

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

Department 18b

Honorable Shella Deen, Presiding

Farris Bryant, Courtroom Clerk
191 North First Street, San Jose, CA 95113

DATE: November 21, 2024 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.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

SCHEDULING MOTION HEARINGS: Please go to <https://reservations.scscourt.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.

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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV404901	Tara Kumar, Trustee of the Anjali Kumar Trust dated 12/17/1997 et al vs T-Mobile West, LLC et al	Motion to Compel (Special Interrogatories--Set Two) Plaintiffs' motion to compel further responses from Defendant Sprint Spectrum Realty Company, LLC to its Special Interrogatories (Set Two) was continued from September 12, 2024. The parties filed a joint statement on November 5, 2024, as ordered, and reported that Defendant has agreed to serve supplemental and/or further supplemental verified responses to all items remaining in dispute, with service to take place on or before November 15, 2024. The items remaining in dispute are Special Interrogatories 37-41, 27 43-44, 47, 52, 55 and 58. The Court has not received any notification of noncompliance. If Plaintiffs believe that the further responses are deficient, they will need to meet and confer and file a <i>new</i> motion to compel based on the further responses. This motion is therefore OFF CALENDAR. Moving party to prepare order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 2	22CV404901	Tara Kumar, Trustee of the Anjali Kumar Trust dated 12/17/1997 et al vs T-Mobile West, LLC et al	<p>Motion to Compel (Request for Production of Documents—Set Two) and remaining continued motions to compel</p> <p>Plaintiffs' motion to compel further responses and responsive documents from Defendant Sprint Spectrum Realty Company, LLC to its Request for Production of Documents (Set Two) was continued from September 12, 2024. The parties filed a joint statement on November 5, 2024 and reported that Defendant agreed to serve supplemental and/or further supplemental verified responses to all items remaining in dispute, with service to take place on or before November 15, 2024. The items remaining in dispute are Request Nos. 2, 4-7, 10-13, 20, 9 22-25, and 27-28. The parties have not reported any non-compliance. If Plaintiff believes that the further responses are still deficient, they will need to meet and confer and file a <i>new</i> motion to compel based on the further responses.</p> <p>The Court also continued two other motions to compel, which do not appear to have made the calendar--the Court's Tentative Rulings on those motions is as follows:</p> <ol style="list-style-type: none">1. Plaintiffs' motion to compel further responses from T-Mobile USA, Inc. to Special Interrogatories (Set Two) -- Defendant has agreed to serve supplemental and/or further supplemental verified responses to all items remaining in dispute, with service to take place on or before November 15, 2024. Those items remaining in dispute are Special Interrogatories 35-38, 40-41, 43-49, 52-55, and 58. The Court has not received any notification of non-compliance. If Plaintiffs believe that the further responses are deficient, they will need to meet and confer and file a <i>new</i> motion to compel based on the further responses.2. Plaintiff's Motion to compel further responses from T-Mobile USA, Inc. to Request for Production of Documents (Set Two). Defendant has agreed to serve supplemental and/or further supplemental verified responses to all items remaining in dispute, with service to take place on or before November 15, 2024. Those items remaining in dispute are Request Nos. 2, 14-15, 18-21, 25 and 26-36. The Court has also not received any notification of non-compliance. If Plaintiff believes that the further responses are deficient, they will need to meet and confer and file a <i>new</i> motion to compel based on the further responses. <p>These motions are therefore OFF CALENDAR.</p> <p>Moving party to prepare order.</p>
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LAW AND MOTION TENTATIVE RULINGS

