

**Superior Court of the State of California  
County of Orange**

**DEPT C25 TENTATIVE RULINGS**

**The Honorable Nico A. Dourbetas**

**Civil Court Reporters:** The Court does not provide court reporters for law and motion hearings. Please see the Court's website for rules and procedures for court reporters obtained by the Parties.

**Tentative Rulings:** The Court will endeavor to post tentative rulings on the Court's website by 4 p.m. on the day before the motion is set to be heard. Do NOT call the Department for a tentative ruling if none is posted. **The Court will NOT entertain a request for continuance or the filing of further documents once a tentative ruling has been posted.**

**Submitting on the Tentative Ruling:** If ALL counsel intend to submit on the tentative ruling and do not wish oral argument, please advise the Court's clerk or courtroom attendant by calling (657) 622-5225. 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 Ruling and prepare an Order for the Court's signature if appropriate under CRC 3.1312. **Please do not call the Department unless ALL parties submit on the tentative ruling.**

**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 whether the tentative ruling shall become the final ruling.

**Appearances:** Counsel may appear by video on Zoom.

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**Date:** May 3, 2024

<b>1</b>	<b>Alcala vs. Allied Universal Security Services, Inc.</b>  2020-01170523	<b>Motion for Summary Judgment and/or Adjudication</b>  * Motion continued to 10/04/2024 per stipulation signed 04/29/2024. *
<b>2</b>	<b>Ragland vs. Wells Fargo, N.A.</b>  2020-01137118	<b>Motion to Set Aside/Vacate</b>  * Motion continued to 05/17/2024. See minute order dated 04/24/2024 (ROA 1331). *

<p><b>3</b></p>	<p><b>White vs. Vollmer</b></p> <p>2022-01292900</p>	<p><b>Motion to Compel Production</b></p> <p>* Motion vacated per Notice of Withdrawal filed 05/01/2024 (ROA 134) *</p>
<p><b>4</b></p>	<p><b>Duong vs. Nissan North America, Inc.</b></p> <p>2023-01336316</p>	<p><b>Motion to Compel Arbitration</b></p> <p>Defendant Nissan North America, Inc.'s Motion to Compel Arbitration is DENIED.</p> <p>A party moving to compel arbitration must make an initial showing as to three factors: (1) The existence of written agreement to arbitrate; (2) A demand to arbitrate and refusal by the party opposing arbitration; and (3) Proof that the arbitration agreement covers the dispute at issue. (See <i>Mansouri v. Superior Court</i> (2010) 181 Cal.App.4th 633, 641.)</p> <p>There is currently a split of authority in California as to factor No. (3) (e.g., whether a vehicle manufacturer can enforce an arbitration clause contained in a retail installment purchase agreement between a vehicle buyer and the seller of a vehicle, to which the manufacturer is not a party).</p> <p>Defendant urges that the Court follow (<i>Felisilda v. FCA US LLC</i> (2020) 53 Cal.App.5th 486), however there are a number of subsequent appellate decisions that declined to follow <i>Felisilda</i> including (<i>Montemayor v. Ford</i> (2023) 92 Cal.App.5th 958; <i>Kielar v. Hyundai Motor America</i> (2023) 94 Cal.App.5th 614; &amp; <i>Davis v. Nissan</i> (2024) 100 Cal.App.5th 825.)</p> <p>Plaintiff also cites to (<i>Ford Motor Warranty Cases</i> (2023) 89 Cal.App.5th 1324) (which has been accepted for review with the Supreme Court, but can still be cited as persuasive, and can be cited for purpose of establishing the existence of a conflict in authority that would in turn allow trial courts to exercise discretion under Auto Equity Sales. (See 532 P.3d 270) <i>Ford Motor</i> also rejected the holding in <i>Felisilda</i>. Finally, plaintiff cites to (<i>Ngo v. BMW of N. Am., LLC</i> (9th Cir. Jan. 12, 2022) 23 F.4th 942) a federal district court appeal. While not binding, it is persuasive and held that <i>Felisilda</i> was wrongly decided.</p> <p>The Court decides that <i>Ochoa</i>, <i>Montemayor v. Ford</i> (2023) 92 Cal.App.5th 958; <i>Kielar v. Hyundai Motor America</i> (2023) 94 Cal.App.5th 614; &amp; <i>Davis v. Nissan</i> (2024) 100 Cal.App.5th 825 are better reasoned and</p>

