<u>Tentative Rulings for September 22, 2022</u> <u>Department 503</u>

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).)					
	ntinued the following cases. The deadlines for opposition and reply 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				

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

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(20) <u>Tentative Ruling</u>

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 codecompliant; 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.

<u>Plaintiff's Motions to Compel Further Responses</u>

After CCENT served two sets of responses to the discovery requests at issue, plaintiff filed motions to compel *initial* responses. Ordinarily the court would deny such a motion, as motions to compel further responses are the proper motions. The court was lenient, however, and continued the hearing to afford plaintiff time to file separate statements, treating the motions as motions to compel *further* responses. The court now questions that decision, as plaintiff again demonstrates failure to comply with required procedures for bringing motions to compel further responses.

After the court's June 9, 2022 order continuing the hearing on the motions to compel initial responses, counsel for the parties met and conferred. As a result of that meet and confer, CCENT served second amended responses on August 3, 2022. The second amended responses are the operative responses to which the motions should be directed. Before filing motions to compel further responses, plaintiff was required to meet and confer (Code Civ. Proc., §§ 2016.040, 2030.300, subd. (b)(1), 2031.310, subd. (b)(2)), request a pretrial discovery conference and obtain permission to file the motions (Local Rule 2.1.17). There was no meet and confer after service of the second amended responses, and plaintiff did not file a request for pretrial discovery conference, or obtain permission to file a motion to compel directed at these new responses. Accordingly, the motions to compel are taken off calendar.

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:	KAG	on	9/14/2022	
-	(Judge's initials)		(Date)	

(37) <u>Tentative Ruling</u>

Re: In Re Jovani Pulido

Superior Court Case No. 22CECG02718

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

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To deny, without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

Explanation:

Petitioner has not substantiated the medical expenses. No billing records and/or liens, if any, were attached to the petition. According to the petition, there were no negotiated reductions, and it is anticipated that the full amount charged will be paid from the settlement. Ultimately, petitioner has not substantiated any medical expenses.

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 Ruli	ng			
Issued By:	KAG	on	9/20/2022	
-	(Judge's initials)		(Date)	

(37)

<u>Tentative Ruling</u>

Re: Karey Fidalgo v. Bradley Machado

Superior Court Case No. 17CECG01752

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

Motion: By Defendant Bruno Lometti to Set Aside Default Entered on

July 29, 2021

Tentative Ruling:

To continue the hearing to October 25, 2022, at 3:30 p.m. in Department 503. Counsel are to provide supplemental briefing regarding the issue of defective notice, as addressed below. The supplemental briefs are due simultaneously on October 11, 2022, and are not to exceed 10 pages.

Explanation:

"The general rule of motion practice ... is that new evidence is not permitted with reply papers ... [and] should only be allowed in the exceptional case" (Jay v. Mahaffey (2013) 218 Cal.App.4th 1522, 1537-1538.) The same is true with new arguments presented for the first time on reply. (See Mocek v. Alfa Leisure, Inc. (2003) 114 Cal.App.4th 402, 409 [court declined to consider arguments raised for first time in reply brief under rule an issue is waived when not raised in opening brief]; see also Katelaris v. County of Orange (2001) 92 Cal.App.4th 1211, 1216, fn. 4.) However, if the court exercises its discretion to allow new evidence or argument in reply papers, the opposing party must be given an opportunity to respond. (Alliant Ins. Services, Inc. v. Gaddy (2008) 159 Cal.App.4th 1292, 1307-1308 [new evidence].) The court is exercising its discretion in favor of considering the argument that service on a suspended attorney is defective.

Additionally, defense counsel has requested the court to take judicial notice of the proposed answer attached to the Lometti declaration, filed on October 23, 2018, and to use this pleading as the proposed answer in this motion. Counsel is required to file a proposed answer with her name on the pleading, not a proposed answer with former, disbarred counsel's name on the pleading. The court grants counsel leave to do so by October 11, 2022.

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 Rulii	ng			
Issued By:	KAG	on	9/20/2022	
-	(Judge's initials)		(Date)	