Superior Court of the State of California
County of Orange

TENTATIVE RULINGS

DEPARTMENT C27

JUDGE BRADLEY ERDOSI

LAW AND MOTION IS HEARD ON MONDAYS AT 2:00 P.M.

Tentative Rulings: The Court endeavors to post tentative rulings on the Court's website by 10:00 a.m. on the date of the afternoon hearing. However, ongoing proceedings or other pressing matters may delay the posting of tentative rulings. Additionally, tentative rulings may not be posted in every case. Please **do not** call the department for tentative rulings if tentative rulings have not been posted. The Court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

Submitting on Tentative Rulings: If all counsel intend to submit on the Court's tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5227. Please do not call the department unless **all** parties submit on the tentative ruling. If all sides submit on the Court's tentative ruling and so advise the Court, the tentative ruling will become the Court's final ruling and the prevailing party is ordered to give notice of the ruling and prepare an order for the Court's signature, if appropriate, under Cal. R. Ct. 3.1312.

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 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 by accessing the following link:
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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 C27 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference pursuant to CCP §367.75 and Orange County Local Rule (OCLR) 375. 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/civil-remote-hearings 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. The Court's policies and procedures, including Guidelines for Remote Proceedings are available at https://www.occourts.org/general-information/news-events/covid-19-response/civil-covid-19-response and will be strictly enforced. A helpful video detailing how to check-in and appear by video can be found at https://www.youtube.com/embed/CU090y2oaWM?rel=0&autoplay=1.

Public Access: The courtroom remains open for all evidentiary and non-evidentiary proceedings.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and OCLR 180.

TENTATIVE RULINGS
April 14, 2025

#	Case Name	Tentative
101	2023-01316826 Bertrand vs. Chapman University	**1. Demurrer to Amended Complaint** **2. Case Management Conference** Moving party has been dismissed. Motion off calendar. Case Management Conference continued to April 28, 2025 at 10:00 a.m. in Department C27. Clerk to give notice.
102	2023-01343154 Chavez vs. Kuntz	**Motion for Preference** Plaintiff Karin Chavez as Trustee of the Anneliese Narath Family Trust udt 11/24/09's motion for trial preference is granted. Code Civ. Proc. § 36 states in pertinent part (emphasis added): (a) A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both of the following findings: (1) The party has a substantial interest in the action as a whole. (2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation. * * * (c) Unless the court otherwise orders: (1) A party may file and serve a motion for preference supported by a declaration of the moving party that all essential parties have been served with process or have appeared. (2) At any time during the pendency of the action, a party who reaches 70 years of age may file and serve a motion for preference. Plaintiff moves for trial preference due to the age and health of her mother, Anneliese Narath. But, Anneliese Narath is not a party to the action. Thus, Plaintiff is not entitled to preference under Code Civ. Proc. § 36 (a). Plaintiff, here is "Plaintiff Karin Chavez as Trustee of the Anneliese Narath Family Trust udt 11/24/09." Karin Chavez submits a declaration in support of the motion, stating as follows: 1. I am the adult daughter of Anneliese Narath, and Trustee of the Anneliese Narath Revocable Trust, utd 11/24/2009. I am the plaintiff in the above-entitled matter, pursuant to my capacity as Trustee of the aforementioned trust. My mother resides with me at my Murrieta, California residence and I am her full-time caregiver. 2. My mother is 84 years old and in frail condition. Presently her heart condition is stable, however, she does have periods when her condition becomes life threatening and raises substantial medical doubt of her survival beyond six months. 3. My mother has a substantial interest in this case as she is the current and sole beneficiary of the aforementioned trust. This lawsuit seeks to recover over

