Tentative Rulings for August 26, 2026
Department 502

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.*

23CECG02112 ***Holland Hulling Company v. Singh*** **(Dept. 502)**

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

26CECG00221 ***Werfelmann v. State Farm Mutual Automobile Insurance Company*** **is continued to Wednesday, September 30, 2026, at 3:30 p.m. in Department 502.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(20) **Tentative Ruling**

Re: ***Perez v. Perez et al.***
Superior Court Case No. 23CECG00025

Hearing Date: August 26, 2026 (Dept. 502)

Motion: (1) By Defendants to Set Aside Default of Nina Perez

(2) By Plaintiff to Compel Further Responses by Nina Perez to Sets Two of Special Interrogatories, Request for Production of Documents, Requests for Admissions

Tentative Ruling:

(1) To grant in part and direct the clerk to set aside the default of Nina Perez ("Nina") that was entered on June 4, 2026. (Code Civ. Proc., § 473, subd. (b).) Nina shall file her answer to the Third Amended Complaint within five days of service of the order by the clerk.

(2) To deny all three motions to compel. (Code Civ. Proc., §§ 2016.040, 2030.300, subd. (b)(1); 2031.310(b)(2), 2033.290, subd. (b)(1).)

Explanation:

Motion to Set Aside Default

Nina moves to set aside her default entered on June 4, 2026. As the court noted in granting Roberto Perez's motion to set aside his default, it is unclear why defense counsel did not simply file an answer when he knew the request for entry of default had been submitted but not yet acted upon by the court. Counsel is making it rather difficult to find his neglect to be excusable. However, relief under Code of Civil Procedure section 473, subdivision (b), can be based either on:

- An 'attorney affidavit of fault', in which event, relief is mandatory; or
- Declarations or other evidence showing 'mistake, inadvertence, surprise or 'excusable neglect,' in which event relief is discretionary.

"(W)henever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an **attorney's** *sworn* ***affidavit*** attesting to his or her mistake, inadvertence, surprise or neglect, (the court shall) vacate any (1) resulting *default* entered by the clerk … or (2) resulting *default judgment or dismissal* entered against his or her client …" (Code Civ. Proc., §473, subd. (b), emphasis added.)

The court construes Mr. Porter's declaration to be an "attorney affidavit of fault." He states, "I admit that in hindsight, procedurally, an answer for both of my clients' should have been filed within 30 days of December 10, 2025." (Porter Decl., ¶ 12.) While he advances a number of arguments attempting to show that his neglect was reasonable or excusable, in light of the fact that he has fallen on his sword and admitted his mistake, the motion will be granted, as there is no requirement that the neglect be excusable. And certainly no prejudice has resulted to plaintiff.

Again, the court notes that it is an unfair and almost dirty tactic to quietly enter the default of a defendant, represented by counsel, without first giving advance warning. Though plaintiff represents himself, the California Attorney Guidelines of Civility and Professionalism[1], section 15: "An attorney should not take the default of an opposing party known to be represented by counsel without giving the party advance warning. For example an attorney should not race opposing counsel to the courthouse to knowingly enter a default before a responsive pleading can be filed. This guideline is intended to apply only to taking a default when there is a failure to timely respond to complaints, cross-complaints, and amended pleadings."

<u>Motion to Compel</u>

Plaintiff moves to compel further responses from Nina to sets two of Special Interrogatories, Request for Production of Documents, Requests for Admissions. The motions are denied for failure to file an adequate meet and confer declaration.

Each motion to compel further responses must be accompanied by a declaration *stating facts* showing a "*reasonable and good faith attempt*, either in person, by telephone or by videoconference" to resolve informally the issues presented by the motion *before filing the motion*. (Code Civ. Proc., §§ 2016.040, 2030.300, subd. (b)(1) [interrogatories]; 2031.310(b)(2) [inspection demands], 2033.290, subd. (b)(1) [requests for admission]; *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 138, fn. 9 [declaration must accompany notice of motion, along with all other documents supporting notice of motion].) The attempt to resolve informally may be made *either* by conferring "in person, by telephone, or by videoconference with an opposing party or attorney." (Code Civ. Proc., § 2023.010, subd. (i) [failure to make such attempt constitutes "misuse of discovery process"].) Various factors may be considered by the court in determining whether a party made a "reasonable" and "good faith" attempt to resolve the issue informally, including:

