

**Tentative Rulings for February 22, 2023**

**Department 503**

**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.*

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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

(03)

### Tentative Ruling

Re:

## ***Camarillo v. Topete***

Superior Court Case No. 19CECG02252

Hearing Date:

~~February 22, 2023~~ (Dept. 503) No hearing. See below

Motion:

By Plaintiff Rocio Alvarado Camarillo for Default Judgment

### Tentative Ruling:

To take the matter off calendar, as no moving papers have been filed.

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** 2/21/23

(36)

**Tentative Ruling**

Re: ***Herrera, et al. v. Falcon Private Security, Inc., et al.***  
Superior Court Case No. 20CECG03491

Hearing Date: February 22, 2023 (Dept. 503)

Motions (x5): Defendant Safwat Mikhail, aka Michael Safwat's Motions for an Order Deeming Requests to Admit Truth of Facts Against Plaintiff David Herrera Admitted; and Compelling Plaintiff David Herrera's Responses to (1) Form Interrogatories—General; (2) Form Interrogatories—Employment Law; (3) Special Interrogatories; (4) Request for Production of Documents; and for Monetary Sanctions

**Tentative Ruling:**

To grant and to award monetary sanctions in the total amount of \$750 against plaintiff David Herrera, and plaintiff's attorney Justin B. Toobi, jointly and severally, 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.

The matters specified in defendant Mikhail Safwat, aka Safwat Michael's ("Mr. Safwat") Requests for Admission, Set One, are deemed admitted, unless plaintiff David Herrera serves, before the hearing, proposed responses to the requests for admission that are in substantial compliance with the Code of Civil Procedure, section 2033.220.

Plaintiff shall serve verified responses without objections, to defendant Mr. Safwat's Form Interrogatories—General, Set One; Form Interrogatories—Employment Law, Set One; Special Interrogatories, Set One; and Request for Production of Documents, Set One, no later than 10 court days from the date of this order, with the time to run from the service of this minute order by the clerk.

**Explanation:**

Interrogatories and Document Production

Plaintiff had ample time to respond to the discovery propounded by defendant, and he has 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. Sup.Ct. (Markum)* (1980) 111 Cal.App.3d 902, 905-906.)

Requests for Admissions

Failure to timely respond to requests for admission results in a waiver of all objections to the requests. (Code Civ. Proc., § 2033.280, subd. (a).) The statutory

language leaves no room for discretion. (*Tobin v. Oris* (1992) 3 Cal.App.4th 814, 828.) “The law governing the consequences for failing to respond to requests for admission may be the most unforgiving in civil procedure. There is no relief under [Code of Civil Procedure] section 473. The defaulting party is limited to the remedies available in [Code of Civil Procedure section 2033.280] . . .” (*Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 394-395, disapproved on other grounds in *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 983, fn. 12.)

But the court may relieve the party who fails to file a timely response if, before entry of the order deeming the requested matters admitted, the party in default (1) moves for relief from waiver and shows that the failure to serve a timely response was due to “mistake, inadvertence or excusable neglect” and (2) serves a response in “substantial compliance” with Code of Civil Procedure section 2033.220. (Code Civ. Proc., § 2033.280, subd. (a)-(c); see also *Brigante v. Huang* (1993) 20 Cal.App.4th 1569, 1584, disapproved on other grounds in *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 983, fn. 12.) “If the party manages to serve its responses before the hearing, the court has no discretion but to deny the motion . . . . [¶] Everything, in short, depends on submitting responses prior to the hearing.” (*Demyer v. Costa Mesa Mobile Home Estates* (1995) 26 Cal.App.4th 393, 395-396.)

## 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], 2033.280, subd. (c) [requests for admission].) No opposition was filed, so no facts were presented to warrant finding sanctions unjust. The sanction amount awarded does not include the time for responding to an opposition and for appearing at the hearing, as this proved unnecessary. The court finds it reasonable to allow two hours for the preparation of these discovery motions at the hourly rate of \$225 provided by counsel, and \$300 for the cost of filing the motions. Therefore, the total amount of sanctions awarded is \$750.

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** 2/21/23.  
(Judge's initials) (Date)

(34)

**Tentative Ruling**

Re: ***Ochoa-Gonzalez v. Paul Blanco's Good Car Company Fresno, Inc.***

Superior Court Case No. 18CECG01311

Hearing Date: February 22, 2023 (Dept. 503)

Motion: Plaintiff's Motion to Tax Costs

**Tentative Ruling:**

To grant in part and tax costs of defendant Paul Blanco in the sum of \$870.00. Paul Blanco's recoverable costs are reduced to \$451.06. (Code Civ. Proc. § 1033.5.)

**Explanation:**

A "defendant in whose favor a dismissal is entered" is a prevailing party. (Code Civ. Proc., § 1032, subd. (a).) Moreover, "[e]xcept as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032, subd. (b).)

"A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first." (Cal. Rules of Court, rule 3.1700 (a)(1).)

