

## TENTATIVE RULINGS

### DEPARTMENT C44

#### Judge Walter Schwarm

April 23, 2024

(The below Law and Motion Calendar matter will be heard at 8:30 a.m.)

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 ruling, please call the Court Clerk to inform the court that **all** parties submit on the Court's tentative ruling. 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.

**APPEARANCES:** Department C44 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/media-relations/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/media-relations/aci.html>. Parties preferring to appear in-person for law and motion hearings may do so by providing notice of in-person appearance to the court and all other parties five (5) days in advance of the hearing. (see Appearance Procedures, section 3(c)(1).).

**PUBLIC ACCESS:** Media and public access to proceedings will be in person in the courtroom where the hearing is scheduled. In the event any proceeding is conducted entirely remotely, the press and public can obtain public access by contacting the courtroom. Phone numbers for the courtrooms can be found at <https://www.occourts.org/directory/civil/CivilPhoneDepartmentDirectory.pdf>. In those instances where proceedings will be conducted only by remote video and/or audio, access will be provided to interested parties by contacting the courtroom clerk, preferably 24 hours in advance. 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.

**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 will be the party's responsibility to provide a court reporter. 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

- For additional information, please see the court’s website at [Court Reporter Interpreter Services](#) for additional information regarding the availability of court reporters.

#	Case Name	Tentative
	30-2018-01002061 Law Offices of Mark B. Plummer, PC v. Alai	<p>The court intends to <b>CONTINUE</b> Moving Party’s (Nili Alai) Motion for Reconsideration of September 5, 2023 Ruling Under ROA 1431 on Defendant’s Motion to Compel Under ROA 1138 and Defendant’s Request for Sanctions or in the Alternative Motion for Relief from Order Pursuant to §473 (Motion) filed on 9-13-23 under ROA No. 1445.</p> <p>Code of Civil Procedure section 391.6 states, “Except as provided in subdivision (b) of Section 391.3, when a motion pursuant to Section 391.1 is filed prior to trial the litigation is stayed, and the moving defendant need not plead, until 10 days after the motion shall have been denied, or if granted, until 10 days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to Section 391.1 is made at any time thereafter, the litigation shall be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.”</p> <p><i>Hanna v. Little League Baseball, Inc.</i> (2020) 53 Cal.App.5th 871, 875-876 (<i>Hanna</i>), states, “Black’s Law Dictionary defines a ‘stay’ as ‘[t]he postponement or halting of a proceeding, judgment, or the like.’ (Black’s Law Dict. (11th ed. 2019) p. 1709.) Under the plain language of section 391.6, the entirety of the litigation is stayed once the defendant files a motion to determine that the plaintiff is a vexatious litigant who should be required to furnish security in that action. Furthermore, the stay shall remain effective until 10 days after the motion is denied or 10 days after the security is furnished. (§ 391.6.) Section 391.6 does not carve out any exception for proceedings that may continue during that period except for the dismissal of the action under section 391.3, subdivision (b). That exception does not apply here. [¶] Little League filed its motion to declare Hanna a vexatious litigant under section 391.1 and to have him furnish security on May 14, 2018. At that time, Little League had several pending discovery motions, all requesting the imposition of discovery sanctions. At the same June 7, 2018, hearing at which the trial court granted Little League’s vexatious litigant motion, the trial court also granted Little League’s discovery motions and</p>

		<p>imposed a total of \$1,200 in discovery sanctions (\$400 for each of the three motions) against Hanna. The trial court did not have authority to rule on the discovery motions once Little League filed its motion under section 391.1. Consequently, we reverse the June 7, 2018, orders imposing a total of \$1,200 in discovery sanctions against Hanna.”</p> <p>On 2-13-24, the court found that Moving Party was a vexatious litigant as to Jocelyn Plummer. (2-13-24 Minute Order; ROA No. 1765.) The court ordered Moving Party to furnish security in the amount of \$100,000.00. (2-13-24 Minute Order; ROA No. 1765.) Moving Party filed a Notice of Appeal on 2-14-24 under ROA No. 1784 that states in part, “Also under Section 904.1(a)(6) an order granting or denying an injunction under Section 391 . . . .” On 2-29-24, the Court of Appeal denied Moving Party’s “. . . request for a temporary stay of orders granting vexatious litigant motions . . . .” (Court of Appeal Order (Order) filed on 2-29-24 under ROA No. 1813.)</p> <p>The court’s 3-5-24 Minute Order (filed under ROA No. 1827) states in part, “Based on the Court of Appeal’s Order, the court refers the parties to Department C32 to determine the scope of the stay under Code of Civil Procedure section 391.6, and the effect of a stay, if any, on this Motion[.]” The court’s 3-19-24 Minute Order states in part, “Parties are to meet and confer on the litigation of the stay pursuant to CCP 391.6[.]” The court’s 4-9-24 Minute Order states in part, “The court refers the parties to Department C32 to determine the scope of the stay under Code of Civil Procedure section 391.6, and the effect of a stay, if any, on this Motion.”</p> <p>Based on the court’s 2-13-24, 3-5-24, 3-19-24, and 4-9-24 Minute Orders, the Notice of Appeal, and the Court of Appeal’s Order, it appears that Code of Civil Procedure section 391.6 may require a stay of this litigation. The court refers the parties to Department C32 to determine the scope of the stay under Code of Civil Procedure section 391.6, and the effect of a stay, if any, on this Motion. The parties shall appear in Department C44 on 4-23-24 to advise the court as to the status of a stay, if any, of the litigation in these proceedings pursuant to Code of Civil Procedure section 391.6.</p>
	<p>30-2017-00941390 Zheng v. Zheng</p>	<p>Defendant’s (Gene Zheng) Motion to Temporarily Stay Enforcement/Execution of Judgment (Motion), filed on 3-18-24 under ROA No. 1128, is <b>GRANTED</b>.</p> <p>The court entered the judgment in this action on 3-8-24 under ROA No. 1096. The Motion seeks a stay of the</p>

