TENTATIVE RULINGS

DEPT C21

LAW AND MOTION CALENDAR

Judge Deborah C. Servino

Date: April 18, 2025

Please read the applicable rules carefully. Do not call the department unless submitting on the tentative.

The court will endeavor to post tentative rulings on the Court's website by 3 p.m. on the preceding Thursday. However, ongoing proceedings may prevent posting by that time. Do not call the department for tentative rulings if none are posted. The court will not entertain a request for continuance once a ruling has been posted and no additional papers will be considered once a ruling has been posted.

If you wish to submit on the tentative and do not want to appear, please inform the clerk by calling **(657) 622-5221**, and inform opposing counsel.

The Law and Motion Calendar is heard on Fridays at 10 a.m. All arguments will be heard at that time. Unless otherwise indicated in the tentative ruling, the prevailing party will give Notice of Ruling. If no one appears for the hearing, the court shall determine whether the matter is taken off calendar or whether the tentative ruling shall become the final ruling.

APPEARANCES: The Court offers remote appearances for the Law and Motion Calendar via Zoom. All counsel and self-represented parties appearing remotely for the Law and Motion Calendar must check-in online through the Court's website at **https://www.occourts.org/media-relations/civil.html,** then click on the gold ribbon that states "Click here to appear/check-in for civil small claims/limited/unlimited/complex remote proceedings", and then click on Department C21 (to check-in). However, counsel and self-represented parties preferring to appear in-person may do so. The Court's "Appearance Procedures and Information - Civil Unlimited," "Guidelines for Remote Appearances," remote video appearance instructions, Orange County Superior Court Local Rule 375 on Remote and In-Person Proceedings in Civil, Administrative Order No. 23/06 (Updated Remote Appearance Guidelines for Civil and Probate), and an instructional video are also available through the Court's website at **The Superior Court of California - County of Orange (occourts.org).** If you encounter difficulty checking-in online or connecting remotely, please call Department C21 for assistance at (657) 622-5221.

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. Please see the Court's website for further information. The Court's policy on privately-retained court reporters is available on the Court's website at: Privately-Retained Court Reporter Policy.

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.

#	Case Name	Tentative
50	Bello v. Carmax Auto Superstores, Inc., et al. 30-2023-01332273	Defendants Ruben Valdivia, Jr. and Carmax Auto Superstores, Inc.'s motion for an order compelling Plaintiff Marywilann Bello's appearance at a neuropsychological examination, is granted. A court order is required to obtain discovery by means of a mental examination. (Code Civ. Proc., § 2032.310, subd. (a).) A motion to obtain discovery by means of a mental examination must "specify the time, place, manner, conditions, scope, and nature of the examination, as well as the identity and the specialty, if any, of the person or persons who will perform the examination . . . and be accompanied by a meet and confer declaration under Section 2016.040." (Code Civ. Proc., § 2032.310, subd. (b).) The moving party must show good cause for the mental examination. (Code Civ. Proc., § 2032.320, subd. (a).) Plaintiff agrees to appear and has no objection to the date, time, location, doctor, testing, or any part of the notice of examination. She does not dispute that there is good cause for a neuropsychological examination. She asks that Dr. Boone be required to turn over testing materials and raw data to Plaintiff's counsel, rather than to Plaintiff's retained, licensed psychologist expert, as provided in the notice of independent medical examination. (Opp., at pp. 5-9; see Waghalter Decl., Exh. E, at p. 4.) Defendants provide a "Collective Statement of Importance of Protection of Psychological Test Materials," signed under penalty of perjury by 149 neuropsychologists and psychological experts, including Dr. Boone. (Waghalter Decl., Exh. G.) The Collective Statement explains why the testing materials and raw data cannot be provided to non-psychologists and why neuropsychologists must protect the test materials. (Waghalter Decl., Exh. G, at ¶¶ 1-5.) The Collective Statement also sets forth that various governing bodies have adopted formal requirements and issued statements pertaining to the release of test-related materials and advise against the release of test materials to unqualified persons. (Waghalter Decl., Exh. G, at ¶¶ 6-9.) The Collective Statement addresses why protective orders do not sufficiently protect the psychological test materials and do not ensure test security. (Waghalter Decl., Exh. G, at ¶¶ 10-12.) The Collective Statement reasons that there is no benefit to turning over the protected test data to counsel because counsel do not have the professional training and experience to evaluate, by viewing the raw data, as to whether the neuropsychologist administered, scored, or interpreted the tests correctly. Only a psychologist has the ability to make those determinations. (Waghalter Decl., Exh. G, at ¶ 13.) The Collective Statement concludes:

