

Tentative Rulings for November 30, 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.*

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

23CECG03765	<i>Shahsi Sharma v. Zeyad Elalami</i> is continued to Tuesday, December 19, 2023, at 3:30 p.m. in <u>Department 501</u> (See tentative ruling in Department 501)
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Tentative Rulings for Department 502

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(24)

Tentative Ruling

Re: **Magosh, LLC v. Suretec Insurance Company**
Superior Court Case No. 22CECG02267

Hearing Date: November 30, 2023 (Dept. 502)

Motion: 1) Plaintiff's Motion to Compel Defendant Joshua O'Bannon's Initial Responses to Form Interrogatories – General, Set One, and Requests for Production of Documents, Set One, and Request for Monetary Sanctions

2) Plaintiff's Motion to Compel Defendant Trinity System Group, Inc., dba Trinity Construction's Initial Responses to Form Interrogatories – General, Set One, and Requests for Production of Documents, Set One, and Request for Monetary Sanctions

3) Plaintiff's Motion to Compel Attendance of Defendant Joshua O'Bannon at his Deposition and Request for Monetary Sanctions

****If timely requested, oral argument will be heard on Thursday, December 7, 2023, at 3:30 p.m. in Department 502****

Tentative Ruling:

To grant all motions. Within 20 days of service of the order by the clerk, defendants Joshua O'Bannon and Trinity System Group, Inc., dba Trinity Construction shall serve objection-free responses to Form Interrogatories - General, Set One, and Requests for Production of Documents, Set One, and produce all responsive documents.

Defendant Joshua O'Bannon is ordered to appear at a newly noticed deposition date of the plaintiff's choosing. Plaintiff must serve the Notice of Deposition on defendant at least 15 days before the date of the deposition. Should defendant fail to appear at the newly noticed deposition, plaintiff may file a motion for terminating sanctions without first complying with The Superior Court of Fresno County Local Rules, Rule 2.1.17.

To award monetary sanctions against defendant Joshua O'Bannon in the amount of \$1,159.80, to be paid within 20 calendar days of the date of this order, with the time to run from the service of this minute order by the clerk. To award monetary sanctions against defendant Trinity System Group, Inc., dba Trinity Construction in the amount of \$459.90, to be paid within 20 calendar days of the date of this order, with the time to run from the service of this minute order by the clerk. (Code Civ. Proc., §§ 2030.290, subd. (c), 2031.300, subd. (c), 2025.450, subd. (g)(1).)

Explanation:

Written Discovery

Defendants have had ample time to respond to the discovery propounded by plaintiff, and they have not done so. Failing to respond to discovery within the 30-day time limit (or within the extended time limit allowed by the propounding party, as here)

means that objections to the discovery are waived, 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.)

Monetary 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), 2031.300, subd. (c).) Since no opposition has been filed, the court does not so find. The court finds that the reasonable amount of attorney fees to award as sanctions is a total of \$609.90 on the motion regarding defendant Joshua O'Bannon, representing counsel's and his paralegal's time in preparing the motion (\$450.00), the two filing fees paid (\$120.00) and the amounts charged by the attorney service for filing the motion and the notice of non-opposition (\$39.90). The reasonable amount for the motion regarding defendant Trinity System Group, Inc., dba Trinity Construction, is \$459.90, representing .5 hours of attorney time and 1 hour of paralegal time for the motion (taking less attorney time since it is substantially identical to the first motion) (\$300.00), the two filing fees paid (\$120.00) and the amounts charged by the attorney service for filing the motion and the notice of non-opposition (\$39.90).

Deposition

Service of a proper deposition notice obligates a party to attend and testify, without necessity of subpoena. (Code Civ. Proc., § 2025.280, Subd. (a).) The deposition was duly noticed and plaintiff was not given any indication that defendant Joshua O'Bannon was unavailable for the date selected. Therefore, he should be compelled to attend his deposition.

Where a party deponent fails to appear or to produce materials designated in the deposition notice, monetary sanctions are mandatory unless the court finds the person subject to sanctions acted with substantial justification or there are other circumstances making the imposition of sanctions unjust. (Code Civ. Proc. § 2025.450, subd. (g)(1).) Because no opposition was filed with the court, no justification was given for defendant's failure to appear which would make sanctions unjust. Sanctions must be limited to reasonable expenses, which include the time moving party's counsel spent in research and preparation of the motion and court time on the motion. (*Ghanooni v. Super Shuttle* (1993) 20 Cal.App.4th 256, 262.) The court has excluded the attorney's time to prepare a reply and appear at the hearing, since this was unnecessary, but it has included the additional \$19.95 plaintiff incurred in filing the Notice of Non-Opposition, for a total sanction on this motion in the amount of \$549.90.

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 11/28/23
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: **D.L. v. County of Fresno**
Superior Court Case No. 22CECG01756

Hearing Date: November 30, 2023 (Dept. 502)

Motion: Defendant County of Tulare's Demurrer and Motion to Strike the Second Amended Complaint

****If timely requested, oral argument will be heard on Thursday, December 7, 2023, at 3:30 p.m. in Department 502****

Tentative Ruling:

To continue these motions to Tuesday, April 30, 2024, at 3:30 p.m. in Department 502, so they can be considered at the same time as the Demurrer filed by the County of Kings. The parties are ordered to conduct a meet and confer session, in person or by telephone, at least 30 days prior to the hearing, since both moving defendants have presented declarations indicating that plaintiff's counsel has not cooperated with participating in the meet and confer process, as required by statute. If this resolves the issues, defendants shall call the calendar clerk to take their motions off calendar. If it does not resolve the issues, defense counsel shall each file a declaration, on or before April 15, 2023, stating the efforts made.

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 11/28/23
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Pride Truck Sales L.P. v. Yadwinder Singh***
Superior Court Case No. 23CECG00456

Hearing Date: November 30, 2023 (Dept. 502)

Motion: (1) By Plaintiff to Deem Request for Admissions, set one, Admitted, as Propounded on Defendant Balwinder Singh.

(2) By Plaintiff to Deem Request for Admissions, set one, Admitted, as Propounded on Defendant Yadwinder Kumar Sharma.

****If timely requested, oral argument will be heard on Thursday, December 7, 2023, at 3:30 p.m. in Department 502****

Tentative Ruling:

To deem plaintiffs' request for admissions, set one, admitted, as to both defendants. (Code Civ. Proc. §2033.280, subd. (b)) To grant the request for monetary sanctions in the amount of \$2,137.50. The sanctions amount shall be paid within thirty (30) days from the date of this order.

Explanation:

Plaintiffs' motion is supported by a declaration from attorney Amtoj Randwhawa which states that the requests for admissions (set one) was propounded to each defendant and served on June 16, 2023, but no response has been received. (Randwhawa, Decl. ¶¶ 2-4.) The requests for admissions are attached to counsel's declaration, and the accompanying executed proofs of service states that the requests for admission were served on June 16, 2023. Therefore, plaintiff's motion to deem admitted the requests for admissions (set one) is granted, as to each defendant. (Code Civ. Proc., § 2033.280, subds. (a) and (b).) Considering the material similarity of each motion, the court finds it reasonable to limit mandatory monetary sanctions to the cost incurred to bring one motion (\$2,137.50).

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 11/28/23.
(Judge's initials) (Date)