LINE 3	23CV412522	Dr. Tal Lavian vs CRADAR, A1 LLC et al	<p>Hearing re: Compliance (Individual Defendants Motion to Compel)</p> <p>This compliance hearing relates to the Individual Defendants motions to compel. The Court ordered (order signed September 11, 2024, and filed September 24, 2024) that 1) Plaintiff provide code-complaint responses to the Individual Defendants contention interrogatories by October 31, 2024 and 2) that the parties meet and confer regarding the requests for production of documents in dispute and file a statement to provide the Court with the status of their meet and confer efforts by October 31, 2024. Plaintiff was also ordered to produce the CRadar Dropbox documents in native format by October 31, 2024, by providing a link to the account to the Individual Defendants. Neither party filed any status report by the ordered deadline. Whilst the parties may have decided amongst themselves to extend the time to file a report to the Court, the Court did not permit to any such extension for the parties to file their reports less than a week before the hearing of these motions.</p> <p>Defendant reports that Plaintiff's document production is incomplete. Plaintiff argues otherwise. Based on the information provided in the tardy briefs, as the Court understands the issue, Plaintiff has not conducted a keyword search of ESI for responsive documents. The Court so orders; compliance is to be by December 2, 2024.</p> <p>As to Plaintiff's further responses, to the extent that the Individual Defendants believe that they are not complaint, they will need to meet and confer and file a <i>new</i> motion to compel for the further responses.</p> <p>The Individual Defendants to prepare the formal order.</p>
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LAW AND MOTION TENTATIVE RULINGS

LINE 4	23CV412522	Dr. Tal Lavian vs CRADAR, A1 LLC et al	<p>Motion to Compel (Plaintiff's Motion to Compel)</p> <p>The Court's November 9, 2024 Order is two-fold. First, the motion against Defendant CRADAR was granted in its entirety and the Court ordered CRADAR to comply. That does not appear to have happened. Second, the Order also addressed a number of outstanding discovery issues that related to the Individual Defendants. Again, there does not appear to be full compliance by the Individual Defendants, according to Plaintiff. Neither party filed any status report by the ordered deadline. Whilst the parties may have decided amongst themselves to extend the time to file a report to the Court, the Court did not permit to any such extension for the parties to file their reports less than a week before the hearing of these motions.</p> <p>It appears from the parties' statement that some issues have been resolved (including, <i>inter alia</i>, the agreement of search terms and a Dropbox production), however, the following issues appear to remain:</p> <ol style="list-style-type: none">1. <u>CRADAR has not fully complied with the November 9, 2024 Order.</u> Whilst the Individual Defendants appear to have attempted to submit argument on CRADAR's behalf, the Court has not been provided with any authority that provides the Individual Defendants with any standing to present any argument on CRADAR's behalf. CRADAR failed to file any response to the discovery that was propounded. So it is clear, any objections, including that of attorney client privilege have been waived, the responses compelled are to be code-complaint and without any objections. Thus far, no relief from this ruling has been sought from CRADAR, who appeared at the last hearing and said nothing in this regard. The waiver of the attorney client privilege is limited to the responses ordered and is not a wholesale waiver of the attorney/client privilege.2. <u>The Individual Defendants have not served code-compliant responses to the request for production of documents.</u> As further responses have been served, Plaintiff will need to meet and confer and file a <i>new</i> motion to compel for the further responses.3. It is unclear if all the <u>Bensadoun</u> documents have been produced or if this remains an issue.4. <u>The Individual Defendants privilege log is defective.</u> The Court is unable to decipher whether or not this is a valid argument given the generalized arguments made. To the extent any communications are to or from, or copied to, third parties, or non-attorneys, those documents are not privileged. <p>Both parties' requests for sanctions are DENIED, but the parties' conduct in discovery will be considered in any future discovery motions. The Court may also elect to refer any such future motions to a Discovery Referee, which appears to be very much needed in this case.</p> <p>Plaintiff to prepare order.</p>
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LAW AND MOTION TENTATIVE RULINGS

