

**Tentative Rulings for February 25, 2026**  
**Department 403**

**For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)**

---

---

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

---

---

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

24CECG05582      *Kevin Miller v. Westmont Living, Inc.* is continued to Thursday, March 26, 2026, at 3:30 p.m. in Department 403.

---

(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 403**

Begin at the next page

(03)

**Tentative Ruling**

Re: **Alvand v. Sunrun Solar, Inc.**  
Case No. 24CECG00061

Hearing Date: February 25, 2026 (Dept. 403)

Motion: Defendant Sunrun Installation Services' Motion to Dismiss for Failure to Prosecute

**If oral argument is timely requested, it will be entertained on Thursday, February 26, 2026, at 3:30 p.m. in Department 403.**

**Tentative Ruling:**

To grant defendant Sunrun's motion to dismiss the action for failure to prosecute the case.

**Explanation:**

"The court may in its discretion dismiss an action for delay in prosecution pursuant to this article on its own motion or on motion of the defendant if to do so appears to the court appropriate under the circumstances of the case." (Code Civ. Proc., § 583.410, subd. (a).) "Dismissal shall be pursuant to the procedure and in accordance with the criteria prescribed by rules adopted by the Judicial Council." (Code Civ. Proc., § 583.410, subd. (b).)

Under Rule of Court 3.1340, "The court on its own motion or on motion of the defendant may dismiss an action under Code of Civil Procedure sections 583.410-583.430 for delay in prosecution if the action has not been brought to trial or conditionally settled within two years after the action was commenced against the defendant." (Cal. Rules of Court, Rule 3.1340(a).)

"A party seeking dismissal of a case under Code of Civil Procedure sections 583.410-583.430 must serve and file a notice of motion at least 45 days before the date set for hearing of the motion." (Cal. Rules of Court, Rule 3.1342(a).)

However, while Rule of Court 3.1342(a) requires a motion to dismiss for failure to prosecute to be filed and served at least 45 days before the hearing on the motion, the trial court has the power to shorten the time for the hearing. (*Eliceche v. Federal Land Bank Assn.* (2002) 103 Cal.App.4<sup>th</sup> 1349, 1363.) Here, the court has already granted an order shortening time to serve and hear the motion to dismiss on an ex parte basis, as the March 2, 2026 trial date is fast approaching and there is not enough time to serve and hear the motion before the trial begins. Therefore, the fact that the motion was filed and served less than 45 days before the hearing does not render the motion defective.

"In ruling on the motion, the court must consider all matters relevant to a proper determination of the motion, including: (1) The court's file in the case and the declarations and supporting data submitted by the parties and, where applicable, the

availability of the moving party and other essential parties for service of process; (2) The diligence in seeking to effect service of process; (3) The extent to which the parties engaged in any settlement negotiations or discussions; (4) The diligence of the parties in pursuing discovery or other pretrial proceedings, including any extraordinary relief sought by either party; (5) The nature and complexity of the case; (6) The law applicable to the case, including the pendency of other litigation under a common set of facts or determinative of the legal or factual issues in the case; (7) The nature of any extensions of time or other delay attributable to either party; (8) The condition of the court's calendar and the availability of an earlier trial date if the matter was ready for trial; (9) Whether the interests of justice are best served by dismissal or trial of the case; and (10) Any other fact or circumstance relevant to a fair determination of the issue. The court must be guided by the policies set forth in Code of Civil Procedure section 583.130." (Cal. Rules of Court, Rule 3.1342(e), para. breaks omitted.)

"It is true, as plaintiffs point out, that the policy favoring trial on the merits is generally preferred over termination of a case on procedural grounds. 'But that principle cannot be indiscriminately applied so as to render impotent the provisions of section 583.420. The statutory provisions permitting discretionary dismissal when the plaintiff is not diligent in prosecuting the action serve the dual purpose of discouraging stale claims and expediting the administration of justice.' Thus, the policy favoring resolution on the merits will be applied only after the plaintiff has made 'some showing of excusable delay' and has demonstrated dismissal would effect a miscarriage of justice." (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 698, citations omitted, italics in original.)

