

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

Department 18b

Honorable Shella Deen, Presiding

Catherine Pham and Nancy Vasquez, Courtroom Clerk

191 North First Street, San Jose, CA 95113

DATE: January 30, 2025 TIME: 9:00 A.M.

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

****Please specify the issue to be contested when calling the Court and Counsel****

LAW AND MOTION TENTATIVE RULINGS

FOR APPEARANCES: Department 18 is fully open for in-person hearings. The Court strongly prefers **in-person** appearances for all contested law and motion matters. For all other hearings, the Court strongly prefers either **in-person or video** appearances. If you must appear virtually, you must use video. Audio-only appearances are permitted, but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 18:

https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml

SCHEDULING MOTION HEARINGS: Please go to <https://reservations.scsccourt.org> or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion before you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

FOR COURT REPORTERS: The Court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If you want to have a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

https://www.scsccourt.org/general_info/court_reporters.shtml

RECORDING IS PROHIBITED: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
LINE 1	24CV443432	Colleen Clary vs Regional Medical Center et al	Demurrer Scroll down to LINE 1 for Tentative Ruling.
LINE 2	21CV382422	Elizabeth Brierley vs Costco Wholesale Corporation	Motion to Compel (Special Interrogatories) (Costco Wholesale Corporation) Plaintiff propounded special interrogatories on Defendant Costco on April 10, 2023. Defendant served verified responses to the Special Interrogatories on June 9, 2023 . The parties met and conferred during June and July of 2023. Plaintiff filed this motion to compel as she was dissatisfied with Defendant's responses. Defendant was served with the motion, but did not file any opposition. After full consideration of all 245 pages of Plaintiff's motion, the motion is DENIED. The motion should have been filed within 45 days after service of Defendant's response; a failure to do so waives the right to have the court compel a further response and Plaintiff provided no evidence that the motion to compel deadline was extended. (Code of Civil Procedure Section 2030.300(c). <i>Deyo v. Kilbourne</i> (1978) 84 CA3d 771, 789). Moving party to prepare formal order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 3	23CV416347	Enma Hernandez vs US Hispanic Ventures, Inc.	Motion to Compel (Form Interrogatories -Employment) Plaintiff Enma Hernandez' motion to compel further responses to form interrogatories (Employment) (Set one) from Defendant US Hispanic Ventures, Inc., and request for sanctions of \$683.11 (Plaintiff's briefing also seeks sanctions of \$2,661.00). Defendant opposes the motion. Plaintiff did not file any reply brief. On December 23, 2024, Defendant served supplemental responses to Plaintiff's Form Interrogatories. As such this motion to compel is rendered MOOT. If Plaintiff believes that the supplemental responses are deficient, Plaintiff should timely file a new motion to compel for those supplemental responses – after conducting a good faith meet and confer with Defendant. Any meet and confer shall be in person, by video conference or by phone, to be scheduled with adequate notice. Plaintiff's request for sanctions is GRANTED in the amount of \$683.11 and shall be paid by Defendant to Plaintiff by February 26, 2025. Moving party to prepare formal order.
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LAW AND MOTION TENTATIVE RULINGS

