Tentative Rulings for April 24, 2024
Department 501

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

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

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(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(35)

Tentative Ruling

Re: ***Hylton v. FCA US LLC et al.***
Superior Court Case No. 21CECG00238

Hearing Date: April 24, 2024 (Dept. 501)

Motion: by Plaintiffs Jay Hylton and Krystal Hylton to Enforce Settlement

Tentative Ruling:

To grant the motion to enforce settlement. To grant attorney fees and costs to enforce the settlement agreement in the total amount of $885.00. Plaintiffs Jay Hylton and Krystal Hylton are directed to submit to this court, within 5 days of service of the minute order adopting this tentative ruling, a proposed judgment.

Explanation:

Plaintiffs Jay Hylton and Krystal Hylton (together "Plaintiffs") seek to enforce a settlement agreement by and between them and defendant FCA US LLC ("Defendant") under Code of Civil Procedure section 664.6.

Code of Civil Procedure Section 664.6 provides as follows: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court . . . for settlement of the case . . . the court, upon motion, may enter judgment pursuant to the terms of the settlement." It also provides that the parties may request that the court "retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." (Code Civ. Proc. § 664.6.) Due to the summary nature of the statute authorizing judgment to enforce a settlement agreement, strict compliance with its requirements is prerequisite to invoking the power of the court to impose a settlement agreement. (*J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 984.)

Plaintiffs submit a writing, signed by the parties, made outside the presence of the court. Litigation is still pending. The writing reflects that this court would retain jurisdiction under section 664.6 to enforce the writing. (Harris Decl., ¶ 2, and Ex. A to the moving papers.) The agreement contemplated, among other things, that a separate payment be made in the amount of $3,500.00 to Marilyn Kay Nobel, as trustee of the Terry L. Baker Revocable Trust. Plaintiffs do not identify any other alleged failures by Defendant in performing the terms of the settlement.

In opposition, Defendant does not materially contest Plaintiffs' statements. Rather Defendant expresses frustration with complying with the terms of the settlement, citing an internal policy not to issue checks without certain tax information in compliance with tax law. However, nothing in the terms of the settlement condition Defendant's payment on the receipt of tax information. (*See generally* Ex. A to the moving papers.) Defendant could have negotiated a tax information condition in the settlement agreement if they believed it was important or necessary or a precondition to payment.

Defendant argues, in the alternative, that Plaintiffs have no standing to challenge the terms of the settlement on behalf of the Terry L. Baker Revocable Trust. Defendant cites no authority for the proposition that a party to an agreement may not enforce the terms of the agreement.

Based on the above, the court finds a valid written signed settlement agreement outside of the presence of the court, and judgment will be entered in accordance with the terms of the written settlement agreement. (Code Civ. Proc. § 664.6, subd. (a).)

Plaintiffs seek their fees and costs of having to enforce the settlement agreement. The settlement agreement provides that "[s]hould either party be forced to move the court for the enforcement of this Settlement Agreement, the prevailing party to such motion shall recover from the non-prevailing party the reasonable fees and costs expended in enforcing the Settlement Agreement." (Ex. A to the moving papers.) The court finds that Plaintiffs have prevailed on the present motion to enforce the settlement agreement, and awards fees and costs in favor of Plaintiffs.

Plaintiffs seek fees in the amount of $2,915.00, comprising 3.3 hours of attorney time at $475 per hour, and 7.7 hours of paralegal time at $175 per hour. The declaration submitted in support conflicts with the memorandum of points and authorities. The points and authorities state that the time stated above included attorney tasks in communicating with Defendant, appearing for case management, and for review of motion; and paralegal tasks of communicating with Defendant, case management preparation and motion preparation. In contrast, the declaration states that both sets of time were for an effort to resolve the matter, and merely includes the drafting of the present motion. Counsel provided no information in support of the hourly rates sought.

Based on the above, the court will approve the rates as sought, but reduces the hours to an award of 1 attorney hour and 2 paralegal hours, for a total of $825.00.

