Tentative Rulings for August 28, 2025
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.***

23CECG00682 ***Chhina v. Reschman***

24CECG02299 ***Joshuamir De La Cruz v. Rosanna Hernandez***

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

23CECG04012 ***Barbara Hansen v. Ross Dress for Less, Inc.*** **is continued to Wednesday, September 3, 2025 at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(47)

Tentative Ruling

Re: ***Johan Legarda v Madera Roofing, Inc.***
Case No. 24CECG02472

Hearing Date: August 28, 2025 (Dept. 403)

Motion: Plaintiff's Motion for Preferential Trial Setting

Tentative Ruling:

To deny plaintiff's motion for preferential trial date.

Explanation:

Code of Civil Procedure section 36, subdivision (e), provides

> Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference

The statutory canon of "*In Pari Materia*" is defined as:

> Where two or more statutes are *in pari materia*, each may be interpreted by reference to the other(s). This proposition operates by way of being an exception to the general principle that the meaning of a word for the purposes of one statute cannot be binding in relation to its meaning in another.

It logically follows that the catch-all phrase "the interests of justice" under Code of Civil Procedure section 36, subdivision (e) is meant to be analogous to the life-altering situations in the other subdivisions under Code of Civil Procedure section 36.

Code of Civil Procedure section 36, subdivision (a) provides an instance of mandatory preference when a party to the action is over 70 years old. Code of Civil Procedure section 36, subdivision (b) provides an instance of mandatory preference when a party to the action is under 14 years old. Code of Civil Procedure section 36, subdivision (d) provides that a court "may" grant preference if one of the parties provides "by clear and convincing medical documentation that concludes that one of the parties suffers from an illness or condition raising substantial medical doubt of survival of that party beyond six months."

Plaintiff's hardships can be characterized as typical hardships. While the court may be sympathetic to plaintiff, it does not rise to the standards espoused under Code of Civil Procedure section 36 that warrants trial preference.

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 8-27-25.
(Judge's initials) (Date)

(20) **Tentative Ruling**

Re: ***Rios v. Safeway, Inc. et al.***
Superior Court Case No. 21CECG01209

Hearing Date: August 28, 2025 (Dept. 403)

Motion: By Defendant Safeway, Inc., to Compel Further Responses to Special Interrogatories, Set Five, Nos. 83-88, and for Monetary Sanctions

Tentative Ruling:

To grant and order plaintiff to provide further verified responses to Special Interrogatory Nos. 83-88 within 20 days of service of the order by the clerk. To impose $2,,040 in monetary sanctions against plaintiff Maria Rios and in favor of defendant Safeway, Inc., to be paid to Safeway's counsel within 20 days of service of the order by the clerk.

Explanation:

The special interrogatories at issue seek the exact amount of medical bills that plaintiff incurred and the amount medical providers have accepted as full payment for treatment received for plaintiff's injuries. The interrogatories specifically reference *Howell v. Hamilton* (2011) 52 Cal.4th 541, *Hanif v. Housing Authority of Yolo County* (1988) 200 Cal.App.3d 635. *Hanif* holds that, under the collateral source rule, an injured plaintiff may recover from the tortfeasor money an insurer has paid to medical providers on his or her behalf. The plaintiff's recovery is capped at the amount actually paid by the collateral source, such as insurance. (*Hanif, supra,* 200 Cal.App.3d at pp. 639-644.) *Howell* holds that "a personal injury plaintiff may recover the *lesser* of (a) the amount paid or incurred for medical services, and (b) the reasonable value of the services." (*Howell*, *supra*, 52 Cal.4th at pp. 555-556.)

Without asserting any objection, plaintiff responded with the current amount of medical bills incurred for treatment, failing to provide the detailed information asked for in the interrogatories. Plaintiff's answers are non-responsive.

Plaintiff's interrogatory responses must be as complete and straightforward as the information reasonably available permits. If the interrogatory cannot be answered completely, it must be answered to the extent possible. And plaintiff is required to make a reasonable and good faith effort to obtain the information. (Code Civ. Proc., § 2030.220.)

> (a) On receipt of a response to interrogatories, the propounding party may move for an order compelling a further response if the propounding party deems that any of the following apply: (1) An answer to a particular interrogatory is evasive or incomplete. (2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required

specification of those documents is inadequate. (3) An objection to an interrogatory is without merit or too general.

(Code Civ. Proc., § 2030.300.)

Plaintiff contends that California law prohibits compelled production of Howell numbers before the close of medical discovery and expert designation. The burden is plaintiff's to justify any objection or failure fully to answer the interrogatories. (*Coy v. Superior Court* (1962) 58 Cal.2d 210, 220-221.) Here, though, plaintiff did not assert any such objection in her responses. Any such objection is therefore waived. (Code Civ. Proc., § 2030.290, subd. (a).) Having failed to object, plaintiff's only option is to provide the information requested, to the extent plaintiff can obtain the information.

