

## TENTATIVE RULINGS

DEPT C28

Judge Thomas S. McConville

May 20, 2024 at 2:00 p.m.

**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.

**Tentative rulings:** The court endeavors to post tentative rulings on the court's website in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted. The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

**Submitting on tentative rulings:** If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5228. Please do not call the department unless all parties submit on the tentative ruling. 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 the ruling and prepare an order for the court's signature if appropriate under Cal. R. Ct. 3.1312.

**Non-appearances:** If nobody 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 the tentative ruling becomes the final ruling. 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.)

**Appearances:** Department C28 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C28 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at <https://www.occourts.org/media-relations/civil.html> before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. 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" and "Guidelines for Remote Appearances" also are available at <https://www.occourts.org/media-relations/aci.html>. Those procedures and guidelines will be strictly enforced.

**Public Access:** The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this department by either coming to the department at the designated hearing time or contacting the courtroom clerk at (657) 622-5228 to obtain login information. For remote appearances by the media or public, please contact the courtroom clerk 24 hours in advance so as not to interrupt the hearings.

**Arguments:** The court will allow arguments on the pending motions, but those arguments must not repeat arguments previously made in each parties' applicable briefs.

**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.		
51.		
52.	Wylie v. Chen 2023-01334287	<p>Defendant Fang Chen "Betty" Blackhurst's demurrer to the complaint of Plaintiff Melissa Wylie is OVERRULED in its entirety.</p> <p>The elements of a conversion claim against Moving Party are sufficiently alleged in the complaint. The elements of a claim of conversion are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages. <i>Lee v. Hanley</i> (2015) 61 Cal.4<sup>th</sup> 1125, 1240.</p> <p>It is not the function of this court to determine the truth of the matters alleged on demurrer. <i>Moncada v. West Coast Quartz Corp.</i> (2013) 221 Cal.App.4<sup>th</sup> 768, 775.</p> <p>Plaintiff's objections to the declaration of Milan are sustained.</p> <p>Defendant shall file an answer to the complaint consistent with the timing requirements reflected in the Code of Civil Procedure, and the California Rules of Court.</p> <p>The court sets the trial date on this matter for May 19, 2025 at 9:30 a.m. in Department C28. Should the parties agree to a mandatory settlement conference, they are ordered to file a stipulation and proposed order. Settlement conferences are conducted on Fridays at 8:30 a.m.</p> <p>Defendant shall give notice.</p>
53.	Williams v. Davis 2023-01365974	<p>Plaintiff Danah Williams' Motion to Stay Legal Malpractice Action Pending Resolution of the Underlying Case is GRANTED. "[T]rial courts have inherent authority to stay malpractice suits, holding them in abeyance pending resolution of underlying litigation." (<i>Adams v. Paul</i> (1995) 11 Cal.4<sup>th</sup> 583, 593; see also <i>Beal Bank, SSB v. Arter * Hadden, LLP</i> (2007) 42 Cal.4<sup>th</sup> 503, 513.)</p> <p>The court finds that staying this action will minimize the impact on the related probate matter and minimize</p>

		<p>the risk of inconsistent rulings between this case and the probate matter. Defendant’s concerns regarding the potential loss of evidence and harm from lack of discovery are perhaps valid—but are at this point, speculative.</p> <p>Accordingly, this matter is stayed for all purposes until further order of the Court. Either Party may, upon noticed motion, seek a partial or full lifting of the stay for good cause—including for priority.</p> <p>The court sets the matter for a status conference on October 18, 2024 at 9:00 a.m. Additionally, the Parties are to file a joint status report concerning the related probate matter no later than October 15, 2024.</p> <p>Should the probate matter resolve before the October 18, 2024, the Parties are to promptly notify the court.</p> <p>Plaintiff shall give notice.</p>
54.	<p>Mondragon v. Mycorn 2023-01300871</p>	<p>There are two discovery motions on calendar, addressed in turn below.</p> <p>Defendant Barry N. Mycorn, as trustee of the Barry N. Mycorn Trust’s unopposed motion to compel plaintiff Giovanna Mata to provide further responses to requests for production, set one, numbers 9, 19, 28, 38, 39, 40, 42, 43, 44, 45, 46 and 47 is GRANTED.</p> <p>Defendant Barry N. Mycorn, as trustee of the Barry N. Mycorn Trust’s unopposed motion to compel plaintiff Edna Mondragon to provide further responses to requests for production, set one, numbers 9, 10, 19, 20, 21, 28, 29, 38, 39, 40, 42, 43, 44, 45, 46 and 47 is GRANTED.</p> <p>Plaintiffs Mata and Mondragon shall provide further verified, code compliant responses, without objections, within ten days.</p> <p>Defendant is awarded sanctions against Plaintiff Mata and Plaintiff Mondragon in the amount of \$210.00 each. Each plaintiff shall pay the sanction to defendant through defendant’s counsel within 30 days.</p> <p>Defendant shall give notice.</p>
55.	<p>Garcia v. Seasons Management, LLC 2023-01356084</p>	<p>Plaintiff Dawn Garcia, by and through her Attorney in Fact, Daniel Garcia’s Motion to Compel Further Responses to Special Interrogatories, Set One, Nos. 1-3, 5, 7-10, 15-18, 21, 22, and 23 and for sanctions</p>