Plaintiffs seek $282.00 in costs, comprising $138.00 in filing fees, and $144.00 in CourtCall costs. The filing of case management statements and an amended notice of settlement have no bearing on enforcing the settlement agreement; the purposes of those documents is for case management with the court. Only the motion to enforce the settlement is a reasonable cost to enforce. Further, CourtCall expenses are disallowed. (Code Civ. Proc. § 1033.5, subd. (b)(3); *see also id.*, § 367.6 [repealed 2022].) The court finds reasonable costs in the amount of $60.00.

In sum, the court awards $825.00 in fees, and $60.00 in costs, a total of $885.00 in favor of plaintiffs Jay Hylton and Krystal Hylton, and against defendant FCA US LLC.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling Issued By: DTT on 4/19/2024.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Singh v. Michael Cadillac, Inc.***
Superior Court Case No. 22CECG00617

Hearing Date: April 24, 2024 (Dept. 501)

Motion: by Defendant Michael Cadillac, Inc., for Terminating Sanctions Against Plaintiff Sukhwinder Singh

Tentative Ruling:

To grant and impose terminating sanctions against plaintiff Sukhwinder Singh, pursuant to Code of Civil Procedure section 2023.010, subdivisions (d) and (g), for failure to respond or to submit to an authorized method of discovery and disobeying court orders to provide discovery. The Complaint filed by plaintiff on February 24, 2022, is dismissed, without prejudice. (Code Civ. Proc. §2023.030, subd. (d)(3).)

Explanation:

Section 2023.010 defines "misuses of the discovery process" as including, "failing to respond or submit to an authorized method of discovery" and "disobeying a court order to provide discovery." (Code Civ. Proc. § 2030.010, subds. (d) and (g).) Section 2023.030 states, in relevant part:

> To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process:
>
> * * *
>
> (d) The court may impose a terminating sanction by one of the following orders:
>
> * * *
>
> (3) An order dismissing the action or any part of the action, of that party.

(Code Civ. Proc. § 2023.030, subd. (d)(3).)

Accordingly, terminating sanctions must be authorized by a specific discovery statue; they are not available merely because they are an option listed in section 2023.030.

Order Compelling Discovery Responses:

The failure to respond to interrogatories is controlled by Code of Civil Procedure section 2030.290, subdivision (c). That section provides that if a party unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other

circumstances make the imposition of the sanction unjust, the court "shall" impose monetary sanctions. It is only when a party disobeys an order compelling responses that a terminating sanction is called for.

> If a party then fails to obey an order compelling answers, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(See Code Civ. Proc., § 2030.290, subd. (c).)

A party's failure to obey an order to respond to requests for production of documents is also subject to "the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010)." (Code Civ. Proc. § 2031.300, subd. (c).)

Courts generally follow a policy of imposing the least drastic sanction required to obtain discovery or enforce discovery orders, because the imposition of terminating sanctions is a drastic consequence, one that should not lightly be imposed, or requested. (*Ruvalcaba v. Government Employees Ins. Co*. (1990) 222 Cal.App.3d 1579, 1581.) Sanctions are supposed to further a legitimate purpose under the Discovery Act, i.e. to compel disclosure so that the party seeking the discovery can prepare their case, and secondarily to compensate the requesting party for the expenses incurred in enforcing discovery. Sanctions should not constitute a "windfall" to the requesting party; i.e. the choice of sanctions should not give that party more than would have been obtained had the discovery been answered. (Rylaarsdam & Edmon, *California Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2019) § 8:1213.) "The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks but the court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment. [Citations.]" (*Caryl Richards, Inc. v. Superior Court* (1961) 188 Cal.App.2d 300, 304.)

Appellate courts have generally held that before imposing a terminating sanction, trial courts should usually grant lesser sanctions first. (Rylaarsdam & Edmon, *supra*, § 8:1215.) However, this is not an "inflexible" policy, and it is not an abuse of discretion to issue terminating sanctions on the first request, where circumstances justify it (e.g. where the violation is egregious or the party is using failure to respond as a delaying tactic). (*Id*. at § 8:1215.1; *Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279-280 ["A decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction. [Citation.]".)

Here, plaintiff was ordered on January 4, 2024, to provide initial responses to interrogatories and requests for production and pay monetary sanctions to defendant's counsel. Plaintiff failed to serve responses as ordered by the court. (Galvin Decl. ¶ 7.)