- *Size of case, complexity of discovery:* Greater effort at informal resolution may be required in larger, more complex cases;
- *Previous relations with opposing counsel:* The history of the litigation and the nature of the interaction between counsel;
- *Present dispute:* The nature of the issues, and the type and scope of discovery requested;
- *Timing:* Making the first attempt to meet and confer shortly before the filing deadline may lead to a finding that there was no good faith attempt to resolve the issues informally. Conversely, a delayed response to a meet and confer letter may lead to the same finding as to the responding party;
- *Prospects for success:* Whether, from the perspective of a reasonable person in the position of the discovering party, additional effort appeared likely to bear fruit;

[1] https://www.calbar.ca.gov/sites/default/files/2026-01/Civility-Guidelines_Samples.pdf

- *Evidence of discovery abuse?* When discovery requests are grossly overbroad on their face, and hence do not appear reasonably related to a legitimate discovery need, a reasonable inference can be drawn of an intent to harass and improperly burden.

(*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 431.)

Plaintiff's declarations filed in support of each motion contain the same conclusory and factually inadequate statement: "I engaged in good faith meet and confer efforts to resolve these issues, including written communications identifying deficiencies." (Perez Decl. re RFAs, 2:19-20; Perez Decl. re RPD, 2:22-23; Perez Decl. re SI, 2:26-26.) Only in the declaration regarding the SI does plaintiff provide a little more information:

> However Defendant has not given responses in good faith. An excellent example of this is the follow up reply to Special Interrogatory 10. In a follow up Reply Argument from Defendant Roberto's Attorney Tres A. Porter Esq.: "Are you being serious? Parents tell children a number of things that are not true. Are you now contending a parent needs medical training to examine their children or to administer an enema? Also how is this in the slightest bit relevant to your specific allegations?" Defendant represented to Plaintiff and other minor children that enemas and vaginal examinations were medically necessary and that she possessed the knowledge to perform them. The vaginal examinations consisted of Nina inserting her fingers inside all 3 of her daughters vaginas. This is called SEXUAL ASSAULT. It is called PEDOPHILIA. Whether Defendant had any formal medical, nursing, or clinical training is directly relevant to the credibility and legitimacy of those representations. Whether Nina used 'medical necessity' as an excuse to undress her children goes to the heart of this interrogatory. This information bears on intent, a pattern of using cover stories to sexually abuse her children.

Even this is inadequate, as there is no specific *factual showing* that there was a good faith effort to resolve all disputes raised prior to filing the motions, or that there was any meet and confer *in person, by telephone or by videoconference*. The court requires strict compliance with all requirements for motions to compel further discovery responses, especially meet and confer. The court will not permit plaintiff to file a supplemental declaration showing adequate meet and confer, as the meet and confer declaration must be filed with the moving papers. (*Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 138, fn. 9.) Accordingly, the motions are denied.

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: ___________lmg________________on 8-25-26______________.
(Judge's initials) (Date)

(36) **<u>Tentative Ruling</u>**

Re: ***Esquivel v. Fresno Unified School District***
Superior Court Case No. 24CECG01001

Hearing Date: August 26, 2026 (Dept. 502)

Motion: Expedited Petition to Compromise Claim of Minor

Tentative Ruling:

To deny without prejudice. In the event that oral argument is requested minor is excused from appearing.

Explanation:

Petitioner requests for the minor's settlement balance of $10,815, to be placed in a CalABLE account. Petitioner indicates that the deposit of the funds into a CalABLE account would allow her to access the settlement funds as needed to care for the minor, without being calculated as income for the purpose of the minor's state-issued benefits.

While the court agrees that a CalABLE account appears to protect the minor's eligibility for public benefits programs, petitioner does not make a sufficient showing that access to the settlement funds prior to the minor reaching age 18, would be in his best interest. Especially where it is represented that the minor has fully recovered from the injuries, the court prefers the settlement amount be held in some manner that will prevent withdrawal until the minor attains age 18, for example, in a blocked account or structured settlement, unless there are overriding reason for not doing so.

In petitioner's supplemental declaration, she indicates the unavailability of a blocked account. She does not discuss why a structured settlement would not be feasible.

