

Tentative Rulings for September 22, 2022
Department 503

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

21CECG01008 *John Doe v. Clovis Unified School District* is continued to Tuesday, October 11, 2022 at 3:30 p.m. in Department 503

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Tentative Ruling

Re: ***Doe v. Tonkinson, et al.***
Superior Court Case No. 21CECG02422

Hearing Date: September 22, 2022 (Dept. 503)

Motions: Defendant Central California Ear Nose & Throat Medical Group's Motion for Relief from Waiver of Objections to Plaintiff's Discovery

Plaintiff's Motions to Compel Further Responses to: (1) Request for Production of Documents, Set One, (2) Special Interrogatories, Set One, (3) Form Interrogatories – General, Set One, and (4) Form Interrogatories - Employment, Set One

Tentative Ruling:

To grant defendant Central California Ear Nose & Throat Medical Group's ("CCENT") motion for relief from waiver of objections. (Code Civ. Proc., §§ 2030.290, subd. (a)(1); 2031.300, subd. (a)(1).)

To take plaintiff's motions to compel off calendar due to failure to comply with Local Rule 2.1.17 or the meet and confer requirements of Code of Civil Procedure sections 2016.040, 2030.300, subdivision (b)(1), and 2031.310, subdivision (b)(2).

Explanation:

Relief from Waiver of Objections

Under Code of Civil Procedure section 2031.300, subdivision (a), relief from waiver of objections due to a late response may be granted where both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

(Code Civ. Proc., §2031.300, subd. (a).)

Code of Civil Procedure sections 2030.290 and 2033.290 provide for similar relief with respect to interrogatories and requests for admission.

Although Code of Civil Procedure section 473, subdivision (b) does not apply, as sections 2030.290, 2031.300, and 2033.290 provide for the relief from waiver, because the language in the those sections mirrors the relief language in section 473, subdivision (b),

the legislature intended that “general principles developed in application of section 473 would be utilized in connection with the discretion to be exercised pursuant to the [Discovery] Act.” (*Scottsdale Ins. Co. v. Superior Court* (1997) 59 Cal.App.4th 263, 275.)

Mistake, inadvertence, or excusable neglect is commonly found in instances of calendaring errors by staff members. (See *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 234; *Renteria v. Juvenile Justice, Dept. of Corrections and Rehabilitation* (2006) 135 Cal.App.4th 903, 911.) This is exactly what occurred here. (See Borchers and Manning Declarations.) Plaintiff does not dispute that mistake, inadvertence, or excusable neglect is established here.

The court also finds that the responses that have been submitted by CCENT are in substantial compliance with the relevant discovery statutes. In *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 782, the court addressed substantial compliance in providing responses to requests for admission. The response was in substantial compliance with section 2033.220, as explained by the court:

The proposed response was verified by the party; contained responses to a majority (64) of the individual RFAs that were unquestionably code-compliant; contained, as to at least most of the balance of the individual RFAs (41) meaningful, substantive responses; and was served well before the hearing (and, in fact, even before the deemed admitted Motion was filed). Although *St. Mary's* proposed response may not have actually complied with all statutory requirements, such actual compliance is not required where the proposed response is facially a good-faith effort to respond to RFAs in a manner that is substantially code-compliant.

(*St. Mary, supra*, 223 Cal.App4th at p. 782.) Finding that a response is substantially compliant does not mean there are no deficiencies in the responses. (*Id.* at p. 782, fn. 22.)

Here, CCENT did not provide the responses with the motion, which, to say the least, would make it difficult to assess whether the responses are in substantial compliance. But plaintiff has provided the responses with the opposition. (See *Emma Decl.*, Exs. B-F.) Plaintiff identifies no major deficiencies with the responses to the requests for admissions or interrogatories, simply asserting that the objections are boilerplate. Generally arguing that the objections are boilerplate or lack merit does not show that the responses are not code-compliant. Plaintiff correctly identifies some deficiencies in the responses to the production demands, such as failure to recite that CCENT is producing all documents in its “possession, custody or control” (Code Civ. Proc., § 2031.220) and failure to identify the documents subject to objection (Code Civ. Proc., § 2031.240, subd. (b)(1)). Despite the deficiencies raised by the moving papers, the court finds that the responses are in substantial compliance.

Accordingly, the court grants the motion for relief from waiver. The court notes, however, that this relief is limited to those objections asserted in CCENT's first responses to the discovery. This relief should not be construed to allow CCENT to assert any objections that were not asserted in its first responses served on November 31, 2021.