		$400,000.00 from the Defendant which arose out of a sale of real property. The funds being sued upon are necessary for her continuing care and support. Code Civ. Proc. § 36 (e) provides: Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference. Given that Anneliese Narath is 84 years of age, and is the sole beneficiary of the Anneliese Narath Revocable Trust, utd 11/24/2009, of which Plaintiff Karin Chavez is Trustee, the Court exercises its discretion and finds that the interests of justice will be served by granting preference. The Court sets a Trial Setting Conference on April 21, 2025 at 10:00 a.m. in Department C27 for the setting of a trial date. Counsel for Plaintiff and Defendant are ordered to appear either in person or remotely. The Clerk is ordered to give notice.
103	2025-01453005 H. vs. Ovation Fertility	**Motion to Appear Pro Hac Vice** The unopposed verified application by Daniel Campbell ("Counsel") of the law offices of McDermott Will & Emery LLP for an Order permitting him to appear as counsel pro hac vice in this action on behalf of Defendant US Fertility, LLC is granted. Counsel substantially complied with Rule 9.40. Counsel shall give notice.
104	2021-01217921 Jeyaprakash vs. New Skin and Body Aesthetics, Inc.	**Motion for Summary Judgment and/or Adjudication** The Court grants Defendant Suwan Cheong's Motion for Summary Judgment/Adjudication as to the first cause of action in Plaintiff Tharini Jeyaprakash's Second Amended Complaint for negligence. <u>Evidentiary Objections</u> The Court overrules Defendant's objection nos. 1 through 16. <u>Request for Judicial Notice</u> Plaintiff filed an untimely request for judicial notice, to which Defendant filed an Opposition. The request for judicial notice is denied as untimely. (CCP §437c(b)(2).) Further, even if it were considered, it does not change the ruling. (See *Dover v. Sadowinski* (1983) 147 Cal.Ap.3d 113, 117-118, plaintiff knew that Defendant was one of several doctors who treated his deceased wife, but did not move to join him as a "Doe" until 19 months after the original complaint (for wrongful death) was filed; Plaintiff admitted "We knew he was involved, but we had no idea, Your Honor, how deeply as a negligent individual, he was involved." Leave to amend was properly denied because "actual knowledge" does not require that plaintiff have known each and every detail of the defendant's involvement.) <u>Legal Standard</u> "[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." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.) A "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact. . . ." (Ibid.) "A prima

facie showing is one that is sufficient to support the position of the party in question." (*Id.* at p. 851.) 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).) The scope of this burden is determined by the allegations of the plaintiff's complaint. (*FPI Development v. Nakashima* (1991) 231 Cal.App.3d 367, 381-382 [pleadings serve as the outer measure of materiality in a summary judgment motion]; *580 Folsom Associates v. Prometheus Development Co.* (1990) 223 Cal.App.3d 1, 18-19 [defendant only required to defeat allegations reasonably contained in the complaint].)

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. (*Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at pp. 854-855; *Union Bank v. Superior Court* (1995) 31 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 Scheiding 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.) To meet this burden, the plaintiff must present substantial and admissible evidence creating a triable issue. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163.) Theoretical, imaginative, or speculative submissions are insufficient to stave off summary judgment. (*Doe v. Salesian Society* (2008) 159 Cal.App.4th 474, 481; *Bushling v. Fremont Med. Center* (2004) 117 Cal.App.4th 493, 510.)

Merits

Where a complaint is amended after the statute of limitations has run to identify a fictitiously-named defendant, and to assert a cause of action against that defendant not included in the original complaint, the amended complaint will be given relation back effect, so as to avoid the statute of limitations, provided:

— the original complaint stated a valid cause of action against the now-identified "Doe" defendant; and

— plaintiff was "genuinely ignorant" of the defendant's identity or the facts rendering defendant liable when the original complaint was filed; and

— the amended complaint, identifying the defendant, is based on the "same general set of facts" as the original and refers to the "same accident and same injuries."

(*Austin v. Massachusetts Bonding & Ins. Co*. (1961) 56 Cal.2d 596, 600-601; *Eghtesad v. State Farm Gen. Ins. Co*. (2020) 51 Cal.App.5th 406, 415.)

