

Tentative Rulings for May 9, 2024
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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| 23CECG01862 | <i>Evans v. Tyrell, et al.</i> is continued to Thursday, June 13, 2024 at 3:30 p.m. in Department 503. |
| 23CECG04714 | <i>Nationwide Insurance Company of America v. Evans, et al.</i> is continued to Thursday, June 13, 2024 at 3:30 p.m. in Department 503. |
| 19CECG02252 | <i>Rocio Alvarado Camarillo v. Abraham Topete</i> is continued to Thursday, June 13, 2024, at 3:30 p.m. in Department 503 |
| 22CECG00861 | <i>Collin Harper v. Clovis Lakes Associates, LLC</i> is continued to Tuesday, June 11, 2024, at 3:30 p.m. in Department 503 |

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Tentative Ruling

Re: **Rodriguez v. Wilbur-Ellis Company, LLC et al.**
Superior Court Case No. 19CECG01321

Hearing Date: May 9, 2024 (Dept. 503)

Motion: By Plaintiff Ralph Rodriguez for an Order to Seal

Tentative Ruling:

To deny.

Explanation:

Plaintiff Ralph Rodriguez ("Plaintiff") seeks to file under seal certain documents to support his application for Approval of Compromise of Claim. The documents are alleged to be supporting documents that defendants Wilbur-Ellis Company, LLC, Wilbur-Ellis Company dba RMH Trucking, and John Jared Nail (collectively "Defendants") have requested remain confidential.

As Plaintiff notes, "[a] record must not be filed under seal without a court order. The court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties." (Cal. Rules of Court, rule 2.551 (a).) Further, as Plaintiff notes, the court must make certain express findings in order to seal records. Specifically, the court must find that the facts establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest. (Cal. Rules of Court, rule 2.550(d).)

Plaintiff acknowledges that nothing under the circumstances warrant an order to seal aside from the parties' general agreement to do so. (Rodriguez Decl., ¶ 4.) Defendants did not oppose or otherwise file a response.

Based on the above, the court finds that there exists no overriding interest to the general right of public access to the record, nor is there a substantial probability of prejudice if the record is not sealed. Accordingly, the motion is denied. In the event that Plaintiff seeks an order based on the conditionally lodged documents, Plaintiff must refile the application accordingly.

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

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Tentative Ruling

Re: ***In re: Petition of County of Fresno***
Superior Court Case No. 24CECG01059

Hearing Date: May 9, 2024 (Dept. 503)

Motion: Petition to Perpetuate Testimony and Preserve Evidence

Tentative Ruling:

To deny.

Explanation:

Under Code of Civil Procedure section 2035.010, "One who expects to be a party or expects a successor in interest to be a party to an action that may be cognizable in a court of the state, whether as a plaintiff, or as a defendant, or in any other capacity, may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), for the purpose of perpetuating that person's own testimony or that of another natural person or organization, or of preserving evidence for use in the event an action is subsequently filed." (Code Civ. Proc., § 2035.010, subd. (a).)

"The methods available for discovery conducted for the purposes set forth in Section 2035.010 are all of the following: (a) Oral and written depositions. (b) Inspections of documents, things, and places. (c) Physical and mental examinations." (Code Civ. Proc., § 2035.020, paragraph breaks omitted.)

"If the court determines that all or part of the discovery requested under this chapter may prevent a failure or delay of justice, it shall make an order authorizing that discovery. In determining whether to authorize discovery by a petitioner who expects a successor in interest to be a party to an action, the court shall consider, in addition to other appropriate factors, whether the requested discovery could be conducted by the petitioner's successor in interest, instead of by the petitioner." (Code Civ. Proc., § 2035.050, sub. (a).)

"The petition must meet the requirements of subdivision (a) (1) of section 2017, and the showing must be sufficient to satisfy the court that perpetuation may 'prevent a failure or delay of justice.'" (*Block v. Superior Court of Los Angeles County*, (1963) 219 Cal.App.2d 469, 478, interpreting the prior version of section 2035.010, now-repealed section 2017.)

In the petition at bench, the County of Fresno is seeking to propound requests for documents, obtain deposition testimony, and conduct physical examinations of James Ardaiz and Ernest Duran. Respondents Ardaiz and Duran have been diagnosed with terminal cancer and have submitted claims for damages to Fresno County alleging the cancer was caused by benzene exposure while each was working at the Downtown

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Tentative Ruling

Re: **Charles Yocum v. General Motors LLC**
Superior Court Case No. 22CECG03052

Hearing Date: May 9, 2024 (Dept. 503)

Motion: By Plaintiffs to Compel the Deposition of Defendant's Person
Most Qualified

Tentative Ruling:

To grant. Defendant shall produce its PMQ witness on each of the enumerated categories within Plaintiff's Deposition Notice, without objections, within 10 calendar days of this Order

Explanation:

Discovery requests are generally afforded liberal construction (see Code of Civ. Proc., § 2017.010; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 541), and “[a]ny party may obtain discovery ... by taking in California the oral deposition of any person, including any party to the action.” (Code Civ. Proc., § 2025.010.) Proper service of a notice of deposition compels any deponent to attend, to testify, and to produce documents if requested. (Code Civ. Proc., § 2025.280, subd. (a).) 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).)

The repair information sought by plaintiff appears consistent with the scope of allowable discovery in similar warranty actions. (See *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 993; *Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, 154.) Plaintiffs' motion attaches the deposition notices served on December 16, 2022, November 7, 2023, and November 21, 2023, and contends that defendant essentially remains nonresponsive and court intervention is necessary to schedule and complete the deposition. (Roberge, Decl. ¶ 21.)

Defendant does not substantively oppose the requested relief, but instead promises to respond to the deposition notice before the hearing. Defendant notes that the Code of Civil Procedure “allows” relief from waiver of objections to discovery upon appropriate motion. However, defendant has not filed and served such a motion, and consequently such relief is not properly before the court (to the extent such relief is actually being requested in the opposition). Finally, although criticizing counsel's meet and confer efforts, defendant does not explain the absence of a response to the multiple emails referenced in the motion. Accordingly, the motion to compel the deposition of defendant's person most qualified is granted.

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Tentative Ruling

Re: ***Perez v. Hilton Worldwide Holdings, Inc.***
Superior Court Case No. 22CECG02098

Hearing Date: May 9, 2024 (Dept. 503)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To grant. Orders signed. No appearances necessary.

The court sets a status conference for Wednesday, August 7, 2024, at 3:30 p.m., in Department 503, for confirmation of deposit of the minors' funds into the blocked accounts. If Petitioner files the Acknowledgments 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: jyh on 5/8/24 .

(Judge's initials) (Date)