Tentative Rulings for May 25, 2022
Department 502

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.

20CECG00173 ***Kaushalya Bhatia v. Matthew Chenot*** **is continued to Wednesday, June 8, 2022 at 3:30 in Department 502**

19CECG03814 ***Zenith Insurance Company v. Lummus Corporation*** **is continued to Wednesday, June 8, 2022 at 3:30 in Department 502**

20CECG03623 ***Patricia Wood v. Sanger Unified School District*** **is continued to Wednesday, June 16, 2022 in Department 502**

20CECG02524 ***Timothy Howard v. Jim Crawford Construction*** **is continued to Thursday, July 7, 2022 at 3:30 p.m. in Department 502**

16CECG03036 ***Malaga County Water District v. Central Valley*** **is continued to Wednesday, June 8, 2022 at 3:30 p.m. in Department 502**

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Tentative Rulings for Department 502

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Tentative Ruling

Re: ***Booze v. Addington***
Superior Court Case No. 21CECG02149

Hearing Date: May 25, 2022 (Dept. 502)

Motion: Defendant Leigha Addington's Motion to Stay the action

Tentative Ruling:

To stay discovery as to Defendant Leigha Addington only.

Explanation:

An application for a stay is addressed to the sound discretion of the trial court. (*Thomson v. Continental Ins. Co*. (1967) 66 Cal.2d 738, 746.) An order staying discovery until determination of criminal charges allows plaintiff to prepare his or her action "while alleviating [defendant's] difficult choice between defending either the civil or criminal case." (*Pacers, Inc. v. Superior Court* (1984) 162 Cal.App.3d 686, 690.)

Pursuant to both the United States and California constitutions, a person has the right to refuse to answer potentially incriminating questions put to him or her in *any proceeding*. (U.S. Const., 5th Amend.; Cal. Const., art. 1, § 15; see Evid. Code §940.) The privilege against self-incrimination protects an individual from being forced to answer official questions in any proceeding, civil or criminal, formal or informal, in which the individual reasonably believes that the answers might incriminate him or her in a criminal case. (*Spielbauer v County of Santa Clara* (2009) 45 Cal.4th 704, 714; *Kassey S. v City of Turlock* (2013) 212 Cal.App.4th 1276, 1280.) "One cannot be forced to choose between forfeiting the privilege, on the one hand, or asserting it and suffering a penalty for doing so on the other." (*Spielbauer*, supra, 45 Cal.4th at p. 714.) The privilege may be invoked where it is shown that plaintiff's fear of self-incrimination is "substantial and real, as opposed to merely trifling or imaginary[.]" (*Kassey S*., supra, 212 Cal.App.4th at p. 1281; *Warford v. Medeiros* (1984) 160 Cal.App.3d 1035, 1044.)

> The decision whether to stay civil proceedings in the face of a parallel criminal proceeding should be made in light of the particular circumstances and competing interests involved in the case. This means the decision maker should consider the extent to which the defendant's Fifth Amendment rights are implicated. In addition, the decision maker should generally consider the following factors: (1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation.

(*Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 885, citing *Keating v. Office of Thrift Supervision* (9th Cir. 1995) 45 F.3d 322, 324–25, internal citations and quotation marks omitted.)

What the court is obligated to do in a situation such as this is to balance the competing interests and rights of the parties. In exercising its discretion, the court must consider the extent to which the civil defendant's privilege against self-incrimination would be impaired, the degree of prejudice to that party in defending parallel proceedings, the interest of the civil plaintiff in expeditious litigation, and the court's interest in managing its docket, with consideration to any effect the decision might have on any nonparties and the interest of the general public in the progress of either litigation. (*Avant, supra,* 79 Cal.App.4th at p. 885; *Keating, supra*, 45 F.3d at p. 325; *IBM v. Brown*, *supra*, 857 F.Supp. at p. 1387.)

Although it appears the parties have not yet engaged in discovery requiring Ms. Addington to choose whether or not to invoke her Fifth Amendment rights, should discovery proceed she is certain to face that decision. The criminal prosecution of Ms. Addington is not speculative, it is proceeding and plaintiff has no interest in jeopardizing that potential criminal conviction. Plaintiff represents that he does not intend to depose defendant until after the disposition of the criminal action, which alleviates some of the burden facing defendant.

There are additional defendants in the civil action who are not facing criminal prosecution. There is discovery that can proceed in this action that does not involve Ms. Addington, however, the relief sought in this motion would stay the entire action against all defendants. At this juncture, there is sufficient showing to stay discovery as to Ms. Addington but not to stay the civil action entirely.

Timeliness of Plaintiff's Opposition

To the extent that defendant argues that the court should disregard plaintiff's opposition brief because it was not timely, the defendant's contention is moot. The hearing date for the motion was originally set for May 4, 2022, six weeks after the opposition was served. The hearing was later continued to May 25, 2022. Therefore, even if the opposition brief was not timely, defendant has now had a three additional weeks to analyze and respond to the opposition, so she has not been prejudiced by any delay in serving the opposition.

