger is OVERRULED. Movant demurs to the first cause of action for breach of written contract, second cause of action for breach of oral contract, and fourth cause of action for conversion. <u>First Cause of Action - Breach of Written Contract:</u> Movant contends this cause of action is deficient because the basis for the breach of contract allegations against it versus Cross-Defendant Tierney is unclear. Cross-Complainant responds that Movant is liable based on the alter ego allegations contained at paragraph 5 of the Cross-Complaint.

		"In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone." (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.) "Whether a party is liable under an alter-ego theory is normally a question of fact." (*Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 811; see *Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 1000.) At the pleading stage, the Court must liberally construe the complaint, drawing all reasonable inferences in favor of Plaintiffs' asserted claims. (*Liapes v. Facebook, Inc.* (2023) 95 Cal.App.5th 910, 919.) Therefore, although Cross-Complainant's alter ego allegations at paragraph 5 are generic, they are sufficient for purposes of the pleading stage. Cross-Complainant has also adequately pled the elements of breach of contract, which are "(1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*D'Arrigo Bros. of California v. United Farmworkers of America* (2014) 224 Cal.App.4th 790, 800.) Here, Plaintiff alleges Cross-Defendants entered into the Operating Agreement in 2012, Cross-Complainant has fully performed, but Cross-Defendants have breached the contract including misallocation of taxable losses, failure to maintain records, and failing to comply with the contractual terms for winding up Movant's business. Therefore, the demurrer to the first cause of action is overruled. <u>Second Cause of Action - Breach of Oral Contract:</u> The second cause of action alleges an oral contract involving Cross-Complainant's right to a salary and severance package in exchange for his continued commitment to Movant. Movant allegedly breached the agreement by refusing to pay compensation and severance. Movant contends the parties to the agreement are unclear and Cross-Complainant was not entitled to such compensation under the Operating Agreement, which provided that any amendments must be in writing. As discussed above, Cross-Complainant has adequately pled Movant's liability on an alter ego theory for

		purposes of the pleading stage. The question of whether there was a separate oral agreement as alleged in the second cause of action would require the Court to evaluate the evidence. Such analysis is improper at the pleading stage, where the Court must draw all reasonable inferences in favor of Cross-Complainant. Therefore, the demurrer to the second cause of action is overruled. <u>Fourth Cause of Action – Conversion:</u> This claim is based on the allegation that Cross-Defendants induced Cross-Complainant to assign his intellectual property to Cross-Defendants but failed to make the required payment under the parties' Asset Purchase Agreement. "Conversion is generally described as the wrongful exercise of dominion over the personal property of another. [Citation.] The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages." (*Regent Alliance Ltd. v. Rabizadeh* (2014) 231 Cal.App.4th 1177, 1181.) Movant contends the fourth cause of action is a disguised breach of contract claim but Movant has not breached the agreement because the second payment is not yet due because Movant has not become liquid. At this stage, Cross-Complainant has adequately pled Movant's wrongful dominion over his intellectual property. The question of whether Movant has become liquid is a factual issue which would require evaluation of the evidence. Therefore, the demurrer to the fourth cause of action is overruled.
12	**ZHEJIANG QUNYING VEHICLE CO LTD. VS. CHO INTERNATIONAL INC. 2023-01306529**	**MOTION TO BE RELIEVED AS COUNSEL OF RECORD** The motion of attorney Thomas Pedersen to withdraw as attorney of record for King Power Sports, Inc. is DENIED pending in-camera review. (Code Civ. Proc. § 284, CRC 3.1362.) Counsel's declaration in support of his Motion is insufficient because it lacks any facts for this Court to make a determination whether withdrawal is

		appropriate. Counsel may be heard in-camera should such necessary facts to support his claim that representation will violate the State Bar Act be confidential. Further, Counsel failed to file the requisite Proposed Order. Clerk to give notice.