against Defendant Seasons Management, LLC is GRANTED in part and DENIED in part.

Plaintiff failed to provide any basis for the motion to compel interrogatory nos. 3, 5, 7-9, 15-16, and 18 in the separate statement, as required by Cal. Rules of Court, Rule 3.154. Accordingly, the Motion is DENIED as to those interrogatories.

Additionally, Plaintiff included reference to interrogatory nos. 4, 6, and 11-13 in the separate statement and reference to inadequacies of Defendant's responses to interrogatory no. 14 in Plaintiff's briefing. However, none of these Requests were included in the Notice of Motion, so the Court declines to consider Plaintiff's arguments regarding Defendant's responses to interrogatory nos. 4, 6, and 11-14.

Interrogatory Nos. 1-2, 10, 17, and 21-23 are properly before the Court, and the Court rules on Plaintiff's Motion to Compel Further Responses as follows:

#### Waiver

Plaintiff contends that Defendant has waived any right to invoke Cal. Code Civ. Proc. §2030.230 and any objections to the disputed Interrogatories because Defendant failed to serve a timely response to the Interrogatories. Plaintiff has established that the last day for Defendant to timely serve a response, after the extension Plaintiff granted was 1/3/24. Plaintiff has established that no response was received until 1/19/24. Defendant has failed to provide evidence supporting their contention that Plaintiff had granted additional extensions of time to respond. Defendant has requested that they be granted a relief from waiver of objections, pursuant to Cal. Code Civ. Proc. §2030.290, subd. (a). However, in order to obtain such a waiver, a party must bring a noticed motion. Defendant has failed to make a motion for relief from waiver of objections.

Even though Defendant has waived objections to Interrogatory Nos. 1-2, 10, 17, and 21-23, the Court will nevertheless consider Defendant's objections. (See, e.g. *Heda v. Superior Court* (1990) 225 Cal.App.3d 525, 529-530 ["waivers of constitutional rights are not lightly found"].) Defendant has failed to substantiate any of those objections.

#### Privacy

The party claiming a violation of the constitutional right of privacy must "[1] establish a legally protected privacy interest, [2] an objectively reasonable expectation of privacy in the given circumstances, [3] and a threatened intrusion that is serious." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 552, citing *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35-37). The court must balance whether the invasion of the privacy interest is justified by a competing interest. (*Hill v. National Collegiate Athletic Ass'n*, supra., 7 Cal.4th at 38.)

With respect to "contact information," like home addresses and phone numbers, courts have recognized a privacy interest exists, but have not viewed this information as "particularly sensitive." (See *County of Los Angeles v. Los Angeles County Employee Relations Com.* (2013) 56 Cal.4th 905, 927 [noting that non-union employees of county had a privacy interest in their home addresses and that "home contact information is generally considered private"; nevertheless, in balancing this interest with the union's "duty of fair representation" to both members and nonmembers, the balance favored disclosure]; *Life Technologies Corp. v. Superior Court* (2011) 197 Cal.App.4th 640, 653, disapproved in part by *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557, fn. 8 [rejecting argument that no serious invasion of privacy interests was implicated by seeking disclosure of identities/contact information for nonparty employees and former employees of defendant corporation where nothing in the record suggests these third parties were witnesses to the discriminatory acts plaintiff allegedly suffered] compare *Puerto v. Superior Court* (2008)

158 Cal.App.4th 1242, 1253-1254 [in wage and hour action, former employees were entitled to residential contact information of "all potential witnesses" identified in employer's interrogatory responses; "Nothing could be more ordinary in discovery than finding out the location of identified witnesses so that they may be contacted and additional investigation performed"].)

