

Superior Court of the State of California, County of Orange

TENTATIVE RULINGS FOR DEPARTMENT W02

HON. JUDGE CARMEN R. LUEGE

Date: April 18, 2025

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 Thursday. 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) 622-5902. 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.

Remote Appearances: Department W02 permits non-evidentiary proceedings, including law and motion, to be conducted remotely. *If you are appearing remotely:* (1) all counsel and self-represented parties appearing for such hearings **must**, prior to 10:00 a.m. on Friday, check-in online via the Court's civil video appearance website at [Civil Appearance Procedure and Information | Superior Court of California | County of Orange \(occourts.org\)](https://www.occourts.org); (2) participants will then be prompted to join the courtroom's Zoom hearing session; and (3) the calendar will be displayed and participants will then be instructed to rename their Zoom name to include their hearing's calendar number. Check-in instructions and an instructional video are available on the court's website. Attorneys **shall** comply with Local Rule 375(c) which governs "Decorum for In-Person and Remote Court Appearances." (<https://www.occourts.org/system/files/hr/div3.pdf>.)

#	Case Name	Tentative
51	Griggs v Ayala 24-01427414	Demurrer to Complaint by DEFT Withdrawal of Motion filed 4/8/2025 No appearance required

<p>53</p>	<p>Macedonio v Garibay</p> <p>22-01267043</p>	<p>Motion for Leave to File Cross Complaint by DEFT and Trial Setting Conference</p> <p>The Motion for Leave to file a Cross-Complaint brought by Defendant Juan Fernando Garibay is GRANTED, pursuant to Code of Civil Procedure section 428.50, subdivision (c).</p> <p>Defendant shall separately file and serve the proposed Cross-Complaint, attached as Exhibit A to the Declaration of Nima Sadeghian, within 10-days. Defendant is granted leave to correct the caption of the proposed pleading before filing the cross-complaint. The names of the parties in the caption of the proposed pleading are not identified or mentioned in the allegations of the cross-complaint.</p> <p>The proposed cross-complaint asserts a claim for indemnity and contribution, relating to the motor vehicle accident which is the subject of the complaint. (¶7 of Sadeghian Declaration and Exhibit A thereto, at ¶3-¶7.) "Cross-complaints for comparative equitable indemnity would appear virtually always transactionally related to the main action." (<i>Time for Living, Inc. v. Guy Hatfield Homes/ All American Development Co.</i> (1991) 230 Cal.App.3d 30, 38.) Courts "have repeatedly recognized that cross-complaints for comparative equitable indemnity are specifically allowed under section 428.10, subdivision (b) because of their transactional relationship to the complaint." (<i>Ibid.</i>) "An indemnity claim effectively seeks to apportion among the parties to the indemnity action the precise liability claimed by the plaintiff in the main action; therefore the indemnity claim of necessity arises out of the same occurrence or series of occurrences as asserted by the plaintiff." (<i>Id.</i> at p. 39.)</p> <p>Thus, the proposed Cross-Complaint "arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause brought against Defendants." (Code Civ. Proc., § 428.10, subd. (b).) Additionally, given the close connection between the proposed claim and the claims within the Complaint, permitting the proposed Cross-Complaint will serve the interests of justice and judicial efficiency. (Code Civ. Proc., § 428.50, subd. (c).)</p> <p>The parties and/or their counsel shall appear for the trial setting status conference also scheduled on 4/18/25.</p>
<p>54</p>	<p>Davis v Mid Century Insurance Company</p> <p>16-00877480</p>	<p>Motion to Compel Deposition by DEFT and OSC re Sanctions set by the Court.</p> <p>Defendants Mid-Century Insurance Company and Truck Insurance Exchange move to compel Plaintiff Jaimie Davis to appear for a further deposition. Defendant's motion is DENIED.</p>

On January 10, 2025, the Court found that discovery in this case had to be completed 30 days prior to the 10/28/24 trial date and stated, unequivocally, "Discovery is closed." (ROA 797 [01/10/25 Minute Order].) The Court cited to Code of Civil Procedure section 2024.020, subdivision (b) and *Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568 in noting that "[a] continuance or postponement of the trial date does not operate to reopen discovery proceedings." (*Id.*)

On January 24, 2025, Defendants filed a Ex Parte Application to Reopen Limited Discovery for the purposes of opposing Plaintiff's Pending Motion for Summary Adjudication. (ROA 808 [Ex Parte Application re Reopening Limited Discovery].)

