

Tentative Rulings for November 16, 2023
Department 502

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.*

23CECG01260 *Fabian Diaz v. Michael Robles*, please review the tentative ruling prior to the hearing in Department 502

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

23CECG04526 *In Re: J.L.* is continued to Tuesday, November 28, 2023, 3:30 p.m. in Department 502

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(27)

Tentative Ruling

Re: ***Eujemae Magliba v. Gurdip Singh***
Superior Court Case No. 22CECG02855

Hearing Date: November 16, 2023 (Dept. 502)

Motion:

- (1) By Defendant to Compel Responses to Form Interrogatories, set one,
- (2) By Defendant to Compel Responses to Special Interrogatories, set one,
- (3) By Defendant to Compel Responses to Request for Production of Documents, set one, and request for monetary sanctions

Tentative Ruling:

To deny.

Explanation:

Defendant served these motions on August 9, 2023 and filed them the next day. Plaintiff's counsel filed a declaration on October 24 stating that responses were not served until August 29 due to illness. Accordingly, in light of the responses served, the court denies the merits of the instant motion as moot. (See *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 409 (*Sinaiko*); *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 778.)

Although the court may award sanctions where the merits of a motion to compel are moot (Cal. Rules of Court, rule 3.1348(a)), defendant's reply admits knowledge of opposing counsel's illness, i.e. a hardship reasonably disrupting communication. Yet, despite this knowledge and admitted receipt of the responses, defendant did not withdraw these motions and improperly requests the court transmute them into an adequacy determination of the responses. (See *Sinaiko*, *supra*, 148 Cal.App.4th 390 at p. 409 [unsatisfactory responses are governed by the separate compel further process].) Therefore, the court finds that circumstances exist which make the imposition of sanctions unjust. (Code Civ. Proc., §§ 2030.290, subd. (c); 2031.300, subd. (c).)

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: KCK on 11/15/23
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: **Fabian Diaz v. Michael Robles**
Superior Court Case No. 23CECG01260

Hearing Date: November 16, 2023 (Dept. 502)

Motion: Motion to be Relieved as Counsel

Tentative Ruling:

The court intends to deny plaintiff counsel's motion to be relieved as counsel, without prejudice, for failure to file a proof of service that complies with Code of Civil Procedure section 1013a, demonstrating service by mail to the client at his last known address.

Explanation:

Counsel has filed two declarations in support of the motion, one on the mandatory judicial council form, and the other on pleading paper. The title of the latter suggests it is intended to act as the proof of service of the moving papers on Mr. Diaz, however much of the information required by Code of Civil Procedure section 1013a is not included. Additionally, the declaration is not signed. A code-compliant proof of service is required.

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: KCK on 11/15/23
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: **Jason Hernandez v. David Raygoza**
Superior Court Case No. 20CECG02316

Hearing Date: November 16, 2023 (Dept. 502)

Motion: Default Prove-up

Tentative Ruling:

To grant. The court intends to sign and enter the proposed judgment submitted with the default judgment application on February 21, 2023. No appearances are necessary.

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: KCK on 11/15/23
(Judge's initials) (Date)