

Tentative Rulings for February 3, 2022
Department 503

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.

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Tentative Rulings for Department 503

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Tentative Ruling

Re: **Mercado v. Bodega Latina Corp. dba El Super**
Superior Court Case No. 20CECG02201

Hearing Date: February 3, 2022 (Dept. 503)
In the event oral argument is timely requested, it will be heard at 1:00 p.m. on February 3, 2022, in Department 503.

Motion: By defendant for an order compelling compliance of deposition subpoena for business records to David W. Cardona, M.D.

Tentative Ruling:

To deny.

Explanation:

Defendant seeks an order compelling compliance with a deposition subpoena issued for the business records of David W. Cardona, M.D., relating to the care, treatment and examination of plaintiff. (Mafud Decl., ¶ 4, and Ex. B.) On March 25, 2021, defendant issued said subpoena. (*Ibid.*) The subpoena set a production date of April 22, 2021. (*Ibid.*) On August 11, 2021, counsel for defendant sought to meet and confer with Cardona regarding the failure to produce any responsive records. (*Id.*, ¶ 6, and Ex. C.) To date, Cardona has produced no records. (*Id.*, ¶ 9.) On September 23, 2021, defendant filed the instant motion.

Discovery may be obtained from a nonparty through, inter alia, a deposition for the production of business records and things. (Code Civ. Proc., § 2020.010, subd. (a)(3).) "A deposition subpoena that commands only the production of business records for copying shall designate the business records to be produced either by specifically describing each individual item or by reasonably particularizing each category of item, and shall specify the form in which any electronically stored information is to be produced, if a particular form is desired." (Code Civ. Proc., § 2020.410, subd. (a).)

Where a deponent fails to produce any document specified in the deposition subpoena, the party seeking discovery may move the court for an order compelling that production. (Code Civ. Proc., § 2025.480, subd. (a); see also *Unzipped Apparel, LLC v. Bader* (2007) 156 Cal.App.4th 123, 134 [finding that section 2025.480 applied to business records requests to nonparties].) This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a meet and confer declaration under Code of Civil Procedure section 2016.040. (Code Civ. Proc., § 2025.480, subd. (b).) The deadline is mandatory. (*Unzipped, supra*, 156 Cal.App.4th at p. 136, citing *Sexton v. Super. Ct.* (1997) 58 Cal.App.4th 1403, 1408-1410.)

"The nonparty discovery statutes establish a one-step process for a nonparty responding to a business records subpoena. Upon receipt of the subpoena, a nonparty

Here, defendant fails to timely seek compliance. The deposition subpoena issued with a compliance date of April 22, 2021. While no objection or motion to quash was served in response to the deposition subpoena (Mafud Decl., ¶ 4), Cardona's noncompliance became clear when Cardona failed to respond to the subpoena by the date specified for production, in this case, April 22, 2021. The last day to compel compliance would have been 60 days therefrom. As the deadline is mandatory, the motion is denied.¹

Tentative Ruling

¹ Although defendant's notice of motion also cites to Code of Civil Procedure section 1987.1, no specific arguments were made as to its applicability to the issue at hand. Nor would such reliance change the outcome. Code of Civil Procedure section 1987.1 does not set forth a later filing deadline. (*Unzipped, supra*, 156 Cal.App.4th at p. 136 [“while section 1987.1 may be of assistance in construing the Act (see § 2020.030), it does not dictate the timing on motions to compel.”].)