

Tentative Rulings for July 7, 2016
Departments 402, 403, 501, 502, 503

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).)

14CECG03523 *Cordell v. Fresno Heritage* (Motion to Compel - Dept. 501)

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

14CECG00134 *Gonzalez et al. v. Vemma Nutrition Co. et al.* (Union Pacific's two motions for summary judgment/adjudication) is continued to July 13, 2016 at 3:30 p.m. in Dept. 502

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

Tentative Rulings for Department 403

(28)

Tentative Ruling

Re: ***Jenkins v. McDonald's Restaurants, et al.***

Case No. 16CECG00332

Hearing Date: July 7, 2016 (Dept. 403)

Motion: By Defendant McDonald's Restaurants of California, Inc. to strike claim for punitive damages.
By Defendant McDonald's Corporation to strike claim for punitive damages.
By Defendant McDonald's USA, LLC to strike claim for punitive damages.

Tentative Ruling:

To grant the motion to strike the language appearing on page 6, stating "in excess of \$2,000,000," without leave to amend.

In all other respects, the motion to strike is granted with leave to amend.

The purported second amended complaint is ordered stricken on the Court's own motion.

Plaintiff shall have ten court days within which to file an actual Second Amended Complaint. Any new or amended allegations must be set forth in **boldface** typeset.

Explanation:

Defendants have filed what appears to be three identical motions to strike the allegations of punitive damages from the First Amended Complaint.

A motion to strike can be used to: "(a) Strike out any irrelevant, false, or improper matter inserted in any pleading"; or "(b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc. §§ 431.10, subd.(b); 436, subd.(a).) A court will "read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." (*Clauson v. Sup.Ct. (Pedus Services, Inc.)* (1998) 67 CA4th 1253, 1255.)

A motion to strike may lie where the facts alleged do not rise to the level of "malice, fraud or oppression" required to support a punitive damages award. (*Turman v. Turning Point of Central Calif.* (2010) 191 Cal.App.4th 53, 63.) Mere conclusory allegations will simply not suffice. (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.)

Punitive damages are governed by Civil Code §3294:

(a) In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

(b) An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.

(c) As used in this section, the following definitions shall apply:

(1) "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.

(2) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.

(3) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

First, despite Defendants' claim to the contrary, punitive damages are allowed, under appropriate circumstances, for both products liability and negligence cases. (See, e.g., *Boeken v. Philip Morris Inc.* (2005) 127 Cal.App.4th 1640, 1690-91 (intentionally marketing a defective product knowing that it might cause injury and death is "highly reprehensible" and justified punitive damages (*citing Romo v. Ford Motor Co.* (2003) 113 Cal.App.4th 738, 755); *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 898 (allowing punitive damages for non-intentional behavior, where there is reckless indifference).) Therefore, punitive damages are available for these causes of action, provided that Plaintiff pleads sufficient facts to render them otherwise appropriate.

According to the pleadings of the First Amended Complaint, Plaintiff alleges that Defendants served the coffee to Plaintiff despite knowing that it was unreasonably hot (in excess of 175 degrees Fahrenheit). Plaintiff also alleges that "Defendants served its coffee at such scolding [sic] hot temperatures so that they could save costs by not having to re-brew coffee as often as they would have to had they served their coffee at lower temperatures."

Defendants argue that this is insufficient to support the punitive damages. However, in a different context, courts have held that a conscious and callous disregard for public safety in order to maximize corporate profits can support a claim for punitive damages. (*Grimshaw v. Ford Motor Company* (1981) 119 Cal.App.3d 757, 819.) Here, there are allegations that suggest Defendants adopted a policy to pursue convenience and cost savings at the expense of increased risk to customers' health

Tentative Ruling

Re: **Gill v. Manco Abbott, Inc.**
Case No. 14 CE CG 03352

Hearing Date: July 7th, 2016 (Dept. 403)

Motion: Plaintiff's Motion for Preferential Trial Setting

Tentative Ruling:

To deny plaintiff's motion for trial preference, without prejudice. (Code Civ. Proc. § 36.)