To defeat the amendment, the burden is on defendant to prove plaintiff's earlier awareness of defendant's identity and facts creating its liability. (*See Fara Estates Homeowners Ass'n v. Fara Estates, Ltd.* (9th Cir. 1998) 134 F3d 377, 377 (applying Calif. law); *Breceda v. Gamsby* (1968) 267 Cal.App.2d 167, 179.)

Whether plaintiff was genuinely "ignorant" or had "actual knowledge" of the "Doe" defendant's identity or liability when the complaint was filed is determined by a good faith test. (*Woo v. Sup.Ct. (Zarabi)* (1999) 75 Cal.App.4th 169, 177—genuine ignorance required; *Munoz v. Purdy* (1979) 91 CA3d 942, 947.) Knowledge of plaintiff's attorney can be imputed to the plaintiff for statute of limitations and Doe purposes. (*See Miller v. Thomas* (1981) 121 Cal.App.3d 440, 445.)

		Here, Plaintiff filed her Complaint for negligence on 8/25/21. (ROA 2). She sued Defendant New Skin and Body Aesthetics Inc. Plaintiff alleged in relevant part as follows: "the Defendants, and each of them, negligently and tortuously failed to possess or exercise that degree of knowledge or skill that would ordinarily be possessed and exercised by physicians and surgeons, hospitals, nurses, surgical technicians, attendants, medical clinics, and the like, engaged in said professions in the same locality as Defendants, and each of them, in that the Defendants, and each of them negligently and unlawfully failed to properly and correctly diagnose, render care, and provide treatment on, to perform proper surgery on, and prescribe and administer medicine and drugs for the condition of Plaintiff. Specifically, on Wednesday, October 14, 2020, Plaintiff underwent laser hair removal in her Brazilian area at the hands of a nurse, Suwan Cheong, B.R.N., who was an employee of Defendant NEW SKIN AND BODY AESTHETICS, INC. During the course of the procedure, Plaintiff is informed and believes, and thereon alleges, that at all times herein alleged, nurse Cheong had the wrong settings on the laser removal tool and lasered the skin of the suprapubic and perineal area too long so as to cause Plaintiff fourth-degree, third-degree, second-degree and first-degree burns to her genitourinary system, i.e. her genital area. Plaintiff is informed and believes, and thereon alleges, that at all times herein alleged, there was an absence of physician supervision before and during the procedure. And, that nurse Cheong was inadequately trained to perform said procedure. Plaintiff is informed and believes, and thereon alleges, that at all times herein alleged, Plaintiff has permanent scarring to her genitalia and its surrounding area. (Compl., ¶9, emphasis added.) So, as of the filing of the Complaint, Plaintiff knew that the nurse who performed the procedure was Suwan Cheong and that she was negligent in performing the procedure and improperly trained. Unlike the other Doe Defendants, reference to the Complaint shows that the doe-procedure cannot be used against Ms. Cheong. Despite these judicial admissions in the Complaint, Plaintiff chose not to name Ms. Cheong as a defendant until the Doe Amendment on 7/24/23, almost two years after filing the Complaint. (ROA 136). Defendant has met her burden to show that Plaintiff was not actually ignorant of her identity and the facts constituting her negligence claim at the time she filed in the Complaint. Although CCP § 474 is to be "liberally construed," its requirements, as so construed, are mandatory. (*Fireman's Fund Ins. Co. v. Sparks Const., Inc*. (2004) 114 Cal.App.4th 1135, 1143-1144.) In opposition, Plaintiff raises no triable issue of material fact. Instead, she presents extraneous facts to show that Ms. Cheong faced disciplinary actions and purportedly perjured herself during a deposition on 5/22/23 in this case. These facts do not create a triable issue with regard to Plaintiff's admitted knowledge of Defendant's identity and facts creating her liability, including negligently performing the procedure and handling the laser without proper training. Thus, the Motion is granted. Moving Defendant shall serve notice.
105	2023-01350541	**Demurrer to Complaint** The Court sustains Defendant Santa Ana Police Department's demurrer to the Complaint in

