

Tentative Rulings for January 20, 2022
Department 403

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.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(03)

Tentative Ruling

Re:

Phoolka v. Owens

Superior Court Case No. 20CECG02536

Hearing Date:

January 20, 2022 (Dept. 403)

Motion:

Defendants' Motion to Strike First Amended Complaint

Tentative Ruling:

To deny defendants' motion to strike the first amended complaint. (Code Civ. Proc. § 436, subd. (a).) To order defendants to file and serve their answer within 10 days of the date of service of this order.

Explanation:

Defendants move to strike the FAC on the ground that it was improperly filed several days after the ten-day deadline for filing an amended complaint set by the court's order after it granted the last motion to strike.

Under Code of Civil Procedure section 436, subdivision (b), "[t]he court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: ... (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc. § 436, subd. (b), *italics added*.) Thus, the court's power under section 436(b) is discretionary, not mandatory, and the court is not required to strike an improper pleading.

Here, as defendants correctly point out, the court granted ten days' leave to amend from the date of service of the order granting the motion to strike. (See court's order of April 14, 2021.) The order was served by mail on April 14, 2021. Since service was by mail, the deadline for filing and serving the amended complaint was extended by five days, to April 29, 2021. (Code Civ. Proc. § 1013, subd. (a).) However, plaintiff did not file his first amended complaint until May 5, 2021, so the amended complaint was filed four court days late.

Yet, while the first amended complaint was technically untimely and thus improperly filed, it does not appear that defendants have suffered any prejudice as a result of the short delay in filing the complaint. The four-day delay was too brief to cause any serious problems with responding to the complaint, serving or answering discovery, bringing motions, or delay the trial date. In fact, the case has not yet been set for trial. Therefore, it does not appear that defendants have been harmed by the delay in the filing or service of the FAC.

Nor do defendants point to any other defects in the amended complaint that would warrant striking it. They no longer claim that the FAC does not allege sufficient facts to support an award of punitive damages. They simply argue that the FAC was not

filed within the deadline set by the court. However, since there has been no real prejudice to the defendants from the brief delay in filing the FAC, the court intends to exercise its discretion to deny the motion to strike and order defendants to file their answer.

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** 01/18/22.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Andrade, et al. v. Saint Agnes Medical Center, et al.***
Superior Court Case No. 21CECG00235

Hearing Date: January 20, 2022 (Dept. 403)

Motion: Application of Allison Ng to Appear Pro Hac Vice on Behalf of Defendants CareFusion 303, Inc., CareFusion Corporation, and Becton Dickinson and Company

Tentative Ruling:

To grant. The applicant has satisfied the requirements of the California Rules of Court, Rule 9.40.

Explanation:

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** 01/18/22.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re:

Fonseca v. Faraway, LLC

Superior Court Case No. 18CECG00345

Hearing Date:

January 20, 2022 (Dept. 403)

Motion:

Default Prove-Up

Tentative Ruling:

To continue the hearing to Thursday, February 10, 2022, to allow plaintiffs time to correct the errors in their application for default judgment. Plaintiffs are to submit all corrections no later than on Thursday, February 03, 2022.

Explanation:

Required Forms Not Filed

Plaintiffs have not filed the required "Request for Court Judgment" form (Judicial Council Form CIV-100). This is a dual-purpose form, used for requesting both entry of default and court judgment. Plaintiff used the form, on February 02, 2021, when previously requesting for court judgment by default; however, plaintiff's order was denied on May 13, 2021. In order for the court to consider plaintiff's request, she must resubmit the form as part of her default package in any subsequent request.

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** 01/18/22.
(Judge's initials) (Date)

Tentative Ruling

Re: ***Chase v. State of California, Department of State Hospitals***
Superior Court Case No. 19CECG01806

Hearing Date: January 20, 2022 (Dept. 403)

Motion: Defendant's Motions to Compel Plaintiff's Response to Defendant's Demand for Inspection of Documents, Set One; to Compel Plaintiff's Further Responses to Defendant's Demand for Inspection of Documents, Set Two; and Request for Monetary Sanctions

Tentative Ruling:

Defendant's motion to compel plaintiff's response to defendant's Demand for Inspection of Documents, Set One, is rendered moot by plaintiff's response to the discovery request, served on November 16, 2021.