Defendant argues the totality of the circumstances support the request for terminating sanctions based on plaintiff's failure to comply with the court's order and willfulness demonstrated in his pattern of failing to participate in the prosecution of his case. Defendant points to plaintiff's failure to respond to discovery, failure to respond to defendant's meet and confer letters ahead of the motions to compel discovery, plaintiff's failure to oppose the motions to compel his discovery responses and deem admissions admitted, and plaintiff's failure to comply with the court's January 4, 2024, order compelling him to provide discovery responses. Further proving plaintiff's willful disregard of his obligations to participate in his own case, plaintiff has failed to oppose the motion seeking to terminate this action.

Defendant argues lesser sanctions will be unsuccessful due to plaintiff's repeated failure to participate in the prosecution of his case which has thwarted defendant's ability to conduct any meaningful discovery to prepare for trial.

The evidence presented by defendant of plaintiff's repeated failure to participate in discovery as ordered demonstrate willfulness in plaintiff's failure to comply with the court's orders. It does not appear additional monetary sanctions or lesser sanctions will prompt plaintiff's compliance with court orders.

Therefore, the court intends to grant defendant's motion for terminating sanctions and dismiss the Complaint filed by plaintiff Sukhwinder Singh on February 24, 2022, without prejudice.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/19/2024.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Tammy Mitchell v. Fresno Area Express***
Superior Court Case No. 22CECG01107

Hearing Date: April 24, 2024 (Dept. 501)

Motion: by Defendant City of Fresno for Judgment on the Pleadings

Tentative Ruling:

To grant the motion for judgment on the pleadings as to plaintiff's first cause of action for general negligence without leave to amend and to deny the motion as to the second cause of action.

Explanation:

The plaintiff, Tammy Lynn Mitchell, filed a Complaint against three named defendants—Fresno Area Express, City of Fresno (the "City"), and County of Fresno. Plaintiff alleges the City failed to meet the heightened standard of care when the bus driver failed to assist her as she was boarding the bus in her wheelchair, causing her to flip backwards and sustain injuries.

Motion for Judgment on the Pleadings

A motion for judgment on the pleadings performs the same function as a general demurrer. "The grounds for the motion must appear on the face of the challenged pleading or from matters that may be judicially noticed." (*Tukes v. Richard* (2022) 81 Cal.App.5th 1, 18.)

Meet and Confer

The parties have complied with the obligation to meet and confer.

The City Has Withdrawn Its Challenge to the Second Cause of Action

"Under the California Government Claims Act, all government tort liability must be based on statute." (*County of San Bernardino v. Superior Court* (2022) 77 Cal.App.5th 1100, 1107.) "Thus, in the absence of some constitutional requirement, public entities may be liable *only* if a statute declares them to be liable." (*Cochran v. Herzog Engraving Co.* (1984) 155 Cal.App.3d 405, 409, italics original.) The City contends the plaintiff's first cause of action labeled "negligence" is incurably defective because neither Government Code section 815.2 nor Civil Code section 1714 can serve as the statutory basis for a cause of action against the City. In its moving papers, the City contends the second cause of action labeled "common carrier liability" also is deficient because common carrier liability is a heightened standard of care, not a distinct cause of action.

In her opposition footnote on page two, plaintiff gives notice that "[a]fter further review of the case and statutory authority, Plaintiff will pursue her negligence cause of action against City based on common carrier liability." The City replies "[g]iven Plaintiff's clarification that the second cause of action is predicated on a particular theory of negligence, the City no longer contests the second cause of action despite its erroneous titling." (Rpy., p. 2:6-8.) Therefore, the City no longer challenges the second cause of action and its motion for judgment on the pleadings applies to the first cause of action only.