Explanation:

Under Code of Civil Procedure section 36, subdivision (a), "A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes **both** of the following findings: (1) The party has a substantial interest in the action as a whole. (2) **The health of the party is such that a preference is necessary** to prevent prejudicing the party's interest in the litigation. (Code Civ. Proc., § 36, subd. (a), emphasis added.)

"Upon the granting of such a motion for preference, the court shall set the matter for trial not more than 120 days from that date and there shall be no continuance beyond 120 days from the granting of the motion for preference except for physical disability of a party or a party's attorney, or upon a showing of good cause stated in the record. Any continuance shall be for no more than 15 days and no more than one continuance for physical disability may be granted to any party." (Code Civ. Proc., § 36, subd. (f).)

In addition, "An affidavit submitted in support of a motion for preference under subdivision (a) of Section 36 may be signed by the attorney for the party seeking preference based upon information and belief as to the medical diagnosis and prognosis of any party." (Code Civ. Proc., § 36.5.)

Here, plaintiff's counsel has offered only his own declaration in support of the motion. However, the declaration does not directly state the age of the plaintiff, but only that "After speaking with Attorney Craig Trippel of the Law Offices of John Biard, counsel for Star Properties, LLC, I do not anticipate either of them to dispute that Plaintiff is 84 years old." (Moeck decl., ¶ 6.) This statement is not a clear declaration that plaintiff is 84 years old.

Nor does plaintiff's counsel state how he knows plaintiff's age, or provide any other evidence, such as a birth certificate, to support his representations as to his age. The representation in the points and authorities brief that he is 84 and was born on March 30th, 1921 is not evidence. In any event, the birth date provided is inconsistent

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Tentative Ruling

Re: ***AmericanWest Bank v. Baghgegian, et al.***,
Superior Court Case No. 14CECG03401

Hearing Date: **July 7, 2016 (Dept. 403)**

Motion: Plaintiff AmericanWest Bank's motion to fix attorneys' fees as an element of costs

Tentative Ruling:

To grant in the amount of \$98,000.

Explanation:

Generally, in California, each party to a lawsuit must pay its own attorney fees except where a statute or contract provides otherwise. (Code Civ. Proc., § 1021.) Civil Code section 1717 is one such statute. It states, in subdivision (a):

In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

Civ. Code § 1717, subd. (a).

When a party obtains a " 'simple, unqualified win' " by completely prevailing on, or defeating, the contract claims in the action and the contract contains a provision for attorney's fees, the successful party is entitled to attorney's fees as a matter of right, eliminating the trial court's discretion to deny fees under section 1717. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 875–876 (*Hsu*).) Further, "California courts construe the term 'on a contract' liberally." (*Turner v. Schultz* (2009) 175 Cal.App.4th 974, 979.) In determining whether a prevailing party prevailed "on the contract," "the court should consider the pleaded theories of recovery, the theories asserted and the evidence produced at trial, if any, and also any additional evidence submitted on the motion in order to identify the legal basis of the prevailing party's recovery. [Citations.]" (*Hyduke's Valley Motors v. Lobel Financial Corp.* (2010) 189 Cal.App.4th 430, 435; *Boyd v. Oscar Fisher Co.* (1989) 210 Cal.App.3d 368, 377.)

Here the personal guaranty agreements all contained an attorney fees provision which stated: "Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty." The agreements thus fall within Civil Code section 1717.

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Tentative Ruling

Re: **Jackie Robinson v. Brian Phi**
Superior Court Case No. 14CECG00231

Hearing Date: Thursday, July 7, 2016 (**Dept. 403**)

Motion: Defendants Samantha Amaro's and David Lewright's Motion for Summary Judgment, or, in the Alternative, Summary Adjudication

Tentative Ruling:

To deny Defendants Samantha Amaro's and David Lewright's motion for summary judgment, or, in the alternative, summary adjudication. (Code Civ. Proc., § 437c.)

