

Tentative Rulings for September 21, 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).)

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

14CECG01317 *Moffett v. California Cancer Associates for Research and Excellence, Inc.* all motions are continued to Thursday September 29, 2016, at 3:30 p.m. in Dept. 503.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

(28)

Tentative Ruling

Re: **Quan v. Champagne**

Case No. 16CECG00685

Hearing Date: September 21, 2016 (Dept. 402)

Motion: By Demurrer to Complaint.

Tentative Ruling:

To sustain the demurrer with leave to amend.

Plaintiff shall have ten court days to file and serve a First Amended Complaint. Any new or changed allegations shall be set forth in **boldface** typeset.

Explanation:

[Note- as of September 19, 2016, there appears to be no Reply brief on file for this motion.]

Plaintiffs, in their opposition, assert that the demurrer was moot because Defendant filed an answer. Plaintiffs have pointed to no authority which states that the filing of an answer while a demurrer is pending renders the demurrer moot. California Code of Civil Procedure §430.30, subdivision (c) allows a party objecting to a complaint or cross-complaint to demur and answer at the same time. Therefore, the Court will consider the demurrer on the merits.

A general demurrer admits the truth of all material allegations and a Court will "give the complaint a reasonable interpretation by reading it as a whole and all its parts in their context." (*People ex re. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 300.) The standard of pleading is very liberal and a plaintiff need only plead "ultimate facts." (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) However, a plaintiff must still plead facts giving some indication of the nature, source, and extent of the cause of action. (*Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719.)

Plaintiff alleges in the third cause of action a cause of action for "Elder Abuse-Financial." The main substantive allegation is the following: ""Defendants, and each of them, took, appropriated, and retained \$260,000.00 from Plaintiff

(20)

Tentative Ruling

Re: ***Palmer et al. v. MTC Financial, Inc., et al.***, Superior Court Case No. 16CECG00946

Hearing Date: **September 21, 2016 (Dept. 402)**

Motion: Demurrer to First Amended Complaint

Tentative Ruling:

To take the demurrer off calendar and allow plaintiffs to file the proposed Second Amended Complaint, which shall be filed and served within 10 days of service of the order by the clerk. The Second Amended Complaint will count as an amended pleading in response to a demurrer for purposes of Code Civ. Proc. § 430.41(e)(1).

Explanation:

Ordinarily the court would not decline to rule on a demurrer simply because an amendment was offered. But in this case plaintiffs have obtained new counsel who recognizes that the First Amended Complaint, like the initial Complaint, was poorly drafted and had many deficiencies. It is unnecessary lengthy and full of legal conclusions. The proposed Second Amended Complaint is much more concise, is a vast improvement, and will be easier to evaluate in the event of future challenges to the pleading. Accordingly, the court will permit the filing of the proposed Second Amended Complaint in lieu of ruling on the demurrer.

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: JYH on 9/20/16 .
 (Judge's initials) (Date)

Tentative Rulings for Department 403

Tentative Rulings for Department 501

Tentative Rulings for Department 502

(20)

Tentative Ruling

Re: ***Hamby v. Hovsepian et al.***, Superior Court Case No. 14CECG01784

Hearing Date: **September 21, 2016 (Dept. 502)**

Motion: Plaintiff Barbara Hamby's Motion to Quash Deposition Subpoena Served on Bank of the West

Tentative Ruling:

To deny the motion to quash. However, the court will direct that the subpoena be modified to require production only of any signature cards for the account as well as a copy of check number 132 written to Michael Hovsepian in the amount of \$102,000, and dated May 12, 2009. (Code Civ. Proc. § 1987.1(a).)

Explanation:

Plaintiff alleges that she made a \$102,000 loan to defendants, secured by a deed of trust on the property defendants purchased with the funds. However, defendants did not record the deed of trust as promised, instead selling the property without repaying the loan.

Defendants contend that Roger Vehrs (plaintiff's husband and attorney in this action) was a party to the loan, as well as defendants' attorney, and that the agreement was void and unenforceable due to Vehrs' violation of Rules of Professional Conduct, Rule 3-300, and breach of his fiduciary duties to defendants. Defendants also contend that Vehrs agreed to forgive the loan in exchange for release of claims against Vehrs for damage he caused to defendant's airplane.

In support of their contention that there was agent/principal relationship between plaintiff and Vehrs with respect to the loan, and that Vehrs was a co-owner and/or signatory on the bank account from which the loan was funded, defendants subpoenaed from Bank of the West records pertaining to plaintiff's bank account for the year 2009.

Though defendants were denied leave to file a cross-complaint asserting these claims, the court noted in denying the motion that these facts and allegations can be used as a defense in this action. The question for discoverability is whether it is *possible* that information in a particular subject area *could* be relevant or admissible at the time of trial." (*Maldonado v. Superior*

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Tentative Ruling

Re: ***Wortham v. Turning Point of Central California***
Court Case No. 15CECG02618

Hearing Date: September 21, 2016 (Department 503)

Motion: by plaintiff Hernandez to compel further responses and production of documents responsive to Hernandez' Demand for inspection, Set No. One.