	Luna vs. City of Santa Ana	this case without leave to amend. Moving Defendant argues that Santa Ana Police Department, asserting is not a separate entity from Defendant City of Santa Ana. Plaintiffs concede the point by failing to respond to this argument. Further, the City of Santa Ana's repeated judicial admissions that it is the proper party subject to all orders and relief the Court may grant also supports sustaining the demurrer. Defendants shall serve notice of this Order.
106	2024-01407287 Mirrafati vs. California Receivership Group, Inc.	**1. Demurrer to Complaint** **2. Case Management Conference** The general and special demurrer by Defendants California Receivership Group, Inc. ("Receivership Group") and Mark Adams ("Adams") (collectively, "Defendants") to the Complaint filed by Plaintiffs Sayed Mirrafati and Mira Properties, LLC (collectively, "Plaintiffs") is sustained in part and overruled as moot in part with 60 days leave to amend. As an initial matter, the Court notes Defendants proofs of service for their moving papers and reply did not include the server's email address. (Code Civ. Proc., § 1013b, subd. (b)(1).) Plaintiffs opposed the demurrer without objecting to service. Subject to any objections regarding service of Defendants' reply, the Court rules as follows. Defendants' requests for judicial notice are granted. (Evid. Code, § 452, subd. (d).) However, the Court may not take judicial notice of the truth of the matter stated in the documents. (*Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 659-660.) Judicial notice of other court records and files is limited to matters that are indisputably true. This generally means judicial notice is limited to the orders and judgments in the other court file, as distinguished from the contents of documents filed therein. (*Fremont Indem. Co. v. Fremont Gen. Corp*. (2007) 148 Cal.App.4th 97, 113.) The court cannot accept as true the contents of pleadings or exhibits in the other action just because they are part of the court record or file. Such documents are inadmissible hearsay. (*Day v. Sharp* (1975) 50 Cal.App.3d 904, 914.) Plaintiffs' claims against Defendants arise out of Defendants efforts to collect on a judgment in Adams' favor as a receiver in a separate action. "The rule requiring court permission to sue a receiver stems from Code of Civil Procedure section 568." (*Vitug v. Griffin* (1989) 214 Cal.App.3d 488, 492.) Code of Civil Procedure section 568 provides as follows, "The receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the Court may authorize." "As a general proposition a receiver has no official duties and is not a proper party to any action after being discharged by the court. (*Brockway etc. Co. v. County of Placer* (1954) 124 Cal.App.2d 371, 375, 268 P.2d 524.) The discharge order operates as res judicata as to any claims of liability against the receiver in her official capacity. (*Aviation Brake Systems Ltd. v. Voorhis* (1982) 133 Cal.App.3d 230, 234, 183 Cal.Rptr. 766.)" (*Vitug v. Griffin*, 214 Cal.App.3d at 494.) "A receiver is an officer of the court possessing the property for the court…Consequently, a receiver is liable in tort solely in an official capacity, not a personal one…'He is not personally liable for torts committed in the performance of his receivership duties; liability is in his *official*