To grant defendant's motion to compel further responses to defendant's Demand for Inspection of Documents, Set Two as to Request Nos. 12-14 and 16-24.

Plaintiff shall serve further responses in full compliance with Code of Civil Procedure, sections 2031.210 – 2031.230, without objections, and produce all responsive documents no later than 20 court days from the date of this order, with the time to run from the service of this minute order by the clerk.

To grant and to award monetary sanctions in the total amount of \$2,200 against plaintiff Robert Chase and plaintiff's attorney Melo Marguerite, jointly and severally, 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:

The motions were timely, as to all discovery sought to be compelled. Further, the court finds that all attempts at meet and confer before filing this motion were adequate.

Defendant's Motion to Compel Responses to its Demand for Inspection of Documents, Set One ("RFPD, Set One"):

Because plaintiff has served his responses to RFPD, Set One to defendant on November 16, 2021, this motion has been rendered moot. Consequently, the only issue remaining in this motion is whether defendants should be awarded monetary sanctions.

Pursuant to Code of Civil Procedure, section 2031.300, subdivision (c), the court shall impose a monetary sanction ... against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to a demand for

inspection, copying, testing, or sampling, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (Code Civ. Proc., § 2031.300, subd. (c).)

Sanctions are warranted here, because plaintiff had ample opportunity - almost 22 months - to serve its response to defendant's RFPD, Set One. Plaintiff has not filed an opposition to this motion and instead, in his Response to Motion to Compel Response, filed November 16, 2021, indicates that the requested discovery was not provided due to an unintentional oversight. (Resp. 1:23-24.) However, plaintiff fails to provide any substantial justification for its delay in providing the requested discovery.

Although plaintiff served his response to defendant's RFPD, Set One, prior to the hearing, sanctions are authorized for failure to provide discovery even though "the requested discovery was provided ...after the motion was filed." (Cal. Rules of Court, rule 3.1348, subd. (a).) However, much of the time spent on this motion was unnecessary. The court finds it reasonable to allow three hours for the preparation of a simple discovery motion to compel initial responses, at the hourly rate, \$220. Therefore, the total amount of sanctions awarded against plaintiff for this motion is \$660.

Defendant's Motion to Compel Further Responses to its Demand for Inspection of Documents, Set Two ("RFPD, Set Two"):

On May 5, 2021 defendant propounded RFPD, Set Two, containing requests 12–24. On June 24, 2021, plaintiff waived all objections to each of these requests. On August 16, 2021, plaintiff served its responses to defendant's RFPD, Set Two. On August 18, 2021 and September 21, 2021, defendant met and conferred with plaintiff regarding plaintiff's responses to RFPD, Set Two. Defendant now seeks to compel further responses to its RFPD, Set Two, as to Request Nos. 12-14, and 16-24. No opposition has been filed.

Request Nos. 12, 13, 16-17, and 19-22

In plaintiff's responses to RFPD, Set Two to Request Nos. 12, 13, 16-17, and 19-22, he indicates "I have separately provided all documents that I believe are response [sic] to the request. See Bates Items 1 to 23..." (October 27, 2021, Nachtsheim, Decl. Ex. I, Plaintiff's Responses to RFPD, Set Two, Resp. Nos. 16-24.)

Despite plaintiff's indication that he has provided all documents pertaining to the aforementioned requests, none of the documents provided fall into the category of documents requested for in each request. As such, a further response in compliance with Code of Civil Procedure, sections 2031.210-2031.230 is necessary.

Request No. 14, 18 and 24

In plaintiff's responses to RFPD, Set Two to Request Nos. 12, 13, 16-17, and 19-22, he indicates "I have separately provided all documents that I believe are response [sic] to the request. See Bates Items 1 to 23..." (October 27, 2021, Nachtsheim, Decl. Ex. I, Plaintiff's Responses to RFPD, Set Two, Resp. Nos. 16-24.)

Plaintiff has not produced an application for Social Security disability as requested in Request No. 14. Moreover, it is evident on the face of the documents provided, that there are further documents to be produced. For example, plaintiff has provided what appears to be the first page of two separate Social Security Administration Benefit Verification Letters dated January 5, 2021 and December 18, 2020; however, it is evident on the face these documents are not complete as they state "See Next Page." (October 27, 2021, Nachtsheim, Decl. Ex. I, Bates Item 21-22.)