		14. In summary, allowing non-psychologists to receive protected psychological test materials, including examinee's specific responses, test questions, and test stimuli, poses a serious threat of widespread social harm by compromising test security. 15. I would not agree to releasing protected test information that would jeopardize future use of tests to a non-psychologist, including attorneys, even under a protective order. If this stipulation cannot be met, I would recuse myself from a case. (Waghalter, Decl., Exh. G, at p. 8.) In *Randy's Trucking, Inc. v. Superior Court of Kern County* (2023) 91 Cal.App.5th 818, the court recognized there are concerns that a protective order is insufficient to protect test security and that no neuropsychological or psychological expert will comply with an order to turn over testing material and raw data to a plaintiff's counsel. The court pointed out that the matter was procedurally before that court on a petition for writ of mandate to simply determine whether the trial court had abused its discretion based on the rules of evidence. (*Id.* at p. 848.) Here, the Consolidated Statement addresses aspects that were not fully addressed in *Randy's Trucking, Inc. v. Superior Court of Kern County*. The court declines to exercise its discretion to order Dr. Boone to turn over testing materials and raw data to Plaintiff's counsel. Plaintiff is therefore ordered to appear for her neuropsychological examination with Dr. Kyle Boone, Ph.D. on April 23, 2025, at 9:30 a.m., located at 24564 Hawthorne Blvd., Suite 208, Torrance, CA 90505, unless otherwise agreed. Plaintiff has the right to audio record the mental examination. Dr. Boone also has a right to audio record the mental examination. (Code Civ. Proc., § 2032.530.) The audio recordings shall be subject to a protective order. Defendant shall promptly submit to the court and serve on all parties a proposed protective order as to the audio recording of the mental examination for the court's signature. Dr. Boone is to turn over raw data to Plaintiff's retained, licensed psychologist expert. The court declines to award any sanctions. Defendants shall give notice of the ruling.
51	Citizens Business Bank v. Sovereign Arts and Metal Finishing LLC, et al. 30-2024-01399265	The court grants Defendants Michael Johnson and Sovereign Arts and Metal Finishing LLC's motion to vacate the default and default judgment entered against them on Plaintiff Citizens Business Bank's Complaint, to recall and quash the writ of execution, and to order the return property levied upon.

		Defendants move for relief under Code of Civil Procedure section 473.5 on the grounds that service of the summons did not result in actual notice to Defendants in time to defend the action. Under Code of Civil Procedure section 415.40, service may be made "by sending a copy of the summons and of the complaint to the person to be served by first-class mail, postage prepaid, requiring a return receipt". To prove service by mail on a nonresident pursuant to Code of Civil Procedure section 415.40, there must be hard evidence of actual delivery—either a signed receipt or other proof that the defendant (or someone authorized by defendant) actually received the mail. (Code Civ. Proc., § 417.20, subd. (a).) Here, the proofs of service of summons in this case assert that Johnson received service of process on behalf of himself and Defendant Sovereign Arts and Metal Finishing by signing for certified mail in person in Las Vegas on June 4, 2024, at 12:17 pm at his home address. (ROA 9 & 11.) Defendants present evidence to show that this is false as Johnson was not in Las Vegas at the time he purportedly signed for serve. He was disembarking from a plane at John Wayne Airport in Orange County at that exact time. (Johnson Decl., at ¶ 4). On June 4, 2024, Johnson left his Las Vegas home at approximately 9:45 am for his flight to Orange County John Wayne Airport. (Johnson Decl., at ¶¶ 5, 6, Exh. B [flight itinerary for that day showing that the flight was scheduled to depart at 11:13 am from Las Vegas].) He also includes other evidence to show he was on a flight arriving in California at the relevant time. (Johnson Decl., Exhs. C, D, E.) It was impossible for him to have signed for the certified mail as claimed. Thus, Defendants have shown that service was not effectuated as indicated on the signed receipt. Defendants have averred to a lack of actual notice. Plaintiff did not file any timely opposition to the motion. The motion is granted. The court vacates the default (ROA 13) and default judgment (ROA 24) and quashes the writ of execution based thereon (ROA 34). Any levied property is ordered to be returned to Defendants. No later than April 28, 2025, Defendants shall electronically file the proposed answer that they had lodged with the court. (See ROA 47.) Defendants shall serve their answer pursuant to the Code of Civil Procedure. The court hereby sets a trial for May 26, 2026, at 9 am in Department C21. Should any party wish to have a jury trial, they must post jury fees no later than May 12, 2025. Otherwise, trial will proceed as a court trial.