LINE 4	23CV418757	Jiayan Li et al vs Ting Hong et al	<p>Motions to Compel (Multiple)</p> <p>Plaintiff Jiayan Li's motions to compel further responses and responsive documents to Defendant Morad Mahpour's requests for production of documents, form interrogatories and special interrogatories. Plaintiff also seeks evidence sanctions and monetary sanctions of \$9,151.50. This motion was continued from November 19, 2024. The parties were ordered to further meet and confer and file a joint statement. A joint statement was filed, but the parties failed to provide any information as to the nature and extent of their meet and confer efforts and appear to have merely cut and pasted their previous separate statements into the joint statement. After full consideration and good cause appearing the motion is GRANTED IN PART AND DENIED IN PART as follows:</p> <p><u>Request for Production of Documents</u></p> <p>Requests 1, 2, 3, 4, 7 and 8: GRANTED. Defendant shall serve further verified, code-compliant responses within 30 days of service of the formal order on this motion, that specifically state, <i>inter alia</i>, that a diligent search and reasonable inquiry has been made and Defendant should produce any further responsive documents, within the same time period.</p> <p>Request 5: DENIED.</p> <p><u>Form Interrogatories</u></p> <p>Interrogatories 2.3, 2.5, 2.6, 2.7, 2.11, 2.12, 2.13, 12.4, 50.1 and 50.2: DENIED. There is no showing of how these interrogatories are relevant or reasonably calculated to lead to the discovery of admissible evidence or the interrogatory has been sufficiently responded to.</p> <p><u>Special interrogatories</u></p> <p>Interrogatories 3, 4, 6, 9, 12, 13, 14. DENIED. Plaintiff's arguments to compel further responses to these interrogatories are not persuasive. A motion to compel is not the appropriate method to dispute responding party's responses – this may be addressed at trial.</p> <p>Plaintiff's requests for evidentiary and monetary sanctions is DENIED. Both the initial and court ordered meet and confer efforts fall short of required good faith. Moving party is cautioned that if any further motion to compel is filed, a good faith meet and confer must be conducted. Moving party to prepare formal order.</p>
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LAW AND MOTION TENTATIVE RULINGS

LINE 5	23CV423986	Areli Mendoza vs American Honda Motor Co., Inc.,	Motion to Compel The motion will be heard on March 5, 2025, by Judge Nishigaya in Department 13.
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LAW AND MOTION TENTATIVE RULINGS

LINE 6	23CV416446	Michael Carpenter vs General Motors, LLC	Motion for Attorney's Fees Plaintiff's motion for attorney's fees and costs of \$59,314.88 (fees of \$56,365 and costs of \$2,949.88) against Defendant pursuant to Civil Code §1794(d) and as the prevailing party to a 998 Offer. Defendant opposes the motion. The Court has thoroughly and carefully reviewed the voluminous briefing, including the time entries, and the arguments presented regarding the hourly rates. The Court has discretion to reduce attorney fee awards. (<i>Mikaeilpoor v. BMW of North America, LLC</i> (2020) 48 Cal.App.5th 240). Every lemon law case is different, but in this case the Court does not see any unique issues or extraordinary motions and deems the time charged for standard discovery, discovery motions and the litigation of this case to be excessive, some of the hourly rates are elevated (\$600 and \$675), and time has been billed for pre-retention work and for anticipated work. The Court determines that (1) the fees incurred are unreasonable and excessive for these reasons– the award requested is reduced to account for overbilling, lack of accounting for using form template discovery, discovery motions, and pleadings and litigation inefficiencies using multiple timekeepers; (2) the requested hourly rates are reduced for this standard lemon law case. (<i>Nightingale v. Hyundai Motor America</i> (1994) 31 Cal.App.4th 99, 152) and (3) no fees are permitted for the duplicative entry conceded by Plaintiff or time for anticipated work for this motion. Fees are permitted for work completed on the demurrer. Plaintiff's motion for attorney's fees is GRANTED in the amount of \$29,025 and costs of \$2,249.88. Moving party to prepare the formal order.
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LAW AND MOTION TENTATIVE RULINGS

<u>LINE 7</u>	24CV438625	Maria Duenas vs SV Delivery LLC, a California limited liability company	Motion to Compel Arbitration Defendant SV Delivery LLC’s motion to compel Plaintiff Maria Duenas to arbitrate claims pursuant to the terms of a valid and enforceable arbitration agreement and to dismiss or staying the action pending completion of the arbitration. “[t]he court shall order a matter to arbitration if it determines that there is an agreement to arbitrate and (1) the agreement has not been waived or (2) the agreement has not been revoked.” Code Civ. Pro. § 1281.2); <i>Cinel v. Barna</i> (2012) 206 Cal.App.4 th 1383, 1389.) Good cause appearing, the Court determines that there is a valid agreement to arbitrate between the parties and the dispute in question falls within the scope of that arbitration agreement. (<i>Bruni v. Didion</i> (2008) 160 Cal. App. 4th 1272, 1283). The Court finds no procedural or substantive unconscionability or waiver. The terms of the arbitration provision are equally applied. (<i>Armendariz v. Foundation Health Psychcare Services, Inc.</i> (2000) 24 Cal.4 th 83). Defendant’s motion to compel arbitration is GRANTED. (FAA, Code Civ. Proc., §§1280 et seq., <i>JSM Tuscan, LLC v. Superior Ct.</i> (2011) 193 Cal.App.4th 1222, 1239–40). The case is STAYED pending the outcome of the arbitration. The January 30, 2025 OSC Dismissal hearing shall REMAIN AS SET and the matter is SET for Arbitration Status Review on June 12, 2025 at 10:30 a.m. in Department 18b, regarding the status of the arbitration. Defendant to prepare the formal order after hearing.
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LAW AND MOTION TENTATIVE RULINGS