judgment pursuant to Code of Civil Procedure section 918. The Motion states, "The Defendant needs time to pursue his post judgment remedies without having to oppose motions to enforce a judgment that will be challenged in post-trial proceedings on appeal." (Motion; 4:8-9.)

Plaintiff's (Wen Yu Zheng) Opposition to Motion to Stay Enforcement of Judgment (Opposition), filed on 4-10-24 under ROA No. 1164, states, "Gene's Motion is incomplete in that it provides no substantive reasons or evidence as to why the Court should take the extraordinary step of staying enforcement of judgment." (Opposition; 3:14-15.)

Code of Civil Procedure section 918 states, "(a) Subjection to subdivision (b), the trial court may stay the enforcement of any judgment or order. [¶] (b) If the enforcement of the judgment or order would be stayed on appeal only by the giving of an undertaking, a trial court shall not have power, without the consent of the adverse party, to stay the enforcement thereof pursuant to this section for a period which extends for more than 10 days beyond the last date on which a notice of appeal could be filed. [¶] (c) This section applies whether or not an appeal will be taken from the judgment or order and whether or not a notice of appeal has been filed."

*Sarkany v. West* (2022) 82 Cal.App.5th 801, 809 (*Sarkany*), states, "Section 918 authorizes the trial court to temporarily stay the enforcement of a judgment or order, without regard to whether an appeal is or will be filed or a bond is posted, or the financial status of a party. It does not impose any bond requirement. [¶] Section 918 simply limits the length of a stay of enforcement imposed by the trial court *under section 918* when that stay applies to a money judgment to no more than 10 days beyond the deadline for filing a notice of appeal. (§ 918, subd. (b).) This limitation applies only to stays issued by the trial court under authority of section 918, and no stay under section 918 was issued in this case. . . ." (Italics in *Sarkany*.) "We find it instructive to consider the typical uses of section 918 stays, which differ from stays pending appeal under section 917.1. For example, a trial court might issue a stay under section 918 'to permit the defendant to make arrangements for orderly payment or other satisfaction of the judgment when the defendant has demonstrated good faith to the judge's satisfaction.' (Knighten, Cal. Judges Benchbook: Civil Proceedings After Trial (2021) § 6.199, p. 628 [noting that section 918 stays are most commonly issued in unlawful detainer and consumer debt cases].) Or a party might seek a stay under section 918 'before filing a notice of appeal or before completing the steps required to

obtain a stay pending appeal.’ (Eisenberg, *supra*, ¶ 7:62.) The need for a section 918 stay might arise if a party ‘needs further time to decide whether to take an appeal,’ or ‘wishes to pursue postjudgment motions . . . before filing a notice of appeal,’ or ‘needs time to obtain the security required for a “permanent” stay’ under section 917.1. (*Ibid.*) Or a section 918 stay might be sought ‘[p]ending the trial court’s full consideration of appellant’s request for a discretionary stay.’ (*Ibid.*) So, a party might seek a section 918 stay pending the filing and consideration of a motion for waiver under section 995.240.” (*Id.* at p. 809, footnote 7.)

Defendant’s Reply to Opposition to Temporarily Stay Enforcement /Execution of Judgment (Reply), filed on 4-16-24 under ROA No. 1174, states, “In the meantime, good cause exists in this case to grant a temporary stay in the enforcement/execution of the Judgment because the Judgment may be amended as a result of the Motion for New Trial or the Motion to Vacate Judgment. Moreover, Defendant is presently working with an approved surety to arrange for the necessary appeal bond for 1.5 times the judgment amount. Once the bond is in place, there is no risk to Plaintiff of non-payment of the Judgment.” (Reply; 2:9-14.; See also, declaration of Gene Zheng filed on 4-16-24 under ROA No. 1178 at ¶ 8.)

The court exercises its discretion and grants Defendant’s request for a temporary stay pursuant to Code of Civil Procedure section 918, subdivision (a). Defendant has shown good cause for a stay to pursue post-judgment motions and to make arrangements for an appellate bond. Therefore, the court **GRANTS** Defendant’s (Gene Zheng) Motion to Temporarily Stay Enforcement/Execution of Judgment filed on 3-18-24 under ROA No. 1128.

Defendant is to give notice.