Tentative Rulings for June 3, 2025
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.***

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 501

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(03)

Tentative Ruling

Re: ***Johnston v. Malang***
Case No. 22CECG02017

Hearing Date: June 3, 2025 (Dept. 501)

Motion: by Defendant to Compel Plaintiff's IME and Request for Sanctions

Tentative Ruling:

To deny defendant's motion to compel plaintiff's IME and request for sanctions, without prejudice, for failure to comply with the Fresno Superior Court's pretrial discovery conference requirement.

If oral argument is timely requested, such argument will be entertained on Tuesday, June 10, 2025, at 3:30 p.m. in Department 501.

Explanation:

Defendant has not shown that he complied with Fresno Superior Court Local Rule 2.1.17 by filing a request for pretrial discovery conference and obtaining leave of court before filing the present motion.

Under Local Rule 2.1.17 A, "[n]o motion under sections 2017.010 through 2036.050, inclusive, of the California Code of Civil Procedure shall be heard in a civil unlimited case unless the moving party has first requested an informal Pretrial Discovery Conference with the Court and such request has either been denied and permission to file the motion is granted via court order or the discovery dispute has not been resolved as a result of the Conference and permission to file the motion is expressly granted." (Fresno Sup. Ct. Local Rules, rule 2.1.17 A.)

"This rule shall not apply the following: 1. Motions to compel the deposition of a duly noticed party or subpoenaed person(s) who have not timely served an objection pursuant to Code of Civil Procedure section 2025.410; 2. Motions to compel initial responses to interrogatories, requests for production and requests for admissions; 3. Motions to quash or compel compliance regarding a subpoena served on a nonparty; and 4. Motions to compel compliance with initial disclosures." (Fresno Sup. Ct. Local Rules, rule 2.1.17 A 1-4, paragraph breaks omitted.)

Here, defendant seeks to compel plaintiff's IME under Code of Civil Procedure section 2032.250. A motion to compel an IME is not one of the types of motions expressly excluded from the pretrial discovery conference requirement. Therefore, defendant was required to file a request for a pretrial discovery conference and obtain leave of court before filing his motion to compel the IME. However, defendant has not filed a pretrial discovery conference request, nor has he obtained a court order allowing him to file his motion to compel the IME.

As a result, the court intends to deny the motion to compel the IME, without prejudice, for failure to comply with the pretrial discovery conference requirement. The court will also deny the request for monetary sanctions against 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 5/28/2025.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Iler v. Fresno Community Hospital and Medical Center***
Superior Court Case No. 23CECG03097

Hearing Date: June 3, 2025 (Dept. 501)

Motion: by Plaintiff Henry Justin Iler for an Order Enforcing Communication Protocols

Tentative Ruling:

To deny. (Cal. Rules of Ct., rule 1.100(f)(1).)

If oral argument is timely requested, such argument will be entertained on Tuesday, June 10, 2025, at 3:30 p.m. in Department 501.

Explanation:

Plaintiff Henry Justin Iler ("plaintiff") moves under what appears to be California Rules of Court, rule 1.100, seeking a court order directing defendant Fresno Community Hospital and Medical Center ("defendant") to provide certain accommodations regarding communications.

California Rules of Court, rule 1.100, ("the Rule") states a policy of the courts to ensure that persons with disabilities have equal and full access to the judicial system by designating an access coordinator to address requests for accommodations. (Cal. Rules of Ct., rule 1.100(b).) The Rule further provides the means by which a party may make a request. (*Id.*, rule 1.100(c).) Implicit in the Rule is that the applicability is for court access, and not for general orders. (*See id.*, rule 1.100(f)(2) [A request for accommodation may be denied only when the court determines that: (¶) (2) The requested accommodation would create an undue financial or administrative burden on the court." (emphasis added)], (3) ["A request for accommodation may be denied only when the court determines that: (¶) (3) The requested accommodation would fundamentally alter the nature of the service, program or activity"]; *see also* Judicial Council Form MC-410.) Nothing in the Rule suggests that the courts, by and through the Judiciary, may alter the statutory framework set forth by the State Legislature governing what appears to be the foundation for the request, discovery meet-and-confer efforts.