LINE 5	18CV336139	Primitivo Medina vs David Villatoro et al	<p>Motion to Set Lien Amount</p> <p>The Court ordered the parties to file simultaneous briefing, to be filed on or before November 7, 2024. Moving party timely filed a supplemental brief on November 7, 2024. No supplemental briefing was submitted by Plaintiff. The Court has considered all the arguments and evidentiary support in the briefing, supplemental and further supplemental briefing. Good cause appearing, the motion is GRANTED. Lien Claimant Wesco is entitled to recover the amount of its payments less reasonable attorney's fees (\$124, 105). Plaintiff did not submit a sufficient offer of proof for the uncovered medical expenses or any other lien. Indeed, Plaintiff was unable to provide support that the medical bills that were submitted were for the same injury or had been paid, nor did Plaintiff establish any lien right of any medical provider.</p> <p>Moving party to prepare formal order.</p>
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LAW AND MOTION TENTATIVE RULINGS

LINE 6	23CV427505	Steve McHarris vs City of Milpitas	<p>Motion for Protective Order</p> <p>Defendant City of Milpitas’ motion for protective order to prohibit Plaintiff from disseminating pretrial discovery materials, including deposition testimony. Plaintiff also seeks sanctions. Plaintiff’s limited opposition states: “The plaintiff does not object to an order to the MPO. Plaintiff’s sole opposition to this motion is to the additional language defendant seeks to add to the MPO”.</p> <p>The only language in the proposed protective order in dispute between the parties is whether the protective order should be limited to include the press only (Plaintiff) or broadly worded to encompass third parties (Defendant). Good cause appearing, the motion is GRANTED; the language proposed by Defendant shall be incorporated into the protective order: “The Parties stipulate that any pre-trial discovery, including but not limited to: deposition transcripts and discovery responses shall not be disseminated or released to any third party, unless that person is: a party, witnesses, mediator, expert or any other person assisting any party with the litigation of this matter. Nothing in this order prevents or impairs either Party from disclosing or using information gained through discovery, including deposition transcripts, in preparing and trying this case”.</p> <p>Plaintiff may apply to the court by way of a noticed motion, if he deems it necessary to disseminate information protected by the protective order to a specific precluded person, with good cause shown.</p> <p>The request for sanctions is DENIED.</p> <p>Moving party to prepare order.</p>
LINE 7	24CV429115	Kristin Hoffman vs Kaiser Permanente Division of Research, Vaccine Study Center	<p>Motion to Change of Venue and Discovery Request</p> <p>Plaintiff Kristin Hoffman’s motion to change the venue of this case to Federal court and for a “discovery request”. There is no proof of service filed by Plaintiff showing that timely notice of the hearing was given to Defendant. Further, the motion is unsupported by any legal authority. As such, the motion is DENIED WITHOUT PREJUDICE.</p> <p>Responding party to prepare formal order.</p>

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LAW AND MOTION TENTATIVE RULINGS

LINE 8	24CV429145	Reynaldo Tiopo vs American Automobile Association of Northern California, Nevada & Utah	Motion for Leave to File First Amended Complaint Plaintiff Reynaldo Tiopo's motion to file a first amended complaint "in furtherance of justice and... based on the facts uncovered during the discovery process." Defendant filed a notice of non-opposition to the motion on October 28, 2024. Good cause appearing, the motion is GRANTED. Plaintiff shall file the first amended complaint within 10 days of this order. Plaintiff shall prepare the formal order.
LINE 9	24CV446372	In Re D.S	Petition for Approval for Transfer of Payment Rights Petitioner J.G. Wentworth Originations, LLC's petition to approve the transfer of payment rights by and between D.S. as Trustee of the 2010 J.T. Trust and J.T. individually and Petitioner pursuant to Insurance Code §10134 et seq. Notice of the petition was served on September 17, 2024 (Proof of service filed September 17, 2024). The Petition was amended on October 25, 2024, to reflect that the petition is brought on behalf of Donna Silacci, as Trustee of the 2010 Jacob Tidwell Trust and Jacob Tidwell, individually, pursuant to Insurance Code §§ 10139.3(B), 10139.5(c) and served on even date to all interested parties. No opposition to the petition was filed. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) Good cause appearing, the petition is GRANTED. Petitioner to prepare the order following hearing.
LINE 10	2015-1-CV-288323	Naren Chaganti vs Cricket Communications, Inc. et al	Motion to Set Aside Scroll down to LINE 10 for Tentative Ruling.

