

Tentative Rulings for May 27, 2026
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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| 24CECG03651 | <i>Severino Santos v. Natalia Marquez</i> is continued to Thursday, May 28, 2026, at 3:30 p.m. in Department 403. |
| 25CECG02629 | <i>Ryan Floccini v. Barkley Seed, Inc.</i> is continued to Thursday, May 28, 2026, at 3:30 p.m. in Department 403. |
| 18CECG03442 | <i>Jay Seaver v. Shaheryar Khan</i> is continued to Tuesday, July 7, 2026, at 3:30 p.m. in Department <u>502</u> . |

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Tentative Rulings for Department 403

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Tentative Ruling

Re: **Gregory Smith vs. Nationwide Mutual Insurance Company**
Superior Court Case No. 25CECG02550

Hearing Date: May 27, 2026 (Dept. 403)

Motion: Defendant Lori Smith's Demurrer to the First and Second Amended Complaint

Tentative Ruling:

To continue the hearing on this motion to Thursday, July 9, 2026 at 3:30 p.m. in Department 502. The parties are ordered to conduct a meet and confer session, in person, by telephone, or by videoconference at least 15 days prior to the hearing. If the meet and confer resolves the issues, defendant shall call the calendar clerk to take the motion off calendar. If it does not resolve the issues, defendant shall file a declaration, on or before Wednesday June 17, 2026 at 5:00 p.m., stating the efforts made. (Code Civ. Proc., § 430.41.)

Explanation:

Plaintiff, Gregory Smith ("Mr. Smith" or "Plaintiff") asserts 18 causes of action, including 14 against Lori Smith ("Ms. Smith") and/or her business, Visual Changes Skin Care International, Inc. ("Visual Changes"). All of these causes of action stem from Ms. Smith's alleged misconduct with respect to property located at 4676 W. Jacquelyn Avenue Fresno, California, 93722-6405 ("Covered Property") that is co-owned by plaintiff and Ms. Smith, and purchased during their marriage. (First Amended Complaint (FAC), ¶13.)

Plaintiff further alleges in his First Amended Complaint, that "a unity of interest and ownership between LORI and VISUAL CHANGES, such that any individuality and separateness between LORI and VISUAL CHANGES have ceased to exist and VISUAL CHANGES is the alter ego of LORI in that LORI controls, dominates, manages, and operates VISUAL CHANGES to suit her own conveniences." (FAC., ¶130.)

On January 16, 2026, both Visual Changes and Ms. Smith demurred to the fifth through fifteenth, and eighteenth causes of action to plaintiff's First Amended Complaint because the Court lacks jurisdiction because the family court presiding over plaintiff's and Ms. Smith's marital dissolution has sole jurisdiction over the subject matter of plaintiff's claims. Visual Changes further demurs as to each of the aforementioned causes of action for various reasons.

On February 11, 2026, this Court sustained Visual Changes demurrer, while granting Mr. Smith leave to amend. Mr. Smith then filed his second amended complaint on March 16, 2026.

Accordingly, Ms. Smith's demurrer with respect to Mr. Smith's first amended complaint is moot.

On April 15, 2026, Ms. Smith demurred to Mr. Smith's second amended complaint.

The Court continues the hearing to Ms. Smith's demurrer to Mr. Smith's second amended complaint to Thursday, July 2, 2026 at 3:30 p.m. in Department 502. The parties are ordered to conduct a meet and confer session, in person, by telephone, or by videoconference at least 15 days prior to the hearing. If the meet and confer resolves the issues, defendant shall call the calendar clerk to take the motion off calendar. If it does not resolve the issues, defendant shall file a declaration, on or before Friday, April 24, 2026 at 5:00 p.m. stating the efforts made. (Code Civ. Proc., § 430.41.)

