

"Civility allows for zealous representation, reduces clients' costs, better advances clients' interests, reduces stress, increases professional satisfaction, and promotes effective conflict resolution. These guidelines foster the civility and professionalism that are hallmarks of the best traditions of the legal profession."

OCBA Civility Guidelines

"The American legal profession exists to help people resolve disputes cheaply, swiftly, fairly, and justly. Incivility between counsel is sand in the gears."
(*Karton v. Ari Design & Construction, Inc.* (2021) 61 Cal.App.5th 734, 747.)

TENTATIVE RULINGS
Judge Kimberly Knill, Dept. C31

- **The court encourages remote appearances to save time, reduce costs, and increase public safety.** Go to www.occourts.org/media-relations/civil.html and click on the blue box that says, "Click here to appear/check-in for Civil Small Claims/Limited/Unlimited/Complex remote proceedings." Navigate to Department C31 Judge Kimberly Knill.
- All hearings are open to the public.
- If you desire a transcript of the proceedings, you **must** provide your court reporter (unless you have a fee waiver and request a court reporter in advance).
- Call the other side. If **everyone** submits to the tentative ruling, call the clerk at 657-622-5231. Otherwise, the court may rule differently at the hearing. (See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

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.

HEARING DATE: Friday, 5/17/2024 10:00 AM

#	Case Name	Tentative
1	Jacobson vs LaVine & Associates Inc. 30-2022-01269276-CU-BT-CJC	Defendants' Motion to Consolidate Cases The renewed motion of defendants LaVine & Associates CPAs, Inc., Jon M. LaVine, CPA, and Lois W. Williams, CPA (collectively "LaVine") for consolidation for purposes of discovery, pre-trial, and trial of the following two actions: (1) <i>Daniel Jacobson v. LaVine & Associates CPAs, Inc., et al.</i> , Orange County Superior Court Case No. 30-2022-01269276-CU-BT-CJC ("Daniel Case"), and (2) <i>Lawrence Jay Jacobson, etc., et al. v. LaVine & Associates CPA, Inc., etc., et al.</i> , Orange County Superior Court Case No. 30-2022-01269337-CU-RI-WJC ("Lawrence Case") is GRANTED. All pre-trial and trial dates in the Daniel Case are vacated. The parties are ORDERED to file all future filings in the Daniel Case.

		Clerk to file the minute order in the Daniel Case and the Lawrence Case and to serve all parties in each case with notice.
2	Armer vs Jaguar Land Rover North America, LLC 30-2022-01276601-CU-BC-CJC	<p>Plaintiff’s Motion for Attorney Fees</p> <p>Plaintiff Austin Armer’s Motion for Attorney Fees and costs/expenses is GRANTED in the amount of \$26,520 for fees and \$689.85 in costs/expenses.</p> <p>The Court rules on Defendant’s Objection to the Declaration of Jerry Haddad as follows: Objection Nos. 1, 2, 3, 7, 8, 9, are sustained. Objection Nos. 4-6 are overruled.</p> <p>Plaintiff seeks \$39,055.50 in attorney’s fees representing 78.9 hours billed at \$495/hour. There is no dispute Plaintiff is entitled to fees and costs/expenses. Defendant contends fees sought are excessive.</p> <p>To support the attorney rates claimed, attorney Haddad listed a sample of median hourly rates for attorneys handling consumer law cases in Los Angeles, Long Beach, and Anaheim that average \$506 per hour. (Haddad Decl., ¶ 26.) The list contains no description of the attorney skill or level of experience, or even the factors considered in calculating the median rate.</p> <p>Moreover, Haddad attaches to his declaration two superior court cases where he received his hourly rate request of \$450/hour and \$495/hour. (See Haddad Decl., ¶¶ 27, 28, Exhs. N, O.) Haddad does not attach cases in which he did not receive the requested rate, nor did he provide any information on the hourly rate he is typically awarded in lemon law cases.</p> <p>Plaintiff bears the burden of showing that the hourly attorney rate sought is reasonable. Plaintiff has not demonstrated this case is anything more than a garden-variety lemon law case that resulted in a repurchase. Other than the instant motion, there was no law and motion in this case. A review of the litigation history and billing statement shows that there were no depositions, no vehicle inspection, no motions and only one round of written discovery, and the case settled.</p> <p>Based on the court’s own knowledge and familiarity with lemon law cases, the nature of the work performed in this case, and the evidence provided by the parties, the court finds an hourly rate of \$400/hour to be reasonable and commensurate with the prevailing rate charged by attorneys of similar skill and experience in the community.</p> <p>The billing records submitted by Haddad indicate his firm spent 78.9 hours litigating this action.</p> <p>A review of Plaintiff’s counsel’s billing records reveals entries for administrative tasks such as copying and making reservations for</p>