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Calendar Line 10

Case Name: *Chaganti v. Cricket Communications, Inc., et al.*

Case No.: 2015-1-CV-288323

Before the Court is Plaintiff Naren Chaganti’s motion to set aside orders of Judge McCracken. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling as follows.

I. Background

Plaintiff Naren Chaganti (“Chaganti”) is the owner of Whispering Oaks Residential Care Facility, LLC and Whispering Oaks RCF Management Co., Inc. (collectively, “Plaintiffs”). (First Amended Complaint (“FAC”) at ¶ 3.) Plaintiffs entered into leases with AT&T Wireless, also known as New Cingular, and Cricket Communications, Inc. (“Cricket” or, collectively, “Defendants”) for cell site locations on Plaintiffs’ property in Missouri. (FAC at ¶¶ 4-5.) In 2010, Plaintiffs allege, an employee of AT&T or Defendant unplugged a heating coil causing water pipes to freeze at the Whispering Oaks Residential Care Facility, causing that business to shut down. (FAC at ¶¶ 25, 27, 29, 30.)

On November 20, 2015, Plaintiffs initiated this action filing a complaint. The case was initially assigned to the Honorable Theodore Zayner. In April 2018, Defendants moved for summary adjudication, which was granted as to two causes of action. The remaining two causes of action proceeded to trial, the Honorable JoAnne McCracken presiding. The jury entered a special verdict in favor of Cricket. Plaintiffs filed a notice of appeal challenging the judgment entered on the jury verdict.¹ In April 2019, Chaganti discovered that Judge Zayner owned AT&T stock, a fact which had not been disclosed to the parties.

In August 2020, Chaganti filed a coram vobis petition with the Court of Appeal. The Court of Appeal held that Judge Zayner was disqualified and that his ruling on the motion for summary adjudication was a nullity. (*Chaganti v. Superior Court* (2021) 73 Cal.App.5th 237, 249 (*Chaganti*)). As to Chaganti’s contention that Judge McCracken’s rulings at trial were tainted by Judge Zayner’s ruling on the summary adjudication motion and by conversations Chaganti alleged she had had with Judge Zayner, the Court of Appeal held that Chaganti had

¹ The Court of Appeal assigned that case docket number H046735. The appeal in docket H046735 was dismissed in 2022.

failed to meet his burden to obtain coram vobis relief. (*Ibid.*) The Court of Appeal granted the writ of error coram vobis, stating, “The superior court is directed to vacate the judgment and the order granting summary adjudication.” (*Ibid.*)

Thereafter, the parties disagreed as to whether the 2018 jury verdict was also vacated by the Court of Appeal. In January 2023, Chaganti filed an ex parte application for an order shortening time to allow him to file a motion for leave to amend the complaint. The court denied the ex parte application. Chaganti then filed a second ex parte application asking the court to reconsider its ruling. The court denied that application without prejudice to filing a noticed motion for reconsideration, which was scheduled to be heard on March 7, 2023. On April 6, 2023, the court issued its order on the motion for reconsideration. The court granted the motion for reconsideration finding that the Court of Appeal had determined, in granting the writ of error coram vobis, that everything that had occurred in the case after Judge Zayner’s summary adjudication order was void. The court allowed Plaintiffs to file a first amended complaint.

Plaintiffs filed their FAC on May 18, 2023, alleging 13 causes of action, including breach of contract, fraud, negligence, breach of covenant of good faith and fair dealing, tortious interference with contract, and declaratory judgment. Cricket filed a demurrer and motion to strike the FAC. The court denied the motion to strike, rejecting Cricket’s argument that the Court of Appeal’s coram vobis ruling did not extend to reversing the jury’s verdict. On October 5, 2023, Plaintiffs filed a second amended complaint.