"In addition to the factors listed in California Rules of Court, rule [3.1342(e)], recent cases have also considered both the prejudice to the defendant that results from the plaintiff's failure to diligently prosecute the action and any excuse offered by the plaintiff to explain his lack of diligence." (*San Ramon Valley Unified School Dist. v. Wheatley-Jacobsen, Inc.* (1985) 175 Cal.App.3d 1050, 1056, citations omitted.)

"In order to avoid a dismissal for delay in prosecution, the plaintiff must show a reasonable excuse for such delay; once that showing is made, the trial court must consider all pertinent factors, including those under rule [3.1342] and any prejudice to the defendant from the delay, before deciding whether to dismiss. However, where there has been a protracted and unexplained delay in prosecution, the defendant need not make an affirmative showing of prejudice. Prejudice is inferred from the delay itself." (*Wagner v. Rios* (1992) 4 Cal.App.4th 608, 611–612, citations omitted.) Also, "a belated manifestation of diligence does not operate to justify an earlier unjustified protracted delay." (*Kuchins v. Hawes* (1990) 226 Cal.App.3d 535, 541, citation omitted [holding dismissal was warranted where plaintiff only belatedly served discovery requests after a two-and-a-half-year delay].)

In the present case, the factors listed in Rule 3.1342(e) support granting the motion to dismiss the action. There is nothing in the file to indicate that defendant has been evading service of process, or that the two-year delay in prosecution is the result of service issues. On the other hand, there is also no evidence that plaintiff has not been diligent in serving seeking to effect service on defendant. However, plaintiff has not done anything to prosecute his case other than filing the complaint and serving it on defendant. The case has now been pending for over two years, but plaintiff has yet to serve any discovery, respond to defendant's written discovery, take any depositions, bring any motions, or sit for his own deposition. Defendant has served plaintiff with written



(46)

**Tentative Ruling**

Re: **Nooshin Abedini v. The Vons Companies**  
Superior Court Case No. 23CECG03021

Hearing Date: February 25, 2026 (Dept. 403)

Motion: for Terminating Sanctions

**If oral argument is timely requested, it will be entertained on Thursday, February 26, 2026, at 3:30 p.m. in Department 403.**

**Tentative Ruling:**

To deny the motion for terminating sanctions and further monetary sanctions, without prejudice.

**Explanation:**

Defendant The Vons Companies, Inc. ("defendant") moves for terminating sanctions and further monetary sanctions against plaintiff Nooshin Abedini ("plaintiff"), pursuant to Code of Civil Procedure section 2023.030.

Code of Civil Procedure section 2023.010, subdivision (g) makes "[d]isobeying a court order to provide discovery" a "misuse of the discovery process," but sanctions are only authorized to the extent permitted by each discovery procedure. Sanctions for failure to comply with a court order are allowed only where the failure was willful. (*Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1327.) If there has been a willful failure to comply with a discovery order, the court may strike out the offending party's pleadings or parts thereof, stay further proceedings by that party until the order is obeyed, dismiss that party's action, or render default judgment against that party. (Code Civ. Proc. § 2023.030, subd. (d).)

The court order underlying this motion is this court's order issued on October 30, 2025, which granted defendant's motion to compel compliance. (Zimmerman Decl., ¶ 24, Exh. R; see also Minute Order dated October 30, 2025.) Pursuant to the Minute Order, which summarizes the contents of the Reporter's Transcript of the hearing on October 30, 2025, plaintiff was "ordered and shall appear 'IN PERSON' on December 2, 2025 at 10:00 a.m. for deposition at opposing counsel's office located at 5200 N. Palm Ave., Ste. 300, Fresno CA. If plaintiff fails to appear for deposition there will be consequences such as sanctions and/or dismissal of case."

The court's order was for plaintiff to appear in person at defense counsel's office location for her deposition. By defendant's own admission, plaintiff did appear for her deposition. (Zimmerman Decl., ¶ 26.) Although defendant was unsatisfied with plaintiff's answers (or lack thereof) during her deposition, plaintiff did not fail to appear and therefore did not disobey the court's order. When a deponent fails to answer a question,