Employees and Former Employees (Interrogatory Nos. 1-2, 17, 23)

As it pertains to employees and former employees, the privacy interest is diminished. The contact information for employees of a party is discoverable where third party employees are potential witnesses. Here, Plaintiff seeks to discover the identity and contact information for employees/former employees who "participated in the admission of Dawn Garcia as a resident" (No. 1), "administered Ryary to Dawn Garcia" (No. 2), and were "responsible for setting the FACILITY operating budget which was in effect during the residency of Dawn Garcia" (No. 17). Since these Interrogatories all are limited to seeking the identity and contact information for potential witnesses, that information is discoverable and Defendant's objection is not substantiated. Furthermore, Plaintiff has proposed a reasonable stipulation whereby Defendant would agree to accept service of deposition notices and/or subpoenas directed at any of its current employees and provide Plaintiff notice if any current employee identified in the discovery responses separates from Defendant.

Other Residents and Responsible Parties (Interrogatory Nos. 21-22)

Plaintiff seeks to locate these witnesses in order to establish (1) understaffing of the facility; and (2) a trend of substandard care provided to all residents.

Facts concerning understaffing can be established without resorting to invading the privacy of other residents and their families.

Other residents' testimony about their own interactions with Defendant does not directly pertain to Plaintiff's interaction with Defendant. This is far too attenuated to justify compelling the disclosure of their contact information.

Plaintiff has proposed a reasonable compromise by suggesting the use of a third party claims administrator to facilitate distributing a notice to other residents/responsible parties that permits them to voluntarily reach out to the Parties if they believe they have relevant information to disclose. This would prevent unnecessary disclosure of private information and allow those who believe they have relevant information an opportunity to come forward. Plaintiff further proposes that Plaintiff will pay for the cost of this procedure.

Further, any lingering concerns regarding protection of this third party information could be resolved by entry of a HIPAA compliant protective order.

Defendant's Incomplete/Evasive Response  
(Interrogatory No. 10)

Plaintiff argues that Defendant's response of "unknown" to Interrogatory No. 10 is evasive. Plaintiff reasons that since Defendant is able to identify the last individuals who saw Dawn Garcia before the 7/1/23 incident in Interrogatory No 9, they must be able to identify when those individuals saw her. Defendant makes no attempt to justify this evasive response.

Accordingly, the Court rules as follows:



The Motion is GRANTED with respect to Interrogatory Nos. 1-2, 17, 23: Defendant is ordered to provide further supplemental responses without objection that provide the contact information for the witnesses identified within 15 days of this order.

The Motion is GRANTED with respect to Interrogatory No. 10: Defendant is ordered to provide a complete response without objection that is based upon information reasonably available to Defendant within 15 days of this order.

The Motion is GRANTED in part with respect to Interrogatory Nos. 21-22: The Parties are ordered to meet and confer and lodge a proposed protective order governing the handling of confidential information within 20 days. Protective Order must include a procedure for third party to administer the mailing of notice, the form of notice to be mailed, and the form of return receipt that must be provided. If no agreement is reached, each party to provide their own proposed protective order without legal argument or briefing.

Upon the execution of the proposed protective order, the parties shall work with CPT Group (See Reply at 8) to effectuate the dissemination of requests and receipt of authorizations for the information sought in Interrogatories 21-22. Plaintiff shall bear the cost of CPT.

#### Sanctions

Defendant has opposed this Motion without substantial justification. Plaintiff has offered reasonable compromises as part of the meet and confer efforts, yet Defendant has stood by objections it has failed to substantiate. Accordingly, Defendant is ordered to pay discovery sanctions in the total amount of \$1,610 (2.0 hours at \$150/hour, 0.5 hours at \$1,000/hour, \$810 in costs) to Plaintiff through Plaintiff's counsel within 30 days of notice of this ruling.

Plaintiff shall give notice.