On November 14, 2023, Cricket sought a writ of prohibition in the Court of Appeal seeking to restrain the trial court from allowing Plaintiffs to relitigate the causes of action embraced by the jury’s verdict. The Court of Appeal held that its prior order in *Chaganti* did not compel the superior court to vacate the 2018 jury verdict. (*Cricket Communications, Inc. v. Superior Court* (June 26, 2024, No. H051568) [nonpub. opn.] [2024 Cal. App. Unpub. LEXIS 3986, at *13] (*Cricket Communications*)). The Court of Appeal provided the following disposition, “Let a peremptory writ of prohibition issue restraining respondent court from taking any action to vacate the 2018 jury verdict or allow Chaganti to relitigate the causes of action adjudicated thereunder based on the opinion in *Chaganti*, and directing respondent court

to vacate its April 6, 2023, order and its September 21, 2023, order, and strike the second amended complaint in this action.” (*Id.* at *18-19.) Remittitur was issued on September 17, 2024.

On September 30, 2024, Plaintiffs filed a motion to set aside orders made by Judge McCracken in connection with the trial of some of the causes of action in the FAC. Cricket has opposed the motion and Plaintiffs have filed a reply.

II. Discussion

Plaintiffs move to set aside certain motion in limine orders and other orders made at trial by Judge McCracken in 2018 pursuant to Code of Civil Procedure section 473, subdivision, which provides, “The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order.” “ [I]nclusion of the word “may” in the language of section 473, subdivision (d) makes it clear that a trial court retains discretion to grant or deny a motion to set aside a void judgment [or order].’ [Citation.] However, the trial court ‘has no statutory power under section 473, subdivision (d) to set aside a judgment [or order] that is not void’ [Citation.]” (*Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1020.)

Plaintiffs contend that the orders made by Judge McCracken were “tainted” by Judge Zayner’s earlier summary adjudication ruling and by conversations the two judges shared. Plaintiffs’ argument is foreclosed by the Court of Appeal’s ruling in *Cricket Communications*. The Court of Appeal explained that its order granting the writ of coram vobis “expressly addressed and rejected Chaganti’s argument that the 2018 jury verdict should be vacated. Chaganti had argued that Judge McCracken should be disqualified as well because she had disclosed to the parties that she had conversations about the case with Judge Zayner. (*Chaganti, supra*, 73 Cal.App.5th at p. 249.) Accordingly, Chaganti argued, the jury verdict should be vacated along with the judgment entered in the case. (*Ibid.*) But the appellate court rejected the argument, stating: “we conclude that he has failed to meet his burden of demonstrating that he is entitled to coram vobis relief with regard to Judge McCracken’s

participation in this action. (*Ibid.*)” (*Cricket Communications, supra*, [2024 Cal. App. Unpub. LEXIS 3986, at *16], internal quotation marks omitted.)

The Court of Appeal also ordered the superior court to vacate its orders allowing Plaintiffs to file an amended complaint on the ground that the proceedings that occurred after Judge Zayner’s summary adjudication order were a nullity. In short, the Court of Appeal has concluded that the 2018 jury verdict stands and that this court lacks jurisdiction to make rulings that would interfere with that verdict. (*Cricket Communications, supra*, [2024 Cal. App. Unpub. LEXIS 3986, at *18] [“Here, the remittitur did not reinvest the trial court with jurisdiction to vacate the 2018 jury verdict. Accordingly, the court’s actions vacating the 2018 jury verdict and allowing Chaganti to relitigate the causes of action adjudicated thereunder based on *Chaganti* were in excess of its jurisdiction.”].) Granting the motion to set aside Judge McCracken’s motion in limine rulings would clearly run afoul of the Court of Appeal’s rulings.

