Tentative Rulings for May 14, 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: ***Morales v. Khachatryan***
Case No. 24CECG01494

Hearing Date: May 14, 2025 (Dept. 503)

Motion: Defendant Anahit Khachatryan's Motion for Summary Judgment

Tentative Ruling:

To deny defendant Anahit Khachatryan's motion for summary judgment.

Explanation:

First of all, to the extent that plaintiffs request a continuance of the motion so that they can conduct discovery into the issue of whether defendant might have liability for the accident based on the fact that she was the policyholder of the insurance for the subject vehicle, plaintiffs have not met the requirements for a continuance under subdivision (h) of Code of Civil Procedure section 437c. Subdivision (h) states that, "If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just." (Code Civ. Proc., § 437c, subd. (h).)

A declaration in support of a request for continuance of a summary judgment hearing must show: (1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts. (*Jade Fashion & Co., Inc. v. Harkham Industries, Inc*. (2014) 229 Cal.App.4th 635, 656-657; *Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 254.)

"When a party makes a good faith showing by affidavit demonstrating that a continuance is necessary to obtain essential facts to oppose a motion for summary judgment, the trial court must grant the continuance request." (*Park v. First American Title Co.* (2011) 201 Cal.App.4th 1418, 1428, citation omitted.) However, a continuance of a summary judgment hearing is not mandatory when no affidavit is submitted or when the submitted affidavit fails to make the necessary showing as provided for by statute governing continuance. (*Menges v. Department of Transportation* (2020) 59 Cal.App.5th 13, 25, citing *Park, supra,* at p. 1428.) "It is not sufficient under the statute merely to indicate further discovery or investigation is contemplated. The statute makes it a condition that the party moving for a continuance show 'facts essential to justify opposition may exist.' " (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 548.)

In the present case, while plaintiffs request a continuance for the purpose of conducting further discovery into the issues raised by the summary judgment motion, they have not filed an affidavit that discusses which facts they need to obtain, how the facts are essential to opposing the motion, that there is reason to believe that such facts

exist, or the reasons why they need additional time to obtain these facts. They only state in their opposition points and authorities brief that they need to conduct additional discovery into the issue of the ownership of the vehicle and what the relationship is between defendant and the owner and driver of the vehicle. However, a points and authorities brief is not evidence, and thus does not meet the requirements of section 437c(h). Therefore, the court intends to deny the request for a continuance of the summary judgment motion.

On the other hand, defendant has not met her burden of showing that she is entitled to summary judgment. She contends that she cannot be held liable for the accident that caused plaintiffs' injuries because she was not the driver of the vehicle that struck plaintiffs' car, she does not own the vehicle, and she was not present at the time of the accident. She claims that she had no involvement whatsoever in the accident. Therefore, she concludes that she did not owe a duty to plaintiffs, and she did not breach any duty that she did owe.

However, defendant has not met her burden of showing that she did not owe a duty of care to plaintiffs and that she did not breach any duty that she might have owed. "To succeed in a negligence action, the plaintiff must show that (1) the defendant owed the plaintiff a legal duty, (2) the defendant breached the duty, and (3) the breach proximately or legally caused (4) the plaintiff's damages or injuries." (*Thomas v. Stenberg* (2012) 206 Cal.App.4th 654, 662, citation omitted.)

"Regarding duty, 'Under general negligence principles, ... a person ordinarily is obligated to exercise due care in his or her own actions so as not to create an unreasonable risk of injury to others, and this legal duty generally is owed to the class of persons who it is reasonably foreseeable may be injured as the result of the actor's conduct.' 'Whether a given case falls within an exception to this general rule, or whether a duty of care exists in a given circumstance, "is a question of law to be determined on a case-by-case basis."' [¶] " '[D]uty' is not an immutable fact of nature 'but only an expression of the sum total of those *considerations of policy* which lead the law to say that the particular plaintiff is entitled to protection.' Some of the considerations that courts have employed in various contexts to determine the existence and scope of duty are: 'the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.' " (*Id.* at pp. 662–663, italics in original citations and some quote marks omitted.)

