

**Tentative Rulings for June 22, 2016**  
**Departments 402, 403, 501, 502, 503**

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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).)

15CECG01279    *Eller v. Arax et al.* (Dept. 503)

15CECG00179    *Webb v. Tavassoli* (Dept. 503)

15CECG02494    *Lafuente v. Garcia* (Dept. 501)

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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.

15CECG02967    *Valley Children's Hospital v. Moua* (Dept. 503) [Hearing on motion for stay is continued to June 23, 2016, at 3:30 p.m. in Dept. 503]

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(Tentative Rulings begin at the next page)



(24)

**Tentative Ruling**

Re: **Reyes v. Barnell**  
Court Case No. 15CECG00659

Hearing Date: **June 22, 2016 (Dept. 402)**

Motion: Defendants Migran Kutnerian and Kutnerian Enterprises Motion for Summary Judgment and, in the Alternative, Summary Adjudication

**Tentative Ruling:**

To deny the motion in its entirety, without prejudice.

**Explanation:**

The court is denying this motion based on moving parties' failure to follow pertinent requirements of motions for Summary Judgment/Adjudication.

- *Request for Judicial Notice*

The Request for Judicial Notice seeks notice of two exhibits which cannot be judicially noticed due to defendants' failure to authenticate them, namely the disc ("CD") purporting to be a recording of the trial in the related Unlawful Detainer action (Fresno Superior Court Case No. 15CECL01766), and the Reporter's Transcript purporting to be of the trial recording.

As for the CD, defendants have submitted nothing to prove that it is what it purports to be. (Evid. Code § 1400; *Landale-Cameron Court, Inc. v. Ahonen* (2007) 155 Cal.App.4th 1401, 1409—"All that is required to authenticate a writing is that there be evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is." (Internal quotes and citation omitted).) However, the Request for Judicial Notice merely states that the CD was "provided by the court" and that it was "included in the record on appeal." (RJN, p.1:8-9.)

First, counsel's unverified statement in the Request for Judicial Notice is not evidence, much less "sufficient evidence." Second, there is nothing ostensibly showing on the CD itself or the files on that CD originated from the court and that this is the court's official recording. The court on its own motion can and does take judicial notice of the Court Trial Minute Order from April 21, 2015 in Case No. 15CECG01766, and it shows that there was indeed a tape recording made of that proceeding. However, there is no evidence showing that the CD attached to the Request for Judicial Notice is that CD. (Furthermore, it should be noted that the volume on those files is so low as to make it nearly impossible to hear the words spoken, especially the judge's.)

As for the Reporter's Transcript, the unverified statement in the Request for Judicial Notice indicates it was commissioned by the moving parties. However, on the

transcript itself the Reporter failed to sign the "Reporter's Certificate," and this Certificate would have adequately authenticated it. But even if it had been, since it does not purport to be a transcript of the hearing itself, but rather a transcript of the recording of the hearing, it still could not be judicially noticed due to the failure to properly authenticate the recording in the first place.

As for all documents of which judicial notice is requested, defendants fail to mark them in a manner that calls attention (and makes for ready reference) to the portions defendants rely on to support their arguments, such as by highlighting or bracketing those portions. While this is not expressly required (Cal. Rules of Court, Rule 3.116 ostensibly applies only to deposition testimony), the goal should be to make the information easier to find rather than more difficult.

- *Separate Statement*

A Separate Statement must follow the requirements of Code of Civil Procedure section 437c ("Section 437c") and California Rules of Court, Rule 3.1350 ("Rule 3.1350"). Section 437c, subdivision (b)(1) requires each of the material facts in the statement to be "followed by a reference to the supporting evidence." "Citation to the evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers." (Rule 3.1350, subd. (d)(3), emphasis added.) However, here defendants only referred generally to the "request number" of the Request for Judicial Notice (e.g., "Kutnerian Request for Judicial Notice, filed and served herewith, Request #1."). This is wholly insufficient. "Separate statements are required not to satisfy a sadistic urge to torment lawyers, but rather to afford due process to opposing parties and to permit trial courts to expeditiously review complex motions for [summary adjudication] and summary judgment to determine quickly and efficiently whether material facts are disputed." *United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 335, brackets added.)

