

Tentative Rulings for May 28, 2025
Department 502

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.*

21CECG02866 *Baldeep Dhindsa v. Suretec Insurance Company*

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(03)

Tentative Ruling

Re: ***Western States Petroleum Association v. California Air Resources Board***

Superior Court Case No. 23CECG02976

Hearing Date: May 28, 2025 (Dept. 502)

Motion: Petitioner/Plaintiff's Application to Admit J. Mark Little as Counsel *Pro Hac Vice*

Tentative Ruling:

To grant petitioner/plaintiff's application to admit J. Mark Little as counsel *pro hac* vice.

Explanation:

Mr. Little has complied with all of the requirements of Rule 9.40. He has provided his home and business addresses. He is a member in good standing of the Texas State Bar, as well as being admitted to several federal District Courts, federal Courts of Appeal, and the United States Supreme Court. He has not been suspended or disbarred in any court. He has sought admission *pro hac vice* in California in one other case in the last two years. The application was granted in December of 2024. He also has a California attorney, Rica Garcia, who is one of the California attorneys of record for petitioner in this case. Petitioner has also paid the required fees to the State Bar and given them notice of the application. The other parties have been served with notice of the application, and they have not filed opposition or objected to the application. Therefore, the court intends to grant the application for *pro hac vice* admission.

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: KCK on 05/27/25
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***In re: Viviana Moreno***
Superior Court Case No. 25CECG02115

Hearing Date: May 28, 2025 (Dept. 502)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant and sign the proposed order approving compromise. No appearances necessary.

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: **KCK** **on** **05/27/25** .
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: **Gabino Barranco Cruz v. Harbinder Singh**
Superior Court Case No. 24CECG04612

Hearing Date: May 28, 2025 (Dept. 502)

Motion: Defendants' Motion to Compel Plaintiff's Mental Examination,
and for Monetary Sanctions

Tentative Ruling:

To grant defendants' motion to compel plaintiff's mental examination. To deny plaintiff's request to have the raw data from the examination disclosed to his attorneys. The raw data shall be provided only to plaintiff's expert, not his attorneys. To deny defendants' request for monetary sanctions against plaintiff and his attorneys.

Explanation:

"A defendant generally may obtain a mental examination of a plaintiff if the plaintiff has placed his or her mental condition in controversy. ([Code Civ. Proc.] § 2032.020, subd. (a).) To obtain discovery by a mental examination, the defendant must seek leave of court, with the motion specifying 'the time, place, manner, conditions, scope, and nature of the examination, as well as the identity and the specialty, if any, of the person or persons who will perform the examination.' (§ 2032.310, subds. (a), (b).)" (*Randy's Trucking, Inc. v. Superior Court* (2023) 91 Cal.App.5th 818, 833.)

"The court may order the mental examination only on a showing of good cause. (§ 2032.320, subd. (a).) Its order granting the examination must specify certain details of the examination, including 'the person or persons who may perform the examination, as well as the time, place, manner, diagnostic tests and procedures, conditions, scope, and nature of the examination.' (*Id.*, subd. (d).) Both the examiner and examinee 'have the right to record a mental examination by audio technology.' (§ 2032.530, subd. (a).) If a party submits to a mental examination, 'that party has the option of making a written demand that the party' seeking the examination deliver to the demanding party '[a] copy of a detailed written report setting out the history, examinations, findings, including the results of all tests made, diagnoses, prognoses, and conclusions of the examiner.' (§ 2032.610, subd. (a)(1).) If the option is exercised, a copy of the requested reports must 'be delivered within 30 days after service of the demand, or within 15 days of trial, whichever is earlier.' (§ 2032.10, subd. (b).)" (*Id.* at pp. 833-834.)

However, the statutes do not expressly require production of the "raw data" from the examination. They only require production of a copy of any written reports made by the examiner. (Code Civ. Proc., § 2032.610, subd. (a).)

