Tentative Rulings for May 13, 2025
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)

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.***

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 503

Begin at the next page

(03)

Tentative Ruling

Re: ***Gil v. Outback, Inc.***
Case No. 21CECG03273

Hearing Date: May 13, 2025 (Dept. 503)

Motion: Plaintiffs' Motion for Preliminary Approval of Class and PAGA Settlement

Tentative Ruling:

To deny plaintiffs' motion for preliminary approval of class and PAGA settlement, without prejudice.

Explanation:

1. Class Certification

a. Standards

First, the court must determine whether the proposed class meets the requirements for certification before it can grant preliminary approval of the proposed settlement. An agreement of the parties is not sufficient to establish a class for settlement purposes. There must be an independent assessment by a neutral court of evidence showing that a class action is proper. (*Luckey v. Superior Court* (2014) 228 Cal. App. 4th 81 (rev. denied); see also Newberg, *Newberg on Class Actions* (T.R. Westlaw, 2017) Section 7:3: "The parties' representation of an uncontested motion for class certification does not relieve the Court of the duty of determining whether certification is appropriate.")

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 313.)

b. Numerosity and Ascertainability

"Ascertainability is achieved by defining the class in terms of objective characteristics and common transactional facts making the ultimate identification of class members possible when that identification becomes necessary. While often it is said that class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records, that statement must be considered in light of the purpose of the ascertainability requirement. Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata." (*Nicodemus v. Saint Francis Memorial Hospital* (2016) 3 Cal.App.5th 1200, 1212, internal citations and quote marks omitted.)

Here, the class is ascertainable, as defendants' personnel records should be sufficient to allow the parties to identify the class members. The class is also sufficiently numerous to justify certification, as plaintiff's counsel claims that there are approximately 341 class members who worked for defendant during the class period. Therefore, the court finds that the class is sufficiently numerous and ascertainable for certification.

c. Community of Interest

"[T]he 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021, internal citations omitted.) "The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.) [T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 669.)

Here, it does appear that there are common questions of law and fact, as all of the proposed class members worked for the same defendant and allegedly suffered the same type of Labor Code violations. Therefore, the proposed class involves common issues of law and fact.

With regard to the requirement of typicality of the representative's claims, it does appear that Mr. Gil's and Mr. Ayala's claims are typical of the rest of the class and that they seek the same relief as the other class members based on their allegations and prayer for relief in the complaint. There is no evidence that they have any conflicts between their interests and the interests of the other class members that would make them unsuitable to represent their interests. Therefore, plaintiffs have shown that the named plaintiffs have claims typical of the other class members.

Plaintiffs' counsel has submitted declarations showing that they are experienced and qualified to represent the class. (See Rodriguez decl., ¶¶ 15-22; Alami decl., ¶¶ 2-8.) The attorneys' declarations discuss their background, education, and experience in class action litigation. They clearly have extensive backgrounds and experience in class action litigation. Therefore, the declarations provide sufficient evidence to support counsels' assertion that they are experienced and qualified to represent plaintiffs and the other class members here.

d. Superiority of Class Certification

It does appear that certifying the class would be superior to any other available means of resolving the disputes between the parties. Absent class certification, each employee of defendants would have to litigate their claims individually, which would result in wasted time and resources relitigating the same issues and presenting the same testimony and evidence. Class certification will allow the employees' claims to be resolved in a relatively efficient and fair manner. (*Sav-On Drugs Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.) Also, the value of each individual class member's claim is relatively small, so it would not be worthwhile for them to bring their claims on an individual basis. On the other hand, if they bring their claims as a class, then they can

recover substantially more money and hopefully deter defendant from committing future violations of the law. Therefore, it does appear that class certification is the superior means of resolving the plaintiff's claims.

Conclusion: The court intends to grant certification of the class for the purpose of settlement.

2. Settlement

a. Legal Standards

"When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair." (*Koby v. ARS National Services, Inc.* (9th Cir. 2017) 846 F. 3d 1071, 1079.)