The court does not have the burden to search through the Separate Statement, and then search through the introductory material in the Request for Judicial Notice to attempt to determine what evidence is actually being referred to on the Separate Statement (only to then have to wade through the unmarked, unhighlighted exhibits). "The failure to comply with this requirement...may in the court's discretion constitute a sufficient ground for denial of the motion." (Section 437c, subd. (b)(1).) "Overly general references to supporting evidence, of course, may place an undue burden on busy trial courts [citation] and need not be tolerated: Rule 342 [now Rule 3.1350] requires the parties to include specific citations to the evidence in their separate statements; and the trial court can properly refuse to proceed if the moving party fails to support its proposed undisputed facts with specific references to the evidence." (*Parkview Villas Ass'n, Inc. v. State Farm Fire and Cas. Co.* (2005) 133 Cal.App.4th 1197, 1214 (brackets added), but noting that defects in opposing Separate Statements might merit the allowance of a continuance in order to correct.)

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



(24)

**Tentative Ruling**

Re: **Valencia v. City of Reedley**  
Court Case No. 15CECG00355

Hearing Date: **June 22, 2016 (Dept. 402)**

Motion: Defendant's Motion for Bifurcation

**Tentative Ruling:**

To grant bifurcation, with the issue of defendant's liability to be tried first, pursuant to Code of Civil Procedure section 598.

**Explanation:**

The granting or denying of a motion for bifurcation is within the trial court's sound discretion. (*Grappo v. Coventry Financial Corp.* (1991) 235 Cal.App.3d 496, 502.) The court has inherent power to regulate the order of trial, and therefore can entertain a motion to bifurcate at any time—even during the trial itself. (*McLellan v. McLellan* (1972) 23 Cal.App.3d 343, 353.) However, the order to bifurcate the liability issue under Code of Civil Procedure section 598 must be made no later than 30 days before trial. (*Id.*, first para.) Defendant has filed a timely motion.

Plaintiffs failed to support their argument that bifurcation is in excess of this court's jurisdiction simply because the issue of dangerous condition is involved, which requires at least some presentation of evidence of the "kind of injury which was incurred." (Gov. Code, § 835.) No authority was cited for this proposition. Presenting sufficient evidence for the jury to understand what type of injury occurred does not require a trial on the issue of damages. Furthermore, there are several published cases where personal injury claims against governmental entities were bifurcated on the issue of "dangerous condition of public property," and there is no suggestion in the opinions that this was beyond the respective trial courts' jurisdiction. (See, e.g., *Du Jardin v. City of Oxnard* (1995) 38 Cal.App.4th 174, 177; *McCauley v. City of San Diego* (1987) 190 Cal.App.3d 981, 985; *Arreola v. County of Monterey* (2002) 99 Cal.App.4th 722, 731, as modified on denial of reh'g (July 23, 2002).)

Nor is there an issue as to a second *voir dire* if the same jury is used in both phases, as proposed by defendant. (*Bly-Magee v. Budget Rent-A-Car Corp.* (1994) 24 Cal.App.4th 318, 323-324.)

There is solid support for the idea of bifurcation here, as determination of the issue of "dangerous condition" is dispositive on whether the trial will need to proceed to the issue of damages. In the end, plaintiffs fail to persuade that bifurcation will complicate the issues, confuse the jury, waste time, or that it will remove the "organic humanity" from plaintiffs' case.

