

**Tentative Rulings for July 3, 2025**  
**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)**

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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.*

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The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

21CECG03273	<i>Jesse Gil v Outback, Inc</i> is continued to Tuesday, July 22, 2025 at 3:30 p.m. in Department 503
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(Tentative Rulings begin at the next page)

## **Tentative Rulings for Department 503**

Begin at the next page

(34)

**Tentative Ruling**

Re: **Cruz v. Bibiano**  
Superior Court Case No. 24CECG03603

Hearing Date: July 3, 2025 (Dept. 503)

Motion: (1) by Plaintiff to Stay Proceedings  
(2) by Defendant for Terminating Sanctions  
(3) by Defendant for Order Compelling Plaintiff to Respond to Discovery

**If oral argument is timely requested, it will be entertained on  
Thursday, July 31, 2025, at 3:30 p.m. in Department 503.**

**Tentative Ruling:**

To deny Plaintiff Frank Cruz's motion to stay proceedings.

To deny Defendant Oscar Bibiano's motion for terminating sanctions. To grant the motion for monetary sanctions for failure to comply with the court's order. (Code Civ. Proc., § 2031.310, subd. (i).) To impose monetary sanctions in favor of Defendant Oscar Bibiano and against Plaintiff Frank Cruz in the amount of \$2,147.40, payable to the Proper Defense Law Corporation within 30 days of the clerk's service of the minute order.

To grant Defendant Oscar Bibiano's motions to compel Plaintiff Frank Cruz's responses to Form Interrogatories, Set One, and Request for production of Documents, Set Two. (Code Civ. Proc. §§ 2030.290, subd. (b); 2031.300, subd. (b).) Plaintiff is ordered to serve complete verified responses to the discovery set forth above, without objection, within 30 days of the clerk's service of the minute order. To impose monetary sanctions in favor of Defendant and against Plaintiff Frank Cruz. (Code Civ. Proc. §§ 2023.010, subd. (d), 2030.290, subd. (c), 2031.300, subd. (c).) Plaintiff is ordered to pay \$619.90 in sanctions to Proper Defense Law Corporation within 30 days of the clerk's service of the minute order.

**Explanation:**

**Motion to Stay**

An application for a stay is addressed to the sound discretion of the trial court. (*Thomson v. Continental Ins. Co.* (1967) 66 Cal.2d 738, 746.) In the present case, Plaintiff Frank Cruz is seeking to stay proceedings 90 days after having been diagnosed with a concussion following a February 2025 motor vehicle accident.

Plaintiff attests to being unable to fully function due to his injuries from the accident. (Cruz Decl., ¶ 7.) It is not until the reply that plaintiff includes a medical record indicating plaintiff was diagnosed with disequilibrium and lumbar disc degeneration.

(Reply Decl., Exh. A.) In his reply, plaintiff additionally attests to requiring strong pain medication for headaches and having been instructed by his doctor to avoid work that will impede his recovery. (*Id.* at ¶¶ 2-3.) Although the medical record notes subjective symptoms of dizziness and headaches when concentrating on computer work, there is no indication plaintiff is prescribed medications for the headaches or that his doctor has instructed him to avoid all computer work.

The evidence presented is not sufficient to support a stay of plaintiff's action as requested. Plaintiff continues to file papers and participate in law and motion in his case while avoiding discovery obligations, suggesting that plaintiff's difficulties concentrating at a computer can be managed when plaintiff desires to do so.

Accordingly, the motion to stay proceedings is denied.

### **Motion for Terminating Sanctions**

Section 2023.010 defines "misuses of the discovery process" as including, "failing to respond or submit to an authorized method of discovery" and "disobeying a court order to provide discovery." (Code Civ. Proc. § 2030.010, subds. (d) & (g).) Section 2023.030 states, in relevant part:

To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process:

\* \* \*

(d) The court may impose a terminating sanction by one of the following orders:

\* \* \*

(3) An order dismissing the action or any part of the action, of that party.

(Code Civ. Proc. § 2023.030, subd. (d)(3).)

Accordingly, terminating sanctions must be authorized by a specific discovery statute; they are not available merely because they are an option listed in section 2023.030.