LINE 8	24CV448039	John Heckler vs Regina Manalac	Motion to Record Lis Pendens Plaintiff, John Carl Heckler's (also identified as John J.H. Heckler in the motion) motion for an order requesting that a lis pendens be filed for property located at 5828 Antigua Ct, San Jose, CA 95120. The motion is opposed by Defendant, who makes a special appearance as she has not yet been served with the summons or complaint. This motion was also not served on any party. The failure to serve the motion alone is a sufficient ground to deny the motion, but the Court will address the motion on the merits. No reply brief was filed by Plaintiff. Plaintiff brought causes of action against Defendant for quiet title. However, Defendant provided satisfactory evidence that a prior order of the probate division of this court, ordered that the property at issue be distributed to Regina Elima Manalac (Defendant herein) "forthwith". The June 5, 2024 order, attached as Exhibit 3 to Defendant's declaration in opposition to this motion, further states that John Heckler, Plaintiff herein, represented himself. (Case No: 24PR196556). Good cause has not been shown, the motion is DENIED. Responding party to prepare formal order.
LINE 9	23CV423986	Areli Mendoza vs American Honda Motor Co., Inc.,	Motion to Compel The motion will be heard on March 5, 2025, by Judge Nishigaya in Department 13.

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Calendar Line 1**Case Name:** *Colleen Clary v. Regional Medical Center, et al.***Case No.:** 24CV443432

Before the court is defendant Physicians Medical Group of San Jose, Inc.’s demurrer to complaint. Pursuant to California Rule of Court 3.1308, the court issues its tentative ruling as follows.

I. Background.

Decedent David Alexander Swerrie (“Decedent”) was a patient at defendant Regional Medical Center (“RMC”) from April 9, 2023 to April 12, 2023 where he received substandard care. (Complaint, ¶1.) Decedent died at home on April 15, 2023 as a result of that substandard care. (*Id.*) Plaintiff Colleen Clary (“Clary”) is the biological mother of Decedent. (Complaint, ¶3.)

On April 9, 2023, Decedent arrived by ambulance at defendant RMC experiencing a myocardial infarction. (Complaint, ¶10.) Defendant Ngai Nguyen, MD (“Dr. Nguyen”) placed two stents in Decedent’s left anterior descending artery in the cardiac catheter lab. (*Id.*) Dr. Nguyen told Decedent he would be Decedent’s cardiologist making a treatment plan and handling follow-up care. (*Id.*) Defendant Dr. Nguyen told Decedent he would have a case manager assigned to him to make all of his follow-up appointments and provide him with copies of important records upon discharge. (*Id.*) Decedent was then taken to the ICU. (*Id.*)

At the ICU, Decedent’s urine was collected for testing and results indicated Decedent had Fentanyl in his system. (Complaint, ¶11.) Doctors confronted Decedent about being a Fentanyl addict and Decedent told the medical team that any Fentanyl in his system was given to him in the hospital. (*Id.*) Decedent’s medical records reflect he was given Fentanyl during the angiogram where the stents were placed. (Complaint, ¶12.) Decedent’s level of care was markedly downgraded after the drug accusation was made. (*Id.*) Decedent was not informed about his specific continuing health care requirements after his discharge from the hospital. (Complaint, ¶30.) Decedent did not receive assistance in arranging for required follow-up care after discharge. (*Id.*)

On July 18, 2024, plaintiff Clary, a self-represented litigant¹, filed a Judicial Council form complaint against defendants RMC, Dr. Nguyen, Physicians Medical Group of San Jose, Inc. (erroneously sued as Physicians Medical Group of San Jose; hereafter, “PMG”), Good Samaritan Health System, and HCA Healthcare asserting causes of action for:

(1) NEGLIGENCE – WRONGFUL DEATH

(2) WRONGFUL DEATH – NEGLIGENCE PER SE

On September 25, 2024, defendant PMG filed the motion now before the court, a demurrer to plaintiff Clary’s complaint.

