

Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR N18
HON. Scott A. Steiner

Date: April 24, 2024

Court Reporters: Official court reporters (i.e., court reporters employed by the court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it is that party's responsibility to provide a court reporter, unless the party has a fee waiver and timely requests a court reporter in advance of the hearing (see link at end of this paragraph for further information). Parties must comply with the Court's policy on the use of privately retained court reporters, which may be found at the following link: [Official Pro Tempore Reporters | Superior Court of California | County of Orange \(occourts.org\)](https://www.occourts.org). For additional information regarding court reporter availability, please visit the court's website at [Language Access Interpreter Request | Superior Court of California | County of Orange \(occourts.org\)](https://www.occourts.org).

Tentative Rulings: The court endeavors to post tentative rulings on the court's website no later than 04:30 PM the day prior to the hearing. Tentative rulings will be posted case by case on a rolling basis as they become available. Jury trials and other ongoing proceedings, however, may prevent the timely posting of tentative rulings, and a tentative ruling may not be posted in every case. Please do not call the department for tentative rulings if one has not been posted in your case. **The court will not entertain a request to continue a hearing, or any document filed after the court has posted a tentative ruling.**

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) 622-5618. Please do not call the department unless **ALL** parties submit on the tentative ruling. If all sides submit on the tentative ruling and 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 California Rules of Court, rule 3.1312.

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 the tentative ruling becomes the final ruling. The court also may make a different order at the hearing. (Lewis v. Fletcher Jones Motor Cars, Inc. (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Appearances: Department N18 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department N18 at the North Justice Center, located at 1275 N. Berkeley Ave., Fullerton, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court’s civil video appearance website at [Civil Remote Hearings | Superior Court of California | County of Orange \(occourts.org\)](https://www.courts.ca.gov/civil-remote-hearings) before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom’s Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at [Civil Remote Hearings | Superior Court of California | County of Orange \(occourts.org\)](https://www.courts.ca.gov/civil-remote-hearings) The Court’s “Appearance Procedures and Information--Civil Unlimited and Complex” and “Guidelines for Remote Appearances” also are available at [Civil Remote Hearings | Superior Court of California | County of Orange \(occourts.org\)](https://www.courts.ca.gov/civil-remote-hearings) Those procedures and guidelines will be strictly enforced.

Public Access: The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this department by either coming to the department at the designated hearing time or contacting the courtroom clerk at (657) 622-5618 to obtain login information. For remote appearances by the media or public, please contact the courtroom clerk 24 hours in advance so as not to interrupt the hearings.

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
5.	2023-1356203 Guo vs. Zhang	<p>Defendant Bo Zhang’s motion to quash service of summons is continued to June 12, 2024.</p> <p>Defendant submitted significant material evidence with his reply brief. (ROA 28.) This includes declarations from Mr. Zhang himself, as well as Jerry Koller, who was served with the summons for Mr. Zhang.</p> <p>Under the general rule of motion practice, new evidence is not permitted with reply papers, unless the opposing party is given the opportunity to respond. (See <i>Maleti v. Wickers</i> (2022) 82 Cal.App.5th 181, 228; <i>Alliant Ins. Services, Inc. v. Gaddy</i> (2008) 159 Cal.App.4th 1292, 1307-1308.)</p> <p>As a result, the Court will allow Plaintiff Liao Guo to submit a brief not exceeding 5 pages in length, no later than 10 court days before the continued hearing date responding to Defendant’s reply evidence.</p> <p>Plaintiff shall give notice.</p>