		<p>decided cases, and elects to follow them, rather than Felisilda. (See Auto Equity Sales v. Superior Court (1962) 57 Cal.2d 450, 456.)</p> <p>The Court rules as follows on the on the evidentiary objections:</p> <p>Declaration of Naoki Kaneko</p> <ol style="list-style-type: none"> <li>1. Overruled.</li> <li>2 Sustained, lack of foundation, lack of personal knowledge.</li> </ol> <p>Defendants' request for judicial notice is granted. Judicial notice is limited to the existence of, filing of, and legal effect of the pleadings but not as to the truth of any facts therein.</p> <p>Defendant is ordered to give notice.</p>
<b>5</b>	<p><b>Akopyan vs. Nissan North America, Inc.</b></p> <p>2022-01273898</p>	<p><b>Motion to Compel Production</b></p> <p>* Motion reset to 05/10/2024. See minute order dated 04/24/2024 (ROA 66). *</p>
<b>6</b>	<p><b>Annan vs. CONAM Management Corporation</b></p> <p>2022-01278541</p>	<p><b>1. Demurrer to Amended Complaint</b></p> <p><b>2. Motion to Strike Portions Of Complaint</b></p> <p><u>Demurrer</u></p> <p>Defendants CONAM Management Corporation, Tenicia Mapp; and Beverly Anaya's demurrer to the Third Amended Complaint ("TAC") is SUSTAINED.</p> <p>Plaintiff Kenneth O. Annan shall have leave to file and serve a fourth amended complaint within 10 days.</p> <p>As an initial matter, Plaintiff's lengthy argument contending that Defendants are obligated to file an answer to the Complaint is without merit. The Code of Civil Procedure permits a defendant to object to a pleading by demurrer or answer. (See, e.g., Cal. Code Civ. Proc. §430.10 ["The party against whom a complaint or cross-complaint has been failed may object, by demurrer or answer ..., to the pleading..."].) Accordingly, until such a time that Plaintiff is able to plead a legally cognizable cause of action against Defendants, Defendants are under no obligation to</p>