The First Cause of Action for General Negligence

The question for the Court to decide is whether the first cause of action for general negligence contains the necessary allegations to state a cause of action against a public entity. Plaintiff cites only Civil Code section 1714 as the statutory basis for the first cause of action. But the provisions of Civil Code section 1714 do not apply to extend the liability of a public entity "beyond the usual reach of the 'dangerous condition' provisions of Government Code section 835." (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1132.) The City argues persuasively that even if plaintiff were to rely on Government Code section 835 as the statutory basis for the first cause of action, "the claim remains deficient because it does not identify any *physical* characteristic of public property that Plaintiff believes to have been a dangerous condition." (Rpy., p. 2:14-15, italics original.) Therefore, the court grants the City's motion for judgment on the pleadings as to the first cause of action.

Leave to Amend

After granting a motion for judgment on the pleadings, the court must consider a request for leave to amend in the same way as if considering the request after sustaining a demurrer. Plaintiff bears the burden to show there is a reasonable possibility that she can allege facts to cure the defect in the complaint by amendment. (*Tukes v. Richard*, *supra*, 81 Cal.App.5th at p. 18.) Here, plaintiff impliedly concedes the issue by neither requesting leave to amend, nor suggesting how the first cause of action is capable of amendment. Accordingly, the court grants the motion for judgment on the pleadings as to the first cause of action without leave to amend.

Request for Judicial Notice

The court grants the City's request for judicial notice of the Complaint.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/22/2024.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Lopez v. Stine***
Case No. 23CECG02228

Hearing Date: April 24, 2024 (Dept. 501)

Motion: by Defendant Stine for Reconsideration

Tentative Ruling:

To deny defendant Stine's motions for reconsideration of the court's order granting the motions to compel initial responses to discovery, deeming defendant to have admitted the truth of the matters in the requests for admission, deeming defendant to have waived his objections to the discovery requests, and ordering him to pay monetary sanctions. To deny plaintiffs' request for sanctions against defendant and his counsel for bringing frivolous motions for reconsideration.

Explanation:

Under Code of Civil Procedure section 1008, subdivision (a), "[w]hen an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown."

Thus, a party moving for reconsideration of a court order must show that there are "new or different facts, circumstances, or law" that justify reconsideration of the order. (Code Civ. Proc. § 1008, subd. (a).) Failure to submit an affidavit that complies with the requirements of section 1008(a) renders the motion invalid and deprives the court of jurisdiction to hear the motion. (*Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1048.) Also, "[a] party seeking reconsideration also must provide a satisfactory explanation for the failure to produce the evidence at an earlier time." (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212, internal citations omitted.) "Case law after the 1992 amendments to section 1008 has relaxed the definition of 'new or different facts,' but it is still necessary that the party seeking that relief offer some fact or circumstance not previously considered by the court." (*Id*. at pp. 212-213, internal citations omitted.)

"Courts have construed section 1008 to require a party filing an application for reconsideration or a renewed application to show diligence with a satisfactory explanation for not having presented the new or different information earlier." (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830,

839, citing *California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 46–47 & fns. 14–15 and *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 688–690.) "Section 1008's purpose is '"'to conserve judicial resources by constraining litigants who would endlessly bring the same motions over and over, or move for reconsideration of every adverse order and then appeal the denial of the motion to reconsider.'" To state that purpose strongly, the Legislature made section 1008 expressly jurisdictional…" (*Id*. at pp. 839–840.) Thus, failure to comply with the requirement of demonstrating new facts, circumstances, or law requires denial of a motion for reconsideration. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1104.)

Here, defendant Stine moves for reconsideration of the court's January 24, 2024, order granting plaintiffs' motions to compel him to provide initial responses to the discovery requests, deeming him to have waived his objections to the discovery, granting sanctions against him, and deeming him to have admitted the truth of the matters in the requests for admission that were served on him. However, defendant has not offered any new facts, circumstances or law that would justify his request to have the court reconsider its order. He simply argues that the court should make the same order that it made with regard to his co-defendant, R&S Towing. Yet the court made a different order with regard to R&S because R&S had served verified responses before the hearing, it had filed opposition and requested oral argument, and it had made a showing that its counsel was not served with the discovery requests so it would have been unduly harsh to grant an order waiving the defendant's right to object to the discovery and deem it to have admitted the truth of the matters in the RFAs. Defendant Stine, on the other hand, never requested oral argument and never served verified responses to the discovery before the hearing. Indeed, he has still failed to serve any responses, despite being ordered to do so months ago. Therefore, defendant has not shown that there are any new facts, circumstances or law that would justify granting reconsideration of the court's prior order granting the motions to compel. Without a showing of new or different facts, circumstances or law there is no basis for granting reconsideration of the order.