<p>6.</p>	<p>2021-1206841 Sonoco Products Company vs. Judah Group, Inc.</p>	<p>The court has entered judgment on the proposed judgment submitted by Plaintiff. Plaintiff is to give notice of entry of judgment. Plaintiff's motion for attorneys' fees will be deemed filed when notice of entry is served.</p> <p>The court notes that no notice of the current hearing was served on Defendant. Accordingly, Plaintiff Sonoco Products Company's motion for attorneys' fees is continued to June 12, 2024.</p> <p>Plaintiff is to give notice.</p>
<p>7.</p>	<p>2022-1290262 Garcia vs. Elmore Motors</p>	<p>Notice of Withdrawal filed on 04/12/2024.</p>
<p>8.</p>	<p>2019-1102209 McDonnell vs. Ford Motor Company</p>	<p>The Court denies Defendant Ford Motor Company's Motion for Summary Judgment/Adjudication of Plaintiff Timothy McDonnell's Complaint.</p> <p>A. Legal Standard</p> <p>The standard governing motions for summary judgment and summary adjudication is settled. "[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (<i>Aguilar v. Atlantic Richfield Co.</i> (2001) 25 Cal.4th 826, 850.)</p> <p>"A prima facie showing is one that is sufficient to support the position of the party in question." (<i>Id.</i> at p. 851.)</p> <p>A defendant moving for summary judgment satisfies his or her initial burden by showing that one or more elements of the cause of action cannot be established or that there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).)</p> <p>A cause of action cannot be established if the undisputed facts presented by the defendant prove the contrary of the plaintiff's allegations as a matter of law. (<i>Brantley v. Pisaro</i> (1996) 42 Cal.App.4th 1591, 1597.) Alternatively, a moving defendant can show that a cause of action cannot be established by submitting evidence, such as discovery admissions and responses, that plaintiff does not have and cannot reasonably obtain evidence to establish an essential element of his cause of action. (<i>Aguilar v. Atlantic Richfield Co.</i>, <i>supra</i>, 25 Cal.4th at pp. 854-855; <i>Union Bank v. Superior Court</i> (1995) 31</p>

Cal.App.4th 573, 590 [finding moving defendant may show plaintiff's lack of evidence by factually devoid discovery responses after plaintiff has had adequate opportunity for discovery]; see *Scheidung v. Dinwiddie Constr. Co.* (1999) 69 Cal.App.4th 64, 80-81 [finding Union Bank rule only applies where discovery requests are broad enough to elicit all such information].) Once a defendant meets its prima facie showing, the burden shifts to the plaintiff to show by reference to specific facts the existence of a triable issue as to that affirmative defense or cause of action. (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 850.)

B. Requests for Judicial Notice

Both sides ask the court to judicially notice orders or documents *filed in this case*. These requests are denied as unnecessary. “[A]ll that is necessary is to call the court’s attention to such papers.” (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) ¶ 9.53.1a.)

C. Merits

In the Moving Papers, Defendant relies solely on the Court’s 10/7/21 Order (issued by a different judicial officer) deeming Requests for Admissions, Set One, admitted against Plaintiff. (SSUF 3-6.)

Plaintiff, however, filed a Notice of Appeal on 8/24/21, staying this case.

Generally, “the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order ...” (CCP § 916(a); *Varian Med. Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189; *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1427-1428.)

An appeal is “perfected” *when a notice of appeal is timely filed*. (*Kroger Co. v. Workers' Comp. Appeals Bd.* (2012) 210 Cal.App.4th 952, 959; Eisenberg & Hepler, Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2023) C. 7-A, ¶7:1.)

Essentially, the § 916(a) “stay” means that, upon timely filing of a notice of appeal, the trial court is divested of power to act on matters “embraced in” or “affected by” the appealed judgment or order: Jurisdiction over the appealed matters shifts to the court of appeal and is terminated in the trial court; and the trial court's power to enforce, vacate or modify the appealed judgment or order is suspended while the appeal

		<p>is pending, and unless and until such time as jurisdiction is restored by remittitur. (<i>See Blizzard Energy, Inc. v. Schaefers</i> (2021) 71 Cal.App.5th 832, 842, fn. 4 (quoting text); <i>Varian Med. Systems, Inc. v. Delfino</i> (2005) 35 Cal.4th 180, 196-198; <i>Daly v. San Bernardino County Bd. of Supervisors</i> (2021) 11 Cal.5th 1030, 1039—“Where the statutory conditions have been met and a stay on appeal is prescribed, the courts lack discretion to deny it except as other statutes may authorize” (citing for example CCP § 1110b); <i>Walmart Foods v. United Food & Comm'l Workers Union, Local 588</i> (2001) 87 Cal.App.4th 145, 154.)</p> <p>Here, a different trial court lacked jurisdiction to enter its 10/7/21 Order deeming the Requests for Admissions, Set One, admitted. Therefore, Defendant has not met its moving burden. The Motion is therefore denied.</p> <p>Defendant is ordered to serve notice.</p>
9.	2023-1331366 Rutan & Tucker, LLP vs. Mobix Labs, Inc.	Continued to 05/29/2024