

“Civility allows for zealous representation, reduces clients’ costs, better advances clients’ interests, reduces stress, increases professional satisfaction, and promotes effective conflict resolution.”

-- [OCBA Civility Guidelines](#)

TENTATIVE RULINGS
Judge Nathan Scott, Dept. W2

- The court encourages remote appearances to save time and reduce costs: <https://www.occourts.org/media-relations/civil.html>. Click on the yellow box.
- All hearings are open to the public. The courtroom doors are open.
- You must [provide](#) your own court reporter (unless you have a [fee waiver](#) and request one in advance).
- **Call the other side** and ask if they will submit to the tentative ruling.

If **everyone** submits, then call the clerk. The tentative ruling will become the order.

If anyone does not submit, there is no need to call the clerk. The court will hold a hearing. 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.)

Hearing Date: Fri. 5/17/24 at 10 am

Posted Thu. 5/16/24 at 11:30 am

1	Beijing Luode Property Management v. Qin	Jacob Yiping Chen’s application to appear pro hac vice for specially appearing cross-defendants Beijing Zhongtai Chuangying Enterprise Management Co. Ltd., Kunsheng Enterprise Management Co. Ltd., Zhang Yi, Xie Zizheng, and Qiu Xiaojian is granted. Moving counsel shall give notice.
2	Rosen v. Woodside Credit	Ross Hofherr’s application to appear pro hac vice for defendant Woodside Credit LLC is granted. Moving counsel shall give notice.
3	Vazquez v. Fusion Ultra Lounge	Damas Law and Edward Damas’s motion to be relieved as counsel for defendant Fusion Ultra Lounge and Little Arabia LLC is granted, effective upon filing proof of service of the signed order. Moving counsel shall give notice.

<p>4</p>	<p>Padilla v. General Motors</p>	<p>Plaintiffs Roger Padilla and Marilyn Diane Padilla’s motion to compel is granted.</p> <p>Defendant General Motors shall serve complete, code-compliant, verified further responses without objection to plaintiffs’ requests for production (set one) and produce all responsive documents within 30 days.</p> <p>Defendant shall pay \$2122.50 in discovery sanctions to plaintiff. (See Sanaia decl. [ROA #43] ¶ 43 [\$375 x 5.5 + \$60].)</p> <p>Plaintiff has established good cause to obtain these documents. (See Code Civ. Proc. § 2031.310, subd. (b)(1).) The meet-and-confer process was adequate. (See Sanaia decl. ¶¶ 27-31 & Exs. 10-14.)</p> <p>With regard to Requests #1-2, 7 and 9, defendant’s statement of “comply in part” is incomplete without explanation of what is being withheld, and why. (See Code Civ. Proc., § 2031.240.)</p> <p>Requests #3, 8, 12, and 18-19 are relevant to the litigation. (See <i>Lopez v. Watchtower Bible & Tract Society of New York, Inc.</i> (2016) 246 Cal.App.4th 566, 590-591 [relevance broadly defined].) Defendant has not substantiated its objections.</p> <p>With respect to Requests #20-22, 28-29, and 33, defendant may limit its responses and production to the type of transmission and engine in plaintiff’s vehicle.</p> <p>With respect to Requests #99, 109-110, and 113-116, defendant may limit its responses and production to documents published, received, or generated since 2014.</p> <p>With respect to Requests #32, 44-45, 62-65, 77-78, 87, and 89-90, these documents are relevant to defendant’s knowledge, reasonableness, and good faith. (See <i>Santana v. FCA US, LLC</i> (2020) 56 Cal.App.5th 334 [civil penalties affirmed where manufacturer knew repair would be ineffective]; <i>Kwan v. Mercedes-Benz of North America, Inc.</i> (1994) 23 Cal.App.4th 174, 184-185 [discussing willfulness]; <i>Lopez, supra</i>, 246 Cal.App.4th at pp. 590-591.)</p> <p>Defendant’s concern about producing trade secrets and personal information is adequately addressed by the parties’ protective order. (See Sanaia decl. ¶ 30.)</p> <p>Plaintiffs’ objections to the Lu declaration are sustained.</p> <p>Plaintiffs’ shall give notice.</p>
<p>5</p>	<p>Farah v. Cannata</p>	<p>Plaintiff Michael Farah’s four motions to compel (ROA #51-54) are granted.</p>