Here, plaintiff has alleged that he suffered neurological damage as a result of the accident, including traumatic brain injury, post-traumatic stress disorder, depression, and headaches. Therefore, plaintiff has placed his mental and emotional health conditions at issue, and defendant is entitled to compel plaintiff to submit to a mental examination.

Defendants have demanded that plaintiff submit to a mental examination by a neuropsychologist. Plaintiff has agreed to submit to the examination, but has demanded that defendants' examiner provide the raw test data and questions to plaintiff's counsel in order to assist in understanding the results and cross-examine defendant's expert about his or her conclusions. Defendants have refused, contending that no neuropsychologist would agree to perform the testing if they had to release the raw data, as it would constitute a violation of their ethical duties. Defendants claim that plaintiff's counsel could use the raw data to coach plaintiff or other clients in the future, and might also allow other examinees to try to "beat" the testing and manipulate the test results. Defendants have provided a declaration signed by 160 neuropsychologists, which is allegedly 94% of the neuropsychologists in California, stating that they would not perform tests if they were required to release their raw data to plaintiff's counsel, even if a protective order were in place. (Exhibit K to Marcia decl.) Defendants claim that they will be unable to locate an expert to conduct the testing if they have to release the raw data, and therefore the court should order plaintiff to submit to the mental examination without releasing the test data to plaintiff's counsel. They offer to have the raw data released to plaintiff's expert instead, with the limitation that it will not be released to plaintiff's counsel. However, plaintiff has refused to allow the mental examination unless the raw data is released to plaintiff's counsel as well as their expert.

In his opposition, plaintiff cites to *Randy's Trucking, Inc. v. Superior Court*, *supra*, 91 Cal.App.5th 818 for the proposition that his attorney is entitled to obtain the raw data from the mental examination. Plaintiff contends that his attorney needs the raw data in order to understand the expert's report and effectively cross-examine him. He contends that a protective order will be sufficient to address any concerns about improper dissemination or use of the raw data. Therefore, plaintiff concludes that he should be ordered to attend the examination, with the raw data from the examination being provided to his expert and his attorney subject to a protective order limiting its use and dissemination.

Thus, the parties agree that plaintiff's mental condition is at issue and that he should submit to a mental examination. The only real issue here is whether the plaintiff's counsel should be allowed to obtain the raw data from the examination, or whether the data should be provided only to plaintiff's expert for review.

The Fifth District Court of Appeal in *Randy's Trucking, Inc. v. Superior Court*, *supra*, 91 Cal.App.5th 818 recently addressed the same issue. However, contrary to plaintiff's contention, *Randy's Trucking* did not categorically hold that all plaintiffs who must submit to a psychological examination are always entitled to production of the raw data from the examination to their attorneys. Instead, the Court of Appeal held that, under the circumstances and evidence presented, the trial court did not abuse its discretion in ordering the raw data to be provided to plaintiff's counsel. (*Id.* at pp. 834-835.)

"[G]iven the trial court's broad discretion in discovery matters, the trial court nevertheless has the power to order disclosure of test materials and data to the plaintiff's attorney." (*Id.* at p. 835, citations omitted.) On the other hand, the court also held that "a trial court is not *required* to order the production of test materials or test data under section 2032.610." (*Id.* at p. 837, italics in original.) The Court of Appeal then concluded that, in the context of the facts of that case, the trial court did not abuse its discretion when it ordered production of the raw data from the testing to plaintiff's counsel. (*Id.* at

pp. 837-838.) “Based on the record before it, the trial court reasonably could find plaintiffs had a legitimate need for the raw data and audio recording and the concerns about maintaining test security would be satisfied with a protective order. While defendants assert Dr. Victor stated she would violate her professional and ethical obligations if she transferred the raw data and audio recording to plaintiffs’ attorney, Dr. Victor did not state that those obligations would be violated if a protective order were issued.” (*Ibid.*)