II. DEFENDANT PMG’S DEMURRER TO PLAINTIFF CLARY’S COMPLAINT IS SUSTAINED.

A. STATUTE OF LIMITATIONS.

Defendant PMG demurs to plaintiff Clary’s complaint on the ground that it is barred by the applicable statute of limitations. A court may sustain a demurrer on the ground of failure to state sufficient facts if “the complaint shows on its face the statute [of limitations] bars the action.” (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315 (*E-Fab*).) “In assessing whether plaintiff’s claims against defendant are time-barred, two basic questions drive our analysis: (a) What statutes of limitations govern the plaintiff’s claims? (b) When did the plaintiff’s causes of action accrue?” (*E-Fab, supra*, 153 Cal.App.4th at p. 1316.)

1. WHAT STATUTE OF LIMITATIONS GOVERNS?

Defendant PMG argues the complaint here is governed by the statute of limitations found at Code of Civil Procedure section 340.5, which states that “In an action for injury or death against a health care provider based upon such person’s alleged professional negligence, the time for commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the exercise of reasonable diligence should have discovered, the injury, whichever comes first.”

¹ Although a judge should ensure that self-represented litigants are not being misled or unfairly treated (see *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284), self-represented litigants are not entitled to special treatment with regard to the Rules of Court or Code of Civil Procedure. “[W]e cannot disregard the applicable principles of law and accord defendant any special treatment because he instead elected to proceed in propria persona. [Citations.]” (*Stein v. Hassen* (1973) 34 Cal. App. 3d 294, 303.) “A litigant has a right to act as his own attorney [citation] ‘but, in so doing, should be restricted to the same rules of evidence and procedure as is required of those qualified to practice law before our courts.’” (*Lombardi v. Citizens Nat’l Trust & Sav. Bank* (1955) 137 Cal.App.2d 206, 208-209.)

Section 340.5 was enacted as part of the Medical Injury Compensation Reform Act (“MICRA”), the goal of which was to “sharply reduce[]” the limitations period for medical malpractice plaintiffs in order to “restrict the flow of medical malpractice lawsuits which were threatening the continued efficient delivery of healthcare to Californians.” (*Roberts v. County of Los Angeles* (2009) 175 Cal.App.4th 474, 481.) MICRA therefore expresses a clear legislative policy that the statute of limitations is a favored defense in medical malpractice suits. Pursuant to its goal of limiting medical malpractice lawsuits, the Legislature codified in section 340.5 the former one year statute of limitations applicable to wrongful death suits, and added to it an ultimate three year statute of repose. (*Larcher v. Wanless* (1976) 18 Cal.3d 646, 657-658 (*Larcher*).)

“Professional negligence” means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

(Code Civ. Proc., §340.5, subd. (2).)

Plaintiff Clary’s own allegation is that “[t]his case arises from the professional negligence and medical malpractice that caused the death of DAVID ALEXANDER SWERRIE (Decedent).” (Complaint, ¶1.) Plaintiff does not waver from this allegation and so this court finds that Code of Civil Procedure section 340.5 is the applicable statute of limitations.

2. WHEN DID PLAINTIFF’S CAUSES OF ACTION ACCRUE?

Turning then to the date of accrual, in the case of a wrongful death claim arising from medical negligence, the “injury” for purposes of section 340.5 is the decedent’s “death, with its allegedly wrongful cause.” (*Larcher, supra*, 18 Cal.3d at pp. 650-651.) Thus, the cause of action begins to accrue as soon as the plaintiff suspects, “or through the exercise of reasonable diligence” should suspect, that the decedent’s death was caused by the defendant’s malpractice.

(*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 413-414; *Kleefeld v. Superior Court* (1994) 25 Cal.App.4th 1680, 1684-1685.)