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement . . . The courts are supposed to be the guardians of the class." (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal. App. 4th 116, 129.) "[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished . . . [therefore] the factual record must be before the … court must be sufficiently developed." (*Id*. at p. 130.) The court must be leery of a situation where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Id*. at p. 129.)

b. Fairness and Reasonableness of the Settlement

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.' The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–245, internal citations omitted, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Here, plaintiffs' counsel has presented a sufficient discussion of the strength of the case if it went to trial, the risks, complexity, and duration of further litigation, and an explanation of why the settlement is fair and reasonable in light of the risks of taking the case to trial. Plaintiffs' counsel has provided a detailed explanation of the claims and defenses raised by the parties, and the problems and risks inherent in plaintiff's case.

Counsel also explains why they decided to accept $367,500 to settle the claims even though they might potentially have recovered much more money if they prevailed at trial. They note that there was a risk that the class might not be certified, or that defendant might try to settle each individual class member's claim separately. The court might also exercise its discretion to reduce or even refuse to award PAGA penalties. In addition, plaintiffs might not have been able to prove that any Labor Code violations were intentional. The issues of the case were hotly contested, and defendant might have prevailed on its defenses. Plaintiffs' counsel and their expert conducted discovery and reviewed a sample of the employees' records to determine what potential damages might be. As a result, plaintiffs concluded that settling for $367,500 was reasonable under the circumstances.

Therefore, plaintiffs have shown that the settlement is fair, reasonable, and adequate in light of the unique facts and legal issues raised by the plaintiffs' case.

c. Proposed Class Notice

The proposed notice appears to be adequate. The notices will provide the class members with information regarding their time to opt out or object, the nature and amount of the settlement, the impact on class members if they do not opt out, the amount of attorney's fees and costs, and the service award to the named class representatives. As a result, the court finds that the proposed class notice is adequate.

3. Attorney's Fees and Costs

Plaintiffs' counsel seeks attorney's fees of $128,625, which is 35% of the gross settlement. Plaintiff' 'counsel has provided two declarations to describe their education, skill, and experience, as well as the challenges presented in the litigation. (Rodriguez decl.; Alami decl.) The declarations generally discuss the attorneys' background, education, skill, and experience. They rely on the fact that courts have chosen to allow attorneys in class and representative actions to recover fees based on a percentage of the common fund that they obtained for the class. Such fees are commonly in the range of one-third of the total recovery.

However, counsel has not provided any evidence regarding the amount of hours they spent on the case, their hourly rates of pay, and the tasks that they performed. They have also failed to submit any evidence showing that the time they spent on the case was reasonable and necessary for the litigation. They merely request fees of up to 35% of the gross settlement without any further explanation of why that amount is reasonable under the circumstances in light of the work done, the hourly rates of counsel, and the difficulty and complexity of the case.

While the court may award fees based on a percentage of the total recovery (i.e. the "common fund" method), it may also perform a lodestar cross-check to ensure that the requested amount of fees is reasonable. (*Laffitte v. Robert Half International, Inc*. (2016) 1 Cal.5th 480, 504.) Here, counsel has not provided the court with enough information to conduct a lodestar cross-check of the requested fees. Therefore, counsel has not shown that the requested fees are reasonable and necessary, and the court will not approve the fees at this time.

On the other hand, plaintiffs' counsel has provided a list of their itemized litigation costs, which presently totals $9,619.23. (Exhibit E to Plaintiffs' Evidence.) Counsel will

presumably incur more costs before the case is resolved, including costs to bring a final approval motion and dealing with other matters related to administering the settlement. Therefore, the request for up to $15,000 in litigation costs is supported by some evidence, and the court intends to grant preliminary approval of the requested costs.

4. Payment to Class Representatives

Plaintiffs seek preliminary approval of a $10,000 service award to the each of named plaintiffs/class representatives. Plaintiffs have provided their declarations, which support the request for a service award, as they state that they worked closely with plaintiff's counsel, provided documents, answered questions, and participated in meetings about the case with counsel. The service awards appear to be fair and reasonable in light of the work done by the named plaintiffs. Therefore, the court intends to grant preliminary approval of the incentive award to the named plaintiffs.