To grant with leave to amend Defendants Samantha Amaro's and David Lewright's motion for judgment on the pleadings as to Plaintiff's two unnumbered causes of action for intentional tort.

To grant without leave to amend Defendants David Lewright's motion for judgment on the pleadings as to Plaintiff's unnumbered cause of action for denial of treatment.

To grant Plaintiff Jackie Robinson 15 days, running from service of the minute order by the clerk, to file and serve a first amended complaint. All new allegations in the first amended complaint are to be set in **boldface** type.

Explanation:

Defendants Samantha Amaro and David Lewright ("Defendants") move for summary judgment of Plaintiff Jackie Robinson's ("Plaintiff") complaint. Alternatively, Defendants move for summary adjudication of the unnumbered cause of action for "intentional tort" directed against Defendant Amaro, the unnumbered cause of action for "intentional tort" directed against Defendant Lewright, and the unnumbered cause of action for "denial of treatment per Welfare and Institutions Code sections 6600-6608" directed against Defendant Lewright. Defendants contend that their motion for summary judgment or summary adjudication should be granted because, first, Plaintiff's complaint fails to allege any viable causes of action against Defendants and, second, no credible or admissible evidence supports the allegations made in Plaintiff's complaint.

The Court agrees with Defendants that Plaintiff's complaint fails to allege any viable cause of action against either Defendant Amaro or Defendant Lewright. "A defendant's motion for summary necessarily includes a test of the sufficiency of the complaint." (*American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1117 [internal quotation marks omitted].) When a motion for summary judgment is used

to test whether the complaint states a cause of action and the time for demurrer had passed by the time the motion was filed, the summary judgment motion is treated as a motion for judgment on the pleadings. (*Id.* at p. 1118.) “Accordingly, ... [the Court] treat[s] the properly pleaded allegations of [Plaintiff's] complaint as true, and also consider those matters subject to judicial notice. [Citations.] ... [Citation.] [The Court's] primary task is to determine whether the facts alleged provide the basis for a cause of action against defendants under any theory.” (*Ibid.* [internal quotation marks omitted].)

1. *Plaintiff's Unnumbered Cause of Action for Intentional Tort Asserted Against Defendant Samantha Amaro*

Defendant Samantha Amaro argues that the unnumbered cause of action for intentional tort asserted against her fails to allege facts sufficient to plead any known intentional tort.

In the intentional tort cause of action asserted against Defendant Amaro, Plaintiff alleges that, on December 9, 2013, after Brian Phi failed to provide Plaintiff with a cane, wheelchair, or other medical aid, Defendant Amaro confiscated the wheelchair that Plaintiff had been using. Defendant Amaro informed Plaintiff that she was confiscating the wheelchair because, since Plaintiff's foot was not broken, Plaintiff could not use the wheelchair in an upstairs unit. As a result of Defendant Amaro's confiscation of the wheelchair, Plaintiff had to hop around the unit on one foot, without any assistance from unit staff or medical aid, and in severe pain while further aggravating his left foot. On December 11, 2013, after standing in front of the message board for a prolonged period, Plaintiff fainted and fell to the floor. After being medically assessed, Plaintiff was provided the use of a wheelchair in the upstairs unit and placed on a medical line of sight hold. Plaintiff alleges that Defendant Amaro intentionally meant to inflict pain and suffering on him by confiscating the wheelchair and, as a result, is the proximate cause of Plaintiff's damages.