To the extent that the Rule might be viewed under the court's inherent authority to control litigation, plaintiff fails to satisfy the requirements as set forth by the Rule. Specifically, plaintiff fails to use the form approved by the Judicial Council. (Cal. Rules of Ct., rule 1.100(c)(1).) Plaintiff further fails to demonstrate that the accommodation sought is related to the medical conditions that would necessitate the accommodation. While the court is sympathetic to plaintiff's conditions, plaintiff submits that the listed conditions impair his ability to participate in unstructured or unscheduled verbal communications. However, the accommodations sought exceed the scope of limiting verbal communications. Plaintiff seeks an order limiting all meet and confer efforts be

conducted in writing; that defendant "confirm receipt within five (5) court days, respond within ten (10) court days, and reply to email confirmations within 24 hours"; require immediate notice if any attachments fail to transmit; stipulate that such communications meet the standards set forth by the Code of Civil Procedure; and impose an issue sanction to the extent that such accommodations are not provided.

In addition to the issue of whether this trial court may alter the requirements set forth by enacted law, none of the requests appear to have a rational relationship to the inability to participate in unstructured or unscheduled verbal communications. Rather, the core of the requests require defendant to act within arbitrarily imposed deadlines, and otherwise foreclose the possibility of having structured, scheduled verbal communications.

Defendant opposes. Defendant suggests that plaintiff has had no difficulty in accessing justice as reflected by the present docket of this action. Defendant submits that prior efforts by the parties to meet and confer, via oral and written communications, have generally been successful, regardless of whether the parties ultimately resolve disputes. Though Defendant suggests that plaintiff has not proven his disability, neither the Rule, nor this court, will require plaintiff to produce evidence of a disability.

From the above, the court finds that plaintiff's requested order does not comport with the procedure set forth by the Rule, nor is requested order sufficiently demonstrated as necessary to accommodate the nature of plaintiff's disabilities. (Cal. Rules of Ct., rule 1.100(f)(1).)

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 6/2/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Longoria v. American Honda Motor Co., Inc.***
Superior Court Case No. 24CECG05227

Hearing Date: June 3, 2025 (Dept. 501)

Motion: by Defendant for Relief from Waiver of Discovery Objections

Tentative Ruling:

To grant defendant American Honda Motor Co., Inc.'s motion for relief from waiver of objections to its responses to Form Interrogatories, Set One, Special Interrogatories, Set One, Request for Production of Documents, Set One, and Request for Admissions, Set One.

If oral argument is timely requested, such argument will be entertained on Tuesday, June 10, 2025, at 3:30 p.m. in Department 501.

Explanation:

Under Code of Civil Procedure sections 2030.290, subdivision (a), 2031.300, subdivision (a), and 2033.280, subdivision (a), relief from waiver of objections due to a late response may be granted where both of the following conditions are satisfied:

> (1) The party has subsequently served a response that is in substantial compliance with [relevant Discovery Act sections]
>
> (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Though Code of Civil Procedure section 473, subdivision (b), does not apply, since sections 2030.290, 2031.300 and 2033.280 provide for relief from waiver, and the language in those sections mirrors the relief language in section 473, subdivision (b), the legislature intended that "general principles developed in application of section 473 would be utilized in connection with the discretion to be exercised pursuant to the [Discovery] Act." (*Scottsdale Ins. Co. v. Superior Court* (1997) 59 Cal.App.4th 263, 275.)

In *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 234, the court found that "[w]here any attorney states that he was unaware of his duty to appear or answer because his employees misplaced papers or misinformed him as to a relevant date, relief is routinely granted." *Elston* also stated that relief should be granted where the default will not seriously prejudice the opposing party.

Here, defense counsel attests to learning of the written discovery requests upon receiving plaintiff's meet and confer letter. (Amended Estep Decl., ¶ 3.) Jeffrey Hay, a paralegal in the Warranty Litigation Group for defendant, attests to receiving the discovery requests with a notice of deposition in multiple emails and inadvertently failed

to forward the written discovery requests to counsel. (Hay Decl., ¶ 3.) As a result of Hay's error, counsel for defendant was unable to respond to the propounded discovery requests before the January 27, 2025, deadline. (*Id*. at ¶4.) In opposition, plaintiff corrects Hays' representation that the discovery was served electronically and provides the proof of service stating the discovery was personally served. (Vaziri Decl., Exh. 1.) The distinction between receiving the discovery in multiple emails from the agent who received service and electronic service directly from plaintiff does not support denial of the motion. The court finds defendant has sufficiently established excusable neglect in its failure to serve timely responses to the subject discovery.