5. Payment to Class Administrator

In the points and authorities brief, plaintiffs' counsel states that the class administrator, ILYM Group, will receive a maximum of up to $8,450 to administer the settlement. (Memo of Points and Authorities, p. 10, ¶ 4.) However, in his declaration, plaintiffs' counsel states that ILYM's bid is only an estimate, and that its final costs may be more than $8,450. (Rodriguez decl. ¶ 24.) The settlement agreement itself states that the administration costs will be up to $12,500. (Exhibit A to Plaintiffs' Motion, Settlement Agreement, § 5.3.) Counsel also states that, if the costs are more than the estimate and less than $12,500, then the difference will be paid to the class members on a pro rata basis. (Rodriguez decl., ¶ 24.)

Thus, there is some conflicting information about how much the administrator will charge to administer the settlement. It appears that the administrator has estimated it will cost $8,450 to administer the settlement, but the settlement provides for a payment of up to $12,500. Plaintiffs need to clarify this discrepancy. Also, plaintiffs need to provide a declaration from a representative of the administrator stating how much it will cost to administer the settlement, as well as providing background information about the administrator's qualifications. At this time, plaintiffs have not provided enough information to allow the court to grant preliminary approval of the administrator's fees.

6. PAGA Settlement

Plaintiffs propose to allocate $20,000 of the settlement to the PAGA claims, with 75% of that amount being paid to the LWDA as required by law and the other 25% being paid out to the aggrieved employees. Plaintiffs' counsel states that he gave notice of the settlement to the LWDA, and includes a copy of the email confirming that the LWDA received the notice. (Rodriguez decl., ¶ 25, and Exhibit G to Plaintiffs' Exhibits.) Therefore, plaintiffs' counsel has shown that he complied with PAGA's requirement to give notice of the settlement to the LWDA. (See Labor Code, § 2699, subd. (s)(2).)

Plaintiffs' counsel has also adequately discussed the reasons why they allocated $20,000 of the total settlement to the PAGA claims. As a result, the court intends to find that plaintiffs have adequately shown that the PAGA settlement is fair, adequate, and reasonable.

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 5/5/2025.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Thao v. Community Hospital and Medical Center***
Case No. 24CECG03930

Hearing Date: May 13, 2025 (Dept. 503)

Motion: Defendant's Petition to Compel Arbitration

Tentative Ruling:

To grant defendant's petition to compel arbitration of the plaintiff's individual claims and dismiss his representative claims. To stay the action pending the resolution of the arbitration.

Explanation:

In light of the plaintiff's statement that he is not opposing the petition to compel arbitration and that he wishes to submit his individual claims to arbitration and dismiss his class claims and stay the action, the court will grant the petition to compel arbitration of plaintiff's individual claims. The court will also dismiss the class action claims. The court action will be stayed pending the outcome of the 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: JS on 5/5/2025.
(Judge's initials) (Date)

(20) **Tentative Ruling**

Re: ***Phillips v. Coalinga Regional Medical Center, et al.***
Superior Court Case No. 23CECG03749

Hearing Date: May 13, 2025 (Dept. 503)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To deny without prejudice.

Explanation:

Plaintiff's counsel needs to address two issues in any future petition to approve the settlement of this action.

First, plaintiff's attorney Corina Burchfield seeks $45,833.33 (about 35% of the gross settlement after deduction of costs) in attorney fees and $17,922.55 in litigation costs. Plaintiff was initially represented by Sawl Law Group, with whom petitioner signed a retainer agreement, providing that the firm would receive 33% of all amounts recovered after the filing of a complaint but before trial. (Petition Attach. 17.) Attorney Corina Burchfield was employed by Sawl Law Group at the time, but left to start her own practice and took this case with her. On 3/25/25 Burchfield filed a notice of conditional settlement. That same day Sawl Law Group filed a notice of lien, claiming entitlement to "the sum of approximately $57,545.79 for attorney's fees and costs, against any settlement or judgement awarded to Plaintiff, before payment of any settlement or satisfaction of any judgement …" The petition was filed over three weeks later on 4/18/25, but does not address this issue. Any future petition to approve the compromise must address how the lien is to be resolved.