Moreover, plaintiff does not show that such production is not allowed at this stage. Plaintiff cites to *Haniff v. Superior Court* (2017) 9 Cal.App.5th 191 for this proposition, though the opinion concerns ability of the trial court to order a plaintiff to undergo a vocational rehabilitation examination. Plaintiff also cites to a Los Angeles Superior Court order, which is not citeable authority. (See Cal. Rules of Court, rule 8.1115.) Accordingly, the court intends to grant the motion and impose reasonable sanctions (Code Civ. Proc., §§ 2023.01, 2023.030, and 2030.300.)

As for the amount of sanctions, the court is not going to force plaintiff to pay for Safeway's new attorney to get up to speed on the discovery dispute. The court will award the $1,600 incurred up to the filing of the motion. (See Wilkins Decl., ¶ 10.) The eight hours sought to prepare the reply brief is excessive. (Thomas Decl., ¶ 2.) The court will award three hours, for a total sanction of $2,335.

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 8-27-25 .
(Judge's initials) (Date)

(41)

Tentative Ruling

Re:	***Emerald Construction & Engineering, Inc. v. Art Ramirez, Inc.*** Superior Court Case No. 24CECG00591
Hearing Date:	August 28, 2025 (Dept. 403)
Motion:	By Defendant for Summary Judgment or, Alternatively, Summary Adjudication

Tentative Ruling:

To deny the alternative motions for summary judgment and summary adjudication without prejudice.

Explanation:

Plaintiff, Emerald Construction & Engineering, Inc. dba Emerald Concrete Construction (Emerald) filed suit against defendant Art Ramirez, Inc. (ARI [erroneously sued as Art Ramirez, Inc. dba Ari Concrete Construction]) for breach of contract and negligence. ARI now moves for summary judgment or summary adjudication, contending Emerald cannot recover because it was a suspended and unlicensed contractor when it performed the work for which it seeks to recover. (Bus. & Prof. Code, § 7031; Code Civ. Proc., § 996.340.)

Emerald opposes the motion solely on the procedural ground that ARI failed to comply with the mandatory notice provision of Code of Civil Procedure section 437c, which requires the moving party to serve its papers on all other parties at least 81 days before the hearing. (Code Civ. Proc., § 437c, subd. (a)(2).)

Emerald cites *Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, where the Fifth District Court of Appeal explained:

> Section 437c is a complicated statute. There is little flexibility in the procedural imperatives of the section, and the issues raised by a motion for summary judgment (or summary adjudication) are pure questions of law. As a result, section 437c is unforgiving; a failure to comply with any one of its myriad requirements is likely to be fatal to the offending party.
>
> Section 437c thus does not furnish the trial courts with a convenient procedural means, to which only "lip service" need be given, by which to clear the trial calendar of what may appear to be meritless or weak cases. . . . . Any arbitrary disregard of the statutory commands in order to bring about a particular outcome raises procedural due process concerns.

> [Citation.] Motions for summary judgment cannot therefore properly be decided by employing a sort of detached "smell test."

(*Brantley v. Pisaro, supra,* 42 Cal.App.4th at p. 1607.)

ARI concedes it provided notice of 79 days instead of the minimum 81 days required for personal service (or more, depending on the type of notice). ARI contends the purpose of increasing the notice was for the court's benefit, not the parties, but it cites no authority to permit the court to shorten the notice period without the parties' agreement.

The court in *McMahon v. Superior Court* (2003) 106 Cal.App.4th 112 contrasted the Legislature's decision not to give trial courts discretion to shorten the notice period for summary judgment motions with the authority granted trial courts to shorten two other summary judgment time periods. Discussing the shorter notice requirements in the prior version of Code of Civil Procedure section 437c, the appellate court explained why the trial court cannot shorten the moving party's notice period:

> [Code of Civil Procedure section 437c, s]ubdivision (a) provides in pertinent part: "The [summary judgment] motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed *or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct*. Notice of the motion and supporting papers shall be served on all other parties to the action at least ... 75 [now 81] days before the time appointed for hearing.... The motion shall be heard no later than 30 days before the date of trial, *unless the court for good cause orders otherwise*." (Italics added.) This subdivision contains three minimum time requirements. However, the subdivision gives trial courts discretion to shorten only two of these time periods—the 60 days that must have elapsed since the general appearance of a party against whom the motion is directed before a summary judgment motion can be filed, and the minimum 30 days before trial when a summary judgment motion can be heard. **The subdivision does not contain any language authorizing courts to shorten the 75-day [now 81-day] notice period.**

(*McMahon v. Superior Court, supra,* 106 Cal.App.4th at p. 115 [ellipses and italics in original, bold added; *Robinson v. Woods* (2008) 168 Cal.App.4th 1258, 1262 [given express statutory language of § 437c, subd. (a) and potentially dispositive nature of a summary judgment motion, trial court may not shorten minimum notice period without parties' agreement]; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2025) ¶ 10:279 [many summary judgment motions are denied for purely technical reasons, such as lack of sufficient notice, and faulty requests for judicial notice].)

Here, Emerald responded to the summary judgment motion by filing a written opposition objecting to the improper notice without arguing the merits. The court has no authority to shorten the minimum notice requirements. Therefore, based on ARI's failure

to follow the strict procedural requirements of Code of Civil Procedure section 437c, subdivision (a), the court denies ARI's alternative motions without prejudice.

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 8-27-25.
(Judge's initials) (Date)