The court further finds that the late-served responses are in substantial compliance with the Civil Discovery Act. Actual, total, perfect compliance is not the standard. Responses are substantially compliant even if they do not comply with all statutory requirements. (See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 782.)

Here, verified responses to the subject discovery were served on February 28, 2025. (Amended Estep Decl. ¶ 5, Exh. C.) Plaintiff states that the responses include meritless objections that are not code-compliant and defendant has failed to produce the documents requested[1]. The latter issue is expected, as defendant contends that the discovery is overly broad. Plaintiff has the opportunity to meet and confer as to the merits of the objections and participate in the Pretrial Discovery Conference process. The fact that plaintiff contends that the objections lack merit does not render the responses non-substantially compliant with the Code of Civil Procedure. As noted in *St. Mary*, the standard is *substantial compliance*, not perfect compliance.

The court finds the responses are substantially code-compliant and intends to grant the motion for relief from waiver.

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 5/30/2025.
(Judge's initials) (Date)

[1] The court additionally notes that Code of Civil Procedure section 871.26 sets forth required preliminary disclosures to be exchanged between the parties, with which the court expects compliance.

(36)

Tentative Ruling

Re: ***Doe, et al. v. Spatafore, et al.***
Superior Court Case No. 21CECG03118

Hearing Date: June 3, 2025 (Dept. 501)

Motions (x2): by Plaintiffs to Compel Deposition

Tentative Rulings:

To deny without prejudice. (*Carehouse Convalescent Hospital v. Superior Court* (2006) 143 Cal.App.4th 1558, 1562.)

Each request for judicial notice is granted. (Evid. Code, § 452, subd. (d).)

If oral argument is timely requested, such argument will be entertained on Tuesday, June 10, 2025, at 3:30 p.m. in Department 501.

Explanation:

Plaintiffs move for an order compelling the deposition of defendant Community Hospitals of Central California's employee and in-house counsel, Nicea Darling.

Under Code of Civil Procedure section 2025.450, "[i]f, after service of a deposition notice, a party to the action… , without having served a valid objection under Section 2025.410, fails to appear for examination, … the party giving the notice may move for an order compelling the deponent's attendance and testimony..." (Code Civ. Proc., § 2025.450, subd. (a).)

"A motion under subdivision (a) shall comply with both of the following: [¶] (1) The motion shall set forth specific facts showing good cause justifying the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice. [¶] (2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040, or, when the deponent fails to attend the deposition and produce the documents, electronically stored information, or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance." (Code Civ. Proc., § 2025.450.)

Additionally, "[d]epositions of opposing counsel are presumptively improper, severely restricted, and require 'extremely' good cause—a high standard." (*Carehouse Convalescent Hospital v. Superior Court* (2006) 143 Cal.App.4th 1558, 1562.) "There are strong policy considerations against deposing an opposing counsel. The practice runs counter to the adversarial process and to the state's public policy to '[p]revent attorneys from taking undue advantage of their adversary's industry and efforts.' (Code Civ. Proc., § 2018.020, subd. (b).)" (*Ibid*.) "To effectuate these policy concerns, California applies a three-prong test in considering the propriety of attorney depositions. First, does the

proponent have other practicable means to obtain the information? Second, is the information crucial to the preparation of the case? Third, is the information subject to a privilege?" (*Id*., at p. 1563.)

The moving party has the burden of proof to establish the first two prongs, and at least one federal court, "has placed the burden of establishing the applicability of the attorney-client privilege and work product doctrine on the party opposing discovery." (*Carehouse Convalescent Hospital, supra,* at p. 1563 referring to *First Sec. Sav. v. Kansas Bankers Sur. Co.* (D.Neb.1987) 115 F.R.D. 181, 182.)

Here, plaintiffs have shown that CHCC have refused to make Ms. Darling available for deposition on at least two occasions and that they do not intend to make her available. The parties have met and conferred on the issue and plaintiffs have filed a Request for Pretrial Discovery Conference in order to seek Ms. Darling's participation in the deposition.

