

**Tentative Rulings for January 25, 2023**  
**Department 503**

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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).)

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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 503**

Begin at the next page

(34)

**Tentative Ruling**

Re: **Quintero v. Berni**  
Superior Court Case No. 22CECG01671

Hearing Date: January 25, 2023 (Dept. 503)

Motion: by Defendants for an Order Compelling Plaintiff's Responses to Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One; Order Deeming Requests for Admissions Admitted

**Tentative Ruling:**

To deny all motions without prejudice. (Code Civ. Proc. § 1013b, subd. (b)(3).)

**Explanation:**

A party that fails to serve a timely response to a discovery request waives "any objection" to the request. (Code Civ. Proc., §§ 2030.290(a), 2031.300(a), 2033.280(a).) The propounding party may move for an order compelling a party to respond to the discovery request. (Code Civ. Proc., §§ 2030.290(b) 2031.300(b).) In the case of requests for admission, the propounding party may move for an order that the truth of any matters specified in the requests be deemed admitted. (Code Civ. Proc., § 2033.280(b).)

Where a party fails to timely respond to a propounding party's request for admissions, the court must grant the propounding party's motion requesting that matters be deemed admitted, unless it finds that the party to whom the requests were directed has served, prior to the hearing on the motion, a proposed response that is substantially in compliance with Code of Civil Procedure section 2033.220. (Code Civ. Proc. §2033.280(c); see also *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 778.) "Substantial compliance" means compliance with respect to " 'every reasonable objective of the statute.' [Citation.]" (*Id.* at p. 779.) Where the responding party serves its responses before the hearing, the court "has no discretion but to deny the motion." (*Id.* at p. 776.)

Here, defendants seek an order compelling responses without objections to form interrogatories, special interrogatories and request for production. Defendants also request an order deeming the request for admissions admitted by plaintiff<sup>1</sup>. The discovery at issue was served on plaintiff by mail on August 12, 2022 and responses were due on

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<sup>1</sup> Although the title of the Notice of Motion is confusing, as it indicated the motion is seeking an "Order Compelling Plaintiff to Respond to Request For Admissions Be Deemed Admitted," the substance of the notice of motion indicates the relief sought in the motion is that the requests be deemed admitted pursuant to Code of Civil Procedure section 2033.280 and complies with Code of Civil Procedure section 1010.

The proofs of service accompanying the motions at bench indicate electronic service on plaintiff on October 26, 2022. However, the email address of the person served is not included on the proof of service as required by Code of Civil Procedure section 1013b, subdivision (b)(3). As such, defendants' motions to compel responses to interrogatories and requests for production and to deem admissions admitted are denied without prejudice.

## Tentative Ruling

4

(40)

**Tentative Ruling**

Re: ***Isaac Clark v. Jason Pritchard SR, et al.***  
Superior Court Case No. 21CECG03472

Hearing Date: January 24, 2023 (Dept. 503)

Motions Motion to Strike

**Tentative Ruling:**

To deny.

**Explanation:**

Defendants move to strike portions of the First Amended Complaint, arguing that Plaintiff has included a defendant, David Garrett, who is allegedly deceased. The inclusion of a deceased individual is an action void *ab initio*, Defendants argue, citing *Oliver v. The Swiss Club Tell* (1963) 222 Cal.App.2d 528.

In *Oliver v. The Swiss Club Tell*, *supra*, 222 Cal.App.2d 528, 533, an unincorporated association was sued and answered, stating the answer was on behalf of the "The Swiss Club Tell," an unincorporated association, "*if any such organization exists.*" (*Ibid.* at 533.) Plaintiff failed to appear at the hearing where summary judgment was granted to defendant. That judgment was reversed on appeal and the court held the case should be tried to determine whether defendant existed as an entity. (*Ibid.* at 546.)

*Oliver supra*, 222 Cal.App.2d 528, 546, is distinguishable. In that case, the defendant had already appeared and, by its own pleading, created an ambiguity about its legal status, but not its existence as a defendant. There is nothing ambiguous about the First Amended Complaint. A person named David Garrett has been sued and served, but has not appeared. Did he not appear because he is deceased or, is it a different David Garrett against whom plaintiff brings this action? Defendant believes the party David Garrett is deceased; Plaintiff disputes this. A disputed fact cannot be resolved with the pending motion.

The court takes Judicial Notice of the Death Certificate of a person named David Garrett. (Evidence Code § 452 (d).) However, the court may not accept the death certificate as proof of an issue in dispute. (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1565.) The Death Certificate does not indisputably establish the death of **the** David Garrett who named as a defendant here. Therefore, the request for Judicial Notice is granted, within these limitations.