Similarly, while plaintiff provides two medical reports labeled as Injury Status Report #1 and #2 in response to Request Nos. 18 and 24, it is unclear whether these constitute all of the documents in the demanded category. (October 27, 2021, Nachtsheim, Decl. Ex. I, Bates Item 18-19.)

While plaintiff provides in his response to Request No. 24 that any documents not provided are not in his custody or control, plaintiff has provided no similar statement for the other requests that are the subject of this motion. Moreover, plaintiff has failed to identify the name and address of the party in possession of the demanded documents. (Code Civ. Proc. § 2031.230 [if the responding party is unable to comply, the response must state that a diligent search and reasonable inquiry has been made in effort to locate the item demanded and the reason the party is unable to comply, i.e., the document is not in the possession, custody or control of the responding party, in which case, the response must state the name and address of anyone believed to have the document].) Thus, a further response in compliance with Code of Civil Procedure, sections 2031.210-2031.230 is necessary.

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].) No opposition was filed, so no facts were presented to warrant finding sanctions unjust. The sanction amount awarded disallows the time for responding to opposition and appearing at oral argument, as this proved unnecessary. The court finds it reasonable to allow seven hours for preparation of this discovery motion at the hourly rate, \$220, provided by counsel. Therefore, the total amount of sanctions awarded for this motion against plaintiff is \$1,540.

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** 01/18/22.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re:

Pena v. Tigner

Superior Court Case No. 19CECG02235

Hearing Date:

January 20, 2022 (Dept. 403)

Motion:

Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To deny without prejudice. In the event that oral argument is requested minor is excused from appearing.

Explanation:

As the court explained in its order issued on October 1, 2021 (setting a hearing on the related petition of Brandon Derek Martin), there are several deficiencies with the petition of Michael Alexander Martin:

- Proof must be shown that the lien claimant, Conduent, has agreed to accept a reduced lien amount of \$15,723.14 as full and final settlement. Exhibit A simply shows the amounts the medical providers charged and what Conduent paid them.
- The court does not intend to grant the request that \$5,000 be delivered directly to Michael "so he can buy a computer and/or video game system." A minor's settlement does not dispense with the parents' duty to provide for their child. No need for this was presented, and from the wording it does not appear to be a needs-based request, in any event.
- The court does not see a record among the attached medical records showing Michael's complete recovery. The court is not intending to put petitioner to greater expense to make this showing, however. If there are records currently in possession of counsel that can be attached to address this issue, this will suffice.
- At Item 18b(1), petitioner requests that a guardian of the estate be appointed, but also attaches Attachment 18b(2) with information regarding Chase Bank, and also presents an order to deposit into a blocked account. If a blocked account is desired, then Item 18b(2) should be checked, instead.

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 01/18/22.
(Judge's initials) (Date)

(5)

Tentative Ruling

Re: **Wolfe Capital Investments LLC, et al. v. Mary Lambeth, et al.**
Superior Court Case No. 21CECG01666

Hearing Date: January 20, 2022 (Dept. 403)

Motion: By Defendants to expunge lis pendens

Tentative Ruling:

To continue the hearing to April 14, 2022 at 3:30 p.m. in Dept. 403 for the purpose of allowing the Plaintiffs to submit rebuttal evidence. See infra. Any such evidence is to be filed no later than March 28, 2022. No sur-rebuttal evidence will be permitted. However, both sides are to file formal objections to any and all evidence similar to that required on a motion for summary judgment no later than April 4, 2022.

Explanation:

A motion to expunge a lis pendens is different from other motions in that the burden of proof is on the party opposing the motion to expunge. In other words, the lis pendens claimant (plaintiff) bears the burden of establishing the existence of a "real property claim" and that it is "probably valid." (CCP Sec. 405.32) In the case at bench, the moving party filed three declarations and a request for judicial notice in support of the motion. The Plaintiffs filed two declarations in opposition. The Defendants then filed two supplemental declarations in reply. The expungement of a lis pendens is mandatory if the court finds that the probable validity of the underlying claim has not been established by a preponderance of the evidence. (CCP Secs. 405.31, 405.32) Given that the burden of proof falls upon the Plaintiffs, the court will allow them time to file rebuttal declarations.

Pursuant to California Rules of Court, rule 3.1312, subd. (a) and Code of Civil Procedure section 1019.5, subd. (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 01/19/22.
(Judge's initials) (Date)