Defendant PMG asserts, and plaintiff Clary does not dispute, the causes of action in the complaint accrued on April 15, 2023, the alleged date of Decedent's death, and the statute of limitations expired on April 15, 2024. Defendant PMG acknowledges that this deadline can be extended pursuant to Code of Civil Procedure section 364 which states, in relevant part:

(a) No action based upon the health care provider's professional negligence may be commenced unless the defendant has been given at least 90 days' prior notice of the intention to commence the action.

...

(d) If the notice is served within 90 days of the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended 90 days from the service of the notice.

Defendant PMG further acknowledges that on April 9, 2024, plaintiff Clary mailed such a Code of Civil Procedure section 364 notice of intention ("NOI") to defendant PMG.² According to defendant PMG, plaintiff Clary's service of the NOI on April 9, 2024 extended the deadline to commence an action to July 15, 2024. However, since plaintiff Clary did not file the instant action until July 18, 2024, defendant PMG contends her complaint is barred.

In opposition to defendant PMG's demurrer, plaintiff Clary asserts she "filed this case with the county clerk of the Superior Court of Santa Clara on July 12, 2024 at 11:16 AM as noted on the e-filing electronic receipt I received (copy attached). Therefore, the lawsuit was filed prior to the expiration of the statute of limitations."³ In attachments to her opposition, plaintiff Clary proffers what appear to be emails dated July 12, 2024 reflecting the submission of various documents for filing with an electronic filing service provider, Oddysey eFileCA. The emails identify an "Envelope Number: 15923397."

² See ¶3 and Exh. A to the Declaration of Jonathan C. Pai in Support of Defendant Physician Medical Group of San Jose, Inc.'s Demurrer to Complaint ("Declaration Pai").

³ See page 2, lines 5 – 8, of Plaintiff's Response to Defendant Physician Medical Group of San Jose, Inc.'s Demurrer to Complaint.

Putting aside the fact that these assertions are not made in a declaration under penalty of perjury⁴, a review of the court's own records reflect the summons and complaint in this case were submitted to the court clerk for electronic filing on **July 18, 2024** at 11:30 AM under envelope number 15989510.

The court's independent inquiry into envelope number 15923397 reflects those documents being rejected by the court on or about July 16, 2024 at 8:44 AM. The rejection comments state:

Caption and item #1 are inconsistent with Defendant names. Please do not list "et al" on the Complaint as clerks will enter parties EXACTLY how you spell it. Both areas need to be consistent and will also need to be consistent on the Summons. (Medical Center vs Med Ctr) Summons has two pages, however, clerks only file page 1 (You may want to submit each Summons as its own separate PDF in the same envelope if you want both filed).

Plaintiff Clary relies upon California Rules of Court, rule 1.20 which states, "Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk." This rule does not save plaintiff Clary because it is subject to the prefatory remark, "unless otherwise provided." In this situation, California Rules of Court, rule 2.259, subdivision (b), otherwise provides: "If the clerk does not file a document because it does not comply with applicable filing requirements or because the required filing fee has not been paid, the court must promptly send notice of the rejection of the document for filing to the electronic filer. The notice must state the reasons that the document was rejected for filing."

California Rules of Court, rule 2.252, subdivision (c) states, "Filing a document electronically does not alter any filing deadline." While plaintiff Clary may have first attempted to file this action on July 12, 2024, her attempt was unsuccessful. Plaintiff did not successfully file the complaint in this action until July 18, 2024, after expiration of the statute of limitations.

⁴ See *Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 610 – 611—"four elements for a proper declaration under Code of Civil Procedure section 2015.5: "(1) a certification or declaration that it is 'true under penalty of perjury,' (2) the 'subscription' of the declarant, (3) a statement of the 'date of execution,' and (4) a statement that such certification or declaration occurs 'under the laws of the State of California.'" (Internal citations and punctuation omitted.)

Consequently, defendant PMG's demurrer to plaintiff Clary's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)], i.e., the complaint is barred by the applicable statute of limitations, is SUSTAINED WITHOUT LEAVE TO AMEND.

The Court will prepare the formal order.

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