Plaintiffs argue against the conclusion that the Court of Appeal’s rulings bar the relief requested in the instant motion, contending that their current challenges are not based on the opinion in *Chaganti*. This attempt to cherry pick language from the Court of Appeal’s opinion in *Cricket Communications* fails. (See *Cricket Communications, supra*, [2024 Cal. App. Unpub. LEXIS 3986, at *18-19] [“Let a peremptory writ of prohibition issue restraining respondent court from taking any action to vacate the 2018 jury verdict *or allow Chaganti to relitigate the causes of action adjudicated thereunder based on the opinion in Chaganti*, and directing respondent court to vacate its April 6, 2023, order and its September 21, 2023, order, and strike the second amended complaint in this action.” (*Id.* at *18-19, italics added.)] As discussed above, the Court of Appeal has been clear that the superior court is barred from litigating issues relating to the trial of the causes of action remaining after Judge Zayner’s summary adjudication order.

Additionally, even if the court had jurisdiction to set aside Judge McCracken’s rulings, it would find that Plaintiffs have not provided sufficient evidence from which the court could conclude that Judge McCracken’s rulings were “tainted” and that she should be disqualified. Plaintiffs have provided portions of transcripts wherein Judge McCracken ruled that certain evidence should be excluded from trial because the causes of action to which the evidence

related had been summarily adjudicated and made other rulings Plaintiffs related to the trial. She determined that the evidence Plaintiffs wished to introduce and which Cricket sought to exclude was not relevant to the remaining causes of action at the first stage of the bifurcated trial.²

Thus, although the trial was limited to the causes of action that remained after Judge Zayner's summary adjudication order was made, Judge McCracken determined that the evidence Plaintiffs wished to introduce was irrelevant to the remaining causes of action. Plaintiffs provide the court with no reason to believe that that decision was a product of Judge Zayner's summary adjudication order. Plaintiffs contend that Judge McCracken informed the parties that she had had communications with Judge Zayner while he was disqualified. While a conversation between the judges could potentially form a basis to disqualify Judge McCracken, (see *Christie v. City of El Centro* (2006) 135 Cal.App.4th 767, 776), Plaintiffs have provided no evidence of that alleged fact. Notably, Plaintiffs have provided Chaganti's declaration, which makes no mention of Judge McCracken making such a statement and the portions of the transcripts Plaintiffs have provided likewise contain no such admission.

Plaintiffs request that this court order Judges McCracken and Zayner to provide declarations regarding any discussions they may have had related to this case. But, Plaintiffs cite no authority for that request. And, it is not clear what purpose such an order might serve where the Court of Appeal has ruled that this court lacks jurisdiction to vacate the 2018 jury verdict.

Plaintiffs challenge Judge McCracken's in limine rulings and jury instructions given in connection with that jury verdict. Plaintiffs also challenge Judge McCracken's denial of a request for leave to amend the complaint on the ground that Judge McCracken "consulted" Judge Zayner's tentative ruling on Plaintiffs' previous motion to amend and that that consultation amounted to consulting with Judge Zayner himself. Plaintiffs contend that Judge McCracken made her ruling in response to Plaintiffs' motion in limine number 1. (Motion at p. 16:19-22.) That motion sought to add to the complaint additional legal theories related to

² The trial was bifurcated such that the issue of whether Defendants had an insurance policy and whether Defendants breached the contract between the parties would be tried prior to the issue of damages.

breach of contract and add additional causes of action for tortious breach of contract. But, the Court of Appeal opinion in *Chaganti*, only allowed the court to vacate Judge Zayner's summary adjudication order and the judgment. (*Cricket Communications, supra*, [2024 Cal. App. Unpub. LEXIS 3986, at *16] ["Once again, the [Chaganti opinion specified the two acts to be vacated: (1) the summary adjudication ruling, and (2) the judgment, because it incorporated the summary adjudication ruling."].) It did not provide the court will jurisdiction to vacate additional orders. The Court of Appeal's remand only allowed this court to reach issues relating to the motion for summary adjudication and vacated the judgment for that purpose. Accordingly, the motion to set aside is DENIED in its entirety.

III. Conclusion

The motion to set aside is DENIED. The court's orders filed April 6, 2023 and September 21, 2023 are hereby vacated and Plaintiffs' second amended complaint, filed October 5, 2023, is hereby ordered stricken pursuant to the order of the Sixth District Court of Appeal.

The court will prepare the formal order.

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