On January 27, 2025, the Court granted Defendants' Ex Parte Application to Reopen Limited Discovery. (ROA 813 [01/27/25 Minute Order].) The Court signed a formal Order. (See ROA 816 [Order to Reopen Discovery].) The Order granted Defendants' Ex Parte Application and further ordered that Defendants may depose Plaintiff and may propound Requests for Production on Issues Related to and Arising from Plaintiff's Motion for Summary Adjudication, including eight specified categories. (*Id.*)

Defendants' counsel took Plaintiff's deposition on March 6, 2025. (Boon Decl. ¶ 4, Exh. 2.) Believing that Plaintiff did not respond to written discovery or deposition question in satisfaction of her discovery obligations, Defendants moved to compel Plaintiff to appear for further deposition on March 13, 2025. (ROA 846 [Motion to Compel Deposition].) The Court granted Defendants' concurrently-filed Ex Parte Application to advance the Motion to Compel and also continued the parties' Motions for Summary Judgment and/or Summary Adjudication. (ROA 854 [03/14/25 Minute Order].)

In *Pelton-Shepherd Industries*, the plaintiff had served the defendant with a demand for production of documents, to which a written response was due after the discovery cutoff. (165 Cal.App.4th at pp. 1572-1573.) When the defendant did not respond by the deadline, the plaintiff filed a motion to compel the response, to be heard on a date after the last day a discovery motion could be heard. (*Id.* at pp. 1575, 1585.) The trial court granted the motion to compel. On appeal, the appellate court determined that, although the trial court had discretion under section 2024.020 to hear the motion to compel after the 15th day before the initial trial date, its discretion was limited by section 2024.050. Section 2024.050 provides that a party may move to have a discovery motion heard closer to the initial trial date, or to reopen discovery after a new trial date has been set, in accordance with the factors set forth in that section. (*Id.* at pp. 1586-1587.) The

		<p>trial court exceeded its discretion to hear the motion to compel because the plaintiff had not made a motion to reopen discovery and because there was nothing in the record to show that the trial court had decided that discovery should be reopened based on the relevant circumstances. (<i>Id.</i> at p. 1588.)</p> <p>Here, the Court granted Defendants’ March 13, 2025 Ex Parte Application to Advance Motion to Compel and Shorten Time. (ROA 854 [03/14/25 Minute Order].) However, the <i>Pelton-Shepherd</i> court found that Code of Civil Procedure section 2024.050 specifies that leave to reopen discovery may be granted “[o]n motion of any party.” (Code Civ. Proc., § 2024.050, subd. (a).) “Moreover, such a motion must be accompanied by a meet and confer declaration, and in exercising its discretion to grant or deny the motion the court must consider various factors, including (but not limited to) ‘[t]he necessity and the reasons for the discovery’ and ‘[t]he diligence or lack of diligence of the party seeking ... the hearing of a discovery motion, and the reasons that ... the discovery motion was not heard earlier.’ (Code Civ. Proc., § 2024.050, subds. (a) & (b)(1), (2).)” (<i>Pelton-Shepherd</i>, <i>supra</i>, 165 Cal.App.4th at pp. 1586–1587.)</p> <p>Defendants’ March 13, 2025 Ex Parte Application does not satisfy the requirements of Code of Civil Procedure section 2024.050. The Ex Parte Application is not a noticed motion; Defendants did not engage in the required meet and confer; and the Application did not request that discovery be reopened or require the court to consider the necessary factors. The motion to compel deposition is denied because discovery is closed, and Defendants did not file a motion for leave to reopen discovery. Thus, the Court does not have discretion to consider the motion to compel deposition.</p> <p>Plaintiff’s request for sanctions is denied. The court did not consider Plaintiff’s Sur-Reply. It was not material to the disposition of the motion.</p> <p>Defendants to give notice. Defendants and their counsel shall appear at the OSC re Sanctions set for Friday, 4/18/25 at 10:00.</p>
55	<p>Rexford Industrial- Berry LLC v Alatus Aerosystems</p> <p>23-01326669</p>	<p>Demurrer to Complaint x2 by DEFT</p> <p>Defendant Triumph Group, Inc. demurs to the Complaint, the first cause of action for declaratory relief (tenant) and the second cause of action for declaratory relief (guarantor) on the grounds that there is another action pending between the same parties on the same cause of action, Code of Civ. Proc. § 430.10(c); and failure to state sufficient facts under Code</p>

of Civ. Proc. § 430.10 (e). The Demurrer is OVERRULED in full.