Plaintiffs indicate that Ms. Darling's attendance at deposition is necessary as there is no other practicable means to obtain the information and the information is crucial to the preparation of the case. In particular, plaintiffs seek to discover whether defendant John Spatafore accessed plaintiffs' personal information through CHCC's systems in order to perpetuate the alleged stalking and harassment. Plaintiffs explain that CHCC conducted two investigations on the matter, one in cooperation with the criminal matter against defendant Spatafore and another in relation to defendant Spatafore's employment with CHCC. Plaintiffs present evidence to show that in response to search warrants issued by the Fresno Police Department ("Fresno PD") to CHCC, Ms. Darling provided two flash drives and defendant Spatafore's work desktop computer[2] to the Fresno PD. (Whelan Decl., filed on February 19, 2025, Ex. K at ¶¶ 17-21.) According to CHCC, these flash drives contained email files and internet search data of defendant Spatafore. (*Id*., at Ex. G, No. 2.) Only one of these flash drives have been produced, CHCC indicates that the other containing the emails was not retained. (*Ibid*.)

Fresno PD also seized defendant Spatafore's work laptop from his residence. According to Detective Patrick Mares of the Fresno PD, this laptop was returned to CHCC and specifically released to Ms. Darling. (Whelan Decl., filed on February 19, 2025, Ex. K at ¶ 23.) While Detective Mares did not conduct a full investigation into defendant Spatafore's access of plaintiffs' medical information on CHCC's medical record system, EPIC, he does note that there was web logs of defendant Spatafore indicating access to the website for the EPIC system located within Spatafore's work laptop which would suggest such use. (*Id.*, at ¶ 18.) It is also noteworthy that Detective Mares indicates that it is his belief that all of the flash drives were turned over to plaintiff's counsel in response to a subpoena in this case. (*Id*., at ¶ 20.) However, plaintiffs indicate that the flash drive containing the email files were never produced and were lost.

Based on the information provided by both parties, it is unclear to the court which parties would have information as to the custody and location of the flash drive containing the e-mails; however, it is sufficiently shown that the work laptop was released

[2] The evidence contained within the work desktop computer does not appear to be at issue, since it is undisputed that it is currently in the custody of Fresno PD.

to Ms. Darling. (Whelan Decl., filed on February 19, 2025, Ex. K at ¶ 23.) CHCC concedes that the laptop has since been "inadvertently e-wasted", which the court assumes to mean that the laptop is unavailable for unspecified reasons. Plaintiffs have also shown that this laptop likely would have contained information crucial to establishing their cause of action relating to liability under California's Confidentiality of Medical Information Act. (Whelan Decl., filed on February 19, 2025, Ex. K at ¶ 18.)

However, CHCC argues that plaintiffs have not met their burden in showing that Ms. Darling is the *only* individual with knowledge pertaining to the information contained within the laptop and/or the whereabouts of the laptop and the actions taken to preserve it. CHCC argues that they have identified three individuals who would possess knowledge of the relevant facts: Nicea Darling, Brandon Bedsted and Eric Saff. While the opposition does not clarify how these other two individuals would possess knowledge of the relevant facts, the court notes that CHCC's discovery responses presented by plaintiffs indicates that Ms. Darling returned all materials received from the Fresno PD, which the court assumes would include the subject laptop, to Frankie Rios, CHCC's former VP, Chief Information Security Officer. (*Id*., at Ex. G, No. 6.) These discovery responses further disclose that while the names of the individuals who prepared the flash drives are not known, CHCC believes that the flash drives were created at the direction of Frankie Rios. (*Id*., at Ex. G, No. 3.) As a result, even though plaintiffs indicate that Mr. Saff has disclaimed any knowledge of the laptop and criminal investigation and Mr. Bedsted has no involvement in this investigation, it appears there are *other* individuals possessing the same, if not more, information than Ms. Darling. Even though plaintiffs indicate that Mr. Rios is in Texas and defendants have refused to produce him for deposition, plaintiffs do not otherwise indicate why Mr. Rios cannot be compelled to deposition.

Accordingly, plaintiffs have not met their burden in showing that they lack other practicable means of obtaining the information sought and the motion is denied without prejudice.[3]

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 5/30/2025.
(Judge's initials) (Date)

[3] The third-prong pertaining to the attorney-client privilege and work product doctrine is therefore not addressed.