Tentative Ruling:

To grant, ordering that the term "relating to" be stricken from Demand No. 16 for the further response. Further responses under oath and without objections as well as documents are to be produced by October 21, 2016.

Explanation:

1. Knowledge of Plaintiff

Defendant's argument that it is entitled to depose plaintiff to determine the claims of putative class members is incorrect. Even a plaintiff in an individual case is not responsible to answer questions about his or her own legal claims at deposition. Deposition questions may not ask contention-type discovery queries. *Rifkind v. Superior Court* (1994) 22 Cal. App. 4th 1255. The fact that the deponent there was an attorney does not change this.

Further, there is no requirement that a class representative be well-versed in the nuances of his or her legal claim, or that they have personal knowledge of the claims of all in the class. In *Suowitz v. Hilton Hotels Corp.* (1966) 383 U.S. 363 (cited by plaintiff) an immigrant lady with limited English skills and no formal education bought Hilton stock with her savings from her seamstress work. She got a letter that said she would not get a dividend, and she had bought the stock to have income. Her son-in-law, a Harvard law graduate with knowledge of stocks, found facts indicating that insiders had manipulated things so as to put corporate money into their pockets. The U.S. District Court threw out the complaint because the immigrant lady verified the complaint without really understanding what the wrong alleged. The Supreme Court reversed.

Accord *In re Facebook, Inc. IPO Securities and Derivative Litigation* (S.D.N.Y. 2015) 312 F.R.D. 332, 345: "The Supreme Court in *Suowitz v. Hilton Hotels Corp.* (1966) 383 U.S. 363; 86 S. Ct. 845; 15 L. Ed 2d 807 ... expressly disapproved of attacks on the adequacy of a class representative based on the representative's ignorance." "A class representative does not need to have special knowledge of the case or possess a detailed understanding of the legal or factual basis on which a class action is maintained." *Wilkins v. Just Energy Group, Inc.* (N.D. Ill. 2015) 308 F.R.D. 170, 184, also relying on *Suowitz*.

2. Burden Objection

To show objectionable burden requires a declaration from the responding party specifying the tasks required to be completed to answer, and the number of hours required to do those tasks. *West Pico Furniture Co. v. Superior Court* (1961) 56 Cal. 2d 407, 418; *Perkins v. Superior Court* (1981) 118 Cal. App. 3d 761, 764. The objecting party has the duty to substantiate its objections. *Coy v. Superior Court* (1962) 58 Cal. 2d 210, 220.

The Court notes that no evidence of burden in producing the progress notes sought by Demand No. 17 is argued. The objection on the basis of burden is overruled for that Demand.

For Demand No. 16, the burden declaration avers 30 minutes is needed to locate a file and another 30 minutes period is needed to copy said file, at each of three different locations. The files are said to be maintained in alphabetical order. The ADP records are electronic. It makes no sense that a person has to "pull and copy" an electronic file. There is no declaration from the IT manager or ADP itself about how it could obtain such records.

The Court is not persuaded that it will take 30 minutes to pull each employee's file. The Court itself maintains voluminous materials, and it takes very little time to pull a file at a given location. Only two locations are listed in the declaration aside from the ADP electronic files. The time sheets seen in the exhibits appear to record two weeks of time, so an employee would have 26 per year at most. The Court is unpersuaded that it will take 30 minutes to copy such materials, even for employees who worked during the entire class period. Common sense shows five minutes per employee is likely sufficient, a burden reasonably imposed on a defendant in a class action matter.

If in fact it is more difficult to locate and copy the materials sought, "To allow a defendant whose business generates massive records to frustrate discovery by creating an inadequate filing system, and then claiming undue burden, would defeat the purposes of the discovery rules." *Alliance to End Repression v. City of Chicago* (E.D. Ill. 1977) 75 F.R.D. 441, 447. "It is reasonable to expect defendants to have the information plaintiffs seeks and for the information to be accessible in defendants' files. Plaintiff should not suffer if the information is not accessible because defendants have an inefficient filing system." *Fagan v. District of Columbia* (D.C. 1991) 136 F.R.D. 5, 7.

The Court strikes the phrase "relating to" in Demand No. 16. The times sheets themselves are to be produced.

3. Attorney/Client and Work Product Claims

With the striking of "relating to," no such issue appears, and these objections are overruled on that basis.

4. Overbreadth

With the claims of misclassification of hourly workers as exempt, as well as contentions of misconduct with non-exempt employees, the complaint alleges wrongdoing with regard to all employees. There is a time limit. No overbreadth appears after striking the "relating to" language.

