

Tentative Rulings for May 31, 2023
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.

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Tentative Rulings for Department 503

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Tentative Ruling

Re: **Vargas v. Cabrera et al.**
Superior Court Case No. 22CECG00229

Hearing Date: May 31, 2023 (Dept. 503)

Motion: Deposit by Stakeholder

Tentative Ruling:

To grant. Western National Mutual Insurance Company ("Western") shall be discharged from all liability to all parties in this action with reference to Bond No. W71128360051 issued on behalf of Cabrera Duston, Inc. by depositing \$15,000 less \$2,000 with the Clerk of this Court within 15 days of the date of service of this order. Cross-defendants shall litigate their respective claims to the fund. All parties in this action are hereby restrained from instituting or further prosecuting any other proceedings in this or any other court in the State of California affecting the rights and obligations with respect to Bond No. W71128360051 until further order of this court. Western shall be awarded its attorney's fees and costs of \$2,000 from the bond amount to be deposited with the clerk of the court. The Clerk of this Court shall deposit the sum of \$13,000 pending the outcome of this proceeding, to be disbursed upon further order of this court.

Explanation:

"When a person may be subject to conflicting claims for money or property, the person may bring an interpleader action to compel the claimants to litigate their claims among themselves." (*City of Morgan Hill v. Brown* (1999) 71 Cal.App.4th 1114, 1122.) "An interpleader action is an equitable proceeding. [Citations.] In an interpleader action, the court initially determines the right of the plaintiff to interplead the funds; if that right is sustained, an interlocutory decree is entered which requires the defendants to interplead and litigate their claims to the funds. Upon an admission of liability and deposit of monies with the court, the plaintiff then may be discharged from liability and dismissed from the interpleader action. [Citations.] The effect of such an order is to preserve the fund, discharge the stakeholder from further liability, and to keep the fund in the court's custody until the rights of the potential claimants of the monies can be adjudicated. [Citations.]" (*Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 42–43.)

Thus, the interpleader proceeding is traditionally viewed as two lawsuits in one. The first dispute is between the stakeholder and the claimants to determine the right to interplead the funds. The second dispute to be resolved is who is to receive the interpleaded funds. (*Dial 800, supra*, at p. 43.)

Code of Civil Procedure section 386, subdivision (b), applies to "[a]ny person, firm, corporation, association or other entity against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability." These entities "may either file a verified cross-complaint in interpleader, admitting that it has no interest in the money or property claimed, or in only a portion thereof, and alleging that all or such portion is demanded by parties to such"

Western has availed itself of section 386, subdivision (b), and filed a cross-complaint in interpleader on 4/15/2022. This motion is a request for an order of discharge following its deposit of \$13,000 (the \$15,000 bond less \$2,000 in attorneys' fees).

Western is a defendant in the First Amended Complaint filed by plaintiffs. The only cause of action asserted against Western is the eighth, seeking \$15,000 pursuant to the bond issued to Cabrera Duston, Inc. The FAC, Western's Cross-Complaint, and declaration of John Pagan establish that Western's sole stake is the bond issued and that cross-defendants have made adverse and conflicting claims. The court therefore intends to grant the order discharging Western from liability upon its deposit of the funds at issue.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Issued By: jyh **on** 5/30/23
(Judge's initials) (Date)

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Tentative Ruling

Re: **Torres-Amador v. County of Fresno**
Superior Court Case No. 20CECG00420

Hearing Date: May 31, 2023 (Dept. 503)

Motion: Defendant Wellpath's Motion to Compel Plaintiff's Verified Responses to Defendant's Request for Production of Documents, Set Two, and Request for Monetary Sanctions Against Plaintiff and/or Plaintiff's Counsel in the amount of \$435

Tentative Ruling:

To grant. Within 20 days of service of the order by the clerk, plaintiff Edgar Torres-Amador shall serve verified responses, without objections, to defendant Wellpath (with copies to all other appearing parties). To grant monetary sanctions in the amount of \$435.00 against Plaintiff and/or plaintiff's attorney, Daniel L. Harralson, to be paid within 20 calendar days from the date of service of the minute order by the clerk.

Explanation:

Plaintiff's counsel contends that he never received 1) the at-issue discovery, 2) defense counsel's meet and confer letter dated April 17, 2023, or 3) notice of this motion.¹ Defendant presents evidence showing that it did electronically serve the discovery, it emailed the April 17th letter, and it sent notice of this motion electronically, and that all items served were also served on defendants County of Fresno and the Fresno County Sheriff's Office, and there was no problem in the transmittal to them, nor did defense counsel's office staff who sent the material ever get notification of any error in transmission to plaintiff's counsel. Considering all the evidence, the court does not find plaintiff's counsel's contentions credible, especially considering plaintiff's repeated failure to comply with discovery demands in this action, with both defendants.

Further, as for notice of the motion, these arguments are immaterial since plaintiff was able to timely file opposition on the merits. "It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of motion." (*Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 7, quoting *Lacey v. Bertone* (1949) 33 Cal.2d 649, 651; *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697.)

Plaintiff argues that the discovery is defective because it cited Federal Rules of Civil Procedure, Rule 34 rather than the relevant California discovery statute, Code of Civil Procedure section 2031.030. However, there is nothing in section 2031.030 (specifying

¹ In two ex parte applications, requesting continuance of Wellpath's summary judgment motion and continuing trial and reopening discovery, counsel relied on similar contentions about not receiving service of Wellpath's summary judgment motion.

