

Tentative Rulings for April 30, 2025
Department 502

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)

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.*

24CECG03986 *Emanuel Grigsby v. Abraham Gonzales*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

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Tentative Ruling

Re: **Ruben Huerta v. Monica Mendez**
Superior Court Case No. 24CECG04495

Hearing Date: April 30, 2025 (Dept. 502)

Motion: (1) By Plaintiff Rueben Huerta to Compel Responses to Form Interrogatories and for Sanctions
(2) By Plaintiff Rueben Huerta for Deemed Admissions Order and for Sanctions
(3) By Defendant Monica Mendez for Summary Judgment, or in the Alternative, Summary Adjudication Against Plaintiff Rueben Huerta

Tentative Ruling:

(1) To grant the motion to compel initial responses to Form Interrogatories, Set One. (Code Civ. Proc., § 2030.290.) Within 20 days of service of the order by the clerk, defendant Carmelo Duran shall serve objection-free responses to the Form Interrogatories. To deny the request for sanctions

(2) To grant. The truth of all matters specified in the Request for Admissions, Set One, are deemed admitted. (Code Civ. Proc., § 2033.280, subd. (b).) To deny the request for sanctions.

(3) To continue the summary judgment motion to 3:30 p.m. on 6/12/2025, in Department 502. No further papers may be filed by plaintiff. Moving party's reply deadline will be based on the continued hearing date.

Explanation:

(1), (2) Discovery Motions

On 1/22/2025 plaintiff served on defendant Carmelo Duran Form Interrogatories, Set One, and Requests for Admission, Set One. Because Duran has not responded, plaintiff moves for an order compelling a response to the interrogatories and a deemed admissions order. Plaintiff seeks \$1,225 in sanctions per motion.

While Duran was served with the summons and complaint on 10/22/24, he has not appeared in this action. His response deadline passed before the discovery was served. Yet instead of simply taking his default, which plaintiff could have done months ago, plaintiff is pursuing discovery from a defendant who apparently is not participating in this action. "A plaintiff may propound interrogatories to a party without leave of court at any time that is 10 days after the service of the summons on, or appearance by, that party, whichever occurs first." (Code Civ. Proc., § 2030.020, subd. (b) [interrogatories]; see also § 2033.020, subd. (b) [RFAs, same].) Because the Civil Discovery Act authorizes

However, the court will not impose sanctions because the motions are pointless and a waste of the court's time. "If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction *unless it finds ... that other circumstances make the imposition of the sanction unjust.*" (Code Civ. Proc., § 2023.030, subd. (a), emphasis added.) There is no point in pursuing discovery from a defendant whose default can be entered. Plaintiff is directed to take Duran's default instead of pursuing pointless discovery motions.

(3) *Motion for Summary Judgment / Adjudication*

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: KCK on 04/24/25
(Judge's initials) (Date)

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Tentative Ruling

Re: ***Hector Navarro v. Los Gatos Tomato Products, LLC***
Superior Court Case No. 24CECG04545

Hearing Date: April 30, 2025 (Dept. 502)

Motion: By Defendant to Compel Arbitration, Dismiss the Class Claims,
and Stay the Proceedings

Tentative Ruling:

To grant the motion to compel arbitration, dismiss the class claims, and to stay the proceedings pending the arbitration of Plaintiff's claims against Defendant.

Explanation:

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc., § 1281.2.) However, there is "no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate." (*Garlach v. Sports Club Co.* (2012) 209 Cal.App.4th 1497, 1505) "Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute." (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.)

The party moving to compel arbitration bears the burden of proving by a preponderance of the evidence the existence of an arbitration agreement. (*Fleming v. Oliphant Financial, LLC* (2023) 88 Cal.App.5th 13, 18; *Lane v. Francis Capital Management LLC* (2014) 224 Cal.App.4th 676, 683.) In order to determine whether an arbitration agreement exists, the court may need to assess the parties to any such agreement. (*Melchor Investment Co. v. Rolm Systems* (1992) 3 Cal.App.4th 587, 592.) After the moving party establishes the existence of an arbitration agreement between the parties, then the burden shifts to the opposing party to show that the agreement is otherwise unenforceable. (*Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 219.)