However, the Court determines that these factual allegations do not plead any known intentional tort and the Court cannot ascertain which tort Plaintiff is attempting to allege. To the extent that Plaintiff is attempting to allege a cause of action for intentional infliction of emotional distress, Plaintiff has failed to allege facts establishing that Defendant Amaro's conduct was outrageous and that Plaintiff suffered severe emotional distress due to Defendant Amaro's outrageous conduct. (CACI No. 1600.) To the extent that Plaintiff is attempting to allege a cause of action for violation of his federal civil rights pursuant to 42 U.S.C. § 1983, Plaintiff has failed to identify which federal civil right or rights that Defendant Amaro's conduct allegedly violated. (CACI No. 3000.)

Accordingly, the Court grants with leave to amend Defendant Amaro's motion for judgment on the pleadings as to Plaintiff's unnumbered cause of action for intentional tort asserted against her.

2. *Plaintiff's Unnumbered Cause of Action for Intentional Tort Asserted Against Defendant David Lewright*

Defendant David Lewright argues that the unnumbered cause of action for intentional tort asserted against him fails to allege facts sufficient to plead any known intentional tort.

In the intentional tort cause of action asserted against Defendant Lewright, Plaintiff alleges that, on December 11, 2013, after learning that Plaintiff had sustained a fall, Brian Phi wrote punitive medical orders restricting Plaintiff to his assigned housing unit and denying Plaintiff access to all services available at the hospital. When Plaintiff asked Defendant Lewright for permission to be escorted in a wheelchair to the Union Square Grill in order to purchase food to eat, Defendant Lewright denied Plaintiff's request to obtain food from the Grill due to the medical hold on Plaintiff. Defendant Lewright also refused Plaintiff's request for a hospital staff member to go and purchase food from the Grill for Plaintiff using Plaintiff's money. Plaintiff alleges that Defendant Lewright intentionally denied Plaintiff food and that he was forced to go without food on December 11, 2013. Finally, Plaintiff alleges that Defendant Lewright's denials were the direct and proximate cause of Plaintiff's damages.

However, the Court determines that these factual allegations do not plead any known intentional tort and the Court cannot ascertain which tort Plaintiff is attempting to allege. To the extent that Plaintiff is attempting to allege a cause of action for violation of his federal civil rights pursuant to 42 U.S.C. § 1983, Plaintiff has failed to identify which federal civil right or rights that Defendant Lewright's conduct allegedly violated. (CACI No. 3000.)

Accordingly, the Court grants with leave to amend Defendant Lewright's motion for judgment on the pleadings as to Plaintiff's unnumbered cause of action for intentional tort asserted against him.

3. Plaintiff's Unnumbered Cause of Action for Denial of Treatment

Defendant David Lewright contends that Plaintiff's cause of action for denial of treatment pursuant to Welfare and Institutions Code sections 6600 through 6608 fails to state a viable cause of action against him. Since Welfare and Institutions Code sections 6600 through 6608 do not create a private right of action under which an individual can sue for violations of their right to attend or access sex offender treatment, Plaintiff's cause of action for denial of sex offender treatment pursuant to Welfare and Institutions Code section 6600 through 6608 fails to state facts sufficient to constitute a viable cause of action against Defendant Lewright. Accordingly, since the cited statutes provide no private right of action, the Court grants without leave to amend Defendant Lewright's motion for judgment on the pleadings as to Plaintiff's unnumbered cause of action for denial of treatment.

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 07/06/16 .
 Judge's initials) (Date)

Tentative Rulings for Department 501

(27)

Tentative Ruling

Re: ***Cordell v. Fresno Heritage***
Court Case No. 14CECG03523

Hearing Date: **July 7, 2016 (Dept. 501)**

Motion: Defendant Joseph Horswill's motion to compel deposition testimony of Elizabeth Nunez; Defendant Joseph Horswill's motion to compel deposition testimony of Susana Rodriguez

(28)

Tentative Ruling

Re: ***Cordell v. Fresno Heritage Partners, et al.***

Case No. 14CECG03523

Hearing Date: July 7, 2016 (Dept. 501)

Motion: By Defendant Marcy Johnson, PH.D. for Summary Judgment or, in the Alternative, Summary Adjudication
By Defendant Asha P. Sidhu, M.D. for Summary Judgment
By Defendant Alex Sherriffs, M.D. for Summary Judgment or, in the alternative, Summary Adjudication
By Defendant Murray Barry, M.D. for Summary Judgment

Tentative Ruling:

To grant each motion. Summary judgment shall be ordered granted in each case. Each of the Defendants is therefore to prepare a judgment not inconsistent with this order and submit for signature by the Court within five court days of service of this order.