Defendant argues that the court must grant reconsideration based on the doctrine of "law of the case", as the court granted a different order with regard to R&S. However, the doctrine of "law of the case" does not apply here, as the circumstances regarding the court's order as to R&S were different than they are with regard to Stine. As discussed above, R&S has served verified responses, it requested oral argument, and it made a showing at the hearing that it would have been overly harsh to grant an order deeming it to have admitted the truth of the RFAs and to have waived all objections. Stine made no similar showing, and in fact he never even requested oral argument or served any verified responses to the discovery. Thus, the court is not required to make the same order with regard to Stine that it did with regard to R&S. Indeed, since Stine never served responses to the requests for admissions or the other discovery, the court was required to make orders deeming him to have admitted the truth of the matters in the RFAs, compelling him to answer the discovery requests, and granting sanctions against him. (Code Civ. Proc., §§ 2030.290, 2031.300 and 2033.280.) Defendant has not provided the court with any reasons why its prior order was incorrect or why the court should reconsider it based on new facts, circumstances or law. Therefore, the court intends to deny the motion for reconsideration.

Finally, the court intends to deny plaintiffs' request for sanctions against defendant and his attorney for bringing frivolous motions for reconsideration. Plaintiffs move for sanctions under Code of Civil Procedure sections 1008 and 128.5. Under section 1008, subdivision (d), "[a] violation of this section may be punished as a contempt and with sanctions as allowed by Section 128.7." (Code Civ. Proc., § 1008, subd. (d).) Therefore, any request for sanctions for violating section 1008 must be brought pursuant to section 128.7's procedures. Section 128.7 must be brought separately from other motions, and must be first served on the other party 21 days before it is filed with the court so that the party subject to the sanction may have an opportunity to withdraw the offending pleading or motion. (Code Civ. Proc., § 128.7, subd. (c)(1).)

Here, plaintiffs did not file a separate motion for sanctions under section 128.7, nor have they served the motion on the defendant 21 days before filing it. Therefore, they have not complied with section 128.7's "safe harbor" provisions, and the court cannot grant their request for sanctions against defendant and his attorney.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/22/2024.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Goodin v. California State University, Fresno***
Superior Court Case No. 22CECG03257

Hearing Date: April 24, 2024 (Dept. 501)

Motion: by Defendant Board of Trustees of the California State University[1] to Dismiss

Tentative Ruling:

To grant, and order dismissal of the action as to defendant Board of Trustees of the California State University, only. The case will proceed as to defendants Joseph I. Castro, Saul Jimenez-Sandoval and Xuan Ning.

Explanation:

Defendant Board of Trustees of the California State University moves to dismiss the Complaint, with prejudice, since plaintiff failed to amend the Complaint within the time allowed after defendant's demurrer was sustained with leave to amend. (Code Civ. Proc., § 581, subd. (f)(2) [defendant has right to obtain order dismissing action with prejudice once demurrer is sustained with leave to amend and plaintiff fails to amend within time given]; *Cano v. Glover* (2006) 143 Cal.App.4th 326, 330 [after time elapses, plaintiff can no longer voluntarily dismiss without prejudice].) Defendant's demurrer was sustained with leave to amend on April 19, 2023, giving plaintiff 10 days to file a second amended complaint. He did not do so. Thus, dismissing moving defendant is proper. However, no dismissal as to the three individual defendants can be entered, since they did not take part in the demurrer and, in fact, have not yet appeared in the action.