In determining whether to consider an untimely opposition, a court shall apply the standards under Code of Civil Procedure, section 473. (*Kapitanski v. Von's Grocery Co., Inc.* (1983) 146 Cal.App.3d 29, 32-33.) However, where there is no showing of prejudice by the other side, the court may consider late-filed papers even without the application of section 473, in light of the "strong policy of law favoring the disposition of cases on the merits." (*Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal.App.5th 1197, 1202.)

In addition, defendant has forfeited her objection to the late opposition by responding to the opposition brief's merits in her reply. Therefore, the court will not disregard plaintiff's opposition brief.

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: RTM on 5/19/22.
(Judge's initials) (Date)

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Tentative Ruling

Re: ***Mendoza v. Stamoules Produce Company***
Superior Court Case No. 18CECG04363

Hearing Date: May 25, 2022 (Dept. 502)

Motion: Defendant's Motion for Terminating Sanctions and for Monetary Sanctions

Tentative Ruling:

To grant terminating sanctions and order this case dismissed pursuant to Code of Civil Procedure Section 2023.030, subdivision (d)(3). Defendant is directed to submit to this court, within 7 days of service of the minute order, a proposed judgment dismissing the action. The trial date set for June 27, 2022, is vacated, as is the Trial Readiness hearing set for June 24, 2022. To grant the request for attorney fees in the amount of $2,122.50. To deny the request that the court find plaintiff in contempt of court and order contempt sanctions, as the order dismissing the action is sufficient.

Explanation:

Once a motion to compel a party to comply with a discovery request is granted, continued failure to comply may support a request for more severe sanctions. Disobeying a court order to provide discovery is a misuse of the discovery process. (Code Civ. Proc., § 2023.010, subd. (g).)

It appears that since at least mid-2020, plaintiff Norma Mendoza has been uninvolved in this litigation. She did not respond to or appear at the hearing when her then-attorney noticed her with his motion to withdraw as her attorney. She apparently has not retained new counsel, even though trial is now only 33 days away. She did not oppose or appear at discovery motions set by defendant. She thereafter failed to obey the court's orders issued on September 1, 2020, which required her to respond to written discovery.[1] It appears plaintiff may have abandoned this litigation.

If a party 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[.]" (Code Civ. Proc., § 2030.290, subd. (c).) This means the court may strike out that party's pleadings or parts thereof, stay further proceedings by that party until the order is obeyed, dismiss a plaintiff's action, or enter a defendant's default and render a default judgment against defendant. (Code. Civ. Proc., § 2023.030, subd. (d).)

[1] Plaintiff has also failed to obey the court's orders to pay monetary sanctions totaling $2,220 which resulted from defendant's motions. However, orders for monetary sanctions are enforceable as money judgments. Thus, since the remedy to enforce payment of monetary sanctions is to obtain and levy a writ of execution on assets of the debtor, a terminating sanction is not necessary or proper for this dereliction. (*Newland v. Superior Court* (1995) 40 Cal.App.4th 608, 615.)

Appellate courts have generally held that before imposing a terminating ("doomsday") sanction, trial courts should usually grant lesser sanctions first, such as orders staying the action until plaintiff complies, or declaring the matters admitted if answers are not received by a specific date. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796.) It is only when a party persists in disobeying the court's orders that sanctions such as dismissing an action are justified. 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.) However, where lesser sanctions have been ordered, such as an order compelling compliance with discovery requests, and the party persists in disobeying, the party does so "at his own risk, knowing that such a refusal provided the court with statutory authority to impose other sanctions" such as dismissing the action. (*Id.* at p. 1583; *Todd v. Thrifty Corp.* (1995) 34 Cal. App. 4th 986.)

These same considerations apply even where parties are representing themselves. Courts have routinely found that parties *in pro per* are treated the same as represented parties. (*Monastero v. Los Angeles Transit Co.* (1955) 131 Cal. App. 2d 156, 160-161; *Bianco v. CHP* (1994) 24 Cal.App.4th 1113, 1125-1126.) "[M]ere self-representation is not a ground for exceptionally lenient treatment. Except when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *Gamet v. Blanchard* (2001) 91 Cal.App.4th 276.) .)

Here, it is virtually the eve of trial. There is no indication that making a lesser sanction order at this juncture would lead to plaintiff's compliance with the discovery process. On balance, in the face of plaintiff's repeated abuse of the discovery process, a terminating sanction is "appropriate to the dereliction" and does not "exceed that which is required to protect the interests of the party entitled to but denied discovery." (*Deyo v. Kilbourne, supra,* 84 Cal.App.3d at 793.)

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: RTM on 5/23/2022.
(Judge's initials) (Date)