Second, the petition proposes to use the balance to the minor to fund a single-premium annuity through United of Omaha Life Insurance Company. However, no quote or annuity contract is provided. The court cannot approve the compromise where the terms of the annuity are not provided.

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 5/6/2025 .
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Maria Garces v. CAN II AG MGT, Inc.***
Superior Court Case No. 23CECG04999

Hearing Date: May 13, 2025 (Dept. 503)

Motion: By Defendant for Leave to File a Cross-Complaint

Tentative Ruling:

To grant.

Explanation:

Defendant Central California Almond Growers Association ("CCAGA") seeks leave to file a cross-complaint against G. Hansen, Inc. A defendant can cross-complain against a codefendant or a third party not yet a party to the action where the cause of action asserted arises out of the same transaction, occurrence, or series of transactions or occurrences, or asserts a claim, right, or interest in the property or controversy which is at issue in the cause of action brought against the defendant. (Code Civ. Proc., § 428.10, subd. (b).)

Defendants may cross-complaint against persons from whom they seek equitable indemnity. (Code Civ. Proc., § 428.70.) In such a cross-complaint, the defendant need only allege the harm for which the defendant is being sued is attributable, at least in part, to the cross-defendant. (*Paragon Real Estate Group of San Francisco, Inc. v. Hansen* (2009) 178 Cal.App.4th 177, 182-183; *American Motorcycle Assn. v. Superior Court* (1978) 20 Cal.3d 578, 607.) Here, Defendant CCAGA asserts that G. Hansen, Inc. is at least partially responsible for Decedent's death.

Once a trial date has been set, leave of court is required prior to filing a cross-complaint. (Code Civ. Proc., § 428.50.) "Leave may be granted in the interest of justice at any time during the course of the action." (Code Civ. Proc., § 428.50, subd. (c).) Here, Plaintiffs argue that Defendant CCAGA was unreasonably delayed in bringing this motion because Gerald Hansen's deposition was taken October 8, 2024. Plaintiffs assert that Defendant relies "exclusively" on this deposition. However, this is not the case. Defendant asserts that it was after the deposition of another G. Hansen, Inc. employee, Alfonso Elenes, that Defendant believed G. Hansen, Inc. was responsible, at least in part, for Decedent's death. A draft of the deposition transcript from Elenes' deposition became available February 11, 2025, just over two weeks before the motion was filed. As such, the Court does not find that Defendant unreasonably delayed in seeking leave to file a cross-complaint against G. Hansen, Inc.

Plaintiffs assert that the cross-complaint would be subject to demurrer for failing to sufficiently allege negligence. However, as discussed above, in a cross-complaint seeking equitable indemnity, the defendant only needs to allege that the cross-

defendant is also, at least partially, liable for the harm. Here, this is the basis of Defendant CCAGA's request to file a cross-complaint against G. Hansen, Inc.

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 5/9/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Vargas v. Romero, et al.***
Superior Court Case No. 23CECG04934

Hearing Date: May 13, 2025 (Dept. 503)

Motion: by Defendant Joel Armendariz for Terminating Sanctions Against Plaintiff Victor Vargas

Tentative Ruling:

To grant and impose terminating sanctions against plaintiff Victor Vargas, pursuant to Code of Civil Procedure section 2023.010, subdivisions (d) and (g), for failure to respond or to submit to an authorized method of discovery and disobeying court orders to provide discovery. The complaint filed by plaintiff Victor Vargas on December 6, 2023 is dismissed, without prejudice, as to defendant Joel Armendariz. (Code Civ. Proc. §2023.030, subd. (d)(3).)

Monetary sanctions in the amount of $900 are ordered in favor of defendant Joel Armendariz and against plaintiff Victor Vargas payable to MacDonald & Cody, LLP no later than 20 days from the date of this order, with time to run from the service of this minute order by the clerk.