56.	Lazarov v. Shaulov 2019-01118784	<p>Plaintiffs Albena Ivanova Hristov Lazarov and Maxim Maximov Lazarov's motion for new trial is DENIED. (Code Civ. Proc., § 657 [authorizing motion].)</p> <p>Plaintiffs only filed a Notice of Intent for New Trial, citing Code Civ. Proc., § 657, subds. (1), (2), and (7) as grounds for new trial. (ROA 441.) However, plaintiffs have not filed any briefs or affidavits showing why a new trial is warranted. (Code Civ. Proc., § 658 (new trial motion under Code Civ. Proc., § 657, subds. (1) or (2), "must be made upon affidavits"); Cal. Rules of Court, Rule 3.1600 [supporting memorandum "must" be filed and served within 10 days of notice of intent; court "may deny the motion for a new trial without a hearing on the merits" if no memorandum filed]; Cal. Rules of Court, Rule 3.1113, subd (a) ["court may construe the absence of a memorandum as an admission that the motion ... is not meritorious and cause for its denial".])</p> <p>Clerk shall give notice.</p>
57.	MBR Cosmetics USA, LLC v. MBR Medical Beauty Research North America LLC 2022-01246272	<p>Defendant Auteur, LLC's unopposed Motion to Compel Plaintiff MBR Cosmetics USA LLC's Further Responses and Documents in Response to Requests for Production of Documents, Set No. 2, and for sanctions, is GRANTED.</p> <p>If a timely motion to compel has been filed, the burden is on the responding party to justify any objection or failure fully to answer the discovery. (See <i>Dee Coy v. Superior Court</i> (1962) 58 Cal.2d 210, 220-21; <i>Fairmont Ins. Co. v. Superior Court</i> (2000) 22 Cal.4th 245, 255.)</p> <p>Plaintiff has failed to oppose the motion, and therefore failed to justify its objections and failure to fully respond to the discovery.</p> <p>Plaintiff MBR Cosmetics USA LLC is ordered to serve further responses to Defendant's Requests for Production of Documents, Set No. 2 without objections and all responsive records within ten days.</p>

		<p>The court awards moving defendant \$1,110.00 in sanctions, payable by Plaintiff MBR Cosmetics USA LLC to defendant's counsel within thirty days of notice.</p> <p>Defendant shall give notice.</p>
58.	<p>Flynn v. J.F. Shea Co., Inc. 2022-01256270</p>	<p>Plaintiff Cooper Flynn's Motion to Compel Defendant Reclaimed Woods of the World, Inc.'s Compliance with Plaintiff's First Set of Requests for Production, and monetary sanctions, is GRANTED. (See Code Civ. Proc. § 2031.320.)</p> <p>Defendant is ordered to serve copies of all records responsive to Plaintiff's request for production, Set No. 1 within ten days. As evidenced by Exh. 7 to the Satar Declaration, defendant's current claims regarding the non-existence of documents appears (at a minimum) to be incorrect.</p> <p>The court imposes monetary sanctions against defendant Reclaimed Woods of The World, Inc. in the sum of \$2,085.00, payable to counsel for Plaintiff within thirty days.</p> <p>Plaintiff shall give notice.</p>
59.	<p>Padilla v. FCA US LLC 2023-01317002</p>	<p>Plaintiff Mario Padilla's unopposed motion to deem matters admitted is GRANTED. (See Code Civ. Proc., § 2033.280.)</p> <p>The matters specified in plaintiff's first set of requests for admission to defendant FCA US LLC (Liu Decl. at Ex. 1) are hereby DEEMED ADMITTED.</p> <p>Plaintiff shall give notice.</p>
60.	<p>McQueen v. General Motors LLC 2023-01329735</p>	<p>Plaintiff Tiffany McQueen's (plaintiff) motion to compel further responses to plaintiff's first set of requests for production (to inspect and copy) is GRANTED IN PART, as follows. (See Code Civ. Proc., § 2031.310.)</p> <p>Defendant General Motors LLC (defendant) is ORDERED to provide verified further responses without objections to the following requests for production (RFP) within 14 days:</p> <ul style="list-style-type: none"> <li>• RFP Nos. 8, 30, 31, and 40, as these requests are hereby limited to the time period of 1/1/19 to the present.</li> </ul>

		<ul style="list-style-type: none"> <li>• RFP Nos. 27, as this request is hereby limited to (1) the time period of 1/1/19 to the present, and (2) dealerships in Southern California.</li> <li>• RFP No. 32, as this request is hereby limited to (1) the same make, model, <u>and year</u> of plaintiff’s vehicle; and (2) complaints by persons who leased/purchased the vehicle <u>in California</u>.</li> <li>• RFP Nos. 13, 15, 17, 19, 21, 22, 29, and 33.</li> </ul> <p>To be clear, defendant’s further responses shall include the contemporaneous production of any and all responsive documents.</p> <p>The motion is otherwise DENIED.</p> <p>Plaintiff has failed to show good cause for RFP Nos. 9-10.</p> <p>Defendant’s verification for the subject responses is adequate, and plaintiff fails to demonstrate otherwise. (See Code Civ. Proc., § 2031.250, subd. (b); <i>Doe v. Superior Court</i> (2011) 194 Cal.App.4th 750, 754-755 [the “oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true”]; see also Le Decl. at Ex. 4 [attesting to truth of responses under penalty of perjury under California law].)</p> <p>Plaintiff shall give notice.</p>
61.		
62.		