		<p>Defendants Michael John Cannata and Cannata Construction Inc. shall serve complete, code-compliant, verified further responses without objection to plaintiff's form interrogatories within 30 days.</p> <p>Defendants Michael John Cannata and Cannata Construction Inc. are deemed to have admitted plaintiff's requests for admission (set one).</p> <p>Defendant Michael John Cannata shall pay \$825 (\$275/hour x 3 hours) to plaintiff.</p> <p>Defendant Cannata Construction Inc. shall pay \$825 (\$275/hour x 3 hours) to plaintiff.</p> <p>Plaintiff shall give notice.</p>
6	Murray v. Leibel	<p><u>OSC re Dismissal (Default Judgment)</u> Unless plaintiff produces a statement of damages with proof of service a reasonable time before 9/13/22 (see 5/15/24 order), the court will continue the OSC to 8/8/24 at 2 pm.</p> <p>No further continuances are anticipated.</p> <p><u>Motion to Tax/Strike</u> Plaintiff Conor Murray's motion to tax defendant Jasmine Leibel's costs memo is denied. (See Cal. Rules of Court, Rule 3.1700, subd. (b) [authorizing motion].)</p> <p>"If items on their face appear to be proper charges, the verified memorandum of costs is prima facie evidence of their propriety, and the burden is on the party seeking to tax costs to show they were not reasonable or necessary." (<i>Jones v. Dumrichob</i> (1998) 63 Cal.App.4th 1258, 1266.) "[M]ere statements in the points and authorities accompanying [a] notice of motion to strike cost bill . . . are insufficient to rebut the prima facie showing." (<i>Rappenecker v. Sea-Land Service, Inc.</i> (1979) 93 Cal.App.3d 256, 266.)</p> <p>Here, plaintiff did not provide any evidence with the moving papers showing how or why the challenged costs should be taxed. Plaintiff first offered evidence on reply, which is untimely. (See <i>Jay v. Mahaffey</i> (2013) 218 Cal.App.4th 1522, 1537-1538.)</p> <p><u>Entry of Judgment</u> The filing window did not notify Dept W2 about the 4/5/24 proposed judgment as it should have done.</p> <p>The court has now reviewed the proposed judgment, plaintiff's 4/12/24 objection, and defendant Jasmine Leibel's 4/12/24 reply.</p>

		<p>The objection at paragraph 4.a. and 4.b. is sustained. The objection is otherwise overruled. The court will enter a corrected judgment including the cost award today.</p> <p>Defendant Jasmine Leibel shall give separate notice of (1) the order denying the motion to tax, and (2) entry of judgment.</p>
7	<p>Skoti Collins Productions v. ROKiT Sponsorships</p>	<p><u>Trial</u> Trial call will proceed.</p> <p><u>Motion to vacate</u> Plaintiff's motion to vacate is denied.</p> <p>The court cannot let Skoti Collins Productions Inc. represent itself in this case, either as plaintiff or cross-defendant.</p> <p>As the case cited in the 10/6/23 order and quoted in ROKiT's opposition held: "a corporation, unlike a natural person, cannot represent itself before courts of record in propria persona It must be represented by licensed counsel in proceedings before courts of record." (<i>CLD Construction, Inc. v. City of San Ramon</i> (2004) 120 Cal.App.4th 1141, 1145.)</p> <p>Nor can the court allow Mr. Collins to represent the corporation. As the case explains: "If the corporate agent who would likely appear on behalf of the corporation in court proceedings, e.g., an officer or director, is not an attorney, that person would be engaged in the unlicensed practice of law." (<i>CLD Construction, supra</i>, 120 Cal.App.4th at p. 1146.) Unlicensed practice of law is a misdemeanor. (Bus. & Profs. Code, § 16240.)</p> <p>The corporation has had a reasonable opportunity to retain counsel. Its prior counsel filed their motion to be relieved on September 8, 2023. The court granted the motion on October 6, 2023, setting an order to show cause against the corporation. The OSC was heard on November 30, 2023, at which time the court dismissed the corporation's complaint and struck its answer to the cross-complaint.</p> <p>While the court accepts Mr. Collins' statement that his absence at the November 30, 2023 OSC was inadvertent, the fact remains that the corporation still lacks counsel today, 5 months later.</p> <p>The clerk shall give notice.</p>
8	<p>Nexus Health Management v. PremierCare IPA</p>	<p><u>Nexus Demurrer</u> Cross-defendants Nexus Health Management LLC's and Nexus Health Medical Group Inc.'s demurrer is sustained as to the 2nd cause of action and otherwise overruled.</p>

Cross-complainant ProCare Health MSO Inc. shall have leave to file and serve its second amended cross-complaint within 15 days.

Uncertainty. The FAXC is not “so incomprehensible that a defendant cannot reasonably respond.” (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135.) Any “ambiguities can be clarified under modern discovery procedures.” (*Ibid.*)

Standing/Capacity. The FAXC alleges MSO “is, and at all times mentioned herein was, a California corporation existing under the laws of the State of California.” (FAXC ¶ 4.) A demurrer “admit[s] all material facts properly pleaded,” including this one. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

The court cannot take judicial notice of the documents purporting to show MSO does not exist. Exhibit 2 states on its face: “The data provided is not a complete or certified record.” Exhibit 3 does not identify itself or its scope.

That said, MSO is incorrect when it states Nexus has “insisted on maintaining Procure Health MSO Inc. as a named defendant in this case.” (Opp. at p. 7.)

MSO is no longer a defendant. Nexus amended the original complaint 3 years ago to say MSO was incorrectly named. (See 5/28/21 amendment.) The FAC and all subsequent complaints assert allegations against “Procure Health Inc.” not MSO. (See FAC ¶ 3.)

