

"Civility allows for zealous representation, reduces clients' costs, better advances clients' interests, reduces stress, increases professional satisfaction, and promotes effective conflict resolution. These guidelines foster the civility and professionalism that are hallmarks of the best traditions of the legal profession."

OCBA Civility Guidelines

TENTATIVE RULINGS
Judge Kimberly Knill, Dept. C31

- **The court encourages remote appearances to save time, reduce costs, and increase public safety.** Go to www.occourts.org/media-relations/civil.html and click on the blue box that says, "Click here to appear/check-in for Civil Small Claims/Limited/Unlimited/Complex remote proceedings." Navigate to Department C31 Judge Kimberly Knill.
- All hearings are open to the public.
- If you desire a transcript of the proceedings, you **must** provide your court reporter (unless you have a fee waiver and request a court reporter in advance).
- Call the other side. If **everyone** submits to the tentative ruling, call the clerk at 657-622-5231. Otherwise, the court may rule differently at the hearing. (See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

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.

HEARING DATE: Friday, 4/19/2024 10:00 AM

#	Case Name	Tentative
2	Jefferson Capital Systems LLC vs Moshfegh 30-2023-01313539-CU-CL-CJC	Defendant's Motion to Quash Service of Summons Defendant Amir Moshfegh's unopposed motion to quash service of summons of the Complaint of Plaintiff Jefferson Capital Systems LLC is GRANTED. Service of Summons must be accomplished by either personal service (Code Civ. Proc., § 417.10, subd. (a)), substitute service (Code Civ. Proc., § 415.20), mail with acknowledgment of receipt (Code Civ. Proc., § 415.30), or publication (Code Civ. Proc., § 417.10, subd. (b)). Plaintiff's proof of service indicates Plaintiff served the summons and complaint via personal service and describes the person served as being a gray-haired Middle Eastern male over 65 years of age, 5'10"-6'0" tall and weighing 180-200 lbs with an accent, a goatee and a mustache. (ROA 9.)

		<p>Defendant declares he was not personally served on the date and time listed in the proof of service because from 4/6/23 through 4/29/23, he was on a trip to Japan, Vietnam, and Singapore. (Moshfegh Decl., ¶ 2; Notice of Errata, Ex. 1 [Defendant’s passport showing dates of entry into Japan and Vietnam].) Defendant states he does not fit the description of the person identified in the proof of service. Defendant describes himself as bald on most of his head except for the lower back side of his scalp, approximately 5’4” tall, with no goatee. (Moshfegh Decl., ¶ 3.) Defendant also states he and his wife are the only people who reside at the home listed in the proof of service. (Moshfegh Decl., ¶ 4.)</p> <p>“When a defendant challenges the court's personal jurisdiction on the ground of improper service of process the burden is on the plaintiff to prove ... the facts requisite to an effective service.” (<i>Summers v. McClanahan</i> (2006) 140 Cal.App.4th 403, 413 (cleaned up); see <i>Lebel v. Mai</i> (2012) 210 Cal.App.4th 1154, 1163.)</p> <p>In failing to oppose the motion, Plaintiff has not met its burden.</p> <p>The court schedules an OSC re dismissal (failure to serve) for 5/9/2024 at 1:30 PM. Plaintiff is ORDERED to file a status report 2 court days prior. If Plaintiff has not filed a proof of service prior to the OSC re dismissal (failure to serve), absent good cause, the court intends to dismiss the case. Failure to comply with the court’s order may subject Plaintiff and/or counsel to sanctions under Code of Civil Procedure section 177.5.</p> <p>Defendant to give notice.</p>
<p>3</p>	<p>Bui vs Nguyen 30-2022- 01269213- CU-BC-CJC</p>	<p>Plaintiff’s Motion for Reconsideration of Dismissal</p> <p>Plaintiff’s motion for reconsideration is DENIED.</p> <p>Plaintiff failed to adequately show new or different facts, circumstances, or law. (Code Civ. Proc., § 1008, subd. (a).) The party seeking reconsideration has the burden of showing the new or different facts were unknown at the time of the original hearing. (<i>Glade v. Glade</i> (1995) 38 Cal.App.4th 1441, 1457.) Section 1008 is jurisdictional, and its requirements apply to all applications. (<i>Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC</i> (2015) 61 Cal.4th 830, 840.)</p> <p>Counsel’s declaration fails to set forth any new facts, circumstances, or law which relate to Plaintiff’s failure to demonstrate irreparable harm, immediate danger, or a statutory basis for granting relief ex parte. All facts in the declaration were known at the time counsel filed the declaration.</p> <p>Clerk to give notice.</p>