		Defendants shall give notice of the ruling, of the May 12, 2025 deadline to post jury fees, and of the May 26, 2026 trial date to all parties and to the levying officer.
52	Hanselmen v. Nasereddin, et al. 30-2024-01426304	Defendant Fouad Nasereddin and Lama Hamam's ("Defendants") motion to dismiss is denied. The court notes that the proof of service of the moving papers does not list the address of record for Plaintiff Connor Hanselmen's counsel. (ROA 26.) However, Plaintiff has opposed the motion on the merits and has not objected to this defect. Additionally, the court notes Plaintiff's proof of service reflects the opposition was electronically served on defendants. However, as self-represented litigants, electronic service on Defendants is not proper without their express consent. (Cal. Rules of Court, rule 2.251(c)(3); Orange County Superior Court Local Rule 352.) On the merits, the motion is denied. There is no statutory authority for using a motion to dismiss as a method to challenge opposing pleadings. Under the Code of Civil Procedure, motions to dismiss are expressly authorized only on specified grounds. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2025) ¶ 7:370.) Here, the motion to dismiss is not based upon any of the specified grounds. Some courts have held that a motion to dismiss may serve the same function as a general demurrer. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2025) ¶ 7:370.) A demurrer presents an issue of law regarding the sufficiency of the allegations set forth in the complaint. (*Lambert v. Carneghi* (2008) 158 Cal.App.4th 1120, 1126.) The challenge is limited to the "four corners" of the pleading (which includes exhibits attached and incorporated therein) or from matters outside the pleading which are judicially noticeable under Evidence Code sections 451 or 452. On demurrer, a complaint must be liberally construed. (Code Civ. Proc., § 452; *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.) All material facts properly pleaded, and reasonable inferences, must be accepted as true. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) Even if the court were to treat the motion to dismiss as a general demurrer, the motion would be denied because it relies on matters that are outside of the Complaint. Plaintiff's allegation that Defendants "were the respective owners and/or drivers of a certain 2015 FORD FOCUS SIL" is presumed to be true. (See Complaint, at ¶ 3.) Any special demurrer for uncertainty would also be overruled because the

		Complaint is not so unintelligible that Defendants cannot reasonably respond. Any ambiguities can be clarified through discovery. (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135; *Khoury*, 14 Cal.App.4th at 616.) Accordingly, the motion is denied. Defendants are ordered to answer the Complaint within 15 days of the notice of ruling. The ruling renders moot Defendants' motion for leave to file a late demurrer. The October 31, 2025 hearing on that motion is hereby vacated. The court reminds the parties that litigants who choose to represent themselves must be treated in the same manner as represented parties and must follow the correct rules of procedure. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) A self-represented litigant is not entitled to any greater consideration than other litigants and attorneys. (*Petrosyan v. Prince Corp.* (2013) 223 Cal.App.4th 587, 594 [self-represented litigants are entitled to same treatment as represented parties]; see Cal. Rules of Court, Rule 1.6(15) [defines "parties" as including both self-represented persons and persons represented by an attorney of record without making any distinction between them].) The fact that Defendants are self-represented litigants does not relieve them of the requirements, law, and procedures applied to all parties who appear in this court. Self-represented litigants are "held to the same standards as attorneys." (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.) Plaintiff shall give notice of the ruling. **CASE MANAGEMENT CONFERENCE**
53	Kim v. Son, et al. 30-2024-01423705	Defendants Don Son, M.D. and Don Son M.D., Inc.'s demurrer to Plaintiff Young Ki Kim's Complaint is sustained with 15 days leave to amend. Defendants demur that the Complaint is barred by the one-year statute of limitations set forth in Code of Civil Procedure section 340.5. The limitations period for a medical malpractice claim is three years after the date of injury or one year after the plaintiff discovers or should have discovered the injury, whichever comes first. (Code Civ. Proc., § 340.5.) As the California Supreme Court explained: > Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong to her. As we said in *Sanchez* and reiterated in *Gutierrez*, the limitations period begins once