Explanation:

Section 2023.010 defines "misuses of the discovery process" as including, "failing to respond or submit to an authorized method of discovery" and "disobeying a court order to provide discovery." (Code Civ. Proc. § 2030.010, subds. (d) & (g).) Section 2023.030 states, in relevant part:

> To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process:
>
> * * *
>
> (d) The court may impose a terminating sanction by one of the following orders:
>
> * * *
>
> (3) An order dismissing the action or any part of the action, of that party.

(Code Civ. Proc. § 2023.030, subd. (d)(3).)

Accordingly, terminating sanctions must be authorized by a specific discovery statue; they are not available merely because they are an option listed in section 2023.030.

Order Compelling Discovery Responses:

The failure to respond to interrogatories is controlled by Code of Civil Procedure section 2030.290, subdivision (c). That section provides that if a party unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust, the court "shall" impose monetary sanctions. It is only when a party disobeys an order compelling responses that a terminating sanction is called for.

> If a party then fails to obey an order compelling answers, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(Code Civ. Proc., § 2030.290, subd. (c).)

A party's failure to obey an order to respond to requests for production of documents is also subject to "the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010)." (Code Civ. Proc. § 2031.300, sub. (c).)

Courts generally follow a policy of imposing the least drastic sanction required to obtain discovery or enforce discovery orders, because the imposition of terminating sanctions is a drastic consequence, one that should not lightly be imposed, or requested. (*Ruvalcaba v. Government Employees Ins. Co*. (1990) 222 Cal.App.3d 1579, 1581.) Sanctions are supposed to further a legitimate purpose under the Discovery Act, i.e. to compel disclosure so that the party seeking the discovery can prepare their case, and secondarily to compensate the requesting party for the expenses incurred in enforcing discovery. Sanctions should not constitute a "windfall" to the requesting party; i.e. the choice of sanctions should not give that party more than would have been obtained had the discovery been answered. (Edmon & Karnow, *California Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2024) § 8:2216.) "The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks but the court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment. [Citations.]" (*Caryl Richards, Inc. v. Superior Court* (1961) 188 Cal.App.2d 300, 304.)

Appellate courts have generally held that before imposing a terminating sanction, trial courts should usually grant lesser sanctions first. (Edmon & Karnow, *supra*, § 8:2235.) However this is not an "inflexible" policy, and it is not an abuse of discretion to issue terminating sanctions on the first request, where circumstances justify it (e.g. where the violation is egregious or the party is using failure to respond as a delaying tactic). (*Id*. at § 8:2236; *Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279-280 ["A decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe

sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction. [Citation.]".)

Here, plaintiff was ordered on December 12, 2024 to provide initial responses to interrogatories and requests for production and pay monetary sanctions to defendant Joel Armendariz's counsel. Plaintiff failed to serve responses as ordered by the court. (Nguyen Decl. ¶¶ 11, 13.)

Defendant argues the totality of the circumstances support the request for terminating sanctions based on plaintiff's failure to comply with the court's order and willfulness demonstrated in his pattern of failing to participate in the prosecution of his case. Defendant points to plaintiff's failure to respond to discovery, failure to respond to defendant's meet and confer letters ahead of the motions to compel discovery, plaintiff's failure to oppose the motions to compel his discovery responses and deem admissions admitted, and plaintiff's failure to comply with the court's December 12, 2024 order compelling him to provide discovery responses. Further proving plaintiff's willful disregard of his obligations to participate in his own case, plaintiff has failed to oppose the motion seeking to terminate this action.

Defendant argues lesser sanctions will be unsuccessful due to plaintiff's repeated failure to participate in the prosecution of his case which has thwarted defendant's ability to conduct any meaningful discovery to prepare for trial. The lesser sanctions, a monetary sanction, imposed by the court's December 12, 2024 order have gone unpaid and failed to induce plaintiff to comply with discovery rules.

The evidence presented by defendant of plaintiff's repeated failure to participate in discovery as ordered demonstrate willfulness in the plaintiff's failure to comply with the court's orders. It does not appear additional monetary sanctions or other lesser sanctions will prompt plaintiff's compliance with court orders.

