

Tentative Rulings for April 24, 2024
Department 503

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.

23CECG01520 *Corporate America Lending, Inc. v. Harris* is continued to Thursday, June 13, 2024, at 3:30 p.m. in Department 503

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Tentative Rulings for Department 503

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Tentative Ruling

Re: **East Rocky Foods LLC v. Lee Perkins**
Superior Court Case No. 22CECG03212

Hearing Date: April 24, 2024 (Dept. 503)

Motion: By Plaintiff East Rocky Foods LLC for Terminating Sanctions as to Defendant Lee Perkins

Tentative Ruling:

To grant the request for terminating sanctions in favor of plaintiff East Rocky Foods LLC and against defendant Lee Perkins. Defendant Lee Perkins' answer filed December 5, 2022 is stricken. Plaintiff may file the request to enter defendant's default on the required Judicial Council forms.

To strike the answer filed August 21, 2023¹. This answer was filed to the First Amended Complaint which was stricken pursuant to the August 18, 2023 Order After Hearing for being filed without leave to amend.

Explanation:

Once a motion to compel discovery is granted, continued failure to comply may support a request for more severe sanctions. 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. For failure to obey the court's discovery orders or to appear at a noticed deposition, the court may:

"[M]ake 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)..."

(Code Civ. Proc. §§ 2025.450, subd. (d) [depositions]; 2030.290, subd. (c) [interrogatories]; and 2031.300, subd. (c) [production demands].) Factors relevant to determining which sanction is appropriate include:

1. The time which has elapsed since the discovery was served;
2. Whether the party received extensions of time to answer;
3. The amount of discovery propounded;

¹ There are other issues with this answer. It is filed by Lee Perkins, as self-represented, but implies that it is filed on behalf of Lee Perkins, Pacific Grain & Foods, LLC, and Jacquelyn Perkins. Jacquelyn Perkins is not a party to this action since the First Amended Complaint naming her was stricken. Additionally, as a non-attorney, Lee Perkins is not permitted to represent anyone but himself.

4. The importance of the discovery sought;
5. Whether the party failing to answer acted in good faith and with reasonable diligence (i.e. whether he or she was aware of the duty to furnish the requested information and had the ability to do so);
6. Whether answers were supplied that were evasive or incomplete;
7. The amount of unanswered discovery remaining;
8. Whether the unanswered discovery requested information that was difficult to obtain;
9. The existence of prior discovery orders and the responding party's compliance with those prior orders;
10. Whether the responding party was unable to comply with prior discovery orders;
11. Whether an order allowing more time to answer would enable the responding party to comply; and
12. Whether a sanction short of dismissal or default would be appropriate to the dereliction.

(Weil & Brown, California Practice Guide: Civil Procedure Before Trial (The Rutter Group 2022), ¶ 8:2205, citing *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796.)

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. (Weil & Brown, *supra*, at ¶ 8:2212.) “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.” (*Caryl Richards, Inc. v. Superior Court* (1961) 188 Cal.App.2d 300, 304.)

Here, on May 11, 2023, the court ordered defendant Lee Perkins to provide responses to Form Interrogatories (Set One), Special Interrogatories (Set One), Requests for Production of Documents (Set One), and monetary sanctions. (See Minute Order, May 11, 2023.) The court reiterated these orders again on August 18, 2023. (See Order After Hearing, August 18, 2023.) Defendant Perkins appeared at the hearing on plaintiff's first motion for terminating sanctions on August 10, 2023 and yet has twice failed to comply with this court's orders. Defendant was served with the discovery requests on January 9, 2023. More than a year has passed since the responses were due on February 13, 2023.

It appears that defendant Lee Perkins will not comply with this court's orders. It does not appear that allowing defendant more time to respond will enable him to comply or to participate in this matter. As such, the court is granting plaintiff's request for terminating sanctions and will strike defendant Lee Perkins' answer filed December 5, 2022.

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

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Tentative Ruling

Re: **Alcantar v. General Motors, LLC**
Superior Court Case No. 23CECG00171

Hearing Date: April 24, 2024 (Dept. 503)

Motion: Plaintiff's Motion to Compel Further Responses to Requests for Production of Documents

Tentative Ruling:

To deny.

Explanation:

This motion was filed without leave of court. Where the moving party's request for a Pretrial Discovery Conference under The Superior Court of Fresno County Local Rules, Rule 2.1.17 ("Local Rule 2.1.17"), has been denied (as here), that Rule specifies that a motion to compel further discovery responses may only be filed where the order denying expressly grants moving party permission to do so. Despite plaintiff's argument that she complied with Local Rule 2.1.17, she did not. Not only did the court's denial order not expressly grant permission, it expressly told plaintiff that she was "NOT authorized to file a MTC [Motion to Compel]." (Order filed Feb. 7, 2024.) Plaintiff correctly states that the court ordered the parties to engage in "at least one telephone call and/or face-to-face meeting," but the court also directed plaintiff to "[s]ee local rules." (*Ibid.*) This did not give plaintiff permission to file the motion after making at least one telephone call. Plaintiff was required to follow the local rule and once again request a pretrial discovery conference. Since this motion was not filed in conformity with Local Rule 2.1.17, it will not be considered on its merits.

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: jyh on 4/22/24.

(Judge's initials) (Date)

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Tentative Ruling

Re: **Johnson & Wood Construction Inc. v. Nickens**
Superior Court Case No. 23CECG00661

Hearing Date: April 24, 2024 (Dept. 503)

Motion: Default Prove-Up Hearing

Tentative Ruling:

To continue to Thursday, May 30, 2024, at 3:30 p.m. in Department 503. The paperwork described below must be filed on or before May 15, 2024.

Explanation:

Plaintiff has not filed a Request for Court Judgment Form (CIV-100), and use of this form is mandatory. (*Simke, Chodos, Silberfeld & Anteau, Inc. v Athans* (2011) 195 Cal.App.4th 1275, 1287(required with prove-up hearing).) This is a dual-purpose form, used for requesting both entry of default and court judgment. While this form was used request entry of default against defendants, plaintiff must file and serve it again when requesting entry of judgment.

Plaintiff should also file a prove-up brief, which provides the critical focus for the court's attention in preparing for the hearing. (Cal. Rules of Court, Rule 3.1800(a)(1).) The brief should clearly show how plaintiff intends to calculate damages and interest in this case, and what proof of damages will be submitted. While the amount of damages plaintiff seeks was clearly alleged in the complaint, a default does not, however, admit that the amount prayed for is the proper amount. (*Brown v. Superior Court* (1966) 242 Cal.App.2d 519, 526.) The court is required to enter judgment only for such sum as appears just. (Code Civ. Proc., § 585, subd. (b).) Plaintiff must present evidence proving the amount of damages. Without such evidence, the court may refuse to enter judgment in any amount, notwithstanding defendant's default. (*Taliaferro v. Hoogs* (1963) 219 Cal.App.2d 559, 560.) The court prefers evidence to be submitted by way of declarations rather than by live testimony.

Also, plaintiff must dismiss all defendants against whom judgment is not sought (here, unnamed Doe defendants). (Cal. Rules of Court, Rule 3.1800(a)(7).)

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: jyh **on** 4/23/24 .
 (Judge's initials) (Date)