

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 16

(Dept 16 is now hearing cases that were formerly in Dept 2)

Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 09-17-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court will call the cases of those who appear in person first. If you appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.

https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. You must use the current link.

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. **You may make an online reservation to reserve a date** before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Go to the Court's website at www.scscourt.org to make the reservation.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	24CV440884 Hearing: Order of Examination	AMERIS BANK vs OWC LLC et al	It does not appear that a proper proof of service has been filed. All parties are to appear in Department 16 at 9:00 AM, either in person or via TEAMS. If all parties appear, the Court will administer the oath and the examination will take place off line. If the debtor does not appear, the matter will be continued to allow proper notice. If there is no appearance by the moving party, the matter will be ordered off calendar.
LINE 2	2013-1-CV-256373 Hearing: Order of Examination	S. Santana vs A. Zepeda, et al	It does not appear that a proper proof of service has been filed. All parties are to appear in Department 16 at 9:00 AM, either in person or via TEAMS. If all parties appear, the Court will administer the oath and the examination will take place off line. If the debtor does not appear, the matter will be continued to allow proper notice. If there is no appearance by the moving party, the matter will be ordered off calendar.

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LINE 3	24CV434782 Hearing: Demurrer	Johana Saffarian et al vs FAY SERVICING, LLC et al	The unopposed demurrer is SUSTAINED with 20 days leave to amend. The failure to file a written opposition “creates an inference that the motion or demurrer is meritorious.” <i>Sexton v. Superior Court</i> (1997) 58 Cal.App.4th 1403, 1410. Moving party shall submit the final order.
LINE 4	24CV434782 Hearing: Demurrer	Johana Saffarian et al vs FAY SERVICING, LLC et al	The unopposed demurrer is SUSTAINED with 20 days leave to amend. The failure to file a written opposition “creates an inference that the motion or demurrer is meritorious.” <i>Sexton v. Superior Court</i> (1997) 58 Cal.App.4th 1403, 1410. Moving party shall submit the final order.
LINE 5	24CV435217 Hearing: Demurrer	Debasish Roy vs JP Morgan Chase Bank, N.A. et al	The matter is off calendar since demurring defendant Nur Metals has been dismissed.
LINE 6	22CV405531 Conference: Status	Duy Nguyen vs Fred Meeske et al	CMC
LINE 7	23CV412261 Motion: Discovery	Juana Esquivel vs County of Santa Clara et al	See Tentative Ruling. Defendant County shall submit the final order.
LINE 8	23CV415067 Motion: Compel	Nicole Mendoza vs BMW of North America, LLC	Moot, as case settled.
LINE 9	23CV415067 Motion: Compel	Nicole Mendoza vs BMW of North America, LLC	Moot, as case settled.
LINE 10	22CV408711 Motion: Leave to File	Andre Chevalier vs Yared Feleke et al	See Tentative Ruling. Defendant Feleke shall submit the final order.

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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 11	24CV430850 Mtn Leave to file compulsory cross complaint after answer is filed	SAMARITAN ENDOSCOPY CENTER, INC. et al vs PATIENT K.T. et al	Off calendar as parties stipulated to the filing of K.T.'s cross-complaint.
LINE 12			
LINE 13			
LINE 14			
LINE 15			
LINE 16			
LINE 17			

Calendar Line 7

Case Name: Esquivel v. County of Santa Clara
Case No.: 23CV412261

The request for protective order regarding special interrogatories (SI) and requests for admission (RFA) is GRANTED. The burden to show the need for additional SIs and RFAs is on the propounding party. See CCP 2030.040 (“If the responding party seeks a protective order on the ground that the number of specially prepared interrogatories is unwarranted, the propounding party shall have the burden of justifying the number of these interrogatories.”); and see CCP 2033.040 (If the responding party seeks a protective order on the ground that the number of requests for admission is unwarranted, the propounding party shall have the burden of justifying the number of requests for admission). Here, Plaintiff’s declarations as to why more SIs and RFAs are needed are conclusory boiler plate and do not demonstrate or justify the additional number of discovery requests. Simply stating that the requests are warranted because of the “complexity” of the case or the “number of issues” is insufficient. Plaintiff has failed to provide any specific basis for the need and thus the request for protective order is granted as to the SIs and RFAs.

As for the requests for production of documents (RFP), Plaintiff is ordered to meet and confer with Defendant within 20 days of the hearing regarding those requests. It appears that many of the requests are unwarranted or repetitive, but it is not clear from the papers whether this is true of all of them and the Court should not need to go through each request when the requesting party has failed to make specific objections. If the parties still cannot agree, Defendant will need to refile a motion on the RFPs with specific bases for the requests based on specific requests. Defendant shall submit the final order.