Having found plaintiff's counsel's excuses not credible, the court is not able to excuse the failure to comply with the at-issue discovery. The monetary sanctions requested are warranted. (Code Civ. Proc., § 2031.300, subd. (c).)

Tentative Ruling

² See Rivera, Cal. Prac. Guide Civ. Pro Before Trial Forms (Rutter 2022 Update), § 8:26.

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Tentative Ruling

Re: ***Muhammad et al. v. Tylar Property Management Company, Inc. et al.***

Superior Court Case No. 19CECG03941/Lead

Hearing Date: May 31, 2023 (Dept. 503)

Motion: (1) Plaintiffs Lennice Jabari Najieb aka Lennice Muhammad and Julia Dudley's Motion for Leave to Amend Second Complaint
(2) Defendants Tylar Property Management Company, Inc. and Mel Wapner's Motion for an Interlocutory Judgment of Dismissal of Plaintiffs' Entire First Amended Complaint

Tentative Ruling:

To grant plaintiffs' motion for leave to amend.

To deny the motion for interlocutory judgment of dismissal of the entirety of the first amended complaint. To deny the alternative relief sought for interlocutory judgment of dismissal of the seventh and eighth causes of action of the first amended complaint.

Explanation:

Plaintiffs Lennice Muhammad and Julia Dudley (collectively "plaintiffs") seek leave to file an amended complaint. Defendants Tylar Property Management Company, Inc. and Mel Wapner (collectively "defendants") seek to dismiss the entirety of plaintiffs' first amended complaint for failure to comply with the court's October 11, 2022 order on judgment on the pleadings of the first amended complaint. Defendants move under Code of Civil Procedure section 581, which allows for a judgment of dismissal to be entered where the court sustains a demurrer with leave to amend and the plaintiff fails to amend within the time allowed. (Code Civ. Proc. § 581, subd. (f)(2).)³

Plaintiffs failed to timely amend their complaint as ordered by the court in granting, in part, the prior motion for judgment on the pleadings, prompting defendants to seek an entry of judgment of dismissal. However, while the motion was pending, plaintiffs filed a motion for leave to file an amended pleading. Though defendants characterize plaintiffs' motion as an untimely response to the court's October 11, 2022 order that must be denied, plaintiffs' motion stands alone even if the motion was prompted by the judgment on the pleadings.

³ The court notes that the October 11, 2022 order did not sustain a demurrer. The October 11, 2022 order was on a motion for judgment on the pleadings, and, pertinent to the present motion, denied the motion as to the first and second causes of action, and granted the motion with leave to amend as to the seventh and eighth causes of action. Accordingly, where a motion is granted with leave to amend, and an amended complaint is not filed, the moving party may move for entry of judgment under Code of Civil Procedure section 438, subdivision (h) and (i).

Leave to Amend

Motions for leave to amend the pleadings are directed to the sound discretion of the court. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading" (Code Civ. Proc. § 473, subd. (a)(1); see also Code Civ. Proc. § 576.) Judicial policy favors resolution of cases on the merits, and thus the court's discretion as to allowing amendments will usually be exercised in favor of permitting amendments. This policy is so strong, that denial of a request to amend is rarely justified, particularly where, as here, "the motion to amend is timely made and the granting of the motion will not prejudice the opposing party." (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.) The validity of the proposed amended pleading is not considered in deciding whether to grant leave to amend. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.) Absent prejudice, it is an abuse of discretion to deny leave to amend. (*Higgins v. Delfaro* (1981) 123 Cal.App.3d 558, 564-65.)

In considering a motion for leave to amend, the moving party must include a copy of the proposed amended pleading; state what allegations are to be deleted or added; identify the effect of the amendment; specify why the amendment is necessary and proper; state when the facts giving rise to the amended allegations were discovered; and give the reasons why the request for amendment was not made earlier. (Cal. Rules of Ct., rule 3.1324(a),(b).)

Here, plaintiffs submit a copy of the proposed amended pleadings, marking additions in boldface type. Plaintiffs' moving papers, where are verified under penalty of perjury, further identifies the effect of the amendment, to include proposed additional parties of Kojo Moore and Moore & Moore. Plaintiffs' moving papers state sufficient facts in support of seeking leave to amend, including facts giving rise to the amendment, and approximately the time of those facts. In sum, plaintiffs sufficiently comply with Code of Civil Procedure section 473 for the court to exercise discretion as may be just in favor of granting leave to amend.

Though defendants argue that the motion to amend is untimely, courts are bound to apply a policy of great liberality in permitting amendments to the complaint "at any stage of the proceedings, up to and including trial," *absent prejudice* to the adverse party. (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761.) If plaintiff is the party seeking leave to amend (knowing the trial will be delayed), even proximity to the trial date is not grounds for denial. As long as no prejudice to the defendant is shown, the liberal policy re amendment prevails and it is an abuse of discretion to refuse the amendment. (*Mesler v. Bragg Mgmt. Co.* (1985) 39 Cal.3d 290, 297 [finding no surprise to defendant because parties had conducted discovery on the issues sought to be raised by amendment].)

Plaintiffs do not suggest that any prejudice will come to defendants. Defendants in opposition only state that because trial is scheduled, the possibility of vacating the trial date due to the addition of new parties would prejudice defendants. As noted above, proximity to the trial date is not a grounds for denying leave.

Interlocutory 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.

Issued By: jyh **on** 5/30/23.
(Judge's initials) (Date)

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