4	Fang vs Wang 30-2022-01292807-CU-CO-CJC	Plaintiffs' Motion to Compel Further Responses to Special Interrogatories, Set One, and Request Monetary Sanction Continued pursuant to meet and confer by parties. The court appreciates counsel's efforts.
5	Castaneda vs Woody's Group, Inc. 30-2023-01354366-CU-WT-CJC	Defendant's Motion to Compel Arbitration Continued pursuant to stipulation.
6	Balboa Capital Corporation vs Architectural Millwork and Stairs 30-2022-01287158-CU-CL-CJC	Defendant Architectural Millwork and Stairs, Inc.'s Motion for Relief of Waiver of Objections Defendant Architectural Millwork and Stairs, Inc.'s motion for relief of waiver of objections is DENIED. There is no evidence defendant served a response to the RFAs as required. Further, it appears defendant has not paid previously imposed monetary sanctions, and defendant has not established mistake, inadvertence, or excusable neglect. (Code Civ. Proc., § 2033.280, subd. (a)(1)-(2).) Plaintiff to give notice. Defendant Daniel Joel Videen's Motion for Relief of Waiver of Objections Defendant Daniel Joel Videen's motion for relief of waiver of objections is DENIED. There is no evidence defendant served a response to the RFAs as required. Further, it appears defendant has not paid previously imposed monetary sanctions, and defendant has not established mistake, inadvertence, or excusable neglect. (Code Civ. Proc., § 2033.280, subd. (a)(1)-(2).) Plaintiff to give notice.
7	Gligic vs Allred 30-2023-01348001-CU-PO-CJC	Plaintiff's Motion to Compel Further Responses to Requests for Production, Set One, and Request for Monetary Sanctions Plaintiff's Motion to Compel Further Responses to Special Interrogatories, Set One, and Request for Monetary Sanctions The motions are CONTINUED to May 17, 2024 at 10:00 a.m. in this Department. All parties and/or counsel are ORDERED to appear in person; no Zoom appearances will be allowed. The parties/counsel have not engaged in sufficient attempts to meet and confer. (See Code Civ. Proc., § 2016.040; <i>Clement v. Alegre</i> (2009) 177 Cal.App.4th 1277, 1293 [Discovery Act requires

		<p>moving party to declare he or she has made a serious attempt to obtain an informal resolution of each issue; rule designed to encourage parties to work out their differences informally to avoid necessity for formal order, which lessens burden on court and reduces unnecessary expenditure of resources by litigants]; <i>Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants</i> (2007) 148 Cal.App.4th 390, 402 [central precept of Discovery Act that discovery be self-executing].)</p> <p>Here, Defendant served objections to Plaintiff’s written discovery in November 2023 and the parties had a disagreement regarding the sequence of discovery. Defendant served further substantive responses after taking Plaintiff’s deposition in January 2024. The Court finds the parties have not engaged in reasonable efforts to resolve this dispute based on the January 2024 further responses.</p> <p>The parties/counsel are ORDERED to engage in additional attempts to meet and confer in person, telephonically, or over remote videoconferences (not email) no later than 4/26/24. If Defendant agrees to serve further responses, Defendant shall serve verified further responses no later than 5/3/24.</p> <p>The parties/counsel are ORDERED to file a JOINT STATUS REPORT indicating whether court intervention remains the only option to resolve this discovery dispute, and if so, why, no later than 5/10/24.</p> <p>Failure to comply with this order may result in sanctions against the non-compliant party and/or their counsel pursuant to Code of Civil Procedure section 177.5. Moreover, the Court will not be inclined to award discovery sanctions to the prevailing party if that party has not made a good faith effort to informally resolve the dispute.</p> <p>Counsel is strongly encouraged to familiarize themselves with Department C31’s General Policies and Procedures listed on the court’s website.</p> <p>Moving party to give notice.</p>
8	<p>White vs Burns 30-2023- 01306257- CU-NP-CJC</p>	<p>Plaintiff’s Motion to Strike Defendant’s Answer and Plaintiff’s Motion for Judgment on the Pleadings</p> <p>The motions are MOOT. Defendant filed an amended and properly verified answer on 8/2/2023, but it appears defendant did not properly serve plaintiff. The amended answer includes a proof of service on plaintiff by mail, but the proof of service is not signed or dated.</p> <p>Defendant is ORDERED to serve the amended answer and file a proof of service of the amended answer on plaintiff within 20 days.</p>