### *Order Compelling Discovery Responses:*

A challenge to the adequacy of responses to a demand for production is controlled by Code of Civil Procedure section 2031.310. That section provides that if a party unsuccessfully makes or opposes a motion to compel a further response to demands for production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust, the court "shall" impose monetary sanctions. (Code Civ. Proc. §2031.310, subd. (h).) It is only when a party disobeys an order compelling responses that a terminating sanction is called for.

[I]f a party fails to obey an order compelling a further response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).  
(Code Civ. Proc., § 2031.310, subd. (i).)

Courts generally follow a policy of imposing the least drastic sanction required to obtain discovery or enforce discovery orders, because the imposition of terminating sanctions is a drastic consequence, one that should not lightly be imposed, or requested. (*Ruvalcaba v. Government Employees Ins. Co.* (1990) 222 Cal.App.3d 1579, 1581.) Sanctions are supposed to further a legitimate purpose under the Discovery Act, i.e. to compel disclosure so that the party seeking the discovery can prepare their case, and secondarily to compensate the requesting party for the expenses incurred in enforcing discovery. Sanctions should not constitute a "windfall" to the requesting party; i.e. the choice of sanctions should not give that party more than would have been obtained had the discovery been answered. (Edmon & Karnow, *California Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2024) § 8:2216.) "The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks but the court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment. [Citations.]" (*Caryl Richards, Inc. v. Superior Court* (1961) 188 Cal.App.2d 300, 304.)

Appellate courts have generally held that before imposing a terminating sanction, trial courts should usually grant lesser sanctions first. (Edmon & Karnow, *supra*, § 8:2235.) However this is not an "inflexible" policy, and it is not an abuse of discretion to issue terminating sanctions on the first request, where circumstances justify it (e.g. where the violation is egregious or the party is using failure to respond as a delaying tactic). (*Id.* at § 8:2236; *Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279-280 ["A decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction. [Citation.]".])

Here, plaintiff was ordered on March 20, 2025 to provide further responses to requests for production and pay monetary sanctions to defendant's counsel. Plaintiff has not served further responses or paid sanctions as ordered. While his motion to compel further responses was pending, defendant propounded additional discovery which is the subject of motions to compel responses to be heard concurrent with defendant's motion for terminating sanctions. Defendant argues plaintiff's failure to participate in discovery demonstrates willful noncompliance with the court's order to provide further responses.

Plaintiff opposes the motion explaining he suffered a concussion following a car accident in February 2025 and this has resulted in difficulty working at a computer and preparing discovery responses. As discussed with respect to the plaintiff's motion requesting a stay in litigation due to his medical condition, the court is sympathetic to plaintiff's condition but it does not support halting litigation. The circumstances do not

support finding plaintiff's failure to comply with the court's order compelling responses was willful to support the imposition of a terminating sanction.

The court intends to exercise its discretion to impose a lesser sanction in an attempt to obtain plaintiff's compliance. In the event plaintiff remains noncompliant with this order and the March 20, 2025 order without substantial justification it will be difficult to convince the court that a lesser sanction would be effective to obtain plaintiff's participation in discovery or in prosecuting his own action.

Additional monetary sanctions are awarded against plaintiff Cruz and in favor of defendant Bibiano in the amount of \$2,147.40.

### **Motion to Compel Responses to Discovery**

A party that fails to serve a timely response to a discovery request waives "any objection" to the request. (Code Civ. Proc. §§ 2030.290, subd. (a), 2031.300, subd. (a).) The propounding party may move for an order compelling a party to respond to the discovery request. (Code Civ. Proc. §§ 2030.290, subd. (b), 2031.300, subd. (b).)

Where responses are served after the motion is filed, the motion to compel may still properly be heard. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 409.) Unless the propounding party takes the matter off calendar, the court may determine whether the responses are legally sufficient, and award sanctions for the failure to respond on time. (*Ibid.*)

The discovery at issue, Form Interrogatories, Set One and Request for Production of Documents, Set Two, was served on plaintiff on February 11, 2025 and March 6, 2025, respectively. (Vecchiarelli Decl., ¶ 3, Exh. A.) Despite extensions of time to respond and defendant's efforts to address the lack of responses informally, plaintiff has failed to serve any responses. (*Id.* at ¶¶ 4-6.) Plaintiff opposes the motion on the basis that he has requested the action be stayed while he recovers from a concussion. However, the court does not intend to stay plaintiff's action as requested. opposition<sup>1</sup> indicates responses were served on January 28, 2025. (Castro Decl., ¶ 5.) Accordingly, the motions to compel plaintiff's responses to Form Interrogatories, Set One and Requests for Production of Documents, Set Two, are granted. Plaintiff is ordered to serve verified responses within 30 days of the clerk's service of the minute order.