		capacity only, to be satisfied from receivership funds.'…Furthermore, a receiver may not be sued without leave of court." (*McCarthy v. Poulsen* (1985) 173 Cal.App.3d 1212, 1219 [internal citations omitted].) A court "is not required to assume jurisdiction of all controversies to which the receiver may become a party, but may upon application permit them to be determined in some other competent tribunal.... When the court cannot afford the same relief in intervention as a claimant would be entitled to in an independent action, or where by virtue of some statutory or constitutional provision a particular kind of action must be brought in some jurisdiction other than where the original special proceeding is pending, the court will undoubtedly grant leave to bring it, and it would be an abuse of discretion not to do so." (*Jun v. Myers* (2001) 88 Cal.App.4th 117, 125 [internal citations omitted].) Here, Defendants' collections action arose out of Adams' receivership in the underlying action. (Complaint, ¶¶ 8 and 12.) Plaintiffs allege Adams is the president of Receivership Group. (Complaint, ¶4.) In the receivership action, Adams filed his papers under Receivership Group's name. (Request for Judicial Notice, Exhibits 2, 3, and 4.) Accordingly, leave to commence this action is required. (*See, Vitug v. Griffin*, 214 Cal.App.3d at 493 ["The rule that claimants must apply to the court before suing a receiver is founded upon notions of judicial economy. In most cases a claimant can obtain appropriate relief in the receivership action; therefore an independent action will not be necessary."].) Accordingly, Defendants' demurrer is sustained with 60 days leave to amend. (*See, Ostrowski v. Miller* (1964) 226 Cal.App.2d 79, 86.) Contrary to Defendants' contention, the Court is not without jurisdiction in the traditional sense due to Plaintiffs not first obtaining leave of court to bring this action. (*Ostrowski v. Miller*, 226 Cal.App.2d at 82; *Vitug v. Griffin*, 214 Cal.App.3d at 493.) Accordingly, the demurrer on the ground that the Court lacks jurisdiction is overruled. In light of the Court sustaining the demurrer on the ground that Plaintiffs are required to seek leave before commencing this action, the Court finds the remainder of the demurrer moot and declines to reach the merits of the general demurrer. The Case Management Conference is continued to August 11, 2025 at 10:00 a.m. in Department C27 Defendants shall give notice.
107	2022-01262979 Patel vs. Amanda Rafi, DMD, A Professional Dental Corporation	**1. Motion to Compel Answers to Form Interrogatories** **2. Motion to Compel Production** **3. Motion to Deem Facts Admitted** (1) MOTION TO COMPEL RESPONSES TO FORM INTERROGATORIES (2) MOTION TO COMPEL PRODUCTION (3) MOTION TO COMPEL RESPONSES TO REQUESTS FOR ADMISSION Plaintiff Paris Patel moves to compel Defendant Amanda Rafi, DMD, A Professional Dental Corporation's verified responses to her Form Interrogatories, Set 2, Requests for Production of Documents, Set 3, and Requests for Admission Set 2. The subject discovery was propounded on Defendant on 9/13/24. On 10/16/24, Defendant served <u>unverified</u> responses. Plaintiff met and conferred, without success; Defense counsel indicated at the time that he had lost contact with his client. (Camilleri Decl., ¶¶ 2-8, Exs. A-E.)

		These three motions were subsequently filed on 11/18/24 and 11/19/24. (ROA 150, 154, 158.) Pursuant to Code Civ. Proc., § 2030.250, "[t]he party to whom the interrogatories are directed shall sign the response under oath unless the response contains only objections." (See Code Civ. Proc., § 2031.250 re document demands, and Code Civ. Proc., § 2033.240 re requests for admission.) Unverified responses are tantamount to no responses at all. (See *Id.*; *Appleton v. Sup.CL (Cook)* (1988) 206 Cal.App.3d 632,636; *Zorro Inv. Co. v. Great Pacific Securities Corp*. (1977) 69 Cal.App.3d 907, 914.) Accordingly, Plaintiff requests an order compelling Defendants' verifications to the discovery at issue as well as monetary sanctions. In opposition, Defendant states that on 1/14/25, after the motions were filed, Defendant served the subject verifications to the discovery, and thereafter verified supplemental responses. (Andrews Dec. ¶8, Exh. A.) Because verified responses ultimately were served, the motion is moot, except with respect to the issue of sanctions. While Defendant argues that sanctions should not be awarded because Plaintiff fails to demonstrate prejudice, there is no requirement that a party moving to compel discovery responses demonstrate prejudice in order to obtain an award of sanctions. Code Civ. Proc., § 2030.290(c) states: "The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (See Code Civ. Proc., § 2031.300(c) re inspection demands and § 2033.290(d) re Requests for Admission.) "The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed." (CRC, Rule 3.1348 [emphasis added].) Verifications, which are required under the Code of Civil Procedure, were not served until four months after the discovery was propounded. The Court finds that sanctions are warranted here and awards Plaintiff $610.00 per motion ($1830.00 total) to be paid within 30 days. Plaintiff shall give notice.
108	2023-01332900 Raynor vs. Hurricanes Bar and Grill	**Motion for Protective Order** Defendant Hurricanes Bar and Grill's motion for protective order is denied. Plaintiff Maddison Raynor is awarded sanctions of $1,985 against Defendant. Code Civ. Proc. §§ 2017.020(b), 2019.030(c). The Discovery Act provides generally for the court's ability to limit or shape discovery, including by protective order: The court shall limit the scope of discovery if it determines that the burden, exper intrusiveness of that discovery clearly outweighs the likelihood that the information soug lead to the discovery of admissible evidence. The court may make this determination pursu

