

**Tentative Rulings for September 5, 2024**  
**Department 501**

**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)**

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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*

23CECG03497      *Andrade v. Quality Furniture & Mattress, Inc.*

22CECG02818      *Stellar Solar, Inc. v. Amazing Energy Partners, Inc.*

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

22CECG02097      *Oracle Anesthesia, Inc. v. Central Valley Advanced Nursing Practice, Inc.* is continued to Wednesday, September 18, 2024 at 3:30 p.m. in Department 501

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## **Tentative Rulings for Department 501**

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**Tentative Ruling**

Re: **Phengdara v. Willis**  
Superior Court Case No. 22CECG02938

Hearing Date: September 5, 2024 (Dept. 501)

Motion: by Defendant Richard Willis to Compel Initial Discovery Responses, Deemed Admissions Order

**Tentative Ruling:**

To grant. (Code Civ. Proc., §§ 2030.290, 2031.300, 2033.280.) Within 10 days, plaintiff Phongsamay Phengdara shall serve verified responses to Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One. All objections are waived. The truth of all matters specified in the Request for Admissions, Set One, are deemed admitted. (Code Civ. Proc., § 2033.280, subd. (b).) To impose reasonable sanctions on both in the sum of \$1,880 against Phengdara and in favor of moving party Willis, to be paid to moving party's counsel within 20 days of service of the order by the clerk.

**Explanation:**

On 9/14/20023 defendant served plaintiff with form interrogatories, special interrogatories, request for production of documents, and requests for admission (set one each). Responses were due by 10/19/2023. To date no responses have been served. Defendant now moves for an order compelling responses to the interrogatories and production demand, and a deemed admissions order as to the requests for admission.

Since no responses have been served, and the response deadline has passed, an order compelling plaintiff to provide initial responses to the interrogatories and production demand without objections (Code Civ. Proc., § 2030.290, subd. (a), 2031.300, subd. (a)), and ordering admitted all matters specified in the requests for admission (Code Civ. Proc., § 2033.280, subd. (b)), is warranted, and reasonable sanctions must be imposed (Code Civ. Proc., §§ 2023.010, subd. (d), 2023.030, subd. (a); *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404). With respect to the requests for admissions, this will be the order of the court unless plaintiff serves, before the hearing on the motion, proposed responses that are in substantial compliance with Code of Civil Procedure section 2033.220.

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: DTT on 8/29/2024.  
(Judge's initials) (Date)

(37)

**Tentative Ruling**

Re: **Kevin Wedgewood v. Gianni Fine Jewelry, Inc.**  
Superior Court Case No. 23CECG00279

Hearing Date: September 5, 2024 (Dept. 501)

Motion: by Plaintiff for an Order to Show Cause re Contempt

**Tentative Ruling:**

To deny.

**Explanation:**

Code of Civil Procedure section 1209, subdivision (a)(5), does provide that disobedience of a court order is contempt of the authority of the court. Generally, to demonstrate contempt, there must be 1) a valid court order, 2) knowledge of the order, 3) ability to comply with the order, and 4) willful failure to comply. (*In re Ivey* (2000) 85 Cal.App.4th 793, 798; *Application of Liu* (1969) 273 Cal.App.2d 135, 140.) Contempt is a quasi-criminal proceeding. (*Application of Liu, supra*, 273 Cal.App.2d at p. 141.) As such, the party seeking to have a person held in contempt must show that person's ability to comply beyond a reasonable doubt. (*Id.* at pp. 141-142.)

On May 22, 2024, this court made orders to enforce a settlement agreement wherein defendant was to make a diamond available to plaintiff for inspection and to pay attorney's fees. (See Minute Order, May 22, 2024.) Defendant has paid the attorney's fees, but has not made the diamond available for inspection.

Here, the issue is whether defendant has the ability to comply with the court order. Plaintiff, as the moving party, bears the burden of showing that defendant has the ability to comply with the court order. Plaintiff has not provided any evidence regarding defendant's ability to comply either at the time of the order or any time since the order was made. Defendant has submitted a declaration which indicates that, both at the time the court made its orders and currently, defendant did not and does not have the ability to comply with respect to the diamond. (See Gage Decl.) As such, the court is not in a position to find that defendant is in contempt.