Here, defendant claims that she does not owe plaintiffs a duty of care because she was not the owner or driver of the vehicle that struck their car and injured them, and that she was not involved in the accident in any way. However, her responses to discovery indicate that she was the named policyholder for the insurance that covered the vehicle that was involved in the accident. (Defendant's Evidence, Exhibit B, Responses to Form Interrogatories 4.1, 7.1, 7.2.) She also states that the driver of the car at the time of the accident was Hakob Khachatryan, who lives at the same address where she resides. (Response to Form Interrogatories 2.5, 12.1, 20.2.) She states that Armen Khachatryan was the registered owner of the vehicle. (Response to Form

Interrogatory 20.2.) She further states that Armen gave permission to Hakob to drive the car. (Response to Form Interrogatory 20.2.) In addition, she states that Hakob was on his way home from a store at the time of the accident. (Response to Form Interrogatory 20.3.)

She also states that "Defendant's vehicle was rendered a total loss." (Response to Form Interrogatory 20.11.) This response seems to indicate that she owned the subject car, as she refers to it as "defendant's car." Anahit Khachatryan was the sole defendant when she answered the interrogatory. While she denies that she was the "registered owner" of the vehicle, she does not state that she had no ownership interest in the car. (Defendant's Evidence, Exhibit D, Response to Special Interrogatory Four.) For example, if she is married to Armen and the car is registered is his name, then she would be a co-owner of the car under community property law regardless of whether the registration lists her as an owner or not.

Defendant's discovery responses also seem to admit that Hakob was covered under her insurance policy, as she states that her insurer interviewed Hakob about the accident and obtained a statement and photos of the accident scene from him, and that her insurance paid out over $33,000 after the vehicle was declared to be a total loss. (Responses to Form Interrogatories 7.2, 12.2, 12.3, 12.4.)

Thus, based on these facts, there is a reasonable inference that Hakob is related to defendant, that he was a covered driver under an insurance policy issued to her, and that he was a permissive driver of the vehicle at the time of the accident. As a result, a reasonable trier of fact could find defendant liable for negligently entrusting the car to Hakob, who allegedly caused the accident and injured plaintiffs.

It also notable that plaintiffs have recently added Hakob Khachatryan and Armen Khachatryan, as defendants in place of Does 1 and 2. (See Doe Amendment filed April 9, 2025.) It appears that they have added the new defendants based on the theory that Armen owned the vehicle and that Hakob drove the vehicle at the time of the accident.

In summary, defendant admits that Hakob was the driver at the time of the accident, that he lives with her, that he shares the same last name with her, that she insured the vehicle involved in the accident, that Armen allowed Hakob to drive the vehicle, and that her insurance company paid out benefits for the loss of the vehicle after the accident. These facts, which defendant has admitted under penalty of perjury in her verified discovery responses, could lead to a reasonable inference that defendant not only insured the vehicle, but also negligently entrusted it to Hakob, who is apparently a family member who lives with her, and that he subsequently caused the accident while driving the family car. Therefore, the trier of fact could reasonably conclude that defendant is liable under a negligent entrustment theory, even if she was not directly involved in the accident.

Defendant does not address this theory of liability in her motion or make any attempt to show that she did not negligently entrust the vehicle to a member of her household. As a result, defendant has not met her burden of showing that she owed no duty to plaintiffs and that she did not breach her duty to plaintiffs. Consequently, the court intends to deny the motion for summary judgment.

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: ***Eddings v. Saint Agnes Medical Center, et al.***
Superior Court Case No. 22CECG03112

Hearing Date: May 14, 2025 (Dept. 503)

Motion: Defendant Ik Sung, M.D.'s Motion to Compel Responses to Form Interrogatories, Set One, Special Interrogatories Set One, and Request for Production, Set One

Tentative Ruling:

To grant in part. (Code Civ. Proc., §§ 2030.290, 2031.300.) Within 10 days of service of the order by the clerk, plaintiff Deesha Eddings shall serve objection-free responses to Form Interrogatories, Set One; plaintiff Ryan Hudson shall serve objection-free responses to Special Interrogatories, Set One and Request for Production of Documents, Set One, and produce all responsive documents. The motion is otherwise denied.