a motion for protective order by a party or other affected person. This motion sh accompanied by a meet and confer declaration under Section 2016.040.

Code Civ. Proc. § 2017.020(a).

Also,

> (a) The court shall restrict the frequency or extent of use of a discovery method provided in Section 2019.010 if it determines either of the following:
> (1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.
> (2) The selected method of discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation.
> (b) The court may make these determinations pursuant to a motion for a protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040.

Code Civ. Proc. § 2019.030.

Defendant's Meet and Confer Efforts were Insufficient

"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." Code Civ. Proc. § 2016.040. The meet and confer requirement is designed "to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order….This, 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 (quoting *Townsend v. Superior Court* (1998) 61 Cal. App. 4th 1431, 1435) (internal quotations and citations omitted). There must be a serious effort at negotiation and informal resolution. *Clement v. Alegre* (2009) 177 Cal. App. 4th 1277, 1294. "[T]he law requires that counsel attempt to talk the matter over, compare their views, consult, and deliberate." *Id.*

"[T]the statute requires that there be a serious effort at negotiation and informal resolution." *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1438.

Defendant's counsel's efforts do not meet the required standard. Neither her communications nor her efforts reflect a good faith attempt to negotiate and resolve the issue of when Plaintiff could do a site inspection in conditions as close as possible to those when Plaintiff fell rather than during the time slot preferred by Defendant.

In support of Defendant's motion for protective order, its counsel filed a declaration explaining that Plaintiff cancelled a schedule site inspection – set for the morning before the bar and grill opened – because he wanted a site inspection at night since that is when Plaintiff slipped and fell. [Torki Decl. (ROA #46), ¶¶ 15-18 and Exs. M-O.] In response, on 8/12/24 Defendant's counsel informed Plaintiff's counsel that it would be too burdensome on Defendant to have to shut down the bar and grill during its peak business hours for a site inspection. She informed him that Defendant would seek a protective order against an inspection during business hours. She also offered to meet and confer further. [*Id.*, Ex. P.]

That is where Defendant's counsel's meet and confer declaration ends. Defendant did not file its motion until 10/30/24, over 2½ months after the email set forth in Exhibit P to the moving papers.

Prior to the filing of the instant motion, on 10/3/24, Plaintiff's counsel offered two alternatives to avoid any burden on Defendant's business: (1) a nighttime inspection after the bar and grill was closed business for the evening; or (2) a daytime inspection utilizing blackout curtains to substantially resemble the conditions at the time the subject incident occurred. [Perry Decl. (ROA #124), ¶ 3.]

Other than Defendant's counsel expressing some concern about the parties having to be present in the middle of the night, Defendant's counsel did not respond to Plaintiff's offers – even after follow-up. Rather, Defendant filed and served its motion for protective order.

Taken together, this record does not present facts showing a reasonable and good faith attempt by Defendant at an informal resolution. This alone is grounds to deny the motion to compel.

Merits

On its face Defendant's motion only seeks an order preventing Plaintiff from conducting a site inspection during business hours.