		the plaintiff " " 'has notice or information of circumstances to put a reasonable person on inquiry . . . . " " ' . . . [T]he limitations period begins once the plaintiff ""'has notice or information of circumstances to put a reasonable person on inquiry . . . " " ' A plaintiff need not be aware of the specific "facts" necessary to establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her. *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110-1111 (citations omitted). Plaintiff filed his Complaint on September 9, 2024. He alleges he was injured by Defendants' malpractice during a colonoscopy on September 12, 2022, at which time he was immediately made aware of Defendants' actions and his own injury by Defendant Son's statements and Plaintiff's own pain. That same day, Plaintiff continued to be in great pain while waiting at the ER due to Defendants' failure to require an ambulance. (Complaint, at ¶¶ 20-32.) The Complaint further alleges Defendant Son gave him antibiotics, prescribed to someone else, that gave him an allergic reaction, and he was aware of all this no later than September 24, 2022. (Complaint, at ¶¶ 35-43.) In October 2022, Defendant Son failed to return Plaintiff's calls seeking medical help. (Complaint, at ¶¶ 50-54.) And by March 2, 2023, Plaintiff learned he had developed a hernia and underwent further surgery. (Complaint, at ¶¶ 58-60.) All of this took place more than a year before Plaintiff filed his Complaint. In opposition to the demurrer, Plaintiff points to the three-year portion of the statute of limitations. But the Complaint alleges that he discovered his injuries and had, at least, a suspicion of wrongdoing immediately or within days of Defendants' actions he alleges were negligent. Given Plaintiff's allegations, his claims are barred by the statute of limitations. It is unclear whether Plaintiff will be able to cure this deficiency. However, out of an abundance of caution, Plaintiff is granted an opportunity to amend. Accordingly, the demurrer is sustained with 15 days leave to amend. The ruling on the demurrer renders moot the motion to strike. The case management conference is continued to October 3, 2025, at 9 am.

		Defendant to give notice of ruling and of the continued case management conference.
54	OC Cars & Credit, Inc. v. XL Funding, LLC, et al. 30-2024-01429967	**MOTION FOR APPOINTMENT OF REFEREE** Defendants XL Funding, LLC and Joseph Moreira's motion for the appointment of a judicial referee is granted. Pursuant to Code of Civil Procedure section 638, subdivision (a), "a referee may be appointed upon the agreement of the parties . . . upon the motion of a party to a written contract or lease that provides that any controversy arising therefrom shall be heard by a referee if the court finds a reference agreement exists between the parties: (a) [t]o hear and determine any or all of the issues in an action or proceeding, whether of fact or of law, and to report a statement of decision." In moving for judicial reference, Defendants refer to the Demand Promissory Note and Security Agreement that the parties entered into on 8/14/20 as part of their financing agreement. It contains a dispute resolution provision providing the following, in relevant part: **11.25 JUDICIAL REFERENCE**. IF DEALER'S LOCATION IS WITHIN THE STATE OF CALIFORNIA, THE FOLLOWING PROVISIONS APPLY: IN THE EVENT THAT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING SECTION 11.24 IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, DEALER AND XLF HEREBYAGREE AS FOLLOWS: (a) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBPARAGRAPH B BELOW, ANY CLAIM WILL BE RESOLVED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. (b) … (c) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN ANY PARTY MAY REQUEST THE COURT TO APPOINT A

		REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED…. (Tremblay Decl., Exh. A-1 [emphasis added].) In Plaintiff OC Cars & Credit, Inc.'s Complaint, it alleges that it obtained lines of credit from various lenders, including Defendant, to finance its used car business. (Complaint, at ¶¶ 7-8.) Plaintiff specifically had such an agreement with Defendant XL Funding, and alleges that "Defendants through that agreement . . . . learned private financial information related to Plaintiff." (Complaint, at ¶ 10.) Plaintiff then alleges how Defendants informed third parties of Plaintiff's alleged default leading to the events that resulted in the closure of Plaintiff's business. (Complaint, at ¶¶ 12, 16-20.) Defendant's Cross-Complaint alleges that Plaintiff breached the Demand Promissory Note and Security Agreement and Guaranty in failing to repay its obligations pursuant to the agreements, resulting in an unpaid balance of $378,265.42. (Cross-Complaint, at ¶¶ 4, 10-13, 16-19.) Contrary to Plaintiff's arguments, the court finds that the judicial reference provision in the parties' agreement encompasses the claims in both the Complaint and Cross-Complaint. The provision is extremely broad, applying to "any controversy, dispute or claim directly or indirectly arising out of or relating to this agreement or transactions contemplated by this agreement . . ." In its brief, Plaintiff focuses on its claims regarding Defendants' allegedly improper communications with other lenders regarding Plaintiff's financial status that ultimately led to the end of Plaintiff's business. Notably, the Demand Promissory Note and Security Agreement contains language suggesting that XL Funding is entitled to share information regarding Plaintiff with third-parties, such as the finance companies referenced in the Complaint, undermining Plaintiff's arguments that its tort action has nothing to do with the agreements. (See Tremblay Decl., Exh. A-1, §§ 2.3 and 4.4) Plaintiff relies on *Rice v. Downs* (2016) 248 Cal.App.4th 175, 190-191, and *Howard v. Goldbloom* (2018) 30 Cal.App.5th 659. These cases are distinguishable as they involved more limited arbitration agreements and claims that were not at all related to the agreements.

		Plaintiff notes that Defendant Moreira is not a party to the contract between Defendant XL Funding and Plaintiff, and argues that Moreira lacks standing to enforce the agreement. But, the contract language regarding judicial reference is not limited only to parties to the contract. It expressly provides that "any claim will be resolved by a general reference proceeding." Therefore, the court finds that Moreira has standing to enforce the judicial reference clause. Defendants request that this matter be resolved by a general reference before the Hon. Yvette M. Palazuelos (Ret.) (presently affiliated with Judicate West) as referee, with the referee's fees split equally between the parties (50% by XLF and 50 % by OC CARS), and the prevailing party to be awarded the balance. Plaintiff in opposition argues that Plaintiff lacks any resources to pay for a reference, and cites to a declaration of Kamran Afrasiabi. However, no such declaration was filed. Plaintiff has submitted no evidence of its financial condition. The court thus finds Defendants' request for the parties to split the referee's fees to be fair and appropriate. Plaintiff also contends that the court cannot allow Defendants to unilaterally select the referee. But, Plaintiff does not offer any specific objections to Hon. Yvette M. Palazuelos (Ret.) of Judicate West. The court is therefore inclined to appoint Judge Palazuelos as the referee, but will entertain discussion at the hearing on this matter. Accordingly, Defendants' motion to appoint a judicial referee is granted. Defendants are ordered to provide for the court's review a proposed order, utilizing Judicial Council Form ADR-110. The proposed order should include all the information required by California Rules of Court, rule 3.902. **DEMURRER** The ruling on the motion for appointment of referee renders moot Plaintiff's demurrer to the Cross-Complaint. The case management conference is hereby vacated. The court sets a status conference re: judicial reference for October 3, 2025, at 9 am in Department C21. Defendants shall give notice of the ruling and of the status conference.
55	Pinon v. Joy, et al. 30-2021-01216986	**NO TENTATIVE RULINGS**