Explanation:

On August 1, 2024 defendant Ik Sung, M.D., propounded on both plaintiffs Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One. Despite extensions of time extending the response deadline to March 12, 2025, responses have only been served for some of the discovery requests. Dr. Sung appears to move to compel responses from Eddings to the Special Interrogatories and Request for Production of Documents, even though she has provided responses to these discovery requests. Though Eddings apparently has not produced documents responsive to the document demand, the proper motion is to compel compliance with the agreement to comply pursuant to Code of Civil Procedure section 2031.320, not to compel an initial response pursuant to section 2031.300.

The court intends to grant the motion to compel Eddings to provide responses to Form Interrogatories, Set One, and Hudson to provide responses to Special Interrogatories, Set One, and Request for Production of Documents, Set One. (Code Civ. Proc., §§ 2030.290, subd. (a), 2031.300, subd. (a).) To the extent the motion seeks further relief, the motion is denied.

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: ***Hodges v. City of Clovis***
Superior Court Case No. 22CECG03153

Hearing Date: May 14, 2025 (Dept. 503)

Motion: Plaintiff's Motion for Reconsideration

Tentative Ruling:

To deny plaintiff Hodges' motion for reconsideration of the court's order on defendant City of Clovis' motion to compel further responses to requests for production and awarding sanctions in favor of defendant City of Clovis. (Code Civ. Proc. § 1008.)

To deny defendant City of Clovis' request for sanctions against plaintiff and her attorney for bringing a frivolous motion for reconsideration.

Explanation:

Plaintiff Marvanette Hodges is seeking reconsideration of the court's March 11, 2025 Law and Motion Minute Order adopting the tentative ruling on defendant's motion to compel further responses to requests for production of documents and awarding sanctions against plaintiff pursuant to Code of Civil Procedure section 1008, subdivision (a).

Under Code of Civil Procedure section 1008, subdivision (a), a party moving for reconsideration of a court order must show that there are "new or different facts, circumstances, or law" that justify reconsideration of the order. (Code Civ. Proc. § 1008, subd. (a).) "A party seeking reconsideration also must provide a satisfactory explanation for the failure to produce the evidence at an earlier time." (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212, internal citations omitted.) The motion must be made within ten days of service of the notice of entry of the order. (Code Civ. Proc. § 1008, subd. (a).)

"Case law after the 1992 amendments to section 1008 has relaxed the definition of 'new or different facts,' but it is still necessary that the party seeking that relief offer some fact or circumstance not previously considered by the court." (*Id*. at pp. 212-213, internal citations omitted.) The requirements of section 1008 are jurisdictional, and failure to comply with the requirement of demonstrating new facts, circumstances or law requires denial of a motion for reconsideration. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1104.)

"Courts have construed section 1008 to require a party filing an application for reconsideration or a renewed application to show diligence with a satisfactory

explanation for not having presented the new or different information earlier." (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 839, citing *California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 46–47 & fns. 14–15 and *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 688–690.) "Section 1008's purpose is '"'to conserve judicial resources by constraining litigants who would endlessly bring the same motions over and over, or move for reconsideration of every adverse order and then appeal the denial of the motion to reconsider.'" To state that purpose strongly, the Legislature made section 1008 expressly jurisdictional…" (*Id*. at pp. 839–840.)

In the present case, plaintiff contends the court's award of sanctions against plaintiff after finding defendant was willing to limit the scope of the document demands at issue is not supported by evidence. Plaintiff would have the court reconsider the ruling awarding sanctions and find plaintiff offered to limit the scope of the records requests at issue. This is not a new fact or circumstance before the court. This court previously considered the parties' positions, including plaintiff's desire to limit the scope of the records requests and the reply declaration of defense counsel Denny Yu reflecting meet and confer efforts occurring after defendant's motion to compel was filed. Plaintiff's objections to the document requests at issue did not include the scope of the requests, thus there was no reason to address the scope of the requests in the moving papers.

Plaintiff's arguments in the motion at bench reflect her disagreement with the court's ruling, which is not a basis for reconsideration. Moreover, these arguments could have been made had plaintiff timely requested oral argument on the March 11, 2025 motion but she failed to do so. Plaintiff has provided no explanation as to why these arguments could not have been presented at oral argument.

As there are no new facts or circumstances presented in the motion at bench, the court must deny the motion for reconsideration for lack of jurisdiction.

