

TENTATIVE RULING

DEPARTMENT C44

Judge Walter Schwarm

April 9, 2024

(The below Law and Motion Calendar matter will be heard at 8:30 a.m.)

This is the Court's tentative ruling. It may become an order if the parties do not appear at the hearing. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

If the parties agree to submit on the Court's tentative ruling, please call the Court Clerk to inform the court that **all** parties submit on the Court's tentative ruling. The tentative ruling will then become the order of the Court upon a party or parties informing the Court that **all** parties submit to the Court's tentative ruling.

APPEARANCES: Department C44 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference. 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/media-relations/civil.html> 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. Check-in instructions and instructional video are available at <https://www.occourts.org/media-relations/aci.html>. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") are also available at <https://www.occourts.org/media-relations/aci.html>. Parties preferring to appear in-person for law and motion hearings may do so by providing notice of in-person appearance to the court and all other parties five (5) days in advance of the hearing. (see Appearance Procedures, section 3(c)(1).).

PUBLIC ACCESS: Media and public access to proceedings will be in person in the courtroom where the hearing is scheduled. In the event any proceeding is conducted entirely remotely, the press and public can obtain public access by contacting the courtroom. Phone numbers for the courtrooms can be found at <https://www.occourts.org/directory/civil/CivilPhoneDepartmentDirectory.pdf>. In those instances where proceedings will be conducted only by remote video and/or audio, access will be provided to interested parties by contacting the courtroom clerk, preferably 24 hours in advance. 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.

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 will be 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 at:

- [Civil Court Reporter Pooling](#); and

- For additional information, please see the court’s website at [Court Reporter Interpreter Services](#) for additional information regarding the availability of court reporters.

#	Case Name	Tentative
	30-2018-01002061 Law Offices of Mark B. Plummer, PC v. Alai	<p>The court intends to CONTINUE Moving Party’s (Nili Alai) Motion for Reconsideration of September 5, 2023 Ruling Under ROA 1431 on Defendant’s Motion to Compel Under ROA 1138 and Defendant’s Request for Sanctions or in the Alternative Motion for Relief from Order Pursuant to §473 (Motion) filed on 9-13-23 under ROA No. 1445.</p> <p>Code of Civil Procedure section 391.6 states, “Except as provided in subdivision (b) of Section 391.3, when a motion pursuant to Section 391.1 is filed prior to trial the litigation is stayed, and the moving defendant need not plead, until 10 days after the motion shall have been denied, or if granted, until 10 days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to Section 391.1 is made at any time thereafter, the litigation shall be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.”</p> <p><i>Hanna v. Little League Baseball, Inc.</i> (2020) 53 Cal.App.5th 871, 875-876 (<i>Hanna</i>), states, “Black’s Law Dictionary defines a ‘stay’ as ‘[t]he postponement or halting of a proceeding, judgment, or the like.’ (Black’s Law Dict. (11th ed. 2019) p. 1709.) Under the plain language of section 391.6, the entirety of the litigation is stayed once the defendant files a motion to determine that the plaintiff is a vexatious litigant who should be required to furnish security in that action. Furthermore, the stay shall remain effective until 10 days after the motion is denied or 10 days after the security is furnished. (§ 391.6.) Section 391.6 does not carve out any exception for proceedings that may continue during that period except for the dismissal of the action under section 391.3, subdivision (b). That exception does not apply here. [¶] Little League filed its motion to declare Hanna a vexatious litigant under section 391.1 and to have him furnish security on May 14, 2018. At that time, Little League had several pending discovery motions, all requesting the imposition of discovery sanctions. At the same June 7, 2018, hearing at which the trial court granted Little League’s vexatious litigant motion, the trial court also granted Little League’s discovery motions and</p>

imposed a total of \$1,200 in discovery sanctions (\$400 for each of the three motions) against Hanna. The trial court did not have authority to rule on the discovery motions once Little League filed its motion under section 391.1. Consequently, we reverse the June 7, 2018, orders imposing a total of \$1,200 in discovery sanctions against Hanna.”

On 2-13-24, the court found that Moving Party was a vexatious litigant as to Jocelyn Plummer. (2-13-24 Minute Order; ROA No. 1765.) The court ordered Moving Party to furnish security in the amount of \$100,000.00. (2-13-24 Minute Order; ROA No. 1765.) Moving Party file a Notice of Appeal on 2-14-24 under ROA No. 1784 that states in part, “Also under Section 904.1(a)(6) an order granting or denying an injunction under Section 391” On 2-29-24, the Court of Appeal denied Moving Party’s “. . . request for a temporary stay of orders granting vexatious litigant motions” (Court of Appeal Order (Order) filed on 2-29-24 under ROA No. 1813.)

The court’s 3-5-24 Minute Order states in part, “Based on the Court of Appeal’s Order, the court refers the parties to Department C32 to determine the scope of the stay under Code of Civil Procedure section 391.6, and the effect of a stay, if any, on this Motion[.]” The court’s 3-19-24 Minute Order states in part, “Parties are to meet and confer on the litigation of the stay pursuant to CCP 391.6[.]”

Based on the court’s 2-13-24, 3-5-24, and 3-19-24 Minute Orders, the Notice of Appeal, and the Court of Appeal’s Order, it appears that Code of Civil Procedure section 391.6 may require a stay of this litigation. The court refers the parties to Department C32 to determine the scope of the stay under Code of Civil Procedure section 391.6, and the effect of a stay, if any, on this Motion. The parties shall appear in Department C44 on 4-9-24 to advise the court as to the status of a stay, if any, of the litigation in these proceedings pursuant to Code of Civil Procedure section 391.6.