The Court of Appeal also rejected defendants’ argument that they would not be able to find another expert who would agree to perform the testing if they had to reveal the raw data to plaintiff’s counsel. “When the trial court issued the transmission order, however, it did not have before it any evidence defendants would be unable to retain another neuropsychologist should Dr. Victor recuse herself. Based on the record before it, the trial court reasonably could believe defendants would be able to retain a neuropsychologist who would comply with its order.” (*Id.* at p. 842.) “In sum, the trial court did not abuse its discretion in ordering transmission of raw data and audio recording to plaintiffs’ attorney subject to a protective order, as plaintiffs demonstrated a need for the materials and the protective order would address the concerns about test security and integrity.” (*Ibid.*)

While the present case is similar to *Randy’s Trucking*, it differs from that case in some significant ways. First, defendants have now obtained a declaration signed by approximately 160 neuropsychologists, who state that they would not agree to do a mental examination if they were required to provide a non-psychological expert with their raw data from the testing. (Exhibit K to Marcia decl.) They have several concerns about disseminating their raw data to attorneys, including that future clients could be coached on how to take and “pass” performance validity test, or how to score lower than their true ability level on standard cognitive tests. (*Id.* at ¶ 5.) They are also concerned that the tests could be released to the public, either intentionally or by accident, which would potentially render the tests useless as well as violating the ethical standards for psychologists. (*Id.* at ¶¶ 6-9.) They also state that protective orders would be insufficient to address these concerns, as test data could be easily disseminated digitally, and once released it would be impossible to “unring the bell” and get the information back. (*Id.* at ¶¶ 10-11.) Also, the raw data would be of little use to counsel, who are not trained to interpret the data. (*Id.* at ¶ 13.)

“In summary, allowing non-psychologists to receive protected psychological test materials, including examinee’s specific responses, test questions, and test stimuli, poses a serious threat of widespread social harm by compromising test security. [¶] I would not agree to releasing protected test information that would jeopardize future use of tests to a non-psychologist, including attorneys, even under a protective order. If this stipulation cannot be met, I would recuse myself from a case.” (*Id.* at ¶¶ 14-15.)

Thus, defendants have now shown that a substantial number of neuropsychologists (allegedly about 94% of all neuropsychologists in California) would not agree to release their raw data even if a court issues a protective order, and that they would refuse to perform testing if they were required to release their data. By contrast, in *Randy’s Trucking* the trial court only had evidence of three neuropsychologists who had refused to release their test data, which the trial court found was not enough to show that the majority of experts in the field would not release their data. Here, the declaration of 160 neuropsychologists stating that they will not agree to do tests if they have to release their test data is a much more significant sample of the

total community of neuropsychologists in the state, and is enough to conclude that there is a consensus in the professional community that such raw test data should not be released to non-professionals.

Also, the expert in *Randy's Trucking* did not provide any detailed reasons why releasing the test data would violate her ethical and professional responsibilities. The neuropsychologists in the present case, on the other hand, have provided a lengthy and compelling explanation of why it would violate their ethical duties to release the test data, including compromising the integrity of the tests and rendering the standardized test questions useless, as well as potentially allowing attorneys and their clients to manipulate the test results.

In addition, as pointed out in the declaration, attorneys do not have the education, training, and background to interpret the raw test data, so it would be of little use to them even if they obtained it. Defendants have offered to provide the raw data to plaintiff's expert, who can then interpret the data and convey his impressions and opinions to plaintiff's counsel. While plaintiff's counsel contends that he cannot conduct an adequate cross-examination of defendants' expert without the raw data, it is unclear how the data would be useful to a non-psychologist when cross-examining the expert. Again, plaintiff's counsel is not a psychological expert, so providing him with the raw data from the tests would not be helpful to him unless it is first interpreted by another psychological expert. Since defendants have already offered to provide the data to plaintiff's expert, who can then interpret the data and provide plaintiff's counsel with his opinions, plaintiff's counsel should be able to conduct an effective cross-examination of defendants' expert.

While plaintiff's counsel contends that he should not be required to retain an expert to obtain the raw data from the examination, here plaintiff has already retained an expert to examine the plaintiff, so plaintiff's objection is misplaced. In fact, plaintiff's expert himself apparently is also unwilling to release the raw data from his examination of plaintiff, which undermines plaintiff's contention that the raw data from mental examinations should always be released.

