

Tentative Rulings for June 1, 2023
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.

23CECG00253 *Laura Arakelyan v. Kristin Kroeker, Medical Group* is continued to Wednesday, September 13, 2023, at 3:30 p.m. in Department 403

22CECG02714 *In Re: 5952 North Greenwood Avenue, Clovis, California 93611* is continued to Tuesday, June 6, 2023, at 3:30 p.m. in Department 403

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Tentative Ruling

Re: **Barrena v. Three Palms MH Park, LLC**
Superior Court Case No. 20CECG02062

Hearing Date: June 1, 2023 (Dept. 403)

Motion: by Defendant for an Order Compelling Responses of Plaintiff Melinda Frias to Form Interrogatories, set one, Special Interrogatories, set one, and Request for Production of Documents, set one

Tentative Ruling:

To grant defendant Three Palms MH Park LLC's motion to compel plaintiff Melinda Frias' responses to Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One.

Plaintiff Melinda Frias is ordered to serve verified responses, without objections, to plaintiff Sylvia Kissing's Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One, no later than 30 days from the date of this order, with time to run from the service of this minute order by the clerk.

To impose monetary sanctions in favor of defendant Three Palms MH Park, LLC, and against plaintiff Melinda Frias. (Code Civ. Proc. §§ 2023.010(d), 2030.290(c), 2031.300(c).) Plaintiff is ordered to pay \$550 in sanctions to the Wasson & Associates, Inc. law firm, within 30 days of the clerk's service of the minute order.

If oral argument is timely requested, the matter will be heard on Friday, June 2, 2023, 3:30 p.m. in Dept. 403.

Explanation:

The discovery at issue was served on plaintiff Frias on June 21, 2021. At that time plaintiff was represented by counsel and counsel was served with the discovery. No responses were served and the attorney for plaintiff Frias filed a motion to be relieved as counsel on September 30, 2021. The motion was granted and plaintiff Frias has continued in litigation in propria persona since January 6, 2022. Despite defendant's efforts to address the lack of responses informally, defendant has not succeeded in contacting plaintiff. It appears the last known address and phone number of plaintiff Frias, as identified on the order granting her former attorney's motion to be relieved is no longer correct. (Wasson Decl., ¶ 5, Exh. C.)

"An attorney or self-represented party whose mailing address, telephone number, fax number, or e-mail address ... changes while an action is pending must serve on all parties and file a written notice of the change." (Cal. Rules of Court, rule 2.200.) There is no requirement that counsel track down a plaintiff who has failed to keep the court and counsel apprised of his or her current mailing address. It is incumbent on the party to

update the court and counsel of his or her current contact information. The fact that a party has no attorney and is appearing in propria persona in a proceeding does not entitle them to any different treatment in regard to rule requiring them to notify the court when they change their address. (*Kramer v. Traditional Escrow, Inc.* (2020) 56 Cal.App.5th 13, 32.)

Plaintiff Frias failed to serve any responses. Therefore, defendant is entitled to an order compelling plaintiff to respond to Form Interrogatories, Set One, Special Interrogatories, Set One, and Requests for Production, Set One. (Code Civ. Proc. §§ 2030.290, subd. (b) [interrogatories], 2031.300 [document demands].) In addition, since plaintiff did not respond to the discovery in a timely manner, she has waived all objections. (Code Civ. Proc. §§ 2030.290, subd. (a), 2031.300, subd. (a).)

The court intends to grant the request for monetary sanctions against plaintiff for her failure to respond to the discovery requests. (Code. Civ. Proc. §§ 2023.010, subd. (d), 2030.290, subd. (c), 2031.300, subd. (c).) Based on the lack of complexity of the motions and absence of opposition, the court finds it reasonable to reduce the monetary sanctions from the amount requested and will allow two hours for the preparation of the motions at the hourly rate of \$185. The court also allows \$180 for the cost of filing these three motions. Plaintiff Melinda Frias is ordered to pay \$550 in sanctions to the Wasson & Associates, Inc. law firm within 30 days of the service of the minute order.

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 5/29/2023
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: **Jose Garza v. City of Parlier**
Superior Court Case No. 21CECG02953

Hearing Date: June 1, 2023 (Dept. 403)

Motion: By Defendant City of Parlier to Quash Deposition Subpoena
for Production of Business Records Served on Liest¹ &
Associates

Tentative Ruling:

To grant Defendant City of Parlier's motion to quash deposition subpoena for production of business records served on Liest & Associates. To sustain plaintiff's objection to the Declaration of Cerda, paragraph 2, lines 22 to 25 and Exhibit A. To overrule plaintiff's remaining objections. To reserve the issue of sanctions.