*Timeliness of Defendant's Memorandum of Costs*

Plaintiff filed the request for dismissal of the entire action with prejudice on January 21, 2022. The clerk entered the dismissal as requested on the same date. Defendant filed his memorandum of costs on July 28, 2022 after having learned that the action was dismissed on July 27, 2022. (Sifers Decl. ¶ 3.) Plaintiff requests the court strike the memorandum of costs as untimely. (Cal. Rules of Court, rule 3.1700 (a)(1).)

There is no record of a notice of entry of dismissal being served on Defendant Paul Blanco. Plaintiff did not serve such a notice on all parties, even though she was obligated to do so. (Code Civ. Proc. § 1034, subd. (a); Cal. Rules of Court, rule 3.1390.) Because nothing triggered the 15-day deadline, defendant had 180 days from the entry of dismissal to file his memorandum of costs. (Cal. Rules of Court, rule 3.1700 (a)(1); see *Gagnon Co. v. Nevada Desert Inn* (1955) 45 Cal.2d 448, 455 [dismissal without prejudice has effect of final judgment because it concludes rights of parties in the particular action].) Based on the entry of dismissal on January 21, 2022, the last day to file a memorandum of costs was July 20, 2022.

Defendant requests that the court use its discretion to allow the late filing of the Memorandum of Costs, as plaintiff cannot demonstrate prejudice from allowing the late filing. (*Lee v. Wells Fargo Bank, N.A.* (2001) 88Cal. App.4th 1187, 1199.)

The failure to provide notice of the entry of dismissal, triggering the deadline for the prevailing defendant to file a memorandum of costs is entirely the responsibility of plaintiff. Should the court strike the memorandum as untimely, it would allow Plaintiff to benefit from her own failure to comply with the Rule of Court. Plaintiff has not demonstrated any prejudice from the late filing and took the opportunity to file a motion to tax the costs in the memorandum. As such, the court intends to use its discretion and allow the late filed memorandum to stand.

#### *Prevailing Party*

Plaintiff's argument that defendant Paul Blanco is not a prevailing party based on his failure to participate in the arbitration and settlement of the case is not persuasive.

Pursuant to Code of Civil Procedure section 1032, subdivision (a)(4), a prevailing party includes "a defendant in whose favor a dismissal is entered ... and a defendant as against those plaintiffs who do not recover any relief against that defendant." Here, a voluntary dismissal of the entire action was entered January 21, 2022. Hence, each of the defendants against whom plaintiffs recovered nothing is "a defendant in whose favor a dismissal is entered" and is considered a "prevailing party" under the statute. The settlement with defendant Santander Consumer USA, Inc. and the alleged refusal to participate in the arbitration and pay the arbitration fees has no bearing on the analysis.

#### *Filing Fees Incurred by Other Parties*

Defendant Paul Blanco's memorandum of costs claims the \$435 first appearance filing fee for himself as well as the \$435 first appearance filing fee for defendant Paul Blanco's Good Car Company Fresno, Inc. and the \$435 first appearance filing fee for defendant Putu Blanco. Plaintiff moves to tax the \$870.00 in filing fees claimed for defendants Paul Blanco's Good Car Company and Putu Blanco. The motion is granted. The filing fees for defendants Paul Blanco's Good Car Company and Putu Blanco are not recoverable by defendant Paul Blanco.

In opposition, defense counsel attests to his client's payment of the first appearance filing fees for Paul Blanco's Good Car Company Fresno, Inc. and Putu Blanco and submits documentary evidence of the payments. (Sifers Decl. ¶ 4, Exh. 3.) Defendant Paul Blanco's filing fees (first appearance and substitution of attorney) are allowable costs pursuant to Code of Civil Procedure section 1033.5, subdivision (a)(1). However, no authority is provided to recover the filing fees Mr. Blanco apparently paid on behalf of the other defendants. Mr. Blanco asserts that that all costs claimed in his memorandum were incurred reasonably and were necessary to litigate this action. This assertion is unsupported. "Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation." (Code Civ. Proc. § 1033.5(c)(2).)

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** 2/21/23  
(Judge's initials) (Date)



(34)

**Tentative Ruling**

Re: ***Diaz-Samaniego v. Paul Blanco's Good Car Company Fresno, Inc.***

Superior Court Case No. 18CECG02632

Hearing Date: February 22, 2023 (Dept. 503)

Motion: Plaintiff's Motion to Tax Costs

**Tentative Ruling:**

To grant in part and tax costs of defendant Paul Blanco in the sum of \$870.00. Paul Blanco's recoverable costs are reduced to \$639.06. (Code Civ. Proc. § 1033.5.)

**Explanation:**

A "defendant in whose favor a dismissal is entered" is a prevailing party. (Code Civ. Proc., § 1032, subd. (a).) Moreover, "[e]xcept as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032, subd. (b).)

"A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first." (Cal. Rules of Court, rule 3.1700 (a)(1).)