5. Vagueness Objection

"Whether the description of records is sufficient to inform [responding party] of that which is desired, presents a question merely of whether under the circumstances and situation generally, considered in the light of reason and common sense, he ought to recognize and be able to distinguish the particular thing that is required." *Pacific Automobile Ins. Co. v. Superior Court* (1969) 273 Cal. App. 2d 61, 68.

Striking the "relating to" language of Demand No. 16 moots this objection. The moving papers provide examples of the time sheets and progress notes to be produced as well. This objection is overruled on that basis.

6. Claim Plaintiff Has the Information

This is part of the "preliminary statement" which included a plethora of myriad objections. Clearly, this boilerplate objection does not apply to the documents sought by requests Nos. 16 and 17.

7. Need to Make a Compilation

This is one of the objections found in the preliminary statement. Demand No. 16 does ask for the time sheets in data form, but defendant may produce the individual documents. In any case, this statement is a permissible answer to interrogatories only, not document demands. See Code of Civil Procedure section 2030.230.

8. Relevancy / Good Cause

"Good cause" is found where there are facts, including those based solely on information and belief and inference that the documents sought are relevant to the subject matter of the action and are material to the issues of the case. *Associated Brewers Distrib. Co. v. Superior Court* (1967) 65 Cal. 2d 583, 588.

Information and belief sufficient to demonstrate the documents "might" contain useful evidence is all that is required, as "the showing made by Associated could not be more detailed without an inspection of the documents."

See also *Garcia v. Superior Court* (2007) 42 Cal. 4th 63, 70 (citations and internal quotations omitted): "This good cause showing is a relatively low

Tentative Rulings for Department 503

(30)

Re: ***Gilbert Valenzuela v. County of Fresno***

Superior Court No. 16CECG01420

Hearing Date: Wednesday, September 21, 2016 (**Dept. 503**)

Motion: (1) Defendant Corizon Health, Inc.'s Demurrer to Complaint.

Tentative Ruling:

To order Defendant Corizon Health Inc.'s demurrer to Plaintiff's Complaint off calendar.

Explanation:

A party may amend its pleading once without leave of the court at any time after a demurrer is filed but before the demurrer is heard, if the amended complaint is filed and served no later than the date for filing an opposition to the demurrer. (Code Civ. Proc., § 472.) All papers opposing a demurrer shall be filed with the court and a copy served on each party at least **nine** court days before the hearing. (Code Civ. Proc., § 1005.) The filing of an amended complaint renders moot a demurrer to the original complaint. (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1054.)

Here, Plaintiff filed his first amended complaint on September 8, 2016, **nine** court days prior to the hearing. Plaintiff's filing is allowable and timely. Therefore, this (pending) demurrer is moot. Defendant Corizon Health Inc.'s demurrer to Plaintiff's Complaint is ordered off calendar. *Any challenges to the amended pleading must be raised by new motion(s).*

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 09/13/16.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Carolyn Brown v. Martha Vagt, et al.***
Superior Court Case No. 16CECG00340

Hearing Date: September 21, 2016 (Dept. 503)

Motions: Compel responses to form and special interrogatories, set one; compel responses to request for production of documents, set one; deem request for admissions, set one, admitted; sanctions

Tentative Ruling:

To grant Defendant's motion to compel Plaintiff to provide initial verified responses to Plaintiff's form interrogatories, set one; special interrogatories, set one; and request for production of documents, set one. (Code Civ. Proc. §§ 2030.290, 2031.300.) Plaintiff is ordered to serve complete verified responses to all discovery set forth above, without objection, within 10 days of the clerk's service of the minute order.

To grant Defendant's motion that the truth of the matters specified in the request for admissions, set one, be deemed admitted. (Code Civ. Proc. §2033.280.)

To impose monetary sanctions in favor of Defendant, against Plaintiff and Plaintiff's counsel, jointly and severally. (Code Civ. Proc. §§ 2023.010(d), (i); 2023.030(a); 2030.290(c); 2031.300(c); 2033.280(c).) Plaintiff and Plaintiff's counsel are ordered, jointly and severally, to pay \$676 in sanctions to the Law Offices of Raquel Birch within 30 days of service of this order.

Explanation:

The discovery at issue was served on Plaintiff on June 7, 2016. Despite Defendant's multiple efforts to handle the lack of response informally, Plaintiff failed repeatedly to provide the requested discovery, or even return Defendant's counsel's phone calls or written communication. Accordingly, Defendant's motions to compel and motion to deem admissions admitted are granted. (Code Civ. Proc. § 2030.290(a), 2031.300(a), 2033.280(b).) Sanctions in the amount of \$676 are imposed, jointly and severally, against Plaintiff and Plaintiff's attorney of record. (Code Civ. Proc. §§ 2023.010(d), (i); 2023.030(a); 2030.290(c); 2031.300(c); 2033.280(c).)

Pursuant to California Rules of Court, rule 3.1312, 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 09/20/16.
(Judge's initials) (Date)