		<p>the instant motion. Most of the entries are vague such as "5 emails sent and reviewed" making it impossible to discern the work that was actually done on this case. Accordingly, the Court reduces the number of hours by 10.6 hours (20% of 53 hours) based on Defendant's objections. The Court further reduces the number of hours by 2 hours, finding Plaintiff's billing for the instant motion to be excessive.</p> <p>Plaintiff seeks \$689.85 in costs/expenses. Defendant does not object to the costs.</p> <p>Plaintiff's counsel's total compensable time is 66.3 hours. At \$400/hour, the reasonable compensation is \$26,520.</p> <p>Plaintiff's motion for attorney fees and costs/expenses is GRANTED in the amount of \$26,520 in fees and \$689.85 in costs/expenses, for a total of \$27,209.85.</p> <p>Plaintiff to give notice.</p>
3	Darougar vs 22711 Via Tercero Residence 30-2021- 01236444- CU-PO-CJC	<p>Plaintiff's Motion to Set Aside/Vacate Dismissal</p> <p>Plaintiff Soren Darougar's Motion to Vacate Dismissal is GRANTED.</p> <p>Plaintiff provides the declaration of Ilan N. Rosen Janfaza, which is sufficient for mandatory relief based on attorney affidavit of fault under Code of Civil Procedure section 473, subdivision (b). (Rosen Decl. ¶¶ 9, 10, and 13.)</p> <p>Order to Show Cause re: Dismissal (any defendant not defaulted) scheduled for 6/13/2024 at 1:30 PM. Plaintiff's counsel is ORDERED to file a status report 2 days prior. Failure to comply with the court's order may subject plaintiff and/or counsel to sanctions pursuant to Code of Civil Procedure section 177.5.</p> <p>Plaintiff to give notice.</p>
4	Morgan vs O'Brien 30-2023- 01315232- CU-MC-CJC	<p>Plaintiff's Motion to Compel Deposition and Request for Monetary Sanctions</p> <p>Plaintiff's Motion to Compel Defendant Patrick O'Brien to appear at deposition and for monetary sanctions is GRANTED.</p> <p>Defendant Patrick O'Brien is ORDERED to appear for his deposition at an agreed upon date and time within 30 days.</p> <p>Defendant Patrick O'Brien is ORDERED to pay monetary sanctions to plaintiff's attorney in the sum of \$1,830.15 within 30 days.</p> <p>Plaintiff to give notice.</p>
5	Gligic vs Allred 30-2023- 01348001-	<p>Plaintiff's Motion to Compel Further Response to Special Interrogatories, Set One, and Request for Monetary Sanctions</p>

	<p>CU-PO-CJC</p>	<p>Plaintiff Drago Gligic’s Motion to Compel Dean Allred’s Further Responses to Special Interrogatories, Set One, is MOOT.</p> <p>On 4/19/24, the Court ordered the parties to engage in additional attempts to meet and confer. The parties filed a joint statement on 5/10/24 stating Defendant served second supplemental responses on 5/2/24 and the only remaining issue is monetary sanctions.</p> <p>The Court declines to award monetary sanctions to either side. Plaintiff did not make reasonable efforts to meet and confer before filing the motion. Defendant did not make reasonable efforts to promptly serve Code-compliant responses. Under the circumstances, imposition of sanctions against either side would be unjust. (Code Civ. Proc., § 2031.310, subd. (h).)</p> <p>Plaintiff to give notice.</p> <p>Plaintiff’s Motion to Compel Further Response to Requests for Production, Set One, and Request for Monetary Sanctions</p> <p>Plaintiff Drago Gligic’s Motion to Compel Dean Allred’s Further Responses to Requests for Production, Set One, is MOOT.</p> <p>On 4/19/24, the Court ordered the parties to engage in additional attempts to meet and confer. The parties filed a joint statement on 5/10/24 stating Defendant served second supplemental responses on 5/2/24 and the only remaining issue is monetary sanctions.</p> <p>The Court declines to award monetary sanctions to either side. Plaintiff did not make reasonable efforts to meet and confer before filing the motion. Defendant did not make reasonable efforts to promptly serve Code-compliant responses. Under the circumstances, imposition of sanctions against either side would be unjust. (Code Civ. Proc., § 2031.310, subd. (h).)</p> <p>Plaintiff to give notice.</p>
<p>6</p>	<p>Koh vs State Farm General Insurance Company 30-2023-01341094-CU-IC-CJC</p>	<p>Defendant’s Motion to Compel Further Responses to Form Interrogatories, Set One, to Plaintiffs Myung Koh and Suzie Soyon Koh and Request for Monetary Sanctions</p> <p>Defendant State Farm General Insurance Company’s Motion to Compel Responses to Form Interrogatories, Set One, to Plaintiffs Myung Koh and Suzie Soyon Koh, is GRANTED.</p> <p>Defendant served form interrogatories, set one to Plaintiffs on 11/15/23. As of 2/2/24, Defendant’s counsel had not received any response despite making multiple efforts to request that Plaintiffs’ counsel serve responses</p> <p>Plaintiffs are ORDERED to serve verified responses, without objection, within 20 days. (Code Civ. Proc., § 2030.290, subd. (b).)</p>