*Timeliness of Defendant's Memorandum of Costs*

Plaintiff filed the request for dismissal of the entire action without prejudice on February 15, 2022. The clerk entered the dismissal as requested on the same date. Defendant filed his memorandum of costs on July 28, 2022 after having learned that the action was dismissed on July 27, 2022. (Sifers Decl. ¶ 3.) The court notes that defendant Paul Blanco was dismissed from the action without prejudice on October 19, 2021, prior to the dismissal of the entire action. Plaintiff requests the court strike the memorandum of costs as untimely. (Cal. Rules of Court, rule 3.1700 (a)(1).)

There is no record of a notice of entry of dismissal being served on Defendant Paul Blanco. Plaintiff did not serve such a notice on all parties, even though she was obligated to do so. (Code Civ. Proc. § 1034, subd. (a); Cal. Rules of Court, rule 3.1390.) Because nothing triggered the 15-day deadline, defendant had 180 days from the entry of dismissal to file his memorandum of costs. (Cal. Rules of Court, rule 3.1700 (a)(1); see *Gagnon Co. v. Nevada Desert Inn* (1955) 45 Cal.2d 448, 455 [dismissal without prejudice has effect of final judgment because it concludes rights of parties in the particular action].) Proofs of service for both the February and October requests reflect service only on the Robards & Stearns law firm. Paul Blanco filed a substitution of attorney on July 7, 2021 updating his counsel of record to be James S. Sifers of Madison Law, APC.

Based on the entry of dismissal of Paul Blanco on October 19, 2021, the last day to file a memorandum of costs was April 18, 2022.

Defendant requests that the court use its discretion to allow the late filing of the Memorandum of Costs, as plaintiff cannot demonstrate prejudice from allowing the late filing. (*Lee v. Wells Fargo Bank, N.A.* (2001) 88Cal. App.4th 1187, 1199.)

The failure to provide notice of the entry of dismissal, triggering the deadline for the prevailing defendant to file a memorandum of costs is entirely the responsibility of plaintiff. Should the court strike the memorandum as untimely, it would allow Plaintiff to benefit from his own failure to comply with the Rule of Court. Plaintiff has not demonstrated any prejudice from the late filing and took the opportunity to file a motion to tax the costs in the memorandum. As such, the court intends to use its discretion and allow the late filed memorandum to stand.

#### *Prevailing Party*

Plaintiff's argument that defendant Paul Blanco is not a prevailing party based on his failure to participate in the arbitration and settlement of the case is not persuasive.

Pursuant to Code of Civil Procedure section 1032, subdivision (a)(4), a prevailing party includes "a defendant in whose favor a dismissal is entered ... and a defendant as against those plaintiffs who do not recover any relief against that defendant." Here, a voluntary dismissal of the entire action was entered January 21, 2022. Hence, each of the defendants against whom plaintiff recovered nothing is "a defendant in whose favor a dismissal is entered" and is considered a "prevailing party" under the statute. The settlement with defendant Santander Consumer USA, Inc. and the alleged refusal to participate in the arbitration and pay the arbitration fees has no bearing on the analysis.

#### *Filing Fees Incurred by Other Parties*

Defendant Paul Blanco's memorandum of costs claims the \$435 first appearance filing fee for himself as well as the \$435 first appearance filing fee for defendant Paul Blanco's Good Car Company Fresno, Inc. and the \$435 first appearance filing fee for defendant Putu Blanco. Plaintiff moves to tax the \$870.00 in filing fees claimed for defendants Paul Blanco's Good Car Company and Putu Blanco. The motion is granted. The filing fees for defendants Paul Blanco's Good Car Company and Putu Blanco are not recoverable by defendant Paul Blanco.

In opposition, defendant claims he paid the first appearance filing fees for Paul Blanco's Good Car Company Fresno, Inc. and Putu Blanco and submits documentary evidence of the payments. (Sifers Decl. ¶ 4, Exh. 3.) Defendant Paul Blanco's filing fees (first appearance and substitution of attorney) are allowable costs pursuant to Code of Civil Procedure section 1033.5, subdivision (a)(1). However, no authority is provided to recover the filing fees Mr. Blanco apparently paid on behalf of the other defendants. Mr. Blanco asserts that that all costs claimed in his memorandum were incurred reasonably and were necessary to litigate this action. This assertion is unsupported. "Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation." (Code Civ. Proc. § 1033.5(c)(2).)

There is no explanation provided as to why paying the filing fees for all defendants was necessary to litigate this action on behalf of Mr. Blanco individually. While it appears that it was convenient or beneficial for defendant Paul Blanco to pay the filing fees of the other defendants, as all were represented by the same attorney at the time payment was made, there is no indication that doing so was reasonably necessary to the conduct of the litigation. Moreover, counsel of record for these defendants was served with the Request for Dismissal and had the opportunity to file their own memorandum of costs.

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** 2/21/23

(Judge's initials)                      (Date)