Explanation:

To obtain summary judgment, "all a defendant needs to do is to show that the plaintiff cannot establish at least one element of the cause of action." *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853. If a defendant makes this showing, the burden shifts to the plaintiff to demonstrate that one or more material facts exist as to the cause of action or as to a defense to a cause of action. (CCP § 437(c), subdivision(p)(2).)

In a summary judgment motion, the pleadings determine the scope of relevant issues. (*Nieto v. Blue Shield of Calif. Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74.) A defendant need only "negate plaintiff's theories of liability as *alleged in the*

complaint; that is, a moving party need not refute liability on some theoretical possibility not included in the pleadings." (*Hutton v. Fidelity Nat'l Title Co.* (2013) 213 Cal.App.4th 486, 493 (emphasis in original).)

The court examines affidavits, declarations and deposition testimony as set forth by the parties, where applicable. (*DeSuza v. Andersack* (1976) 63 Cal.App.3d 694, 698.) Any doubts about the propriety of summary judgment are to be resolved in favor of the opposing party. (*Yanowitz v. L'Oreal USA, Inc.* (2003) 106 Cal.App.4th 1036, 1050.)

A court will "liberally construe plaintiff's evidentiary submissions and strictly scrutinize defendant's own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiff's favor." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.)

Here, the Third Amended Complaint alleges a cause of action for medical negligence against each of the moving defendants. In order to recover in a medical negligence case, it is necessary to prove that an alleged failure to exercise the care and skill required under the circumstances proximately caused the condition about which the complaint is made. (*Marvin v. Talbott* (1963) 216 Cal.App.2d 383, 385.) Further, normally, expert testimony is required to show the standard of care. (*Deckard v. Sorenson* (1960) 177 Cal.App.2d 305, 308.) Thus, if a defendant can produce an uncontradicted declaration from an expert that that defendant's actions were at or above the standard of care, then defendant has negated an element of the cause of action. (Cf. *Osborne v. Irwin Memorial Blood Bank* (1992) 5 Cal.App.4th 234, 273 (plaintiffs need opinions from qualified experts to establish prima facie case of professional negligence).)

Each of the defendants have moved for summary judgment (two of the defendants have moved for summary adjudication). Plaintiff has filed notices of non-opposition to each of the motions. Therefore, the Court's review is to determine whether each defendant has met their burden of production to negate an element of Plaintiff's cause of action against them.

1) Motion of Asha P. Sidhu

According to Sidhu's Motion, the only allegations in the Complaint against Defendant Sidhu are that "Despite being provided with a copy of Dr. Siu's and Dr. Terrell's reports, on July 28, 2014, Dr. Sidhu issued a report perpetuating the dementia diagnosis without proper testing or evaluation, which on information and belief, fell below the applicable standard of care." (SSUMF 3.)

However, Dr. Sidhu has filed a declaration under oath that he was not aware of the reports and there appears to be no evidence suggesting otherwise. (Declaration of Sidhu.)

Dr. Sidhu has also provided a declaration by Dr. Steinke, a medical expert, who opines that Dr. Sidhu's actions were within the duty of care. (Dr. Steinke Decl. ¶18b.)