	<p>admit or deny any of the allegations of Plaintiff's Complaint.</p> <p>This is so because a court will "treat the demurrer as admitting all the properly pleaded material facts" in order to "test the legal sufficiency of the pleading." (Nolte v. Cedars-Sinai Medical Center (2015) 236 Cal.App.4th 1401, 1406.)</p> <p><i>First Cause of Action: Breach of Contract:</i></p> <p>The elements of a claim for breach of contract are (1) the existence of a contract; (2) the plaintiff's performance or excuse from performance of the contract; (3) the defendant's breach; and (4) resulting damages to the plaintiff. (See Oasis West Realty, LLC v. Goldman (2011) 51 Cal.4th 811, 821.)</p> <p>In the demurrer, Defendants argue that the TAC does not allege the existence of an enforceable contract. Rather, Defendants contend that what Plaintiff has alleged is an agreement to agree.</p> <p>An agreement to lease could create a tenancy, provided there is an agreement embodying the essential terms. (See Witkin Summary of California Law, 11th ed., Real Property §545 Agreement to Lease (citing Cappelmann v. Young (1946) 73 Cal.App.2d 49, 53).)</p> <p>However, such a tenancy can only be created "where the parties ... have agreed in writing upon the essential terms of the lease, there is a binding lease, even though a formal instrument is to be prepared and signed later. (Cappelmann, Supra. 73 Cal.App.2d at 53.)</p> <p>Here, Plaintiff alleges that the Parties came to an agreement regarding the premises, amount of rent and commencement date. There is no allegation, however, that Plaintiff and Defendants reduced to writing the alleged terms of the tenancy Plaintiff contends was created. Given the fact that Plaintiff characterizes this cause of action as breach of oral contract, it appears Plaintiff contends that no such writing exists.</p> <p>Accordingly, there is no basis to construe the discussions alleged in the TAC as effectively creating a tenancy. There is a possibility Plaintiff could state a legally cognizable cause of action under a theory of</p>
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		<p>quasi-contract. Plaintiff shall be provided one more opportunity to amend the Complaint to state a valid cause of action based upon a theory of quasi-contract.</p> <p><i>Second Cause of Action: Negligence</i></p> <p>The elements of a cause of action for negligence are (a) a legal duty to use due care; (b) a breach of such legal duty; and (c) the breach as the proximate or legal cause of the resulting injury. (Ladd v. County of San Mateo (1996) 12 Cal.4th 913, 917.)</p> <p>Defendants argue that the TAC does not allege any duty owed to Plaintiff. Plaintiff argues that the TAC alleges that Defendants had a duty to ensure Plaintiff had a place to live, by virtue of them accepting payment of the security deposit.</p> <p>Plaintiff cites no authority in support of the notion that receiving a lease application process creates a legal duty to ensure that the applicant's housing needs are taken care of.</p> <p>Based upon what has been alleged in the TAC, it does not appear that any legal duty and breach thereof could be alleged. Accordingly, the demurrer to this cause of action is sustained. Plaintiff shall be prepared to discuss the existence of any facts Plaintiff believes show that Defendants owed Plaintiff a duty of care.</p> <p><u>Motion to Strike</u></p> <p>In light of the foregoing ruling sustaining the demurrer in its entirety, Defendants' Motion to Strike Portions of the Third Amended Complaint is denied as moot.</p> <p>Defendants to provide notice.</p>
7	<p><b>Bednar vs. Los Alamitos Racing Association</b></p> <p>2021-01224855</p>	<p><b>1. Motion to Compel Further Responses to Form Interrogatories</b></p> <p><b>2. Motion to Compel Production</b></p> <p><b>3. Motion to Compel Production</b></p> <p><u>Motion No. 1</u></p> <p>Plaintiff Vincent Bednar's Motion to Compel Defendant Edward C. Allred to Serve Further Responses to Plaintiff's Inspection Demands, Set No. 1 is GRANTED in part.</p>

If a timely motion to compel has been filed, the burden is on the responding party to justify any objection or failure fully to answer the discovery. (See Coy v. Superior Court (1962) 58 Cal.2d 210, 220-21; Fairmont Ins. Co. v. Superior Court (2000) 22 Cal.4th 245, 255.)

The Court finds that defendant's objections were without merit and the claims of privilege were not justified, as the face of the categories of records sought do not include records falling into any of the claimed privileges. Defendant fails to provide evidence of the existence of such privileged records.

The request for sanctions is denied. Plaintiff's notice of motion fails to identify the type of sanctions sought and against whom as mandated by Calif. Code of Civil Procedure, section 2023.040.

Defendant Edward C. Allred is ordered to serve verified, complete responses to the plaintiff's inspection demands within ten days.

Motion No. 2

Plaintiff Vincent Bednar's Motion to Compel Defendant Los Alamitos Racing Association to Serve Further Responses to Plaintiff's Inspection Demands, Set No. 1 is DENIED in part as moot and DENIED in part.

Plaintiff failed to identify any disputed responses in his separate statement, and the only defect appears to be the fact that the responses were not verified. Service of verifications for the responses on 04/11/24 rendered the motion moot as to the responses.

The request for sanctions is denied. Plaintiff's notice of motion fails to identify the type of sanctions sought and against whom as mandated by Calif. Code of Civil Procedure, section 2023.040.

Motion No. 3

Plaintiff Vincent Bednar's Motion to Compel Defendant Edward C. Allred to Serve Further Responses to Form Interrogatories, Set No. 1 is DENIED in part and GRANTED in part.