The court intends to deny defendant's request for sanctions against plaintiff and her attorney for bringing a frivolous motion for reconsideration. Defendant moves for sanctions under Code of Civil Procedure sections 1008 and 128.7. Under section 1008, subdivision (d), "[a] violation of this section may be punished as a contempt and with sanctions as allowed by Section 128.7." (Code Civ. Proc., § 1008, subd. (d).) Therefore, any request for sanctions for violating section 1008 must be brought pursuant to section 128.7's procedures. Section 128.7 must be brought separately from other motions, and must be first served on the other party 21 days before it is filed with the court so that the party subject to the sanction may have an opportunity to withdraw the offending pleading or motion. (Code Civ. Proc., § 128.7, subd. (c)(1).)

Here, defendant did not file a separate motion for sanctions under section 128.7, nor has it served the motion on the plaintiff 21 days before filing it. Therefore, it has not complied with section 128.7's "safe harbor" provisions, and the court cannot grant its request for sanctions against plaintiff and her attorney.

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)

(46)

Tentative Ruling

Re: ***Frank Cruz v. Oscar Bibiano***
Superior Court Case No. 24CECG03603

Hearing Date: May 14, 2025 (Dept. 503)

Motion: Cross-Complainant Oscar Bibiano's Demurrer to Cross-Defendant Frank Cruz's First Amended Answer to Cross-Complaint

Tentative Ruling:

To overrule the demurrer to first amended answer. (Code Civ. Proc. § 430.40 subd. (b).)

Explanation:

"A party who has filed a complaint or cross-complaint may, within 10 days after service of the answer to his pleading, demur to the answer." (Code Civ. Proc. § 430.40(b).)

Cross-defendant Frank Cruz's first amended answer to cross-complainant Oscar Bibiano's cross-complaint was served on cross-complainant on December 31, 2024. Cross-complainant filed his demurrer to cross-defendant's first amended answer on January 21, 2025. This is more than 10 days after service of the first amended answer to the cross-complaint. The demurrer to the first amended answer is therefore overruled in its entirety as untimely.

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

(41)

Tentative Ruling

Re: ***Maria Manzo v. Shogy Ahmed* / LEAD CASE**
Superior Court Case No. 21CECG01048

Hearing Date: May 14, 2025 (Dept. 503)

Motion: By Defendant Shogy Ahmed to Dissolve Preliminary Injunction

Tentative Ruling:

To grant defendant's motion to dissolve the preliminary injunction; to deny, without prejudice, the request to pay the case deposit to defendant.

Explanation:

Preliminary Injunction

Code of Civil Procedure section 533 provides the court may dissolve an injunction, after noticed motion, upon a showing of a material change in the facts or the law, or to serve the ends of justice:

> In any action, the court may on notice modify or dissolve an injunction or temporary restraining order upon a showing that there has been a material change in the facts upon which the injunction or temporary restraining order was granted, that the law upon which the injunction or temporary restraining order was granted has changed, or that the ends of justice would be served by the modification or dissolution of the injunction or temporary restraining order.

(*Ibid*.; see also *Harbor Chevrolet Corp. v. Machinists Local Union 1484* (1959) 173 Cal.App.2d 380, 384 [affirming trial court's exercise of discretion to dissolve preliminary injunction after eight months].)

Defendant Shogy Ahmed (Defendant) now moves upon noticed motion to dissolve the preliminary injunction issued on June 3, 2021, in favor of plaintiff Maria Guadalupe Luna Manzo (Plaintiff). The preliminary injunction was granted to preserve Plaintiff's ownership of the subject property (Property) and to enjoin Defendant's foreclosure under a challenged deed of trust during the pendency of this proceeding.

Defendant's motion relies on the following material changes: (a) at an unknown time after the court issued the June 2021 preliminary injunction Defendant learned Blackridge Corporation (Blackridge) held a first deed of trust on the Property and had started the process to foreclose on its security interest (Def. decl., ¶9); (b) in November 2023 Defendant learned Plaintiff had transferred 50 percent of her interest in the Property to her ex-husband, Juan Vargas (Def. decl., ¶ 12); (c) Plaintiff made multiple bankruptcy filings affecting the Property (Gilmore decl., ¶ 9, ex. 3 [in rem order filed 01/25/25 in Bk. No. 24-10003 vacating stay, ¶¶ 2, 3]) and Vargas filed a bankruptcy proceeding to stop

