

Tentative Rulings for September 29, 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.

22CECG00222 *Pulliam v. Fresno Community Hospital and Medical* is continued to Thursday, October 13, 2022, at 3:30 p.m. in Department 503

22CECG00522 *Huerta v. Sloan* is continued to Thursday, October 27, 2022, at 3:30 p.m. in Department 503

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Tentative Ruling

Re: ***The State of California v. Kraig Carter et al.***
Superior Court Case No. 22CECG00971

Hearing Date: September 29, 2022 (Dept. 503)

Motion: By Plaintiff for an Order of Possession

Tentative Ruling:

To deny without prejudice.

Explanation:

The motion fails to satisfy the statutory notice requirements. While plaintiff has established that it is entitled to take the subject properties by eminent domain, and has deposited the amount(s) required to be deposited pursuant to Code of Civil Procedure section 1255.010 [the probable amount of compensation to be awarded to defendants], plaintiff has failed to provide notice of its motion to all the requisite parties.

Notice Requirement

A motion for prejudgment possession must be served on the “record owner of the property and on the occupants, if any.” (Code Civ. Proc., § 1255.410, subd. (b).) “[R]ecord owner’ means the owner of the legal or equitable title to the fee or any lesser interest in property as shown by recorded deeds or other recorded instruments.” (Code Civ. Proc., § 1255.450, subd. (a).) “The plaintiff shall set the court hearing on the motion not less than 60 days after service of the notice of motion on the record owner of unoccupied property. If the property is lawfully occupied by a person dwelling thereon or by a farm or business operation, service of the notice of motion shall be made not less than 90 days prior to the hearing on the motion.” (Code Civ. Proc., § 1255.410, subd. (b).) Since the motion can be filed at the time of filing the complaint, or any time thereafter, notice of the motion must be given to all defendants, whether or not they have appeared in the action. (See Code Civ. Proc., § 1255.410, subd. (a).)

According to plaintiff's proof of service, plaintiff has served counsel and associated counsel for defendants Michael G. Jackson; Lori R. Jackson; Kingsburg Orchards, Inc.; Scott Kernick Carter; Kelly Carter Cummings; and Ray L. Carter and Judy C. Carter Family Limited Partnership notice of the instant motion.

There is no proof of service to indicate that the following parties have been served with this motion: Kraig Vincent Carter, Kirk Wallace Carter, Natalie Ruth Carter, Gail West Carter, or Rancho Cuervo, LLC. Notably, the answer on behalf of Kraig Vincent Carter, Kirk Wallace Carter, Natalie Ruth Carter, and Gail West Carter was filed on July 1, 2022. This motion was filed one month prior, on June 2, 2022. However, this does not negate the need for service on all defendants, whether or not they have appeared in the action.

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Tentative Ruling

Re: ***Lembo et al. v. FCA US LLC et al.***
Superior Court Case No. 18CECG04511

Hearing Date: September 29, 2022 (Dept. 503)

Motion: Plaintiffs' Motion to Compel Attendance

Tentative Ruling:

To order the motion off calendar, based on plaintiffs' failure to comply with Fresno Superior Court Local Rules, rule 2.1.17.

Explanation:

Fresno County Superior Court Local Rules, rule 2.1.17 states, in relevant part:

Except for motions to compel the deposition of a duly noticed party or subpoenaed person(s) who have not timely served an objection pursuant to Code of Civil Procedure section 2025.410 or otherwise obtained the consent of all interested parties agreeing to the non-appearance of the party or person(s) at the deposition as noticed or subpoenaed, and motions to compel initial responses to interrogatories, requests for production and requests for admissions, no motion under sections 2016.010 through 2036.050, inclusive, of the California Code of Civil Procedure shall be heard in a civil unlimited case unless the moving party has first requested an informal Pretrial Discovery Conference with the Court and such request for a Conference has either been denied and permission to file the motion is expressly granted via court order or the discovery dispute has not been resolved as a consequence of such a conference and permission to file the motion is expressly granted after the conference.

(Fresno County Superior Court Local Rules, rule 2.1.17(A).)

In this case, plaintiffs initially served a notice of the deposition of the personal most knowledgeable for defendant FCA US, LLC ("defendant") on February 27, 2019. (See Neubauer Decl., Ex. 8.) Defendant timely served objections to the deposition notice on March 26, 2019. (See Neubauer Decl., Ex. 9.) The parties met and conferred, and, one year later, plaintiffs served an amended deposition notice on April 30, 2020. (See Neubauer Decl., Ex. 12.) Defendant again served timely objections to the amended deposition notice on May 8, 2020. (See Neubauer Decl., Ex. 13.)

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Tentative Ruling

Re: ***Savala v. Pacheco, et al.***
Superior Court Case No. 20CECG01141

Hearing Date: September 15, 2022 (Dept. 503)

Motion: Defendants' Motion for Terminating Sanctions

Tentative Ruling:

To grant defendants' motion for terminating sanctions against plaintiff, as plaintiff has willfully refused to comply with this court's order compelling him to respond to discovery. (Code Civ. Proc., §§ 2023.010, subd. (g); 2030.290, subd. (c); 2031.300, subd. (c).) To strike plaintiff's complaint and dismiss the action against defendants. (Code Civ. Proc., §§ 2023.010, subd. (g); 2030.030, subd. (d).) Defendants shall submit a proposed judgment consistent with the court's order within 10 days of service of the minute order.

Explanation:

Code of Civil Procedure section 2023.010, subdivision (g) makes "[d]isobeying a court order to provide discovery" a "misuse of the discovery process," but sanctions are only authorized to the extent permitted by each discovery procedure. Once a motion to compel answers is granted, continued failure to respond or inadequate answers may result in more severe sanctions, including evidence, issue or terminating sanctions, or further monetary sanctions. (Code Civ. Proc., § 2030.290, subd. (c); 2031.300, subd. (c).)

Sanctions for failure to comply with a court order are allowed only where the failure was willful. (*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 495; *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545; *Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1327.) If there has been a willful failure to comply with a discovery order, the court may strike out the offending party's pleadings or parts thereof, stay further proceedings by that party until the order is obeyed, dismiss that party's action, or render default judgment against that party. (Code Civ. Proc., § 2023.030, subd. (d).)

Here, on March 30, 2022, the court ordered plaintiff to serve verified responses to the discovery requests no later than 15 court days from the date of service of the court's order, as well as to pay \$555 in monetary sanctions to defendants within 30 days of service of the court's order. The court's order was served on plaintiff's counsel by mail on April 1, 2022. However, plaintiff never served verified responses to any of the discovery requests, nor did he pay the monetary sanctions as ordered, despite the passage of almost six months.

Therefore, it appears that plaintiff is willfully refusing to comply with the court's order compelling him to answer the discovery requests and to pay monetary sanctions.