Here, Defendant has quoted the arbitration provision verbatim and attached the signed agreement. The agreement provides,

..."("Employee") and Los Gatos Tomato Products, LLC (Employer") agree to resolve all claims, disputes or controversies arising out of or relating to Employee's employment and/or the cessation of employment exclusively by final and binding arbitration to the extent permitted by law."

(Hernandez Decl., Exh. B.)

It also provides,

"The parties to the Agreement intend to arbitrate any disputes between them on an individual basis only. To the fullest extent permitted by law, the parties agree that they shall not join or consolidate claims submitted for arbitration under the Agreement with those of any other persons, and that no form of class, collective, or representative action shall be maintained without the mutual consent of the parties."

(Ibid.)

Defendant has met its initial burden of demonstrating the existence of an arbitration agreement. Plaintiff does not oppose this motion. The Court grants the motion to compel arbitration, dismiss the class claims, and stay the proceedings pending the outcome of arbitration.

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: KCK **on** 04/25/25.
(Judge's initials) (Date)

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Tentative Ruling

Re: **John Doe v. Saint Agnes Medical Center**
Superior Court Case No. 23CECG00816

Hearing Date: April 30, 2025 (Dept. 502)

Motion: Application of Joseph Y. Ahmad to Appear *Pro Hac Vice*

Tentative Ruling:

To deny, without prejudice.

Explanation:

No Service of Application on State Bar

Pursuant to California Rules of Court, Rule 9.40(c), the applicant must prove service of the notice and application on the State Bar of California. Here, no proof of service on the State Bar was filed. Local counsel's statement in his declaration that a copy of the notice and verified application was "uploaded to the website of the State Bar of California" does not prove service. (Caddell Decl., ¶ 2.) This statement does not suggest that proper service was effectuated, as "uploading" is not a method of service.

Numerous Applications for Appointment as Counsel Pro Hac Vice

California Rules of Court, Rule 9.40(a) requires the applying attorney to show that he or she is not ineligible to appear as counsel *pro hac vice* by showing clearly that they are (*inter alia*) not regularly employed in the State of California, and not regularly engaged in substantial business, professional, or other activities in the State of California. It is further expounded that absent special circumstances, repeated appearances is a cause for denial of an application. (Cal. Rules of Court, rule 9.40(b).)

Here, applicant has filed five (5) applications to appear as counsel *pro hac vice* in California in the past two years. (Appl., ¶ 7.) No special circumstances are claimed. Each of the five cases names a hospital or other healthcare entity as a defendant. The numerous applications in cases against a particular category of defendants seem to imply that applicant is establishing himself as an attorney who specializes in (or at least focuses on) these types of cases and thereby is intending to regularly represent plaintiffs in civil actions against healthcare defendants in California. *Pro hac vice* appearances are supposed to be the exception, not the rule, and if the applicant intends to appear in California on a regular basis in these matters, he should not be doing so *pro hac vice*.

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Tentative Ruling

Re: **Vince Zavala v. Advanced Roofing & Rain gutters**
Superior Court Case No. 23CECG00045

Hearing Date: April 30, 2025 (Dept. 502)

Motion: by Plaintiffs to Enforce Settlement

Tentative Ruling:

To grant the motion to enforce settlement. (Code Civ. Proc. § 664.6.) To grant attorney's fees and costs in the total amount of \$1,245.00, payable to counsel for plaintiffs, Wilkins, Drolshagen & Czeshinski LLP, within 10 days of the date of this order, with the time to run from the service of this minute order by the clerk.

Explanation:

Legal Standard

Code of Civil Procedure section 664.6 provides as follows: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court . . . for settlement of the case . . . the court, upon motion, may enter judgment pursuant to the terms of the settlement." It also provides that the parties may request that the court "retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." (Code Civ. Proc. § 664.6.) Due to the summary nature of the statute authorizing judgment to enforce a settlement agreement, strict compliance with its requirements is prerequisite to invoking the power of the court to impose a settlement agreement. (*J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 984.)