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



# **Tentative Rulings for Department 403**

# **Tentative Rulings for Department 501**

(24)

## **Tentative Ruling**

Re: **5985 Enterprises LP v. Schmidt**  
Court Case No. 14CECG02484

Hearing Date: **June 22, 2016 (Dept. 501)**

Motion: Cross-Defendants' Motion for Judgment on the Pleadings as to the Cross-Complaint

### **Tentative Ruling:**

To deny. Cross-Defendants are granted 10 days' leave to file their answer to the Cross-Complaint. The time in which the answer can be filed will run from service by the clerk of the minute order

### **Explanation:**

Cross-complainants have incorrectly stated the alter ego allegations as a separate cause of action, and moving parties attempt to obtain judgment on the pleadings as to it. However, there is no cause of action for alter ego liability. "A claim against a defendant, based on the alter ego theory, is not itself a claim for substantive relief, e.g., breach of contract or to set aside a fraudulent conveyance, but rather, procedural..." (*Hennessey's Tavern, Inc. v. American Air Filter Co.* (1988) 204 Cal.App.3d 1351, 1359.)<sup>1</sup> Alter ego is merely a legal theory, or doctrine, employed to make a substantive cause of action applicable to the "alter ego defendant" where otherwise that claim could only be stated against the corporate entity. Under this theory, plaintiff seeks to "disregard the corporate entity as a distinct defendant and to hold the alter ego individuals liable on the obligations of the corporation where the corporate form is being used by the individuals to escape personal liability, sanction a fraud, or promote injustice." (*Id.*) Thus, a demurrer or motion for judgment on the pleadings regarding alter ego allegations is grounded in arguing that they are insufficient to hold the moving party liable on the substantive cause(s) of action.

Cross-complainants should have simply placed the alter ego allegations in a separate subsection in the "General Facts" portion of the cross-complaint and then alleged each of the three substantive causes of action against all cross-defendants. However, they have effectively accomplished that end by incorporating into their "Fourth cause of action" all prior allegations, thereby restating the allegations of the first three causes of action as to the "alter ego defendants." Likewise, cross-defendants' motion (which merely followed cross-complainants in their pleading error) is regarded

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<sup>1</sup> See also *Ardente, Inc. v. Shanley* (N.D. Cal., Feb. 10, 2010, No. C 07-4479 MHP) 2010 WL 546485, at \*4, a Federal District Court case relied on by cross-defendants (for a different point): "Moreover, [the allegation of alter ego] is not a cause of action but a doctrine for determining the party upon whom liability should be imposed."

as arguing that the alter ego allegations are insufficient to state the three substantive causes of action against all the cross-defendants.

The pleading elements of the doctrine of alter ego are: 1) a unity of interest and ownership between the corporation and its equitable owner such that that no separation between them actually exists, and 2) an inequitable result if the acts in question are treated as those of the corporation alone. (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 417. See also 5 Witkin, Cal. Proc. 5th Plead § 927 (2008)—“The complaint merely sets forth additional facts of improper domination of the corporation as a basis for judgment against the individuals.”) These pleading requirements are not burdensome, and courts have often stressed that it is not even necessary to expressly plead the concept of alter ego, but that it may be raised simply by stating sufficient facts which plead that the “alter ego defendant” is liable for the acts giving rise to liability. (*Los Angeles Cemetery Ass'n v. Superior Court of Los Angeles County* (1968) 268 Cal.App.2d 492, 494—“[W]hile it is the better practice to allege the facts upon which a plaintiff seeks to hold a defendant on the alter ego theory, still it is the law of California that that issue may be raised by a simple allegation that the defendant sought to be charged had made the contract involved.” See also *Pan Pac. Sash & Door Co. v. Greendale Park, Inc.* (1958) 166 Cal.App.2d 652, 655-656.)

Furthermore, alter ego pleading is not subject to the same heightened pleading standard as a “claim sounding in fraud,” as argued by cross-defendants. (See 5 Witkin, Cal. Proc. 5th Plead § 927 (2008), noting that the doctrine itself is not based on fraud. See also *First Western Bank & Trust Co. v. Bookasta* (1968) 267 Cal.App.2d 910, 915.) The two cases cited by cross-defendants do not support their argument: *Vess v. Ciba-Geigy Corp. USA* (9th Cir. 2003) 317 F.3d 1097, 1103-1104, did not involve or discuss alter ego, and in the unpublished District Court case cited, *Ardente, Inc. v. Shanley* (N.D. Cal., Feb. 10, 2010, No. C 07-4479 MHP) 2010 WL 546485, at \*4, the court actually stated it was not aware of any case standing for the proposition that a heightened pleading standard applied to alter ego allegations.