If oral argument is timely requested, the matter will be heard on Friday, June 2, 2023, 3:30 p.m. in Dept. 403.

Explanation:

Notice

Counsel is required to provide notice to the opposing party when issuing a third party subpoena for business records. (See Code Civ. Proc., § 2025.220, subd. (b); *California Shellfish Inc. v. United Shellfish Company* (1997) 56 Cal.App.4th 16.) Plaintiff's counsel has not presented proof of service of the deposition subpoena on the opposing party. The service of the subpoena is therefore defective. As such, the court grants defendant's motion to quash the deposition subpoena.

Types of Records

Defense counsel also argues the records sought are records relating to employees of the City of Parlier, and must be served with a notice of privacy rights on those employees pursuant to Code of Civil Procedure sections 1985.6 and 2020.410, subdivision (d). Employment records are defined as "the original or any copy of books, documents, other writings, or electronically stored information pertaining to the employment of any employee maintained by the current or former employer of the employee ..." (Code Civ. Proc., § 1985.6, subd. (a)(3).) On November 21, 2022, counsel spoke with Leist who informed him that Leist & Associates had audiotape interviews, notes and documents reflecting the results of the investigation, and evidence developed during the

¹ Defendant's motion names the third party as Liest & Associates in the caption for notice. The pleadings have it spelled as "Liest" and "Leist". The court's ruling is meant to be effective regardless as to which spelling is accurate. Additionally, the court may use the spellings interchangeably based on the spelling used by the party.

investigation. (Costanzo Decl., ¶ 4.) These documents appear to be regarding an outsourced investigation and not employment and personnel records. Audiotape interviews, notes and documents reflecting results of the investigation are not employment or personal records. Nothing presented has made it apparent that the evidence developed during the investigation included employment and personal records. Defendant City of Parlier should be able to affirmatively identify if any records turned over to Leist & Associates included employment and personal records. Otherwise, records created by Leist, which is what "evidence developed during the investigation" appears mean, are not employment records. Additionally, the code section provides that the documents must be maintained by the employer. (Code Civ. Proc., § 1985.6, subd. (a)(3).) Leist & Associates is not an employer in this context. As such, if counsel reissues any subsequent business records deposition subpoena, it will not be required to also do a notice of privacy rights on those employees.

Sanctions

Counsel noted that defendant intends to pursue sanctions if the motion is granted. No authority was provided for such sanctions and the notice did not include sanctions. Sanctions are not being considered by the court at this time.

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** 5/30/2023.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Bhatia v. Chenot***
Superior Court Case No. 20CECG00173

Hearing Date: June 1, 2023 (Dept. 403)

Motion: By Plaintiffs for Default Judgment

Tentative Ruling:

The court intends to deny the application for default judgment.

If oral argument is timely requested, the matter will be heard on Friday, June 2, 2023, 3:30 p.m. in Dept. 403.

Explanation:

A "default judgment ... can be entered only upon proof to the court of the damage sustained." (*Taliaferro v. Hoogs* (1963) 219 Cal.App.2d 559, 560; see also Code Civ. Proc., § 585, subd. (b) ["The court shall ... render judgment in the plaintiff's favor ... not exceeding the amount stated in the complaint ... as appears by the evidence to be just."].) Accordingly, "damages must be proved in the trial court before the default judgment may be entered[.]" and "[t]he amount of general damages awarded is usually correlated to the special damages proved." (*Jones v. Interstate Recovery Service* (1984) 160 Cal.App.3d 925, 929 [internal citations omitted].) "Conclusory" demands attached to a declaration are insufficient default prove-up evidence. (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 288.)

Here, plaintiffs seek \$111,002 in special damages, \$5 million in general damages, and \$2,304 in costs. Plaintiffs submit no evidence in support of any of the above. As already noted in the court's June 8, 2022 and March 3, 2021 denial of plaintiffs' prior attempts for default judgment, evidence must be provided to support plaintiffs' request for special and general damages. Plaintiffs have not provided documentary evidence of their out-of-pocket losses (i.e., special damages) nor have they provided a sufficient basis for their requested general damages. While the court is sympathetic, plaintiffs' present filings are insufficient to support an award of general damages of more than 40 times the amount of special damages. The trial court has a duty to reduce excessive general damages valuations. (See *Beagle v. Vasold* (1966) 65 Cal.2d 166, 179-180.)

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 5/31/2023.
(Judge's initials) (Date)