To the extent petitioner intends to seek a special needs trust, the court generally approves of this arrangement, since this will ensure that receipt of this money will not disqualify the minor from receiving the public benefits he may need due to his disabilities. However, petitioner must show that she has first filed, with the Probate Department, a Petition under Probate Code sections 3600-3613 to establish and fund the special needs trust. The Probate Court is better suited to confirm that the Trust complies with California Rules of Court, Rule 7.903, to ensure that the notice required by Probate Code section 3611, subdivision (c) is given, and to provide for the ongoing court supervision of the trust.

Once the probate petition has been granted, petitioner can then petition this court for approval of the compromise of the disabled adult's claim.

Pursuant to California Rules of Court, Rule 3.1312 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: ______________lmg______________ **on** ______8-24-26______________ .
(Judge's initials) (Date)

(36)

<u>Tentative Ruling</u>

Re: ***Aquino v. Alderkin, et al.***
Superior Court Case No. 24CECG00181

Hearing Date: August 26, 2026 (Dept. 502)

Motion: by Defendants Jennifer Elderkin, erroneously sued as Jennifer Alderkin, and Elizabeth Pruitt Demurring to the Complaint

Tentative Ruling:

To sustain the demurrer to the third, twelfth, and fourteenth causes of action, with leave to amend. (Code Civ. Proc., § 430.010, subd. (e).)

Plaintiff is granted 10 days' leave to file the First Amended Complaint. The time in which the First Amended Complaint can be amended will run from service by the clerk of the minute order. All new allegations in the First Amended Complaint are to be set in **boldface** type.

Explanation:

Defendants Jennifer Elderkin, erroneously sued as Jennifer Alderkin and Elizabeth Pruitt demur to the third, twelfth, and fourteenth causes of action for failure to state a claim.

Third Cause of Action – Harassment

"Under the FEHA, it is unlawful '[f]or an employer ... or any other person, because of ... national origin ... [or] age ... to harass an employee ....' ([Gov't. Code,] § 12940, subd. (j)(1).) To establish a prima facie case of a hostile work environment, [plaintiff] must show that (1) she is a member of a protected class; (2) she was subjected to unwelcome harassment; (3) the harassment was based on her protected status; (4) the harassment unreasonably interfered with her work performance by creating an intimidating, hostile, or offensive work environment; and (5) defendants are liable for the harassment. [Citation.]" (*Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 581, citations omitted.) "To constitute harassment, the conduct must be so objectively severe or pervasive as ' "to create a hostile or abusive working environment." ' [Citation.]" (*Doe v. Department of Corrections & Rehabilitation* (2019) 43 Cal.App.5th 721, 736 (*Doe*), citations omitted.)

"In addition, disability harassment is distinguishable from discrimination. [Citation.]" (*Doe, supra,* at p. 736.) " '[D]iscrimination refers to bias in the exercise of official actions on behalf of the employer, and harassment refers to bias that is expressed or communicated through *interpersonal relations* in the workplace.' " [Citation.] '[H]arassment focuses on situations in which the *social environment* of the workplace becomes intolerable because the harassment (whether verbal, physical, or visual) communicates an offensive message to the harassed employee.' [Citation.] Put differently, '[h]arassment claims are based on a type of conduct that is avoidable and unnecessary to job performance. No supervisory employee needs to use slurs or derogatory drawings, to physically interfere with freedom of movement, to engage in unwanted sexual advances, etc., in order to carry out the legitimate objectives of personnel management. Every supervisory employee can insulate himself or herself from claims of harassment by refraining from such conduct. An individual supervisory employee cannot, however, refrain from engaging in the type of conduct which could later give rise to a discrimination claim. Making personnel decisions is an inherent and unavoidable part of the supervisory function.' [Citation.]" (*Id*., at pp. 736-737, citations omitted.)

"Without making personnel decisions, a supervisory employee simply cannot perform his or her job duties. [Citations.]" (*Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 869-870, citations omitted.) "[The] Legislature intended that commonly necessary personnel management actions such as hiring and firing, job or project assignments, office or work station assignments, promotion or demotion, performance evaluations, the provision of support, the assignment or nonassignment of supervisory functions, deciding who will and who will not attend meetings, **deciding who will be laid off, and the like, do not come within the meaning of harassment.** These are actions of a type necessary to carry out the duties of business and personnel management. These actions may retrospectively be found discriminatory if based on improper motives, but in that event the remedies provided by the FEHA are those for discrimination, not harassment. Harassment, by contrast, consists of actions outside the scope of job duties which are not of a type necessary to business and personnel management. [Citation.]" (*Id*. at p. 870, emphasis added, citations omitted.)