The 4AC names 5 defendants (4AC ¶¶ 3-7):

- Premiercare Health Services Inc.
- Procure Health, Inc.
- Procure Health DCE Inc.
- Anh Nguyen
- Christopher Do

Part of the confusion seems to come from all parties’ inclusion of various DBAs when referring to parties. “Use of a fictitious business name does not create a separate legal entity.” (*Pinkerton's, Inc. v. Superior Court* (1996) 49 Cal.App.4th 1342, 1349.) DBAs can neither sue nor be sued.

The court orders the parties to meet and confer in an effort to agree on which legal entities are the true parties. If the parties cannot agree on which entities actually exist, the court may bifurcate that issue for early trial and appoint an expert witness at the parties’ expense.

2nd cause of action, fraudulent inducement. The FAXC fails to state facts sufficient to constitute this claim with the required level of specificity. (See *Lazar v. Superior Court* (1996) 12

Cal.4th 631, 639 [elements], 645 [the “particularity requirement necessitates pleading facts which ‘show how, when, where, to whom, and by what means the representations were tendered’”].)

The pre-agreement representations by Sanghvi about the 3,000 members fail to allege how and by what means the representations were made. (See FAXC ¶¶ 13, 16, 21-22, 46.) The pre-agreement representations by the consultant fail to allege what vouching was given or when, how, and by what means the representations were made. (See *id.* ¶¶ 51.) The post agreement representations fail to allege when, how, and by what means the representations were made. (See *id.* ¶¶ 31, 52.)

Sanghvi Demurrer

Cross-defendant Rajiv Sanghvi’s demurrer is sustained as to the 2nd cause of action and otherwise overruled.

MSO shall have leave to file and serve its SAXC within 15 days.

Uncertainty. The FAXC is not “so incomprehensible that a defendant cannot reasonably respond.” (*Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135.) Any “ambiguities can be clarified under modern discovery procedures.” (*Ibid.*)

Standing/Capacity. The FAXC adequately alleges MSO is an existing corporation. (See *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; see also FAXC ¶ 4.) The court declines to take judicial notice of the documents purporting to show otherwise.

1st cause of action, quantum meruit. The FAXC states facts sufficient to constitute this cause of action. While it alleges services provided to Nexus at its request (though Sanghvi), and not services provided directly to Sanghvi, it adequately alleges Sanghvi used Nexus as his alter ego. (See *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 236 [complaint may allege alter ego liability with “ultimate rather than evidentiary facts”]; see also FAXC ¶¶ 6-9.)

2nd cause of action, fraudulent inducement. The FAXC fails to state facts sufficient to constitute this cause of action with the required specificity. (See *Lazar, supra*, 12 Cal.4th at pp. 639 [elements], 645 [specificity]; see also FAXC ¶¶ 13, 16, 21-22, 46 [pre-agreement representations], 51 [vouching], 31, 52 [post-agreement representations].)

Nexus Motion to Strike

In light of the demurrer ruling, the motion to strike punitive damages allegations is denied as moot.

		<p>Defendants' request for judicial notice is granted as to Exhibit 1 and otherwise denied for the reasons explained above.</p> <p>The court declines to consider the new evidence submitted on reply. (See <i>Jay v. Mahaffey</i> (2013) 218 Cal.App.4th 1522, 1537-1538.)</p> <p><u>Sanghvi Motion to Strike.</u> In light of the demurrer ruling, the motion to strike punitive damages allegations is denied as moot.</p> <p>Defendants' request for judicial notice is granted as to Exhibit 1 and otherwise denied for the reasons explained above.</p> <p>The court declines to consider the new evidence submitted on reply. (See <i>Jay v. Mahaffey</i> (2013) 218 Cal.App.4th 1522, 1537-1538.)</p> <p>Nexus shall give notice of all rulings.</p>
9	National Funding v. Sunset Freights	<p>Plaintiff National Funding Inc.'s motion for summary judgment is denied.</p> <p>Plaintiff has not met its initial burden to show each element of its causes of action. (See Code Civ. Proc. § 437c, subd. (p)(1); <i>Aguilar v. Atlantic Richfield Co.</i> (2001) 25 Cal.4th 826, 850.)</p> <p>Plaintiff has not shown defendants Sunset Freights LLC and Hassan Shire breached the contract or guaranty. (See <i>Oasis West Realty, LLC v. Goldman</i> (2011) 51 Cal.4th 811, 821 [elements]; Compl. ¶¶ 10, 17 [alleging loan default].)</p> <p>Defendants' objections #3-4 are sustained. With regard to the Loan Payment History (Ex. 2), the custodian declaration provides "no information about who prepared the documents, the circumstances and method of preparation," or, "how the records were maintained." (<i>People v. McVey</i> (2018) 24 Cal.App.5th 405, 415; accord Evid. Code, § 1271 (c), (d); Otero decl. ¶ 2 & Ex. 2.)</p> <p>Defendant's objections #1-2 are overruled. The declaration contains adequate information about the Loan Agreement (Ex. 1), which the declarant signed. (See Otero decl. ¶¶ 2-3 & Ex. 1.)</p> <p>Plaintiff shall give notice.</p>