The alter ego allegations are sufficient. Cross-defendants repeatedly argue that cross-complainants have stated *opinion* instead of *fact*. However, such opinions are merely the pleader's allegations *made on information and belief*. This is perfectly appropriate, and routinely done where the pleader is basing his/her allegations on hearsay or surmise rather than personal knowledge. Obviously, it is the pleader's proof that will ultimately determine whether the alleged facts are the “actual facts” (which is what cross-complaints insist are necessary at this juncture). Paragraph 38 is expressly stated on information and belief. Paragraph 39 (which they also argued was merely a “statement of opinion”) is an allegation of the ultimate fact required to be pleaded (that recognition of separate corporate existence would permit abuse of the corporate privilege and sanction fraud) based on the preceding allegations and moreover based on the subsequent factual allegation that cross-complainants *believe* the corporation and limited partners are without funds and would thus be judgment proof.

Further, the allegations cross-defendants call conclusory facts are merely ultimate facts. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550.) For instance, the allegation that cross-defendants have not adhered to corporate formalities is the



# **Tentative Rulings for Department 502**

# **Tentative Rulings for Department 503**

(20)

## **Tentative Ruling**

Re: ***Gaston v. Willow Creek Healthcare Center, LLC***, Superior Court Case No. 15CECG00690

Hearing Date: **June 22, 2016 (Dept. 503)**

Motion: Motion to Compel Further Responses to Special Interrogatories

### **Tentative Ruling:**

To grant. (Code Civ. Proc. § 2030.300(a)(1).) Plaintiff Gail Gaston shall provide further verified responses to special interrogatory nos. 17-20, and Josephine Mino (by and through Gaston) shall serve further verified responses to special interrogatory nos. 55, 56, 59-62. The further responses shall be served within 20 days of service of the order by the clerk.

To impose \$1,400 in monetary sanctions against plaintiffs and in favor of defendant, to be paid to defendant's counsel within 30 days of service of the order by the clerk. (Code Civ. Proc. § 2030.300(d).)

### **Explanation:**

These contention interrogatories asked plaintiffs to identify each instance of contradictory charting, inaccurate charting, and where defendant's records (medical or otherwise) do not fully reflect Josephine Mino's medical condition or clinical prognosis, as alleged in the complaint. The interrogatories are all addressed to specific contentions in the complaint.

Plaintiffs responded, to each and every request: "I have attempted to outline the contradictions between the records and my [or 'my mother's'] actual condition in my First Amended Complaint. I expect that expert witnesses will be able to amplify these contentions."

Interrogatories may seek information pertaining to contentions of the responding party. (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 416-417; *Burke v. Superior Court* (1969) 71 Cal.2d 276, 281-282.)

Each answer in the response be "as complete and straightforward as the information reasonably available to the responding party permits". (Code Civ. Proc. § 2030.220.)

Answers must be complete and responsive. Thus, it is not proper to answer by stating, "See my deposition," "See my pleading," or "See the financial statement." Indeed, if a question does require the responding party to make reference to a pleading or document, the pleading or document should be identified and summarized so the answer is fully responsive to the question.

(*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783-84.)

Here, plaintiffs merely respond, "See my pleading." If plaintiffs know of no contradictory or inaccurate charting beyond what is alleged in the complaint, then they can repeat in a verified response the allegations of the complaint. But simply directing defendant to their complaint is not a proper response.

If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party.

(Code Civ. Proc. § 2030.220(c); *Regency Health Services, Inc. v. Superior Court* (1998) 64 Cal.App.4th 1496, 1504.)