Application

Here, plaintiffs Vince and Michelle Zavala submit a writing, signed by the parties, made outside the presence of the court. (See Wilkins Decl., Exh. A.) The settlement agreement was signed by the parties on September 25, 2024 and September 30, 2024 respectively. Pursuant to the agreement, defendant was to make a payment to plaintiffs via their counsel in the total amount of \$50,000.00 by December 31, 2024. (Wilkins Decl., ¶ 6.) The agreement provides that the owner of defendant Advanced Roofing & Rain gutters, Robert Rodriguez, agrees to personally guaranty the obligation of \$50,000.00. (*Id.*, ¶ 6; Exh. A, ¶ 2.) As of the date of filing this motion, the payment has not been received pursuant to the payment instructions set forth in the agreement. (*Id.*, ¶¶ 7, 9.)

Litigation is still pending. Further, the writing reflects that jurisdiction would be retained under section 664.6 to enforce the writing. (Wilkins Decl., ¶ 8; Exh. A, ¶ 19.) Plaintiffs state that defendant has failed to satisfy its contractual obligations under the writing. (*Id.*, ¶¶ 7, 9.) No opposition to the instant motion has been filed, thus the court will rely on the declaration of Mr. Wilkins and grant the motion.

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Tentative Ruling

Re: ***Dr. Victor Khalil v. The State of California Department of State Hospitals.***

Superior Court Case No. 20CECG02085

Victor Khalil v. Robert Withrow

Superior Court Case No. 22CECG02007

Hearing Date: April 30, 2025 (Dept. 502)

Motion: by Defendants Department of State Hospitals and Brandon Price to Consolidate; and Continue Trial

Tentative Ruling:

To grant. Superior Court Case No. 22CECG02007 is consolidated under Superior Court Case No. 20CECG02085, as the lead case, for all purposes. Subsequent filings must be filed only in the lead case.

To vacate trial set in each of Superior Court Case No. 20CECG02085 and 22CECG02007. To set a Trial Setting Conference in Superior Court Case No. 20CECG02085 for May 28, 2025, 3:30 p.m. in Department 502.

Explanation:

On March 24, 2020, plaintiff Victor Khalil ("Plaintiff") filed an original action in Los Angeles County against defendant Department of State Hospitals ("DSH") for retaliation in violation of Government Code section 12940, subdivision (h); and for racial discrimination in violation of Government Code section 12940, subdivision (a). The action was later transferred to Fresno County and given the case number 20CECG02085 (the "02085 Action"). In the 02085 Action, Plaintiff alleges that he began work as a Chief Dentist with DSH in 2014. Following certain events, in 2019, Plaintiff alleges that he was pressured into giving satisfactory reviews to individuals he had already reported with poor reviews. Subsequently, Plaintiff alleges that discriminatory comments were made and that he suffered adverse disciplinary actions due to a prior lawsuit.

On June 30, 2022, Plaintiff filed a second action against DSH and defendant Brandon Price (together "Defendants") stating claims of violation of whistleblower protection; violation of Labor Code section 1102.5; violation of Health and Safety Code section 1278; violation of Labor Code section 6310; and wrongful termination. The substance of the allegations are materially similar to the 02085 Action, though this action, 22CECG02007 (the "02007 Action") adds further allegations occurring in 2020 and 2021.

Defendants now seek to consolidate the 02085 Action and the 02007 Action.

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it

Defendants submit that both of these actions are materially similar to each other, and suggests that a third action, 22CECG02588, is also related, but has been appealed. (Purcell Decl., ¶¶ 2, 3.) Defendants state that trial in the 02085 Action and the 02007 Action are set three weeks apart. Defendants argue that there will be burdens on the witnesses who necessarily overlap. Defendants argue that there is a risk of inconsistent rulings. No opposition was 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.

Issued By: KCK on 04/29/25
(Judge's initials) (Date)

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Tentative Ruling

Re: ***Buchanan Crossroads, LP v. Franklin Dixon***
Superior Court Case No. 24CECG05325

Hearing Date: April 30, 2025 (Dept. 502)

Motion: By Plaintiff for Default Judgment

Tentative Ruling:

To deny without prejudice. (Code Civ. Proc., § 1005 ["[A]ll moving and supporting papers shall be served and filed at least 16 court days before the hearing."].)

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: KCK on 04/29/25
(Judge's initials) (Date)