

**Tentative Rulings for January 17, 2024**  
**Department 501**

**For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)**

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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).) *The above rule also applies to cases listed in this "must appear" section.*

22CECG00917      *Pacific Grain & Foods, LLC v. Oregon Harvest, LLC*

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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.

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(Tentative Rulings begin at the next page)

## **Tentative Rulings for Department 501**

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(20)

**Tentative Ruling**

Re: **Turner v. Bulldog Square, Inc.**  
Superior Court Case No. 20CECG02717

Hearing Date: January 17, 2024 (Dept. 501)

Motion: by Plaintiff to Quash Deposition

**Tentative Ruling:**

To deny. (Code Civ. Proc., §§ 2016.040, 2025.410, subd. (c); Fresno Superior Court Local Rule 2.1.17.)

**Explanation:**

The first step when a discovery dispute arises is *not* to file a discovery motion. Rather, you must first meet and confer telephonically and/or in person in a reasonable and good faith attempt to resolve the dispute without court intervention. (Code Civ. Proc., §§ 2016.040, 2025.410, subd. (c).) Simply "informing" opposing counsel to your unavailability does not suffice. (See Wexler Decl., ¶ 6.) If that fails the next step is to file a Request for Pretrial Discovery Conference (Local Rule 2.1.17), which was not done here.

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: DTT on 1/9/2024.  
(Judge's initials) (Date)

(36)

**Tentative Ruling**

Re: **Case v. Rye**  
Superior Court Case No. 23CECG05070

Hearing Date: January 17, 2024 (Dept. 501)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

**Tentative Ruling:**

To continue the matter to Thursday, January 25, 2024, in Department 501 at 3:30 p.m., to require petitioner to file an amendment to the petition which attaches information regarding the terms and conditions of the annuity for the minor in the form of documentation from the annuity company confirming the details of the structured settlement. Petitioner will also need to lodge a revised proposed Order Approving Compromise (MC-351) which attaches that same information at Item 8b(2) (i.e., by reference to Attachment 8b(2)). The amendments and revised orders must be filed no later than 12:00 noon on Monday, January 22, 2024, at 12:00 p.m.

**Explanation:**

The information petitioner has provided regarding the annuity, a *proposed illustration*, is insufficient, since the court must see confirmation of the details from the annuity company itself, and this information must also be attached to the proposed Order Approving Compromise.

If counsel believes that more time is needed to provide the supplemental information, he may call for a hearing and ask for a continuance. The instant continuance is short due to the 30-day deadline for the court to rule on the petition, mandated by Probate Code section 3505.

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: DTT on 1/12/2024.  
(Judge's initials) (Date)

(24)

**Tentative Ruling**

Re: **Gardenhire v. Wroten**  
Superior Court Case No. 20CECG00580

Hearing Date: January 17, 2024 (Dept. 501)

Motion: for Reconsideration – Set Aside Dismissal Order

**Tentative Ruling:**

To deem the motion as a mislabeled Motion to Set Aside Dismissal, and grant. (Code Civ. Proc., § 473, subd. (b).) The dismissal entered on October 31, 2023, is set aside.

The clerk is directed to set a CRC 3.1395 Dismissal Hearing on Thursday, February 29, 2024, at 3:00 p.m. in Department 402.

**Explanation:**

The mere title of the motion may not be determinative of what the motion is actually requesting. A trial court may construe a motion bearing one label as a different type of motion. This is consistent with the court's inherent authority to manage and control its docket. [*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187, 192-193 (post-judgment motion "for reconsideration" treated as motion for new trial); see also *Pierson v. Sharp Memorial Hosp.* (1989) 216 Cal.App.3d 340, 342-343 (motion to strike treated as a motion for judgment on the pleadings).] Here, this is not actually a motion for a reconsideration based on "new or different facts [or] circumstances," but is simply requesting that the dismissal ordered on October 31, 2023, be set aside based on the excusable neglect of counsel in failing to attend the CRC 3.1395 Dismissal hearing on that date.

"The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Code Civ. Proc., § 473, subd. (b).) A motion requesting discretionary relief from default, as here, must be made "within a reasonable time" and "in no case exceeding six months" after entry of the default. (*Id.*) The motion was filed timely, since it was filed only nine days after the dismissal.