Plaintiffs are under a duty to investigate, and inquire and perform their own analysis of the facts supporting their contentions. That plaintiffs' expert(s) may be able to come up with more examples does not relieve plaintiffs of the responsibility to describe all facts supporting their contention within their knowledge after reasonable inquiry and investigation.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(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:** A.M. Simpson **on** 6/20/16.  
(Judge's initials) (Date)

(23)

**Tentative Ruling**

Re: ***Patricia Gamez v. Del Monte Corporation***  
Superior Court Case No. 14CECG02849

Hearing Date: Wednesday, June 22, 2016 (**Dept. 503**)

Motion: Plaintiff Luis Aguilar's Motion for Leave to File Second Amended Complaint

**Tentative Ruling:**

To grant Plaintiff Luis Aguilar's motion for leave to file second amended complaint. (Code Civ. Proc., § 473, subd. (a)(1).) Plaintiff Luis Aguilar shall file and serve the second amended complaint within 10 calendar days after service of the minute order. All new allegations must appear in **boldface** type.

**Explanation:**

Plaintiff Luis Aguilar ("Plaintiff") moves the Court for an order granting him leave to file a second amended complaint that makes numerous changes, including deleting three named class representative plaintiffs, adding one new named class representative plaintiff, narrowing the wage and hour claims to only the Sanger, California production facility, deleting one entire proposed sub-class, and adding and deleting various factual allegations. Defendants Del Monte Fresh Produce N.A., Inc. and Del Monte Fresh Produce West Coast, Inc. ("Defendants") oppose Plaintiff's motion on the grounds that the proposed amendments would prejudice them and Plaintiff's new proposed class representative is an inadequate class representative.

Initially, the Court notes that it "has discretion to allow amendments to the pleadings 'in the furtherance of justice.'" (Code Civ. Proc., § 473.) This discretion should be exercised liberally in favor of amendments, for judicial policy favors resolution of all disputed matters in the same lawsuit." (*Kittredge Sports Co. v. Superior Court (Marker, U.S.A.)* (1989) 213 Cal.App.3d 1045, 1047.) Therefore, rather than decide the merits of the proposed amendments in the instant motion, the Court determines that it would be most proper to permit the amendment and allow Defendants to challenge the factual and/or legal sufficiency of the new second amended complaint by an appropriate motion or motions. (*California Casualty General Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 280-281, disapproved on other grounds in *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390, 407, fn. 11.) Further, the Court finds that Defendants have failed to establish that they will suffer any prejudice if the instant motion is granted.

Accordingly, the Court grants Plaintiff's motion for leave to file a second amended 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:** A.M. Simpson on 6/21/16.  
(Judge's initials) (Date)

**Tentative Ruling**

Re: **Davis v. Chokatos**  
Case No. 12 CE CG 02059

Hearing Date: June 22<sup>nd</sup>, 2016 (Dept. 503)

Motion: Defendant Igbinosa's Motion for Protective Order

**Tentative Ruling:**

To grant defendant Igbinosa's motion for protective order relieving him from having to respond to the request for production of documents, set two, served on him on November 8<sup>th</sup>, 2015. (Code Civ. Proc. §§ 2017.20; 2031.060.)

**Explanation:**

Under Code of Civil Procedure section 2017.020, "The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code Civ. Proc., § 2017.020, subd. (a).)

Also, under section 2031.060, "When an inspection, copying, testing, or sampling of documents, tangible things, places, or electronically stored information has been demanded, the party to whom the demand has been directed, and any other party or affected person, may promptly move for a protective order. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code Civ. Proc. § 2031.060, subd. (a).)

"The court, for good cause shown, may make any order that justice requires to protect any party or other person from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." (Code Civ. Proc., § 2031.060, subd. (b).)

Here, the burden, and intrusiveness of the document request clearly outweigh the likelihood that the information sought will lead to the discovery of admissible evidence. Plaintiff seeks production of all documents related to narcotics that the inmate population of Pleasant Valley State Prison (PVSP) received between 2005 and 2010. However, the only remaining cause of action in plaintiff's complaint does not relate to the provision of narcotics to the inmate population of PVSP. Instead, it relates to the allegedly retaliatory cancellation of one of plaintiff's inmate appeals. It does not appear that documents relating to the provision of narcotics to all inmates at the prison would have any bearing whatsoever on plaintiff's remaining cause of action, or that the documents would be likely to lead to the discovery of admissible evidence regarding his claim. Plaintiff has not filed any opposition to the motion, so he has not