56	Selim v. Fujifilm Irvine Scientific, Inc. 30-2024-01374896	Hearing on motion to compel production off-calendar. Notice of withdrawal of motion filed 4/11/2025
57	Alliance Funding Group v. Kayfam Transportation LLC 30-2024-01373164	Plaintiff/Judgment Creditor Alliance Funding Group obtained a default judgment against Defendants/Judgment Debtors Kayfam Transportation LLC and Nikolle D. Mcaninch aka Nikolle McAninch ("Mcaninch"). (ROA 18.) Two writs of execution were issued. (ROA 28 & 35.) It appears that Alliance Funding Group sought to garnish Mcaninch's wages pursuant to the Wage Garnishment Law (Code Civ. Proc., § 706.010, et seq.), and that Mcaninch filed with the levying officer a claim of exemption pursuant to Code of Civil Procedure section 706.105, subdivision (b). It also appears that on March 20, 2025, the levying officer mailed Notice of Filing Claim of Exemption to Alliance Funding Group. (See Not. of Opp. to Claim of Exemption [ROA 41].) The claim of exemption was not provided to the court. As a well-regarded practice guide points out: "The judgment creditor should also file with the court copies of the debtor's claim of exemption and financial statement. (The debtor is only required to file these papers with the levying officer; thus, the court will not be able to review them unless they are filed by the judgment creditor.)" (Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2025) ¶ 6:1196.1.) A judgment creditor wishing to oppose the claim of exemption must file a notice of opposition with the levying officer within 10 days after the date of the notice of claim of exemption was mailed. (Code Civ. Proc., § 706.105, subd. (d).) This 10-day period is not extended even when the claim of exemption was served by mail. (Code Civ. Proc., § 684.310.) In addition to timely filing the notice of opposition with the levying officer, the judgment creditor must also file with the court a notice of motion for an order determining the claim of exemption and a notice of hearing on claim of exemption (Judicial Council form WG-010) within 10 days after the levying officer mailed the notice of claim of exemption. (Code Civ. Proc., § 706.105, subd. (e).) The 10-day period is not extended where the claim of exemption was served by mail. (Code Civ. Proc., § 684.310.) Finally, the judgment creditor must give written notice of at least 16 court days before the hearing to the levying officer and the judgment debtor, which is increased by five calendar days if served by regular mail. (Code Civ. Proc., §§ 706.105, subd. (e), 1005, subd. (b).)

		Here, Alliance Funding Group stated in its notice of opposition to claim of exemption (wage garnishment) that it was mailed the notice of claim of exemption on March 20, 2025. It is unclear whether Alliance Funding Group timely filed its notice of opposition to claim of exemption to the levying officer. The notice of opposition to claim of exemption and notice of hearing on claim of exemption were dated April 1, 2025, which is 10 days from March 20, 2025. (ROA 40 & 41.) But, the proof of service only indicated service on the Mcaninch. (ROA 38.) In any event, Alliance Funding Group failed to give at least 16 court days plus five calendar days' notice to the levying officer and Mcaninch and did not seek to shorten the minimum notice periods. (Code Civ. Proc., § 1005, subd. (b).) If Alliance Funding Group filed the notices with the levying officer after April 1, 2025, the statutory procedure mandates the levying officer to release the wages. (Code Civ. Proc., § 706.105, subd. (f).) Alliance Funding Group untimely filed the notice of hearing on claim of exemption and notice of opposition to claim of exemption (wage garnishment) on April 7, 2025 with the court. Because the notices were untimely filed, Alliance Funding Group waived its rights to object to the claim of exemption. (See *Westervelt v. Robertson* (1981) 122 Cal.App.3d Supp. 1, 9-10 [construing predecessor statute to Code of Civil Procedure section 706.105].) Accordingly, Mcaninch's claim of exemption is granted. The levying officer is directed to release any earnings held to the judgment debtor. The Clerk shall transmit a certified copy of this order to the levying officer: Levying Office, Sheriff's Office, 9425 Penfield Ave., Room 1100, Chatsworth, CA 91311. Alliance Funding Group shall give notice of the ruling.
58	Tan v. Burns 30-2025-01471598	**NO TENTATIVE RULING**