Here, the complaint alleges that Elderkin and Pruitt told plaintiff to return to work on July 5, 2023, and the next day, they informed her position had been eliminated. (Compl., ¶ 17.) These are ordinary personnel management actions that do not constitute harassment. While conduct that overlaps with personnel management is not categorically excluded from a harassment claim, plaintiff fails to allege *any* other factual allegations against Elderkin and Pruitt.

Plaintiff argues that she has alleged sufficient facts to state a claim for harassment, because she alleges that defendants subjected her to an ongoing pattern of unwanted and offensive conduct that was so severe and pervasive so as to alter the conditions of her employment. However, plaintiff fails to allege what such unwanted and offensive conduct actually was.

Accordingly, the demurrer to the third cause of action is sustained.

Intentional Infliction of Emotional Distress

Defendants demur to the twelfth cause of action for intentional infliction of emotional distress on the grounds that plaintiff fails to allege extreme and outrageous conduct, and that the claim is barred by the exclusive remedy provisions of California's workers' compensation law. Plaintiff argues that she has sufficiently pled her cause of action for IIED and that her claim is subject to an exception to the workers' compensation preemption.

"Where the provisions of the workers' compensation system apply, an employer is liable without regard to negligence for any injury sustained by its employees arising out of and in the course of their employment. (Lab. Code, § 3600, subd. (a)(1).) The employee, in turn, is generally prohibited from pursuing any tort remedies against the employer or its agents that would otherwise apply. (*Id.*, § 3602, subd. (a).)" (*Light v. Department of Parks & Recreation* (2017) 14 Cal.App.5th 75, 96.)

"Physical and emotional injuries sustained in the course of employment are preempted by the workers' compensation scheme and generally will not support an independent cause of action. [Citation.] Emotional injuries caused by workplace discipline, including termination, fall within this rule. [Citations.]" (*Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal.App.4th 144, 161, citations omitted.) "[W]hen the misconduct attributed to the employer is actions which are a normal part of the employment relationship, such as demotions, promotions, criticism of work practices, and frictions in negotiations as to grievances, an employee suffering emotional distress causing disability may not avoid the exclusive remedy provisions of the Labor Code by characterizing the employer's decisions as manifestly unfair, outrageous, harassment, or intended to cause emotional disturbance resulting in disability." (*Ibid*.)

However, a plaintiff may "pursue a claim for intentional infliction of emotional distress in the employment context where the conduct at issue violates FEHA and also satisfies the elements of the claim." (*Light, supra,* at p. 101.) " 'The elements of the tort of intentional infliction of emotional distress are: " '(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct....' Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." ' [Citation.]" (*Ibid*., citations omitted.)

As explained above, the complaint fails to allege that defendants engaged in any specific conduct to give rise to a FEHA harassment cause of action, let alone the requisite extreme and outrageous conduct to give rise to an IIED cause of action. Thus, the complaint fails to state a claim for intentional infliction of emotional distress and the demurrer is sustained as to the twelfth cause of action.

Declaratory Relief

"A complaint for declaratory relief must demonstrate: (1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party. [Citation.] The 'proper subjects' of declaratory relief are set forth in Code of Civil Procedure section 1060 and other statutes. [Citations.] The 'actual controversy' requirement concerns the existence of present controversy relating to the legal rights and duties of the respective parties pursuant to contract (Code Civ. Proc., § 1060), statute or order." (*Brownfield v. Daniel Freeman Marina Hospital* (1989) 208 Cal.App.3d 405, 410, citations omitted.)

Title VII of the Civil Rights Act of 1964 makes it "an unlawful employment practice for an employer ... to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." (42 U.S.C. § 2000e-2(a)(1).) When "an individual proves a violation under section 2000e-2(m) [i.e. Title VII] . . . the court . . . may grant declaratory relief. . ." (42 U.S.C. § 2000e-5(g)(2)(B).) "Proof that an adverse employment decision was substantially motivated by discrimination may warrant a judicial declaration of employer wrongdoing." (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 234.)

As a matter of law, individuals such as supervisors and coworkers who do not otherwise qualify as employers, employment agencies, labor organizations, or job training programs, may not be held individually liable for violations of Title VII. (42 U.S.C. § 2000e-2(a)-(d); 42 U.S.C. § 2000e(b).)