		<p>The motion is granted as to Form Interrogatories No. 2.6 and part of No. 2.5. The response to Form interrogatory No. 2.5 is limited to defendant's current residence address. Plaintiff failed to show the relevance of defendant's previous residences.</p> <p>The motion is denied as to Form Interrogatory No. 2.3, as plaintiff failed to show the relevance of defendant's driver's license information.</p> <p>Defendant Edward C. Allred is ordered to serve further responses without objections to Form Interrogatories No. 2.5 and 2.6 (subject to the limitation for interrogatory 2.5) within ten days.</p> <p>The request for sanctions is denied. Plaintiff's notice of motion fails to identify the type of sanctions sought and against whom as mandated by Calif. Code of Civil Procedure, section 2023.040.</p> <p>Plaintiff is ordered to give notice of all the above.</p>
<p><b>8</b></p>	<p><b>Fortis LLP vs. Marquez</b> 2022-01277792</p>	<p><b>Motion to Compel Deposition (Oral or Written)</b></p> <p>Petitioner Fortis LLP's Motion to Compel Frances Marquez's Answers to Deposition Questions is GRANTED.</p> <p>The Court orders Frances Marquez to appear within 21 days for a supplemental deposition where she will answer the questions identified in Petitioner's Motion along with any follow up questions Petitioner may have regarding her answers to these questions.</p> <p>Petitioner has shown that Marquez's failure to provide answers to these questions is not justified. A party who objects to the relevancy of a deposition question may not refuse to answer the question on the basis of that objection. The issue of privilege of the subject matter Petitioner seeks to discovery has already been decided by this Court. (See ROA Nos. 92, 121.) All Respondent does is object to the relevancy of the information sought by the disputed questions. Objections as to relevancy are generally not made at a deposition. (Cal. Code Civ. Proc. §2025.460, subd. (c).) If Respondent truly believed Petitioner's questioning to be about irrelevant topics, the proper course of action would have been to suspend the deposition to seek a protective order pursuant to Cal. Code Civ. Proc. §2025.420. Respondent did not seek a protective order.</p>

		<p>Furthermore, Respondent’s reliance on County of San Benito v. Superior Court (2023) 96 Cal.App.5th 243 is misplaced. Respondent fails to appreciate the distinction between discovery concerning the substantive conduct of a public entity and discovery concerning the existence, identity, and location of potentially responsive public records. Here, the disputed questions all fall within the permissible scope of discovery outlined in City of Los Angeles v. Superior Court (2017) 9 Cal.App.5th 272. Accordingly, Respondent has failed to substantiate her objections to the disputed questions.</p> <p>No monetary sanctions shall be awarded. While Petitioner included reference to Cal. Code Civ. Proc. §2023.030 in the notice of motion, Petitioner fails to provide any information indicating whom the sanction is sought against, the specific type of sanction requested, and the factual basis for the amount of monetary sanctions sought. (See Cal. Code Civ. Proc. §2023.040 [“A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. The notice of motion shall be supported by a memorandum of points and authorities and accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought.”].)</p> <p>Petitioner shall provide notice of this ruling.</p>
<p><b>9</b></p>	<p><b>Cortez vs. Bergan</b> 2023-01338315</p>	<p><b>1. Demurrer to Cross-Complaint</b> <b>2. Motion to Strike Portions Of Cross-Complaint</b></p> <p><u>Demurrer</u></p> <p>Cross-Defendant, Matthew C. Cortez’s demurrer to the cross-complaint of Lynda Bergan and James Foss is SUSTAINED in part and OVERRULED in part as follows:</p> <p>The demurrer to the 4th cause of action for intentional misrepresentation is sustained. Plaintiff has not alleged with claim with the required specificity.</p> <p>The demurrer to the 1st, 2nd, and 7th causes of action is overruled. The claims have been properly alleged.</p> <p><u>Motion to Strike</u></p>



		<p>The motion to strike is granted in its entirety. Cross-complainants haven't set forth facts supporting the required finding of fraud, oppression, or malice.</p> <p>Cross-complainants are granted ten days leave to amend.</p> <p>Moving Party to give notice.</p>
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