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: DTT on 9/3/2024.  
(Judge's initials) (Date)

(27)

**Tentative Ruling**

Re: ***Eustorgio Reyes v. Legend Trucking, Inc.***  
Superior Court Case No. 23CECG01707

Hearing Date: September 5, 2024 (Dept. 501)

Motion: by National Continental Insurance Company for Leave to Intervene in the Action

**Tentative Ruling:**

To grant National Continental Insurance Company's motion for leave to intervene in the action. (Code Civ. Proc. § 387, subd. (d)(1)(A).) National Continental Insurance Company shall file and serve its complaint in intervention within 10 days of the date of service of this order.

**Explanation:**

"The court shall, upon timely application, permit a nonparty to intervene in the action or proceeding if ... "[t]he person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties." (Code Civ. Proc., § 387, subd. (d)(1)(B).)

No party has filed an opposition to this motion, and it appears well-settled that an insurer may protect its interests by intervening in a personal injury action brought against its insured. (*Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383, 386.) Therefore, the motion is granted. Proposed intervenor National Continental Insurance Company shall separately file and serve its proposed complaint in intervention.

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: DTT on 9/3/2024.  
(Judge's initials) (Date)

(37)

**Tentative Ruling**

Re: ***Amber Billingsley v. Premier Valley Bank***  
Superior Court Case No. 22CECG01807

Hearing Date: September 5, 2024 (Dept. 501)

Motion: by Defendant/Cross-Complainant for Terminating Sanctions  
Against Cross-Defendant Matthew Billingsley

**Tentative Ruling:**

To grant the request for terminating sanctions in favor of defendant/cross-complainant Premier Valley Bank and against cross-defendant Matthew Billingsley. Cross-defendant Matthew Billingsley's Answer filed October 12, 2022, in Fresno Superior Court Case Number 22CECG02476, which was consolidated into this matter on October 31, 2022, is stricken. Premier Valley Bank is to file a proposed order describing the consolidation of these matters and striking the answer within 10 days of service of the clerk's minute order.

**Explanation:**

Once a motion to compel discovery is granted, continued failure to comply may support a request for more severe sanctions. 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. For failure to obey the court's discovery orders or to appear at a noticed deposition, the court may:

"[M]ake those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010)..."

(Code Civ. Proc. §§ 2025.450, subd. (d) [depositions]; 2030.290, subd. (c) [interrogatories]; and 2031.300, subd. (c) [production demands].) Factors relevant to determining which sanction is appropriate include:

1. The time which has elapsed since the discovery was served;
2. Whether the party received extensions of time to answer;
3. The amount of discovery propounded;
4. The importance of the discovery sought;
5. Whether the party failing to answer acted in good faith and with reasonable diligence (i.e. whether he or she was aware of the duty to furnish the requested information and had the ability to do so);
6. Whether answers were supplied that were evasive or incomplete;
7. The amount of unanswered discovery remaining;

8. Whether the unanswered discovery requested information that was difficult to obtain;
9. The existence of prior discovery orders and the responding party's compliance with those prior orders;
10. Whether the responding party was unable to comply with prior discovery orders;
11. Whether an order allowing more time to answer would enable the responding party to comply; and
12. Whether a sanction short of dismissal or default would be appropriate to the dereliction.

(Weil & Brown, California Practice Guide: Civil Procedure Before Trial (The Rutter Group 2022), ¶ 8:2205, citing *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796.)

Sanctions are supposed to further a legitimate purpose under the Discovery Act, i.e. to compel disclosure so that the party seeking the discovery can prepare their case, and secondarily to compensate the requesting party for the expenses incurred in enforcing discovery. Sanctions should not constitute a “windfall” to the requesting party; i.e. the choice of sanctions should not give that party more than would have been obtained had the discovery been answered. (Weil & Brown, *supra*, at ¶ 8:2212.) “The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks but the court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment.” (*Caryl Richards, Inc. v. Superior Court* (1961) 188 Cal.App.2d 300, 304.)