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Calendar Line 10

Case Name: Chevalier v. Feleke

Case No.: 22CV408711

Defendant Feleke seeks to file a cross-complaint. He claims it is a compulsory cross-complaint. Cal. Code Civ. Proc., § 426.30 governs compulsory cross-claims:

Except as otherwise provided by statute, if a party against whom a complaint has been filed and served fails to allege in a cross-complaint any related cause of action which (at the time of serving his answer to the complaint) he has against the plaintiff, such party may not thereafter in any other action assert against the plaintiff the related cause of action not pleaded.

(Cal. Code Civ. Proc., § 426.30.). A claim is “related” for the purpose of determining whether a cross-claim is compulsory if it arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause of action which the plaintiff alleges in his complaint. (Cal. Civ. Code, § 426.10(c); see also *Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 960.) Courts have consistently applied a “liberal construction” in determining what constitutes a related “transaction” to “avoid[] a multiplicity of actions.” (*Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 959-60 [holding that the wrongful termination claims of an employee, and the wrongful side practice and patent misappropriation cross-claims of the employer were “related” because they both arose out of the same employment relationship]; see also *Wittenberg v. Bornstein* (2020) 51 Cal.App.5th 556, 564 [“The compulsory cross-complaint statute is designed to prevent ‘piecemeal litigation.’” (internal citations omitted)].)

Here, the claims asserted in Feleke’s putative Cross-Complaint are compulsory because the claims are (1) asserted “against the plaintiff”, and (2) are “related”, as they arise from same nucleus of facts and employment/business relationship. The Cross-Complaint sets forth causes of action based on facts and allegations plead in the Complaint. For example, the Cross-Complaint asserts causes of action for declaratory relief as to the business relationship between the parties, potential unpaid wages and overtime, and failure to reimburse for business expenses—all as it relates to Feleke’s and Plaintiff’s involvement in Sloshees. (*See* Motion, Ex. 1.) Similarly, the Complaint alleges causes of action for, among other things, conversion and fraud as it relates to Feleke’s involvement in the sale of Sloshees. (*See* Complaint at 4-5.) Accordingly, the Court finds that it is a compulsory cross-complaint.

As a result, leave to file “must be granted unless bad faith of the moving party is demonstrated.” *Silver Orgs. v. Frank* (1990) 217 Cal. App. 3d 94, 99. The bad faith finding must be supported by substantial evidence. *Id.*

Plaintiff claims that by statute, Defendant was required to provide an explanation for the delay in raising the unpled claims, yet cites no statute or other authority in support of this argument. In any event, Defendant has indicated that the delay related to his having ineffective counsel for a time and then no attorney until December 2023 and that his current counsel needed some time to get up to speed. Plaintiff next claims that the causes of action in the cross-complaint are barred by the statute of limitations, but again he fails to provide any authority for his assertion that unreimbursed businesses expenses are subject to a one-year statute of limitations period or that the cross-complaint should not relate back to the time of the filing of

the complaint, in which case Defendant is within the three-year statute of limitations period. In fact, the case Plaintiff cites indicates that the time of the filing of the complaint is the appropriate date for purposes of the statute of limitations on a compulsory cross-complaint. See *Liberty Mut. Ins. Co. v. Fales* (1973) 8 Cal.3d 712, 718 [“It is difficult to rationally conclude that justice would be promoted by permitting Fales to show Maeyama's negligence for the purpose of defending against the charge that he, Fales, was the party at fault, while prohibiting him from offering the very same facts for the related purpose of recovering for his personal injuries.”]. Moreover, it is established that “a defendant's cross-complaint against the plaintiff, irrespective of whether it is related to the matters asserted in the complaint, is entitled to the benefit of the tolling doctrine.” *ZF Micro Devices, Inc. v. TAT Capital Partners, Ltd.* (2016) 5 Cal. App. 5th 69, 92. Next, Plaintiff argues that Defendant cannot bring his claims as a matter of law, as they would demonstrate he violated the Tied House laws. Plaintiff cites no authority demonstrating that the claims are barred as a matter of law. Finally, Plaintiff argues that Defendant brings the cross-complaint in bad faith. The Court does not believe Plaintiff has met his burden to demonstrate that Defendant is acting in bad faith. That Defendant acted wrongfully, as pled in the Complaint, is a matter of dispute. Defendant has provided a reasonable explanation for his delay, and Plaintiff has not shown how the filing of the cross-complaint is harassing.

Leave to file the cross-complaint is GRANTED. Defendant shall submit the final order and file the cross-complaint, both within 10 days.

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