Blackridge from foreclosing (Def. decl., ¶ 13); (d) the bankruptcy court determined the filing of Plaintiff's final petition "was part of a scheme to delay, hinder, or defraud creditors" and expressly ruled that Blackridge could commence or complete foreclosure proceedings involving the Property (Gilmore decl., ex. 3 [in rem order vacating stay, ¶¶ 2, 3]); (e) thereafter Defendant paid over $240,000 to Blackridge to cure the default on Blackridge's first deed of trust, and Blackridge cancelled the last scheduled sale (Def. decl., ¶ 15); (f) Plaintiff failed to pay the property taxes and the County issued a notice of tax sale for the Property set for March 14, 2024 (Def. decl., ¶ 16).

Plaintiff opposes the motion, contending no change in facts exists to justify dissolving the preliminary injunction. Plaintiff provides evidence that the delinquent property taxes were paid over a year later on March 26, 2025, and that the "balance of equities weighs in favor of Plaintiff getting her day in court, which is presently set for March 23, 2026." (Opp., p. 5:8-10.) Defendant correctly replies that dissolving the injunction does not deprive Plaintiff of her day in court—she will have an opportunity to litigate her claim for damages at trial.

Plaintiff fails to address Defendant's authority that "under Civil Code sections 2876 and 2877 where the holder of a junior deed of trust, as here, is compelled to satisfy a prior deed of trust for his own protection, the amount so paid by the holder of the junior deed of trust becomes a part of the indebtedness due him under his second deed of trust." (*United Sav. & Loan Assn. v. Hoffman* (1973) 30 Cal.App.3d 306, 313.) Plaintiff's refusal to pay Blackridge to preserve the Property is a significant change in circumstances that weighs heavily in favor of dissolving the preliminary injunction.

In summary, the court finds Defendant's showing of a material change in the facts and serving the ends of justice outweigh Plaintiff's interests in maintaining the preliminary injunction. Therefore, the court grants Defendant's motion to dissolve the preliminary injunction.

Cash Deposit Posted in Lieu of Bond

Plaintiff correctly contends Defendant's motion to recover the cash deposit posted in lieu of bond is premature. The parties agree that "[w]here it is necessary to defend on the merits in order to defeat a preliminary injunction, judgment after full trial against the party who obtained the preliminary injunction is, in effect, tantamount to an adjudication that he was not entitled to any injunctive relief at any time, and that thereupon a right of action upon the injunction bond accrues in favor of the party enjoined." (Def.'s memo., p. 9:19-24, citations omitted.)

The court in *Satinover v. Dean* (1988) 202 Cal.App.3d 1298 encountered a situation similar to the case at bar, where the enjoined party sought to recover the cash deposit after the trial court dissolved a temporary restraining order and refused to grant a preliminary injunction. The appellate court explained the motion to enforce liability on the cash deposit was brought prematurely because the action in which the undertaking was granted was still pending:

> Code of Civil Procedure section 996.440 provides in relevant part: "(a) If a bond is given in an action or proceeding, the liability on the bond may be

> enforced on motion made in the court without the necessity of an independent action. [¶] (b) *The motion shall not be made until after entry of the final judgment in the action or proceeding in which the bond is given* and the time for appeal has expired or, if an appeal is taken, until the appeal is finally determined."
>
> *The dissolution of the temporary restraining order or the refusal to grant a preliminary injunction is not enough. The main action has to be terminated before an action to recover an undertaking may be brought.* [Citations.]
>
> In the present case, the motion to enforce liability on the deposit posted in lieu of a bond was brought prematurely. The action in which the undertaking was granted is still pending for trial.

(*Satinover v. Dean, supra,* 202 Cal.App.3d at pp. 1300–1301, italics added [reversing trial court's order awarding recovery from deposit in lieu of bond after dissolving temporary restraining order and refusing to grant preliminary injunction].) Likewise, here the action in which the undertaking was granted is still pending for trial. Therefore, the court denies, without prejudice, Defendant's motion to recover the cash deposit.

Evidentiary Objections

Plaintiff's evidentiary objections are not dispositive to this motion. Therefore, for purposes of this motion, the court sustains all of Plaintiff's evidentiary objections and has not considered the evidence subject to an objection.

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)