		Plaintiff to give notice.
10	Ruiz vs Salazar 30-2023-01335408-CU-OR-CJC	<p>Defendant’s Demurrer to Complaint</p> <p>Defendant’s Demurrer is OVERRULED.</p> <p>The elements of fraud are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or scienter); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage. (<i>Lazar v. Superior Court</i> (1996) 12 Cal.4th 631, 638.) Fraud must be plead with particularity and requires pleading facts which show how, when, where, to whom, and by what means the representations were tendered. (<i>Id.</i> at p. 645.)</p> <p>Plaintiff has adequately pled fraud. Plaintiff alleges Defendant did not intend to perform her obligations under the 2023 Settlement Agreement when she signed it with Plaintiff. (Compl., ¶¶ 23, and 29.)</p> <p>Defendant to file an answer within 10 days.</p> <p>Plaintiff to give notice.</p>
11	Young vs Ford Motor Company 30-2023-01364792-CU-BC-CJC	<p>Defendant’s Demurrer to Complaint</p> <p>Defendant Ford Motor Company’s Demurrer to Plaintiff’s Complaint is CONTINUED to 5/17/24 at 10:00 in this Department.</p> <p>Plaintiff has not opposed the demurrer. Rather, Plaintiff attempted to file a first amended complaint on 4/9/24, which was rejected by the Court clerk because an answer was filed by Defendant McCoy Mills Ford on 1/5/24.</p> <p>The parties are ordered to meet and confer regarding Plaintiff’s filing of a first amended complaint which would render the demurrer moot. <i>The parties are encouraged to file a stipulation allowing Plaintiff to amend the complaint.</i></p> <p>Defendant to give notice.</p>
12	Hanmi Bank vs ASSS4L Autopaint Supplies LLC 30-2023-01339549-CU-BC-CJC	<p>Plaintiff’s Motion for Summary Judgment or Alternatively Summary Adjudication</p> <p>Plaintiff Hanmi Bank’s motion for summary judgment is GRANTED.</p> <p>“A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding.” (Code Civ. Proc., § 437c, subd. (a)(1).) “A plaintiff . . . has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff . . . has met that burden, the burden shifts to the defendant . . . to show that a</p>

triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant . . . shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." (Code Civ. Proc., § 437c, subd. (p)(1).)

The Complaint alleges causes of action for: (1) Breach of Equipment Finance Agreement; (2) Recovery of Personal Property; (3) Conversion; and (4) Breach Of Guaranty. Plaintiff dismissed the third cause of action for Conversion on 1-31-24. (ROA No. 30.)

Though the court ordered defendant ABSS4L Autopaint Supplies LLC's ("ABSS4L") answer stricken on 1-26-24 and ABSS4L is currently defaulted (ROA No. 45), the court treats the Motion as a default prove-up as to ABSS4L.

First Cause of Action for Breach of Written Equipment Finance Agreement Against ABSS4L

To establish breach of contract, plaintiff must prove the existence of a contract, plaintiff's performance or excuse for nonperformance, defendant's breach, and resulting damage. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.)

Plaintiff has shown on 4-27-21, ABSS4L, as borrower, and Plaintiff, as secured party, entered into a written Equipment Finance Agreement ("Agreement") whereby Plaintiff agreed to provide financing to ABSS4L to enable ABSS4L to acquire certain Equipment for use in the business. (UMF No. 1.) Plaintiff funded the transaction and to secure performance of its obligations, ABSS4L provided Plaintiff with a security interest in the Equipment which Plaintiff duly perfected. (*Id.*) Concurrently with ABSS4L's execution of the Agreement, Shahriari executed a written Guaranty of Equipment Finance Agreement ("Guaranty") whereby he unconditionally guaranteed all present and future indebtedness of ABSS4L under the Agreement. (UMF No. 3.) ABSS4L defaulted under the Agreement by failing to make the payments owed thereunder for 4-27-23 and thereafter. (UMF No. 4.) Despite Plaintiff's demand for payment, ABSS4L and Shahriari have failed and refused to perform their obligations under the Agreement and the Guaranty. (UMF No. 5.)

Plaintiff has met its burden. The burden shifts to defendant. Having failed to oppose the motion, defendant has not met its burden.

Second Cause of Action for Recovery of Personal Property Against ABSS4L and Shahriari

To prevail on a claim for Recovery of Personal Property, a party must establish it has the right to immediate possession of the property and defendant has unlawfully refused to return the property to the plaintiff. (*Fredericks v. Tracy* (1893) 98 Cal. 658.)

The same facts outlined above support this cause of action. Plaintiff has met its burden. The burden shifts to defendants. Having failed to oppose the motion, defendants have not met their burden.

Fourth Cause of Action for Breach Of Guaranty Against Shahriari

"A lender is entitled to judgment on a breach of guaranty claim based upon undisputed evidence that (1) there is a valid guaranty, (2) the borrower has defaulted, and (3) the guarantor failed to perform under the guaranty." (*Gray1 CPB, LLC v. Kolokotronis* (2011) 202 Cal.App.4th 480, 486.)

The same facts outlined above support this cause of action. Plaintiff has met its burden. The burden shifts to Shahriari. Having failed to oppose the motion, Shahriari has not met the burden.

Plaintiff is ORDERED to submit a judgment for the court's review and signature within 5 days.

Plaintiff to give notice.