### Sanctions

The court may award sanctions against a party that fails to provide discovery responses. (Code Civ. Proc. § 2023.010 subd., (d).)

Plaintiff's request for sanctions in connection with the motion at bench is granted. The court finds it reasonable to award sanctions for one hour of attorney time preparing the motion to compel and costs of \$84.95 for each motion. Attorney Vecchiarelli attests to his junior associate preparing the moving papers and her hourly rate of \$225.

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<sup>1</sup> The court will exercise its discretion and consider the late-filed opposition. (Cal. Rules of Court, rule 3.1300, subd. (d).)

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: JS on 7/2/2025.  
(Judge's initials) (Date)

(20)

**Tentative Ruling**

Re: **Wells Fargo Bank, N.A. v. Key Island, LLC**  
Superior Court Case No. 25CECG01764

Hearing Date: July 3, 2025 (Dept. 503)

Motion: NNN Capital Fund I, LLC's Motion for Leave to Intervene

**If oral argument is timely requested, it will be entertained on  
Thursday, July 31, 2025, at 3:30 p.m. in Department 503.**

**Tentative Ruling:**

To grant. The proposed Complaint in Intervention shall be filed and served on all parties within 10 days of service of the order by the clerk.

**Explanation:**

A nonparty has the right to intervene in litigation between others where he claims an interest in the property or transaction involved in such litigation, and is so situated that any judgment rendered in his absence "may as a practical matter impair or impede his ability to protect that interest ... " (Code Civ. Proc., § 387, subd. (b).) "[T]he trial court has discretion to permit a nonparty to intervene where the following factors are met: (1) the proper procedures have been followed; (2) the nonparty has a direct and immediate interest in the action; (3) the intervention will not enlarge the issues in the litigation; and (4) the reasons for the intervention outweigh any opposition by the parties presently in the action.'" (*State Water Bd. Cases* (2023) 97 Cal.App.5th 1035, 1050.) Motions to intervene are to be given a liberal construction in favor of intervention. (*Simpson Redwood Co v. State of California* (1987) 196 Cal.App.3d 1192, 1200.)

This is an action for appointment of receiver and injunctive relief to aid in plaintiff's ultimate goal of nonjudicial foreclosure of the property at issue, owned by defendant Key Island, LLC, which is in default on a \$9 million loan. NNN Capital Fund I, LLC ("Intervenor"), has a \$23 million judgment against Todd Mikles, and defendant Key Island has been adjudicated to be an alter ego of Mikles. Intervenor's proposed complaint in intervention seeks declaratory relief that it is the owner of the property at issue.

Given Intervenor's claim of ownership of the property through its status as a judgment creditor, and expressed intent to cure the default once it obtains that adjudication, the court finds that intervention is appropriate here. Intervenor has a direct interest in this action, its interests are not adequately represented by the existing parties in this action, and the declaratory relief claim will not enlarge the issues presented in this action. The court therefore intends to grant the motion for leave to intervene.

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





(27)

**Tentative Ruling**

Re: **Kevin Assemi v. Farid Assemi**  
Superior Court Case No. 23CECG05154

Hearing Date: July 3, 2025 (Dept. 503)

Motion: Application of Michael Nadel to Appear *Pro Hac Vice* on  
Behalf of Plaintiff

**If oral argument is timely requested, it will be entertained on  
Thursday, July 31, 2025, at 3:30 p.m. in Department 503.**

**Tentative Ruling:**

To deny, without prejudice.

**Explanation:**

Despite opposing counsel's unhelpful hyperbole and rhetoric, elemental defects prevent admission at this time. Although moving counsel (Jason Strabo) insists payment has been made to the state bar, there is no evidence of payment, nor does it appear the alleged payment comports with the updated fee schedule. (See Rules Prof. Conduct, appx. A [\$500 fee for pro hac vice application].) In addition, although the applicant claims to be in good standing, there is no evidence presented to support such claim. Accordingly, the application is denied. (Cal. Rules of Court, rule 9.40.)

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** 7/2/2025.  
(Judge's initials) (Date)