Before the merits of a demurrer are considered, the moving party must first have demonstrated that he or she fulfilled the meet and confer duties set forth in Code of Civil Procedure section 430.41. Code of Civil Procedure section 430.41 requires the party who is attacking the pleadings by way of demurrer to meet and confer in person, by telephone, or by videoconference prior to filing the motion, in order to determine if the parties can reach an agreement that would resolve the objections and avoid having to file the motion. Then, if these efforts do not result in reaching an agreement, the moving party must file a declaration, along with the moving papers, stating one 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., § 430.41, subd. (a)(3).)

Here, the attorney for Ms. Smith, Justin O'Connell, filed a declaration regarding the efforts to meet and confer prior to filing the demurrer to the second amended complaint. The declaration detailed only one follow-up email to meet and confer with the Mr. Smith's attorney on April 9, 2026, in addition to prior discussions pertaining to the first amended complaint. (O'Connell Decl., ¶¶ 1-6.)

The one follow-up email with respect to Ms. Smith's demurrer to the second amended complaint is insufficient to satisfy the meet and confer requirement. Defendant must make a concerted effort to meet telephonically or face-to-face with plaintiff and discuss the legal issues and bases for demurrer during that meeting. (Code Civ. Proc., § 430.41 subd. (a)(1).) It is not a plaintiff's burden to meet and confer with a defendant prior to this motion, and the burden cannot be shifted to him or her if the defendant's efforts are insufficient.

"A determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer." (Code Civ. Proc., § 430.41, subd. (a)(4).) The insufficiency of the attempt to meet and confer is not a reason to overrule

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Tentative Ruling

Re: **Zelaya v. Alamco, Inc.**
Superior Court Case No. 25CECG04131

Hearing Date: May 27, 2026 (Dept. 403)

Motion: By Plaintiff to Quash Subpoenas

Tentative Ruling:

To deny the motion to quash as moot, as the subpoenas at issue have been withdrawn. To deny all requests for sanctions.

Explanation:

Plaintiff in this personal injury action filed a motion to quash three subpoenas issued by defendant for plaintiff's medical and insurance records. The subpoenas have been withdrawn and are to be reissued with the modifications requested by plaintiff. Accordingly, as plaintiff recognizes, the motion to quash itself is moot, as the discovery dispute has been resolved. The only remaining issue is whether plaintiff should be granted the \$8,460 in monetary sanctions she seeks, because the subpoenas were not withdrawn until after the motion to quash was filed.

Certainly the court *can* impose sanctions against a party despite a motion to quash being rendered moot when the subpoenas were not withdrawn in a timely manner and the moving party expended the time and expense to prepare the motion. (See *Eviszior v. Sweeney* (2014) 230 Cal.App.4th 1304, 1311; *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404.) In making an order on a motion to quash, "the court *may in its discretion* award the amount of the reasonable expenses incurred in making or opposing the motion, including reasonable attorney's fees, if the court finds the motion was made ... in bad faith or without substantial justification...." (Code Civ. Proc., § 1987.2, subd. (a), emphasis added.)

The court finds that it was not reasonable for plaintiff's counsel to proceed with filing the motion, and therefore awards no sanctions. Based on the document production date of December 22, 2025, plaintiff's deadline to file a motion to quash was December 17, 2025. Plaintiff filed the motion on December 16, even though on December 11, again on December 12, and again on December 16, defense counsel communicated to plaintiff's counsel that the subpoenas were on hold while defendant addressed plaintiff's concerns about the language and scope of the subpoenas. On December 12, four days before the motion to quash was filed, defense counsel explicitly communicated that there would be no forthcoming production pursuant to the subpoenas while the parties were working out the dispute. Counsel stated, "While they are on hold, the vendor will not be obtaining documents until we provide an update. The subpoenas will not be re-activated until our meet and confer efforts have resolved the dispute." (See Wu-Chu Decl., Exhs. B, D.) On December 16, defense counsel proposed modifications of the language to alleviate plaintiff's concerns, and withdrawal and reissuance of the subpoenas accordingly. (Wu-Chu Decl., Exh. E.)