Here, on September 19, 2023, the court ordered cross-defendant Matthew Billingsley to provide further responses to Premier Valley Bank's discovery requests. Matthew Billingsley has failed to follow these court orders. Shortly thereafter, his counsel filed a motion to withdraw as counsel. On December 19, 2023, the court granted counsel's request and counsel filed the proof of service of the order on January 10, 2024. On February 9, 2024, counsel for the bank spoke with Matthew Billingsley and sent him information about the pending discovery requests. Following this, Matthew Billingsley has not responded to further inquiries from the bank. Additionally, beginning April of 2024, all mail sent by the clerk of the court to Matthew Billingsley's last known address has been returned, indicating that he has failed to keep his address updated with the court.

Typically, the court will allow the offending party a second opportunity to respond and to comply with the court's orders. However, Matthew Billingsley has been given multiple opportunities to comply, both while he was represented and while he has appeared in pro per, but he has failed to do so. Additionally, he has failed to keep his address updated with the court since April. It does not appear that allowing him more time to respond will enable him to comply or to participate in this matter. It does not appear that Matthew Billingsley intends to defend himself or further participate in this matter. As such, the court grants defendant/cross-complainant Valley Premier Bank's motion for terminating sanctions.

This matter was consolidated with Fresno Superior Court Case Number 22CECG02476 on October 31, 2022, with this case being the lead case. Cross-defendant Matthew Billingsley was named in 22CECG02476 and filed his Answer therein on October

12, 2022. The court strikes the Answer filed October 12, 2022, in Fresno Superior Court Case Number 22CECG02476.

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:** DTT **on** 9/3/2024 .  
(Judge's initials) (Date)



(35)

**Tentative Ruling**

Re: ***Ivory v. Bliss***  
Superior Court Case No. 23CECG02508

Hearing Date: September 5, 2024 (Dept. 501)

Motion: Petition to Compromise Minors' Claims

**Tentative Ruling:**

To grant each of the Petitions for Honesty Lavender, Promise Lavender and JahViy Rivera. The Proposed Orders have been signed. No appearances are necessary.

The court sets a status conference on Thursday, December 5, 2024, at 3:30 p.m. in Department 501, for confirmation of deposit of the funds into blocked accounts. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356), at least five court days before the hearing, the status conference will come 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: DTT on 9/3/2024.  
(Judge's initials) (Date)

(24)

### Tentative Ruling

Re: ***In Re: Serena and Seana Alvarado***  
Superior Court Case No. 21CECG00708

Hearing Date: September 5, 2024 (Dept. 501)

Motion: Request to Amend Original Orders Approving Compromise of Disputed Claims of Minors

### Tentative Ruling:

To continue the hearing to Thursday, September 19, 2024, at 3:30 p.m. in Department 501. No later than September 13, 2024, petitioner's counsel, Daniel Harralson, must file a supplemental declaration which verifies receipt of the additional funds from AMCO (\$2,500.00, i.e., \$1,250.00 for each minor). Counsel must also, no later than September 13, 2024: 1) lodge revised Orders Approving Settlement which attach as exhibits the annuity detail which was attached to counsel's supplemental declaration filed on August 30, 2024, and which also provide for the additional funds from AMCO to be deposited into blocked accounts for each minor (i.e., the numbers at Items 6 and 8b must be adjusted with 8b(1) filled out; Item 9 must specify the banking institution for the blocked accounts; and Item 9c(2) must be filled out); and 2) lodge new Orders for Deposit for the amounts to be deposited into the blocked accounts.

**Explanation:**

The additional notice required by the court has been given. The declaration of AMCO insurance counsel and the supplemental declaration of petitioner's counsel supply the necessary detail. **The court does not find any excuse for the long delay created by petitioner's counsel**, but at least at this point the problem will be rectified. **The court does not find any delay caused by AMCO or its counsel**, but it accepts the gracious offer to contribute \$1,250.00 in additional money to each minor (for a total of \$2,500) to offset losses in interest caused by the delay. The court intends to grant the request to amend the original orders at the next hearing, and to order the additional funds to be deposited into blocked accounts for each minor, so as not to cause any further delay in funding the annuities.

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: DTT on 9/4/2024  
(Judge's initials) (Date)