Therefore, the court intends to grant defendant's motion for terminating sanctions and dismiss the complaint filed by plaintiff Victor Vargas on December 6, 2023, without prejudice, as to defendant Joel Armendariz.

Additionally, the court intends to order monetary sanctions against plaintiff for the reasonable attorney's fees and costs of $900 incurred to bring this motion.

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 5/9/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Torres v. Gillespie***
Superior Court Case No. 24CECG03965

Hearing Date: May 13, 2025 (Dept. 503)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant the petition. The court intends to sign the proposed orders. No appearances are necessary.

The court sets a status conference for Tuesday, August 12, 2025, at 3:30 p.m., in Department 503, for confirmation of deposit of the minor's funds into a blocked account. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

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 5/9/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Leon Butler v. Amazon.com Services LLC***
Superior Court Case No. 22CECG02684

Hearing Date: May 13, 2025 (Dept. 503)

Motion: By Plaintiff's Counsel to Be Relieved as Counsel

Tentative Ruling:

To continue the matter to Thursday, May 15, 2025 at 3:30 p.m. in Department 503. Plaintiff's counsel is to file the Notice of Motion and Motion to Be Relieved as Counsel - Civil (Judicial Council Form MC-051), the Declaration in Support of Attorney's Motion to Be Relieved as Counsel - Civil (Judicial Council Form MC-052), and an amended Order Granting Attorney's Motion to Be Relieved as Counsel-Civil (Judicial Council Form MC-053). These forms are to be filed no later than noon on May 14, 2025.

An appearance will be required at the continued hearing on May 15, 2025. The Court will also address the request to continue trial at the May 15, 2025 hearing.

Explanation:

"A notice of motion and motion to be relieved as counsel under Code of Civil Procedure section 284(2) must be directed to the client and must be made on the Notice of Motion and Motion to Be Relieved as Counsel - Civil (form MC-051)." (CRC, rule 3.1362(a). "Notwithstanding any other rule of court, no memorandum is required to be filed or served with a motion to be relieved as counsel." (Id. at subd. (b).)

"The motion to be relieved as counsel must be accompanied by a declaration on the Declaration in Support of Attorney's Motion to Be Relieved as Counsel - Civil (form MC-052). The declaration must state in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil Procedure section 284(1)." (CRC, rule 3.1362(c).)

Forms MC-051 and MC-052 have been adopted for mandatory use by the Judicial Council. Counsel has not utilized the required forms. Additionally, counsel has largely left Form MC-053 blank. Counsel is to also complete sections 6 through 9 of Form MC-053.

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 5/9/2025.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Garcia v. Royer et al.***
Superior Court Case No. 20CECG03454

Hearing Date: May 13, 2025 (Dept. 503)

Motion: By Plaintiff Tammy Garcia to Set Aside

Tentative Ruling:

To deny.

Explanation:

Plaintiff Tammy Garcia ("Plaintiff") moves solely under Code of Civil Procedure section 473, subdivision (b) for relief from entry of default. However, as noted in the opposition by defendant Ryan Royer ("Defendant")[1], there was no entry of default against Plaintiff. Following a failure by Plaintiff to appear at the Trial Readiness Hearing, the court entered a dismissal of the action.

Code of Civil Procedure section 473, subdivision (b) provides, in pertinent part:

> 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. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.
>
> …
>
> Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect. (emphasis added)

[1] Defendant CT Scribes, Inc. also filed an opposition. However, on January 30, 2025, a notice of entry of judgment was filed and served regarding judgment entered on January 23, 2025, concluding CT Scribes, Inc.'s participation in the action.

Thus, under Code of Civil Procedure section 473, subdivision (b), the court is empowered to relieve a party "upon such terms as may be just . . . from a judgment, dismissal, order or other proceeding taken against him or her through his or her mistake, inadvertence, surprise or excusable neglect." Relief under section 473, subdivision (b) can be based either on: an 'attorney affidavit of fault,' in which event, relief is mandatory; or declarations or other evidence showing 'mistake, inadvertence, surprise or excusable neglect,' in which event relief is discretionary.