In her opposition, Plaintiff points out that she was not seeking to perform an inspection during Defendant's business hours. She wants a site inspection that more closely approximates the conditions when her fall occurred. Since that was at night, so sunlight was not illuminating the room through the windows, Plaintiff wants a site inspection when it is not daylight. She is willing to do that after the bar and grill has shut down for the night – or under other conditions that will approximate the lighting at night. *See Andrews v. Barker Brothers Corp*. (1968) 267 Cal.App.2d 530, 537 (citing Garcia v. Hoffman (1963) 212 Cal.App.2d 530: "It is the settled rule that evidence of the results of experiments as to a disputed fact is not admissible unless the conditions of the experiment are substantially identical to those out of which the dispute arises.").

Nonetheless, on reply, Defendant dismisses this.

For the first time on reply, Defendant argues that –apart from the issue of whether the site inspection takes place outside or during business hours – Plaintiff is not entitled an inspection during non-daylight hours because she has never raised lighting as an issue before and, in any event, Plaintiff will not be able to closely approximate the conditions at the time of her fall. As to Defendant's first point, the purpose of discovery is to identify facts bearing on the validity of the claims asserted. The fact that Plaintiff has not previously asserted that lack of lighting/visibility contributed to her fall does not foreclose her from discovering if it was.

On the latter point, Defendant points to the fact that the fall happened during winter when it was or had been raining – and there is no way to recreate such conditions in the spring/summer. [Reply at 5:7-17.] It is worth noting that Defendant can only make this argument because of its motion for a protective order. Had the parties agreed to a site inspection when Defendant filed this motion, it could have been set in the winter.

In any event, the fact that Plaintiff cannot replicate the identical conditions does not mean there is no value in replicating a substantial portion of them.

The admissibility of accident reconstruction evidence does not rest on the ability to recreate

		the circumstances of the accident with exactitude. The conditions on which the expert's analysis rests must simply be "substantially similar" to those of the actual occurrence. *Pannu v. Land Rover North America, Inc.,* (2011) 191 Cal.App.4th 1298, 1318. Photographs of the accident scene, although "highly pertinent" evidence (*People v. Turner* (1990) 50 Cal.3d 668, 706) must be made under "substantially similar"—but not necessarily identical—conditions. *Anello v. Southern Pacific Co.* (1959) 174 Cal.App.2d 317, 323. "The standard that must be met in determining whether the proponent of the experiment has met the burden of proof of establishing the preliminary fact essential to the admissibility of the experimental evidence is whether the conditions were substantially identical, not absolutely identical." *Culpepper v. Volkswagen of America, Inc.* (1973) 33 Cal.App.3d 510, 521. It is too soon at the discovery stage to foreclose Plaintiff's inquiry. The admissibility of evidence derived from the inspection can be determined at trial. For all the above reasons, the motion is denied. Plaintiff is awarded sanctions in the amount of $1,985 against Defendant, to be paid within 30 days. Plaintiff to give notice.
111	2023-01345045 Xing vs. Cao	**Motion to Compel Arbitration** Defendant Pingchao Cao's motion to compel arbitration of Plaintiff Jianyong Xing claims in his Second Amended Complaint is continued to June 9, 2025 at 2:00 pm in Dept. C27. Defendant moves for an order to compel Plaintiff to arbitrate his claims before the Shijiazhuang Arbitration Commission under the laws of the People's Republic of China, and to dismiss this lawsuit. Counsel for Plaintiff filed a declaration in opposition stating that he is moving to withdraw as counsel because he has lost contact with his client who he believes resides in China. (Sipprelle Decl., ¶¶ 2-3.) He states that because he has lost all contact with Plaintiff he has been unable to obtain the information and documentation which would be necessary to oppose Defendant's motion to compel arbitration, and believes it would be manifestly unjust for the Court to proceed with the hearing on Defendant's motion to compel arbitration as scheduled. (Sipprelle Decl., ¶ 4.) Counsel currently has a motion to be relieved scheduled for July 14, 2025. The Court finds that under these circumstances the interests of justice will be best served by continuing the hearing on the motion to compel arbitration, and advancing the hearing on the motion to withdraw as counsel. No prejudice to Defendant has been demonstrated that would result from a brief continuance of his motion. Plaintiff counsel's motion to be relieved as counsel of record is advanced to this date and continued to May 19, 2025 at 2:00 p.m. in Department C27. Plaintiff's counsel is ordered to give notice of all rulings to all parties, including his client at his last known address(es).