Defendants are alleged to be individuals as opposed to any of the statutory entities subject to Title VII. Declaratory relief afforded under Title VII is not an available remedy against individual defendants and thus, plaintiff has not alleged a proper subject of declaratory relief pertaining to the moving defendants. Accordingly, the demurrer to the fourteenth cause of action is sustained.

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: lmg on 8-25-26 .
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Iniguez v. Body Del Sol Aesthetics et al.***
Superior Court Case No. 25CECG02281

Hearing Date: August 26, 2026 (Dept. 502)

Motions: (1) By Plaintiff Lucy Iniguez for an Order Compelling Initial Responses to Special Interrogatories, Set Two, and Request for Sanctions;
(2) By Plaintiff Lucy Iniguez for an Order Compelling Initial Responses to Request for Production, Set Two, and Request for Sanctions;
(3) By Plaintiff Lucy Iniguez for an Order to Deem Requests for Admissions, Set Two as Admitted by Defendant Body Del Sol Aesthetics, and Request for Sanctions

Tentative Ruling:

To grant each of the motions to compel initial responses to special interrogatories, and request for production of documents.

Within ten (10) days of service of the order by the clerk, defendant Body Del Sol Aesthetics shall serve verified responses, without objections, to Special Interrogatories, Set Two; and Request for Production, Set Two, and produce all documents responsive to the Request for Production.

To grant the motion seeking an order deeming the truth of matters specified in the Requests for Admission, Set Two by defendant Body Del Sol Aesthetics pursuant to Code of Civil Procedure section 2033.280, subdivision (b) against plaintiff Michael Kachadoorian **unless** responses in substantial conformity with Code of Civil Procedure section 2033.220 are served **prior** to the hearing.

To impose monetary sanctions in the total amount of $800 against defendant Body Del Sol Aesthetics, in favor of plaintiff Lucy Iniguez. Within thirty (30) days of service of the order by the clerk, defendant Body Del Sol Aesthetics shall pay sanctions to counsel for plaintiff Lucy Iniguez.

Explanation:

On March 17, 2026, plaintiff Lucy Iniguez served the discovery at issue on defendant Body Del Sol Aesthetics. (*E.g.*, Lacour Decl., ¶ 3.) As of the filing of the motions to compel, no responses have been served. (*Id.*, ¶ 5.) No opposition was filed.

Initial Responses to Interrogatories and Inspection Demand

Within 30 days of service of interrogatories, the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party. (Code Civ. Proc., § 2030.260.) Within 30 days of service of a demand for inspection, the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party. (Code Civ. Proc., § 2031.260.) To date, Defendant has received no response to interrogatories and demands for inspection. Accordingly, an order compelling Plaintiffs to provide initial responses is warranted. (Code Civ. Proc., §§ 2030.290, subd. (b), 2031.300 subd. (b).) All objections are waived. (*Id.*, §§ 2030.290, subd. (a), 2031.300, subd. (a).)

Deemed Admissions

On May 28, 2026, Plaintiff filed and served motions seeking an order that the truth of any matter specified in the requests be deemed admitted pursuant to Code of Civil Procedure section 2033.280, subdivision (b). No responses have been served since the filing of the motion. No opposition was filed.

The motion seeking an order deeming the truth of matters specified in Requests for Admissions, Set One deemed established, will be granted pursuant to Code of Civil Procedure section 2033.280, subdivision (b) **unless** responses in substantial conformity with Code of Civil Procedure section 2033.220 are served **prior** to the hearing.

Sanctions

Sanctions are mandatory unless the court finds that the party acted "with substantial justification" or other circumstances that would render sanctions "unjust." (Code Civ. Proc., §§ 2030.290, subd. (c), 2031.300, subd. (c), 2033.280, subd. (c).) As no opposition was filed, the court finds no circumstances that would render the mandatory sanctions unjust. Counsel provided no hourly rate, and seeks an unreasonable $2,500 <u>per motion</u>.[2] Counsel further seeks to make the imposition of sanctions joint and several as to counsel for Defendant. The request for joint and several sanctions is denied. Sanctions are imposed in the total amount of $800 in favor of plaintiff Lucy Iniguez and against defendant Body Del Sol Aesthetics.

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: <u>lmg</u> on <u>8-24-26</u>.
(Judge's initials) (Date)

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[2] Even at an insurmountable rate of $1,000 per hour, 7.5 hours aggregate for simple motions to compel initial responses is per se unreasonable.