In his opposition, Plaintiff attached an obituary notice for a David Garrett. The Court disregards this material as it is not within the parameters of a Motion to Strike, which is not for the purpose of resolving disputed facts. (Code of Civil Procedure section 436.) While the Court has the power to strike inappropriate allegations in a pleading the Court declines to do so here. Defendant has not established proper grounds for its request.



(24)

### Tentative Ruling

Re: **Mercado v. Washington Unified School District**  
Superior Court Case No. 21CECG01671

Hearing Date: ~~January 25, 2023~~ (Dept. 503) – Cont. See *below*.

Motion: Defendant Washington Unified School District's Demurrer to the First Amended Complaint

### Tentative Ruling:

To continue the motion to Thursday, February 23, 2023, at 3:30 p.m. in Department 503, in order to allow the parties to meet and confer in person or by telephone, as required. If this resolves the issues, defendant shall call the court to take the motion off calendar. If it does not resolve the issues, defense counsel shall file a declaration, on or before February 14, 2023, stating the efforts made.

**Explanation:**

Defendant did not satisfy its requirement to meet and confer prior to filing the demurrer. Code of Civil Procedure section 430.41 is very clear that meet and confer must be conducted “in person or by telephone. (*Id.*, subd. (a).) While counsel's declaration does state he called plaintiff's counsel's office and left a message, it does not appear that his message conveyed that he wanted to set a telephone appointment. The court cannot find that plaintiff failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. (*Id.*, subd. (a)(3)(B).) Even so, the court expects plaintiff's counsel to fully cooperate with setting a time to meet and confer.

The parties must engage in good faith meet and confer, in person or by telephone, as set forth in the statute. The court's normal practice is to take such motions off calendar, subject to being re-calendared once the parties have met and conferred. Presently, however, given the extreme congestion in the court's calendar currently, rather than take the motion off calendar, the court will instead continue the hearing to allow the parties to meet and confer, and only if efforts are unsuccessful will it rule on the merits.

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:         jyh         on         1/24/23        .  
(Judge's initials) (Date)

(24)

**Tentative Ruling**

Re: ***Zybura v. Freitas***  
Superior Court Case No. 20CECG03201

Hearing Date: ~~January 25, 2023~~ (Dept. 503) – Cont. See *below*.

Motion                                1) Defendants Keith Freitas and Sea Pine Ventures' Motion to Strike or Motion for Judgment on the Pleadings as to the Third Amended Complaint  
    2) Defendant Tend the Garden, Inc.'s Demurrer to the Third Amended Complaint

**Tentative Ruling:**

To continue the motions to Tuesday, February 28, 2023, at 3:30 p.m. in Department 503, in order to allow the parties to meet and confer in person or by telephone, as required. If this resolves the issues, defendants shall call the court to take the motion off calendar. If it does not resolve the issues, defense counsel shall file a declaration, on or before February 17, 2023, stating the efforts made.

**Explanation:**

Defendants did not satisfy their requirement to meet and confer prior to filing these motions. Code of Civil Procedure sections 430.41 (demurrers), 435.5 (strike) and 439 (judgment on the pleadings) are very clear that meet and confer must be conducted “in person or by telephone. (*Id.*, subd. (a).) While defense counsel's declaration states he attempted to call plaintiff's (former) counsel and was unable to leave a voicemail, the email he sent after this does not request that the parties set up a meeting to confer in person or by telephone, and while the closing line invites a response, the implication is that this should be by email. This is insufficient.

The parties must engage in good faith meet and confer, in person or by telephone, as set forth in the statute. Furthermore, defense counsel must contact plaintiff's new attorney, as reflected in the Substitution of Attorneys filed on November 17, 2022. The court's normal practice is to take such motions off calendar, subject to being re-calendared once the parties have met and conferred. Even so, given the extreme congestion in the Law and Motion calendar, the court prefers to continue the hearings on pleading motions to allow the parties to meet and confer, and only if efforts are unsuccessful will it rule on the merits. Here, however, the court notes that with the two prior rounds of pleading motions, meet and confer was defective and similar continuances were given. And with the last such continuance, no meet and confer declaration was filed, as required (see Minute Order dated May 4, 2022), but the court nonetheless ruled on the merits of the motion. No such leeway will be extended this time, as defense counsel has never shown a good faith attempt to properly meet and confer. If no meet and confer declaration is filed demonstrating either that proper meet and confer occurred or that plaintiff's counsel failed or refused to meet and confer in good faith, these motions will be taken off calendar without a ruling on the merits. There is no



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.

**Issued By:** jyh **on** 1/24/23  
(Judge's initials) (Date)