Mandatory Relief

Mandatory relief pursuant to section 473, subdivision (b) occurs where the entry of default was solely caused by the attorney, i.e., the party did not contribute in any way. (See *Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1248; *Todd v. Thrifty Corp*. (1995) 34 Cal.App.4th 986, 991.) Public policy dictates that disposition on the merits be favored over judicial efficiency. (*Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 392.) Thus, absent a straightforward admission of fault by the attorney, there can be no relief under the mandatory provision of section 473. (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 609-610.)

As noted above, no entry of default was taken against Plaintiff. However, counsel attests to excusable neglect in seeking to set aside the dismissal entered against Plaintiff. Counsel submits that as a result of hospitalization and surgery, there was a calendaring error. (Crouse Decl., p. 1.)

Defendant opposes. Defendant submits that the dismissal was not the result of excusable neglect. Namely, Defendant argues that counsel was fully aware of the trial date and related hearings because Plaintiff unsuccessfully filed, but served, an ex parte application to continue trial, with an expected hearing date of February 6, 2025. (Mason Decl., ¶ 8, Ex. B.) In those papers, counsel acknowledges February 24, 2025 as set for trial. Fresno Superior Court Local Rules, rule 2.6.2 mandates a trial readiness hearing on the Friday prior to the date set for trial, with the attorney trying the case to be personally present, and with trial documents and motions provided at that time. (Fresno Superior Court Local Rules, rule 2.6.2(A), (B), (D).) Further, trial was set pursuant to a Trial Setting Conference, on April 10, 2024. While Plaintiff was not present, notice was provided of not just the trial date, but the trial readiness date, by the clerk of the court. No reply was filed, and the moving papers do not address why Plaintiff had notice of the trial date, but not the trial readiness hearing, or alternatively why Plaintiff should be excused from Local Rule 2.6.2.

The evidence before the court supports the conclusion that Plaintiff's counsel was aware that trial was set for February 24, 2025, and therefore could know of related hearings. While the court is sympathetic to counsel's hospitalization and surgery for acute pancreatitis, no explanation was provided as to why, between the diagnosis on January 20, 2025, and the trial readiness hearing, no meet-and-confer could be had, and no arrangements could have been made. Neither is there a clear explanation as to how the January 20, 2025, diagnosis of acute pancreatitis resulted in a calendaring error, particularly where the hearing was set approximately 10 months prior by order of the court, duly served on the parties. Accordingly, the court finds that the entry of dismissal

of Plaintiff's action was not the result of attorney mistake, inadvertence, surprise or excusable neglect.

Discretionary Relief

"While [Code of Civil Procedure section 473 relief] is remedial and to be liberally construed [citation], the moving party must show 'mistake, inadvertence, surprise or excusable neglect.' … 'It is the duty of every party desiring to resist an action or to participate in a judicial proceeding to take timely and adequate steps to retain counsel or to act in his own person to avoid an undesirable judgment. Unless in arranging for his defense he has shown he has exercised such reasonable diligence as a man of ordinary prudence usually bestows upon important business his motion for relief under section 473 will be denied. …' (*Luz v. Lopes* (1960) 55 Cal.2d 54, 62.)

For the same reasons as on mandatory relief, as to discretionary the court finds that the entry of dismissal was not the result of mistake, inadvertence, surprise, or excusable neglect.

Plaintiff additionally seeks to set aside the dismissal as void for lack of notice. Plaintiff fails to show any lack of notice. In contrast to the rest of the arguments of the moving papers, Plaintiff argued that counsel reasonably failed to calendar the event, not that Plaintiff had no knowledge of the event.

Plaintiff additionally relies on Code of Civil Procedure section 473.5 for relief. However, Code of Civil Procedure section 473.5 addresses default judgments, and specifically only where service of summons has not resulted in actual notice of the action. As Plaintiff is the moving party, Plaintiff is not served with summons.

For the above reasons, the motion is denied in its entirety.

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 5/12/2025.
(Judge's initials) (Date)