

Tentative Rulings for May 15, 2024
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)

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.

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Tentative Rulings for Department 403

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Tentative Ruling

Re: **Yopez v. Old Town Saloon, et al.**
Superior Court Case No. 23CECG05013

Hearing Date: May 15, 2024 (Dept. 403)

Motion: Defendants' Demurrer to Complaint

Tentative Ruling:

To continue the motion to Wednesday, June 26, 2024 at 3:30 p.m. in Department 403, in order to allow the parties to meet and confer in person or by telephone, as required. If this resolves the issues, cross-defendant shall call the calendar clerk to take the motion off calendar. If it does not resolve the issues, counsel for cross-defendant shall file a declaration, on or before June 12, 2024, stating the efforts made. If no declaration is filed, the motion will be taken off calendar.

Explanation:

Under Code of Civil Procedure section 430.41, “[b]efore filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.” (Code Civ. Proc., § 430.41, subd. (a).) “As part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies.” (Code Civ. Proc., § 430.41, subd. (a)(1).)

“The demurring party shall file and serve with the demurrer a declaration stating either of the following: (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer. (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.” (Code Civ. Proc., § 430.41m subd. (a)(3)(A), (B), paragraph breaks omitted.)

Here, counsel for defendant has filed a declaration which indicates a letter was sent by email on March 18, 2024 stating the grounds for the demurrer and requesting a response from plaintiff's counsel. (Laird Decl., ¶ 3, Exh. A.) After not receiving a response to a follow up email sent the morning of March 22, 2024, the demurrer was filed that afternoon. (*Id.* at ¶¶ 4-5.) The declaration does not show that counsel engaged in good faith meet and confer efforts before filing the demurrer.

The parties must engage in good faith meet and confer, in person or by telephone, as set forth in the statute. The court's normal practice is to take such motions off calendar, subject to being re-calendared once the parties have met and conferred. Presently, however, given the congestion in the court's calendar, rather than take the motion off

calendar, the court will instead continue the hearing to allow the parties to meet and confer, and only if efforts are unsuccessful will it rule on the merits.

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** **5/13/2024**
 (Judge's initials) (Date)

(27)

Tentative Ruling

Re: **Melissa Garza v. Cerutti & Sons Transportation Co., Inc.**
Superior Court Case No. 22CECG03793

Hearing Date: May 15, 2024 (Dept. 403)

Motion: By Defendants Cerutti & Sons Transportation Company, Inc.
and David Lightsey to compel deposition of Plaintiff Melissa
Garza

Tentative Ruling:

To grant. Plaintiff Melissa Garza shall appear for a deposition within ten (10) days of the hearing on this motion. (Code Civ. Proc., §§ 2025.450, subd. (a), 2025.280, subd. (a).)

To impose monetary sanction in the amount of \$1,075, payable to counsel for Defendants within 30 days of the clerk's service of this minute order.

Explanation:

Where a party deponent fails to appear at a properly noticed deposition, and no valid objection under section 2025.410 has been served, the party giving the notice may move for an order compelling the deponent's attendance and testimony. (Code Civ. Proc., § 2025.450, subd. (a).) Defendants' motion is supported by evidence of the subject deposition notice served on plaintiff Melissa Garza and her failure to appear. There is neither evidence of objection to the notice nor is there opposition to this motion, despite proofs of service of each. Therefore, the motion is granted.

Sanctions are mandatory "unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2025.450, subd. (g)(1).) Considering plaintiff's unwillingness to comply with established discovery rules (e.g. meet and confer obligations) and absence of opposition, the court does not make these findings. Defendants' evidence includes the reporter's invoice, counsel's fee calculation, and filing fee charge. (Mulgrew, Decl., ¶¶ 11-13.) In total, the amount incurred is \$1,075, which appears a reasonable sanction under the circumstances.

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** **5/13/2024** .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: **Lopez v. K-Lin Events, LLC, et al.**
Superior Court Case No. 22CECG03354

Hearing Date: May 15, 2024 (Dept. 403)

Motion: by plaintiff/cross-defendant to Quash Deposition Subpoenas

Tentative Ruling:

To grant the motion to quash the subpoenas directed at Wells Fargo, National Association. (Code Civ. Proc., § 2024.020, subd. (a).)

Explanation:

Plaintiff moves to quash defendants' business records subpoena under Code of Civil Procedure sections 1987.1 and 1987.2, contending that any discovery sought after the discovery cutoff date is prohibited.

"If a subpoena requires the attendance of a witness or the production of books, documents, electronically stored information, or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by any person..., or upon the court's own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely..." (Code Civ. Proc., § 1987.1, subd. (a).)

"...[A]ny party shall be entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action." (Code Civ. Proc., § 2024.020, subd. (a).) Additionally, "a continuance or postponement of the trial date does not operate to reopen discovery proceedings." (*Id.*, at subd. (b).) However, parties may agree, in writing, "to extend the time for the completion of discovery proceedings or for the hearing of motions concerning discovery, or to reopen discovery after a new date for trial of the action has been set." (Code Civ. Proc., § 2024.060.)

In the present case, trial was originally set for September 25, 2023. On June 28, 2023, the parties filed a proposed stipulation and order to continue the trial date and for the discovery and motion cutoff dates to be based on the new trial date. On July 6, 2023, the stipulation and order was signed, setting the new trial date on March 11, 2024. (Khan Decl., ¶ 5, Exh. A.) On March 8, 2024, the court vacated the March 11, 2024 trial date and set a case management conference to reschedule the trial date since the parties had failed to comply with the Fresno Superior Court Local Rule, rule 2.5.5. (See the Trial Readiness Minutes Order, filed on March 8, 2024.) At the March 26, 2024 Case Management Conference, trial was set for July 8, 2024. The Case Management Conference Minutes is silent on whether the discovery cutoff date was also continued.

Therefore, the discovery cutoff date was based on the March 11, 2024 trial date. This meant that discovery was to be completed by February 13, 2024.¹

The subject subpoenas were served on March 5, 2024, and March 21, 2024, respectively. The former provided a production date of March 29, 2024 and the latter sought a production date of April 18, 2024. (Khan Decl., ¶¶ 8-9, Exhs. B-C.) Discovery is considered completed on the day the response to the demand is due. (Code Civ. Proc., § 2024.010.) Since both production dates are well past the discovery cutoff date, February 13, 2024, the motion to quash the subpoenas are granted.

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** **5/13/2024** .
 (Judge's initials) (Date)

¹ The 30th day before trial was actually February 10, 2024, but since that was a Saturday, and Monday, February 12, 2024 was a court holiday, the discovery cutoff date rolled forward to Tuesday, February 13, 2024. (See Code Civ. Proc., § 2016.060.)