Here, the negligence claim charged that Dr. Sidhu had notice of a lack of dementia on the part of plaintiff and yet issued a report perpetuating the dementia. He has denied receiving the report, thus negating a material element of Plaintiff's claim. Further, Sidhu's expert also opines that his behavior was above the standard of care. Defendant Sidhu has therefore negated at least one of the elements of the cause of action (causation and breach). Since Defendant has met their burden of persuasion, and plaintiff has not produced any contrary evidence or separate statement, then Dr. Sidhu's motion is granted.

2) Marcy Johnson, M.D.'s Motion

The Third Amended Complaint alleges one cause of action against Dr. Johnson for medical negligence. Dr. Johnson presents the expert declaration of Dr. Kiernan, who opines that Dr. Johnson's conduct in her treatment of Plaintiff was at all times within the standard of care. (Johnson's UMF Nos. 28-32.) As a result, Defendant has negated an element of Plaintiff's claim (breach of duty of care). Since Defendant Johnson has met her burden of persuasion, and plaintiff has not produced any contrary evidence or separate statement, the motion is granted.

3) Murray Barry, M.D.'s Motion

Dr. Barry was responsible for Plaintiff's care between August, 2012 and April, 2013 and treated plaintiff off and on for several years. (Barry's UMF No. 5.) He monitored her treatment throughout this period and recommended that Plaintiff be treated as though she could not live independently. (Barry's UMF No. 28.) He ceased being involved in her treatment and care as of May 8, 2013. (Barry's UMF No. 29.) Dr. Barry has presented a declaration of Dr. Dean Nickles, a qualified expert, who opines that Dr. Barry's treatment of plaintiff was medically appropriate and met or exceeded the applicable standard of care. (Barry's UMF No. 40-41.) As a result, Defendant Barry has negated an element of Plaintiff's claim. Since Defendant Barry has met his burden of persuasion, and plaintiff has not produced any contrary evidence or separate statement, the motion is granted.

4) Alex Sherriffs, M.D.'s Motion

The Third Amended Complaint alleges one cause of action against Dr. Sherriffs for medical negligence. Dr. Sherriffs presents the expert declarations of Dr. Kiernan and Dr. Cassini, who opine that Dr. Sherriffs' conduct was within the standard of care at all times. (Sherriffs' UMF Nos. 28-32.) As a result, Defendant has negated an element of Plaintiff's claim. Since Defendant Sherriffs has met their burden of persuasion, and plaintiff has not produced any contrary evidence or separate statement, the motion is granted.

Each of the Defendants is therefore to prepare a judgment not inconsistent with this order and submit for signature by the Court within five court days of service of this order.

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Tentative Ruling

Re: ***Sandoval v. Parlier Unified School District, et al.***
Court Case No. 14 CECG 01837

Hearing Date: July 7, 2016 (Dept. 501)

Motion: District's Motion for Terminating Sanctions

Tentative Ruling:

To deny without prejudice.

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) & (g).) Section 2023.030 provides, that to the extent authorized a by particular discovery code section, the court, after notice, and after opportunity for hearing, may impose a terminating sanction by "[a]n order rendering a judgment by default against that party." (Code Civ. Proc. § 2023.030, subd. (d)(4).)

The failure to respond to interrogatories is controlled by Code of Civil Procedure section 2031.310, subdivision (h). 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.

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). ...

(See Code Civ. Proc., § 2031.310, subd. (i).)

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 2015) § 8:1213.) "The

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Tentative Ruling

Re: ***Martinez v. Finance and Thrift Company***
Superior Court Case No.: 12CECG03998

Hearing Date: July 7, 2016 (**Dept. 502**)

Motions: (1) Motion for final approval of class action settlement;
(2) Motion for award of attorneys' fees and costs to class counsel

Tentative Ruling:

To grant both motions: the Court will execute the final approval order and final judgment, and award class counsel \$62,370.00 in reasonable attorneys' fees and \$1,374.90 in costs.

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: DSB **on** 7/5/16 .
(Judge's initials) (Date)

Tentative Rulings for Department 503