

Tentative Rulings for November 16, 2021
Department 501

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.

20CECG01735 *California Farm Management, Inc. v. Bazan Vineyard Management, LLC* is continued to Thursday, November 18, 2021, at 3:30 p.m. in Department 501.

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Tentative Ruling

Re: ***Escalante v. Dyving***
Superior Court Case No. 20CECG02097

Hearing Date: November 16, 2021 (Dept. 501)

Motion: by Defendants for an Order Compelling Initial Responses to Form Interrogatories, Special Interrogatories, and Requests for Production of Documents (Set One as to Each Plaintiff) and Compelling Attendance at Deposition as to Each Plaintiff

Tentative Ruling:

To grant, but to require defendants to pay \$240 for motion fees to the clerk (in addition to the \$120 for motion fees already paid) for the correct total motion fee of \$360 (6 motions x \$60 each). The additional filing fees must be paid no later than November 30, 2021.

Plaintiffs Brandon A. Escalante and Samantha Quintero are ordered to serve separate, verified responses, without objections, to defendants' Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One (a separate set of which was served on each plaintiff) no later than 15 court days from the date of this order, with the time to run from the service of this minute order by the clerk.

Plaintiffs Brandon A. Escalante and Samantha Quintero are ordered to appear at newly noticed deposition dates of defendants' choosing. Defendants must serve the Notices of Deposition personally on plaintiffs at least 10 days before the date of the deposition.

To award monetary sanctions in the total amount of \$1,110 for all motions, in favor of defendants and against plaintiffs Brandon A. Escalante and Samantha Quintero (\$550 as against each plaintiff), payable within 20 days of the date of this order, with the time to run from the service of this minute order by the clerk.

Explanation:

Proof of Service of Motions

Defendants attached the proof of service of the moving papers onto the Proposed Orders lodged with each set of moving papers. This is improper as well as ill-advised, since the court routinely discards a proof of service attached to a proposed order (once it is signed it is no longer a *proposed* order, and thus the proof of service is a nullity). For future reference, the proof of service of the moving papers must either be filed as a separate document (as anticipated by Cal. Rules of Court, rule 3.1300(c)), or it must be attached to the moving papers. As an accommodation, the court will direct its clerk

to file the proofs of service for each motion together, under a separate cover sheet, so the file will show valid proof of service of the motions.

Additional Motion Fees Must Be Paid

Defendants ostensibly filed two motions, one for each plaintiff, and paid a \$60 motion fee for each. However, this court deems motions to compel for each type of discovery as a distinct motion, even if combined into one moving paper. Each motion concerned form interrogatories, special interrogatories, requests for production of documents, and attendance at a deposition. The court will consider the request regarding form and special interrogatories as one motion. Therefore, each moving paper concerned three motions to compel: 1) regarding interrogatories; 2) regarding requests for production of documents; and 3) regarding compelling attendance at deposition. Therefore, six motion fees were required to be paid, and not just two. An additional \$240 (4 x \$60) must be paid to the clerk. The court will, in turn, add this amount to the monetary sanctions ordered to be paid by plaintiffs.

Interrogatories and Document Production:

Plaintiffs had ample time to respond to the discovery propounded by defendants, and have not done so. Failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and “work product” protection. (Code Civ. Proc. §§ 2030.290, subd. (a), 2031.300, subd. (a); see *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.) Even though defendants were not required to do so, they gave plaintiffs additional time to respond and also sent a meet and confer letter, but still plaintiffs did not respond.

Depositions

Service of a proper deposition notice obligates a party to attend and testify, without necessity of subpoena. (Code Civ. Proc., § 2025.280, subd. (a).) The depositions were duly noticed and defendants were not given any indication that plaintiffs were unavailable for the date selected. Plaintiffs must appear at their depositions on the dates listed in the notices to be served on them.

Monetary sanctions

Sanctions are mandatory unless the court finds that the party acted “with substantial justification” or other circumstances that would render sanctions “unjust.” (Code Civ. Proc., §§ 2030.290, subd. (c) [Interrogatories], 2031.300, subd. (c) [Document demands], 2025.450, subd. (g)(1) [depositions].) This applies even where no opposition to the motion was filed, as here. (Cal. Rules of Court, rule 3.1348(a).) Since no opposition was filed, no facts were presented to warrant finding sanctions unjust.

Therefore, the court will award sanctions. However, there are problems with the request for sanctions. First, while counsel asked for \$650 per set of the two moving papers, she provided no information as to the number of hours the requested amount represents, or what part of this amount was comprised of hard costs. Second, she did not indicate her hourly rate so the court could determine if the rate was reasonable based on