The court notes that on October 16, 2023, and February 26, 2024, mail the clerk sent to plaintiff's address of record was returned as undelivered, with no forwarding address found. This was the address defendant used in serving this motion. Code of Civil Procedure Section 1013, subdivision (a), provides that service by mail is effective if the documents are addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence." The address defendant used was the same one plaintiff used on the last document he filed on March 17, 2023, and it is presumed this address is the self-representing plaintiff's place of residence. Thus, defendant has properly served this motion. It is the duty of the litigant (including a self-representing litigant) to serve all parties with a written notice of a change

[1] Defendant was erroneously named in the Complaint as California State University, Fresno.

of address and to file same with the court. (See Cal. Rules of Court, rule 2.200.) No such notice of change of address has been filed by plaintiff.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/22/2024.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Nava v. Fresno Area Express, et al.***
Superior Court Case No. 23CECG00800

Hearing Date: April 24, 2024 (Dept. 501)

Motions (x3): by defendant City of Fresno for an Order Compelling Plaintiff's Responses to (1) Form Interrogatories; (2) Special Interrogatories; (3) Requests for Production of Documents; and for Monetary Sanctions

Tentative Ruling:

To grant and to award monetary sanctions in the total amount of $330 against plaintiff, payable within 30 days of the date of this order, with the time to run from the service of this minute order by the clerk.

Plaintiff shall serve verified responses without objections, to defendant's Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One, no later than 20 days from the date of this order, with the time to run from the service of this minute order by the clerk.

Explanation:

Interrogatories and Document Production

Plaintiff has had ample time to respond to the discovery propounded by defendant, and she has not done so. Failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and work product protection. (Code Civ. Proc., §§ 2030.290, subd. (a), 2031.300, subd. (a); see *Leach v. Sup.Ct. (Markum)* (1980) 111 Cal.App.3d 902, 905-906.)

Monetary Sanctions

Sanctions are mandatory unless the court finds that the party acted "with substantial justification" or other circumstances that would render sanctions "unjust." (Code Civ. Proc., §§ 2030.290, subd. (c) [Interrogatories], 2031.300, subd. (c) [Document demands].) Since no opposition was filed, no facts were presented to warrant finding sanctions unjust. The sanction amount awarded does not include the time for responding to an opposition and for appearing at the hearing, as this proved unnecessary. The court finds it reasonable to allow only 3 hours for the preparation of these simple discovery motions at the hourly rate of $110, provided by counsel. Therefore, the total amount of sanctions awarded is $330.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/22/2024.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Yow v. Singh***
Superior Court Case no. 22CECG02767

Hearing Date: April 24, 2024 (Dept. 501)

Motion: Application of Mona Lisa Wallace to appear as counsel *pro hac vice*

Tentative Ruling:

To continue the hearing to Wednesday, May 1, 2024.

Explanation:

Plaintiff seeks admission of Mona Lisa Wallace to appear *pro hac vice* in the above-titled case. "A person desiring to appear as counsel *pro hac vice* in a superior court must file with the court a verified application together with proof of service by mail in accordance with Code of Civil Procedure section 1013a of a copy of the application and of the notice of hearing of the application on ... the State Bar of California at its San Francisco office." (Cal. Rules of Court, rule 9.40(c)(1).) Here, though the application indicates papers were served on the State Bar, the proofs of service attached to the moving papers show service only on opposing counsel. The Court found no proof of service in its file showing service of the instant application on the State Bar. The hearing on the application is therefore continued to May 1, 2024, to allow counsel time to file the missing proof of service. The proof of service must be filed by noon on April 29, 2024.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling Issued By: DTT on 4/22/2024 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Arredondo v. Homegoods, Inc., et al.***
Superior Court Case No. 23CECG02809

Hearing Date: April 24, 2024 (Dept. 501)

Motions x(3): by Defendants Homegoods, Inc., and TJX Companies, Inc., for Orders Compelling Compliance with Subpoena against Non-Party Prestige Urgent Care and for Monetary Sanctions

by Plaintiff for Order Compelling Defendant Homegoods, Inc., to Respond to Requests for Production of Documents, Sets One and Two and for Monetary Sanctions

Tentative Ruling:

To deny the motions compelling Prestige Urgent Care's compliance with subpoena, without prejudice. (Code Civ. Proc., § 2020.220, subds. (b)-(c); Cal. Rules of Court, rule 3.1346.)

To deny the motions for defendant Homegoods, Inc.'s responses to Requests for Production of Documents, Sets One and Two, since Homegoods, Inc. served its verified responses on April 9, 2024.