Furthermore, if the court were to order the release of the raw data from the examination, it might well prevent defendants from conducting a mental examination of plaintiff, as at least 160 psychological professionals have stated that they would not agree to conduct a psychological examination if they had to release the raw data from the examination, even if there was a protective order in place. In effect, granting such an order would deny defendants the ability to defend themselves from plaintiff's neurological injury claim, which is presumably a major component of his total claimed damages, as they would be unable to locate a qualified neuropsychologist to conduct an examination of plaintiff. By contrast, plaintiff has already been examined by his own expert, so he will be able to present a convincing expert to the jury to testify about his injuries, whereas defendant will not have any expert to rebut this evidence. Such a ruling would be highly prejudicial to defendants, as it would deny them the ability to present evidence to the jury about whether plaintiff had in fact suffered neurological injuries, and if so, how severe those injuries are.

On the other hand, plaintiff will not be significantly prejudiced if the court denies him the right to have the raw data from the testing provided to his attorney, as the raw data will still be provided to his expert for review. The expert can then give plaintiff's

Therefore, the court intends to grant the motion to compel plaintiff to attend his mental examination with defendant's neuropsychologist expert. Plaintiff shall be allowed to audio record the examination, and the raw test data shall be provided to his expert. However, the court will not require the raw test data to be provided to his attorneys.

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.

Issued By: KCK **on** 05/27/25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: **Omar Lopez v. Denise Dee Perez**
Superior Court Case No. 23CECG02545

Hearing Date: May 28, 2025 (Dept. 502)

Motion: By Defendant Denise Dee Perez for Leave to File Cross-Complaint; and to Continue Trial

Tentative Ruling:

To grant defendant Denise Dee Perez leave to file the proposed cross-complaint. Defendant Denise Dee Perez shall serve and file her cross-complaint within 10 days of the date of service of this order.

To grant the motion for trial continuance and vacate trial set July 21, 2025, trial readiness set for July 18, 2025, and the mandatory settlement conference set for July 24, 2025.

To set a Trial Setting Conference for June 26, 2025, 3:30 p.m. in Department 502.

Explanation:

Defendant Denise Dee Perez ("Defendant") seeks leave to file a cross-complaint to state a claim against plaintiff Omar Lopez ("Plaintiff") and nonparty Olga Lopez for fraud, undue influence, and to quiet title.

Defendant contends that she seeks to state a claim against Plaintiff for issues arising out of the same facts and incidents alleged by Plaintiff in the First Amended Complaint. As Defendant seeks to state a claim against, among others, Plaintiff related to Plaintiff's causes of action, the cross-complaint is compulsory. (Code Civ. Proc. § 426.30, subd. (a).)

Where a proposed cross-complaint is compulsory and seeks to state a claim against the plaintiff after the time to file an answer has passed, Code of Civil Procedure section 426.50 controls. Code of Civil Procedure section 426.50 states that:

A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action.

(29)

Tentative Ruling

Re: ***The Dentists Insurance Company v. Legacy Stone Works, Inc.***
Superior Court Case no. 24CECG03605

Hearing Date: May 28, 2025 (Dept. 502)

Motion: Application of Jodi E. Barrett to appear as counsel *pro hac vice*

Tentative Ruling:

To grant the application. (Cal. Rules of Court, rule 9.40.)

Explanation:

Defendant/cross-defendant Tyco Fire Products, LP, has filed an application for attorney Jodi E. Barrett to appear in the above-titled case, *pro hac vice*. The revised application complies with the requirements of California Rules of Court, rule 9.40, and no opposition has been filed. The application is granted.

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: KCK **on** 05/27/25
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***In re: Nathan Garcia***
Superior Court Case No. 24CECG04270

Hearing Date: May 28, 2025 (Dept. 502)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant. Order approving compromise signed. No appearance necessary.

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: KCK **on** 05/27/25.
(Judge's initials) (Date)