112	2023-01339201 Xu vs. Wang	**Motion for Leave to Amend** The motion of Defendants Yongmei Zhang, Hongbo Wang, Zhipeng Investment LLC, Bay Vista Investment LLC, Bo Kang Real Estate Investment LLC (collectively, "Defendants") for leave to file their proposed first amended answer ("FAA") is granted. The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. Code Civ. Proc. § 473(a) (1). The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code. Code of Civ. Proc. § 473(a) (1). Additionally, any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order. Code of Civ. Proc. § 576. A motion to amend a pleading before trial must: (1) include a copy of the proposed amendment or amended pleading; (2) state what allegations in the previous pleading are proposed to be deleted, if any, and where, by page, paragraph, and line number, the deleted allegations are located; and (3) state what allegations are proposed to be added to the previous pleading, if any, by page, paragraph, and line number, the additional allegations are located. CRC 3.1324(a). A separate declaration must accompany the motion and must specify: (1) the effect of the amendment; (2) why the amendment is necessary and proper; (3) when the facts giving rise to the amended allegations were discovered; and (4) the reasons why the request for amendment was not made earlier. CRC 3.1324(b). Defendants have substantially complied with the requirements of CRC 3.1324. To the extent Defendants have not completely complied with the requirements of CRC 3.1324, this does not impair the Court's ability to review and assess the FAA. California courts generally allow great liberality, at all stages of the proceeding, in permitting the amendment of pleadings in order to resolve cases on their merits. *IMO Development Corp. v. Dow Corning* (1982) 135 Cal. App. 3d 451, 461. Because the policy favoring amendment is so strong, "it is a rare case in which a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case." *Morgan v. Superior Court* (1959) 172 Cal. App. 2d 527, 530 (internal quotations omitted). **This is particularly true for amendment of answers, as a defendant denied leave to amend is permanently deprived of a defense. *Hulsey v. Koehler* (1990) 218 Cal. App. 3d 1150, 1159.** This liberality only applies so long as there is no prejudice to the opposing party. *Higgins v. Del Faro* (1981) 123 Cal. App. 3d 558, 564. Denial of leave to amend is appropriate where inexcusable delay and probable prejudice to the opposing party is shown. This may happen where a proposed amendment opens up an entirely new field of inquiry without any satisfactory explanation as to why the major change in point of attack had not been made long before trial. *Estate of Murphy v. Gulf Ins. Co.* (1978) 82 Cal. App. 3d 304, 311. If the party seeking the amendment has been dilatory, **and** the delay has prejudiced the opposing party, the judge has discretion to deny leave to amend. *Hirsa v. Sup.Ct. (Vickers)* (1981) 118 Cal. App. 3d 486, 490; *Melican v. Regents of Univ. of Calif.* (2007) 151 Cal. App. 4th 168, 176; *Fisher v. Larsen* (1982) 138 Cal. App. 3d 627, 649 (finding where plaintiff knew for over five months that certain claims had not been properly pleaded, and took no action to amend until after a summary judgment had been granted against it, it was not an abuse of

		discretion to deny leave to amend the complaint); *Hulsey v. Koehler* (1990) 218 Cal. App. 3d 1150. In her opposition, Plaintiff largely argues issues going to the merits of the proposed amendment. Ordinarily, however, the court does not consider the validity of the proposed amended pleading in deciding whether to grant leave to amend. *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. Notably, Plaintiff does *not* assert prejudice. "[I]t is an abuse of discretion to deny leave to amend where the opposing party was not misled or prejudiced by the amendment." *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. Accordingly, the motion is granted. Moving party is ordered to give notice.