To award monetary sanctions in the total amount of $1,320 against Homegoods, Inc.'s counsel of record, Gene S. Stone, Esq., payable within 30 days of the date of this order, with the time to run from the service of this minute order by the clerk.

Explanation:

Compliance with Subpoena

"When a subpoenaed nonparty fails to appear for a deposition or produce documents that were properly requested, the party who subpoenaed the witness may move to compel compliance with the subpoena." (*Sears, Roebuck & Co. v. National Union Fire Ins. Co. of Pittsburgh* (2005) 131 Cal.App.4th 1342, 1351) However, a written notice and all moving papers supporting a motion to compel the answers to deposition questions from a nonparty deponent must be personally served on the nonparty deponent unless the nonparty deponent agrees to accept service by mail or electronic service at an address or electronic service address specified on the deposition record. (Cal. Rules of Court, rule 3.1346.) The deposition subpoena itself, must also be served on the deponent. Personal service is required, not service by mail. (Code Civ. Proc., § 2020.220, subds. (b)-(c).)

Defendants Homegoods, Inc., and TJX Companies, Inc., seek an order compelling the custodian of records for nonparty Prestige Urgent Care to produce documents in compliance with a subpoena issued on September 21, 2023.

However, there is no evidence that the moving papers and the subpoena itself were both personally served on the deponent. The proof of service attached to the motion only indicates that plaintiff's counsel has been served, and no indication has been made that the deponent has been served, at all, with notice of the motion. Additionally, the Proof of Service of Deposition Subpoena for Production of Business Records submitted in accompaniment with the Deposition Subpoena is almost entirely blank. (Stone Decl., Exh. A.)

Accordingly, the motion to compel compliance with the subpoena cannot be granted.

Responses to Requests for Document Production

While plaintiff concedes that Homegoods, Inc. ("Homegoods") has provided verified responses to her document production requests, she argues that she is still entitled to monetary sanctions.

Sanctions are mandatory unless the court finds that the party acted "with substantial justification" or other circumstances that would render sanctions "unjust." (Code Civ. Proc., § 2031.300, subd. (c).) The California Rules of Court authorizes an award of sanctions for failure to provide discovery even if "the requested discovery was provided to the moving party after the motion was filed." (Cal. Rules of Court, rule 3.1348(a).)

While Homegoods has served its responses to the discovery sought, it does not present sufficient facts to show that it acted with substantial justification to warrant finding an award of sanctions to be unjust. The subject discovery requests were served on September 13, 2023, and September 19, 2023, respectively. Despite multiple extensions to respond, Homegoods served untimely and unverified responses in December 2023. Where verification is required, an unverified response is equivalent of no response at all. (*Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636.) Although plaintiff repeatedly attempted to meet and confer with Homegoods on the issue, the verified responses were not served until April 9, 2024, after the plaintiff's motions were filed.

Counsel for Homegoods, Gene S. Stone, provides that the delay in providing the unverified responses was due to the firm's staffing transition and the mistaken failure to provide the verifications was a result of the staffing transition's failure to track this requirement. (Stone Decl., ¶¶ 8-9.) However, counsel has not provided any explanation for why the defect was not remedied after multiple emails were sent directly to Mr. Stone addressing the issue. (Narayan Decl., ¶¶ 4-6, Exhs. 3-5.) The court notes that there was a period of approximately six-months between the dates the discovery were propounded in September 2023, and the filing of plaintiff's motions on March 12, 2023. C*oincidentally,* Homegoods was able to serve its verified responses on April 9, 2024, on the same day it filed and served its opposition to plaintiff's discovery motions. The court does not find that Homegoods acted with substantial justification in its delay in serving verified responses to the subject discovery. Nor are there any other circumstances presented that would render awarding sanctions unjust.

The court finds it reasonable to allow 1.5 hours for the preparation of the discovery motions, and 1.5 hours for the review of the opposition and preparation of the reply, at the hourly rate of $400 provided by counsel, and $120 for the cost of filing the motions. Therefore, the total amount of sanctions awarded is $1320.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/23/2024.
(Judge's initials) (Date)