		<p>Plaintiffs and their counsel, Law Office of Steve White, are ORDERED to pay sanctions of \$960, jointly and severally, within 20 days.</p> <p>Defendant to give notice. (Code Civ. Proc., § 2030.290, subd. (c).)</p> <p>Defendant’s Motion to Compel Responses to Requests for Admission, Set One, to Plaintiffs Myung Koh and Suzie Soyon Koh and Request for Monetary Sanctions</p> <p>Defendant State Farm General Insurance Company’s Motion to Compel Responses to Requests for Admissions, Set One, to Plaintiffs Myung Koh and Suzie Soyon Koh, is DENIED.</p> <p>There is no statutory mechanism to compel initial responses to requests for admissions, only <i>further</i> responses. (Code Civ. Proc., § 2033.290, subd. (a).) The proper motion is for an order that the genuineness of any documents and truth of any matters specified in the requests be deemed admitted. (Code Civ. Proc., § 2033.280, subd. (b).) Defendant’s motion is brought under the wrong code section and seeks relief to which it is not entitled.</p> <p>Defendant to give notice.</p>
7	<p>Shaw vs Ford Motor Company 30-2023-01340982-CU-BC-CJC</p>	<p>Defendant’s Demurrer to Complaint</p> <p>Defendant, Ford Motor Company’s demurrer to complaint is OVERRULED.</p> <p>Third Cause of Action for Violation of Civ. Code § 1793.2(a)(3)</p> <p>Defendant challenges the cause of action for violation of Civil Code section 1793.2(a)(3) on grounds the cause of action does not plead what parts or literature were not available at any repair facilities or any factual allegations regarding damages.</p> <p>Civil Code section 1793.2(a) provides: “Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall: . . . [¶] (3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.”</p> <p>The complaint is adequately pled. (¶¶ 1-49.) Additional facts can be sought through discovery.</p> <p>Fifth Cause of Action for Fraudulent Inducement – Intentional Concealment</p> <p>Defendant challenges the fraudulent inducement by concealment cause of action on grounds it fails to plead the requisite transaction</p>

between Plaintiff and Defendant, fails to plead each element with sufficient specificity, and is barred by the economic loss rule.

"The elements of a claim for fraudulent concealment require a plaintiff to show that: (1) the defendant concealed or suppressed a material fact, (2) the defendant [was] under a duty to disclose the fact to the plaintiff, (3) the defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff was unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage." (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1130 (cleaned up).)

"There are four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts." (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336 (cleaned up).) A duty to disclose facts arises when the parties are in a relationship such as seller and buyer. (See *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 311 (*Bigler-Engler*).

Plaintiff has alleged that Defendant manufactured and/or distributed the Subject Vehicle, Plaintiff purchased the Subject Vehicle from Defendant's authorized retailer, and Plaintiff received an express warranty from Defendant. (§§ 9, 10.) These allegations were found sufficient in *Dhital v. Nissan N. Am., Inc.* (2022) 84 Cal.App.5th 828 (*Dhital*), which, although pending review by the Supreme Court, may be relied on as persuasive authority.

The economic loss rule does not bar Plaintiff's claim for fraudulent inducement by concealment. (*Dhital, supra*, 84 Cal.App.5th at 843; see also *Robinson Helicopter v. Dana Corp.* (2004) 34 Cal.4th 979, 989-990.)

Defendant to file an answer within 10 days.

Plaintiff to give notice.