

Tentative Rulings for November 28, 2023
Department 503

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.*

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

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Tentative Ruling

Re: ***Latanisha Lark v. Delno Terrace, Inc.***
Superior Court Case No. 23CECG00272

Hearing Date: November 28, 2023 (Dept. 503)

Motions: Defendant's Motion to Compel Responses to Form Interrogatories, Request for Production and Special Interrogatories, Set One, and for Monetary Sanctions

**If timely requested, oral argument will be heard on Thursday,
December 7, 2023, at 3:30 p.m. in Department 503.**

Tentative Ruling:

To grant.

To order the plaintiff, Latanisha Lark, to serve separate, verified responses, without objections, to the defendant's Form Interrogatories, Set One, Special Interrogatories, Set One, and Demand for Production, Set One, no later than 15 court days from the date of this order, with the time to run from the service of this minute order by the clerk.

To award monetary sanctions in the total amount of \$842.50 in favor of the defendant, Delno Terrace, Inc., and against the plaintiff, Latanisha Lark, payable within 20 days of the date of this order, with the time to run from the service of this minute order by the clerk.

Explanation:

Interrogatories and Document Production:

The plaintiff had ample time to respond to the discovery propounded by the defendant, and has not done so. Failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and "work product" protection. (Code Civ. Proc. §§ 2030.290, subd. (a), 2031.300, subd. (a); see *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.) Even though the defendant was not required to do so, it informally requested responses and it gave the plaintiff additional time to respond, but still the plaintiff has not responded.

Monetary Sanctions

Sanctions are mandatory unless the court finds that the party acted "with substantial justification" or other circumstances that would render sanctions "unjust." (Code Civ. Proc., §§ 2030.290, subd. (c) [interrogatories], 2031.300, subd. (c) [document demands].) This applies even where no opposition to the motion was filed, as here. (Cal. Rules of Court, rule 3.1348(a).) Since no opposition was filed, no facts were presented to warrant finding sanctions unjust.

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.

Issued By: jyh **on** 11/27/23
(Judge's initials) (Date)

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Tentative Ruling

Re: ***Estrada v. Galvan***
Superior Court Case No. 22CECG02011

Hearing Date: November 28, 2023 (Dept. 503)

Motion: by Plaintiff for Joinder

**If timely requested, oral argument will be heard on Thursday,
December 7, 2023, at 3:30 p.m. in Department 503.**

Tentative Ruling:

To grant. (Code Civ. Proc., § 389.) Plaintiff is granted 20 days' leave to amend her complaint to join Freedom Mortgage as a defendant to the action.

Explanation:

Code of Civil Procedure section 389, subdivision (a) provides that,

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

(Code Civ. Proc., § 389, subd. (a).)

Here, the proposed new party, a lienholder to the property, is a necessary party to the case, as in its absence complete relief cannot be granted. In particular, in a partition action, the plaintiff must join as defendants all persons having or claiming interests of record or actually known to the plaintiff or reasonably apparent from an inspection of the property, in the estate as to which partition is sought. (Code Civ. Proc., § 872.510.) Freedom Mortgage holds an interest in the property, the disposition of the action in its absence may impair its ability to protect its interests. Freedom Mortgage is subject to the jurisdiction of the court and is subject to service of process. Therefore, it can be joined in the case without depriving the court of jurisdiction. The court intends to grant plaintiff's motion to join Freedom Mortgage as a party to the action.

Additionally, "[t]he trial court may order, on its own motion, that parties necessary to determination of issue be brought in and that necessary amendments to pleadings be

made to accomplish such purpose." (*Loock v. Pioneer Title Ins. & Trust Co.* (1935) 4 Cal.App.2d 245, 249.) Plaintiff is granted 20 days' leave to amend her complaint to join Freedom Mortgage as a defendant to the action.

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: jyh **on** 11/27/23

(Judge's initials) (Date)

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Tentative Ruling

Re: **Isaac Gutierrez v. John Doe**
Superior Court Case No. 22CECG01701

Hearing Date: November 28, 2023 (Dept. 503)

Motions: By Defendant to Compel Compliance with Deposition Subpoena for Production of Business Records of Phase II Barbershop

**If timely requested, oral argument will be heard on Thursday,
December 7, 2023, at 3:30 p.m. in Department 503.**

Tentative Ruling:

To grant. Responsive documents shall be produced within five (5) days from the date of this order.

Explanation:

“[D]iscovery from a *nonparty* may be obtained only by ‘deposition subpoena.’” (*Unzipped Apparel, LLC v. Bader* (2007) 156 Cal.App.4th 123, 130; Code Civ. Proc. § 2025.010, subd. (b).) Failure to produce the specified documents is the subject of a motion to compel. (Code Civ. Proc. § 2025.480, subd. (a); see also *Kramer v. Superior Court* (1965) 237 Cal.App.2d 753, 755, fn. 2; see also Code Civ. Proc., § 1987.1, subd. (a) [upon notice, court may make an order directing compliance with the subpoena].)

Moving defendant has produced evidence that deponent was served with the deposition subpoena on April 19, 2023, and, after deponent failed to comply, a demand letter on May 9. There is also evidence that deponent stated to defendant's counsel that the subject discovery does not exist (Kutinsky, Decl. ¶ 8), which indicates that deponent is plainly aware of defendant's request. Nevertheless, deponent has not provided an affidavit of its custodian of records verifying the nonexistence of records, a mandatory requirement of the deposition subpoena. (See *Id.* at ¶ 9; *Deposition Subpoena*, Judicial Council form SUBP-010, item 2.) Good cause supports such a declaration (or the requested surveillance footage, if such exists) considering the proximity of deponent to the location of the alleged event (Complaint, ¶ 3) and to prevent unfair surprise if such footage does exist but is produced late. The court also notes an absence of opposition or objection.

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: jyh **on** 11/27/23