"Where an attorney states that he was unaware of his duty to appear or answer because his employees misplaced papers or misinformed him as to the relevant date, relief is routinely granted." (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 234.) Here, counsel states that he missed the hearing because of a calendaring mistake made by his office. This is sufficient justification to order relief from dismissal.

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:** DTT **on** 1/12/2024.  
(Judge's initials) (Date)

(24)

**Tentative Ruling**

Re: **HC v. Pike**  
Superior Court Case No. 22CECG03888

Hearing Date: January 17, 2024 (Dept. 501)

Motion: Renewed Motion for Order Permitting Pretrial Discovery  
Regarding Defendant Richard Pike's Profits and Financial  
Condition

**Tentative Ruling:**

To continue the motion to Thursday, March 7, 2024, at 3:30 p.m. in Department 501, to allow defendant to submit evidence in opposition to plaintiff's motion, should he wish to. He may also submit a new memorandum of points and authorities along with his evidence. The evidence and new memorandum must be filed on or before 5:00 p.m. on February 20, 2024. Plaintiff may file a new reply on or before 5:00 p.m. on Thursday, February 29, 2024.

**Explanation:**

Defendant opposes the motion by arguing that plaintiff has failed to meet the requirements to allow her to bring a renewed motion under Code of Civil Procedure section 1008, subdivision (b). However, the court does not actually regard this as a "renewed" motion, despite the label plaintiff has given it. The mere title of the motion may not be determinative of the issue. A trial court may construe a motion bearing one label as a different type of motion. This is consistent with the court's inherent authority to manage and control its docket. [*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187, 192-193 (post-judgment motion "for reconsideration" treated as motion for new trial); see also *Pierson v. Sharp Memorial Hosp.* (1989) 216 Cal.App.3d 340, 342-343 (motion to strike treated as a motion for judgment on the pleadings).] Plaintiff's initial motion for an order permitting her to discover defendant's financial condition was denied *strictly* on procedural grounds. In short, it was a defective motion and the court did not consider the merits of her request. Therefore, this motion does not need to meet the requirements of a true renewed motion.

In *Jabro v. Superior Court* (2002) 95 Cal.App.4th 754, the trial court granted a motion brought under Civil Code section 3295, subdivision (c), for an order authorizing disclosure of defendants' financial condition. However, it considered plaintiff's evidence, only, because it concluded that to prevail on the motion, plaintiff must simply make a prima facie showing sufficient to avoid summary judgment on his punitive damages claim. (*Id.* at p. 756.) The appellate court disagreed that this was the appropriate standard, and issued a writ of mandate ordering the trial court to vacate its ruling. (*Id.* at pp. 759-760.) The appellate court examined the legislative intent behind the statute, and noted:

Against this backdrop of legislative intent, in which protecting the financial privacy of defendants is paramount, we interpret the language of section 3295(c), requiring the trial court to find based on supporting and opposing affidavits that the plaintiff has established there is a substantial probability he will prevail on his claim for punitive damages, to mean that before a court may enter an order permitting discovery of a defendant's financial condition, it must (1) weigh the evidence submitted in favor of and in opposition to motion for discovery, and (2) make a finding that it is very likely the plaintiff will prevail on his claim for punitive damages. In this context, we interpret the words "substantial probability" to mean "very likely" or "a strong likelihood" just as their plain meaning suggests. We note that the Legislature did not use the term "reasonable probability" or simply "probability," which would imply a lower threshold of "more likely than not."

(*Jabro, supra*, 95 Cal.App.4th at p. 758, emphasis added.)

The policy behind Civil Code section 3295 is to "protect defendants' financial privacy and prevent defendants from being pressured into settling nonmeritorious cases in order to avoid disclosure of their financial information." (*Kerner v. Superior Court* (2012) 206 Cal.App.4th 84, 120; *Jabro v. Superior Court, supra*, 95 Cal.App.4th at p. 757.)

Plaintiff has presented evidence via her declaration, attesting to being sexually molested by defendant many times throughout her childhood, and to seeing him also molest his own children when plaintiff was sharing a bedroom with them. No evidence was submitted in opposition. Instead, defendant stood on his argument about the procedural aspects of the motion, as discussed above. Since the court has ruled that this is not a "renewed" motion, it will allow defendant an opportunity to address the merits of the motion before ruling. That is the only way the court can rule under the appropriate standard, as enunciated in *Jabro*.

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: DTT on 1/16/2024.  
(Judge's initials) (Date)