

**Tentative Rulings for April 13, 2023**  
**Department 403**

**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.

22CECG00048	Guardian Angel's Adult Day Health Care, LLC v. Cha is continued to Wednesday, May 3, 2023 at 3:30 p.m. in Department 403.
22CECG01113	Vernick v. Morales is continued to Thursday, April 20, 2023, at 3:30 p.m. in Department 403.

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(Tentative Rulings begin at the next page)

## **Tentative Rulings for Department 403**

Begin at the next page

(24)

**Tentative Ruling**

Re:

**Madrigal v. Martinez**

Superior Court Case No. 19CECG03043

Hearing Date:

April 13, 2023 (Dept. 403)

Motion:

Plaintiff's Motion to Set Aside Dismissal

**Tentative Ruling:**

To order off calendar, as premature.

**Explanation:**

The court's order dated June 1, 2022, granted the request for terminating sanctions against plaintiffs, and then stated, "Defendant is directed to submit to this court, within 7 days of service of the minute order, a proposed judgment dismissing this action." Defendant never submitted such a judgment, so the complaint has not yet been dismissed. When the court considered plaintiff's request for reconsideration of the motion for terminating sanctions in January 2023, it was unaware of this fact.

Thus, the six-month time limit to set aside dismissal under Code of Civil Procedure section 473, subdivision (b) has not begun, and (more importantly) there is no dismissal to set aside at this time. In short, the court cannot grant the requested relief, and can offer no opinion on whether some other equitable and discretionary relief might be available to the moving party. (See, e.g., *Lovato v. Santa Fe Internat. Corp.* (1984) 151 Cal.App.3d 549, 555.) "The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court." (*People ex rel. Lynch v. Superior Court* (1970) 1 Cal.3d 910, 912; *Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, 243; *Salazar v. Eastin* (1995) 9 Cal.4th 836, 860.)

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:** JS **on** 4/6/2023.  
(Judge's initials) (Date)

(38)

**Tentative Ruling**

Re:

***CVE Contracting Group, Inc. v. Disaster Restoration International – DRI, Inc.***

Superior Court Case No. 22CECG01744

Hearing Date:

April 13, 2023 (Dept. 403)

Motion:

- 1) Motion by Plaintiff CVE Contracting Group, Inc. for Order that Matters in Requests for Admission, Set One, be Deemed Admitted by Defendant Disaster Restoration International – DRI, Inc., and Imposing Monetary Sanctions
- 2) Motion by Plaintiff CVE Contracting Group, Inc. for Order Compelling Defendant Disaster Restoration International – DRI, Inc. to Respond to Form Interrogatories, Set One, and Imposing Monetary Sanctions
- 3) Motion by Plaintiff CVE Contracting Group, Inc. for Order Compelling Defendant Disaster Restoration International – DRI, Inc. to Respond to Request for Production of Documents, Set One, and Imposing Monetary Sanctions

**Tentative Ruling:**

To grant plaintiff's motion to deem requests for admission admitted. The truth of the matters specified in the Requests for Admission, Set One, are to be deemed admitted, unless defendant Disaster Restoration International – DRI, Inc. serves, before the hearing, a proposed response that is in substantial compliance with Code of Civil Procedure section 2033.220. To grant the motions to compel responses. Within 20 days of service of the order by the clerk, defendant Disaster Restoration International – DRI, Inc. shall serve verified responses, without objections, to plaintiff's Form Interrogatories, Set One and Request for Production of Documents, Set One. To impose monetary sanctions against defendant, Disaster Restoration International – DRI, Inc., in the total amount of \$1,108.00, to be paid within 20 calendar days from the date of service of the minute order by the clerk. To grant plaintiff's Request for Judicial Notice.

**Explanation:**

**Requests for Admission**

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.)

## Interrogatories and Document Production:

DRI had ample time to respond to the discovery propounded by plaintiff, and 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. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.)

### Monetary Sanctions:

Pursuant to Code of Civil Procedure section 2033.280, subdivision (c), it is mandatory that the court impose a monetary sanction on the party whose failure to serve a timely response to requests for admission necessitated this motion. Additionally, sanctions are mandatory against the party who unsuccessfully opposes a motion to compel responses to discovery 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].) No opposition was filed, so no facts were presented to warrant finding sanctions unjust.

The monetary sanctions imposed are less than the amount requested because the motions were nearly identical, with only a few words needing to be changed. The court finds that the reasonable amount of attorney fees to award as sanctions on these simple and uncontested motions is \$928.00. The court awards additional sanctions in the amount of \$180.00, which represents the total amount of the filing fees for the three motions. Thus, the court awards sanctions in the total amount of \$1,108.00.

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: JS on 4/11/2023.  
(Judge's initials) (Date)