Defendant Alatus Aerosystems demurs to the first cause of action for declaratory relief (tenant) on the grounds that there is another action pending between the same parties on the same cause of action, Code of Civ. Proc. § 430.10(c); and failure to state sufficient facts under Code of Civ. Proc. § 430.10 (e). The Demurrer is OVERRULED in full.

Because the grounds for demurrer are substantially similar, they are addressed together herein.

Statutory Abatement per Code of Civil Procedure Section 430.10(c) - Overruled

A demurrer under Code of Civ. Proc. § 430.10(c) is a plea in abatement. A demurrer lies when there are two actions pending in California state courts "between the same parties on the same causes of action." (Code of Civ. Proc. § 430.10(c).)

"In determining whether the causes of action are the same for purposes of pleas in abatement, the rule is that such a plea may be maintained only where a judgment in the first action would be a complete bar to the second action." (*Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 787-788.) The plea in abatement "require[s] absolute identity of parties, causes of action or remedies sought in the initial and subsequent actions." (*Id.*, at p. 788 [emphasis added].)

The identical cause of action must be involved in both suits, so that a judgment in the first action would be res judicata on the claim in the present lawsuit (claim preclusion). (*Bush v. Superior Court* (1992) 10 Cal. App. 4th 1374, 1384.)

Here, the demurrer on this ground is overruled for two main reasons. First, there is only one action pending as the two matters were ordered consolidated for all purposes on 2/28/25. (See, ROA 280.) Thus, there is no concern that judgment in the first action would be res judicata on the second action as both actions were consolidated into one and are before a single judge.

Similarly, there is no claim splitting as all claims have been consolidated into a single action.

Second, the two separately filed complaints did not involve the same causes of action. As the parties point out, the First Action involves breach of contract and the Second Action involved declaratory relief. While both matters arise out of the same Lease, the relief sought is different. In the First

Action, Plaintiff claims Defendants breached the operative Lease, Plaintiff exercised its contractual and statutory rights to continue the Lease and sue for the monthly rents as they came due. Defendants vigorously dispute that they owe any further rent because the Lease was terminated back in April of 2023 when Plaintiff accepted surrender of the premises. Thus, while Plaintiff contends the Lease was not terminated in 2023 and the obligation to pay rent remains ongoing as it comes due, Defendants contend the Lease was terminated. In the Second Action, Plaintiff seeks a declaration of whether the Lease was terminated as Defendants contend because, if the Lease is declared terminated, then Plaintiff's damages may be affected. These are not the same causes of action, or the same relief.

Based on this analysis, the Demurrers on this ground are OVERRULED.

Failure to State Sufficient Facts – Overruled

Code of Civ. Proc. § 1060 provides, in relevant part: "Any person interested under a written instrument...or under a contract...who desires a declaration of his or her rights or duties with respect to another...may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties...including a determination of any question of construction or validity arising under the instrument or contract..."

Defendants each assert that this claim is not ripe for adjudication because it is expressly contingent on a future event. "Where the allegations of the complaint reveal the controversy to be conjectural, anticipated to occur in the future, or an attempt to obtain an advisory opinion from the court, the fundamental basis of declaratory relief is lacking." (*Rhonda S. v. Kaiser Found. Health Plan, Inc.* (2023) 94 Cal. App. 5th 643, 648.

Here, however, there exists an actual controversy as to whether the Lease is continuing in effect (as Plaintiff contends) or whether it had been terminated (as Defendants contend), and if terminated, then what, if any, damages are owed. There is nothing conjectural about these issues and will not give rise to an advisory opinion. In fact, Defendants assert the termination occurred back in 2023. Thus, the trier of fact will need to determine whether (or not) the Lease was terminated. If the Lease was terminated, then the amount of damages must be calculated based on date of termination. Conversely, if the Lease was not terminated, then it remains ongoing. That the trier of fact must determine these issues in the future (at trial) does not defeat a claim for declaratory

		<p>relief. To put it another way, no action for declaratory relief would ever be ripe if it must be adjudicated in the present because adjudication always occurs in the future.</p> <p>Defendants also assert these claims fail because their position is correct and they will prevail at trial. However, whether Defendants ultimately prevail at trial on their defenses has no bearing on whether a declaratory relief claim is ripe for adjudication as pleaded in the complaint.</p> <p>Accordingly, the Demurrers on this ground are OVERRULED.</p> <p>Plaintiff to give notice.</p> <p>The parties and/or their counsel shall appear for the trial setting status conference.</p>
56	Ayala v Nemel 23-01314526	<p>Motion to Compel x3 Motion to Deem Facts Admitted By DEFT</p> <p>Withdrawal of Motion filed 4/18/2025 No appearance required</p>