

Tentative Rulings for February 9, 2022
Department 502

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.

21CECG01163	<i>Valencia v. Wawona Packing Co., LLC</i> is continued to Thursday, February 10, 2022 at 3:30 p.m. in Dept. 502. Case Management Conference is also continued to February 10, 2022 at 3:30 p.m. in Dept. 502.
20CECG03038	<i>VRIS v. Lopez</i> is continued to Wednesday, February 23, 2022 at 3:30 p.m. in Dept. 502

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Tentative Rulings for Department 502

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(03)

Tentative Ruling

Re: ***Ultimate Solar Pro, Inc. v. DeSantis***
Superior Court Case No. 20CECG01390

Hearing Date: February 9, 2022 (Dept. 502)

Motion: Defendants' Motion to Compel Further Responses to Form Interrogatories and Request for Production of Documents, and for Monetary and Evidentiary Sanctions

Tentative Ruling:

To grant defendants' motion to compel plaintiff Ultimate Solar Pros, Inc. to serve verified further responses to form interrogatories-general, set one, numbers 17.1 and 50.1 to 50.6, and requests for production of documents, set one, numbers 1 to 14. To grant monetary sanctions of \$1,695 against Ultimate Solar and its counsel, Sofian Dawood, which shall be paid within 30 days of the date of service of this order. To deny the request for evidentiary sanctions without prejudice. However, if plaintiff fails to serve its verified further responses within 10 days of the date of service of this order, the court will entertain defendants' renewed motion for evidentiary or other sanctions.

Explanation:

The court has already ordered plaintiffs to serve further responses to form interrogatories 17.1 and the 50.0 series, as well as all 14 requests for production of documents. (See Benton decl., ¶11, and Exhibit "O" to Benton decl., Court's Order on Pretrial Discovery Conference dated May 14, 2021.) The court ordered plaintiffs to serve their verified responses within 10 calendar days of the court's order, so responses were due by May 24, 2021. (*Ibid.*) The court also warned plaintiffs that, if they did not serve responses as ordered, defendants would be allowed to file their motion to compel and plaintiffs would be subject to sanctions, up to and including evidence sanctions. (*Ibid.*) However, plaintiff Ultimate Solar Pro has not served supplemental responses as ordered by the court. (Benton decl., ¶ 12.) Therefore, defendants seek an order compelling a further response to the form interrogatories and requests for production of documents, as well as monetary and evidentiary sanctions.

In their opposition, plaintiffs claim that they did in fact serve supplemental responses within 10 days of the court's order, as well as additional supplemental responses on June 12 and 14, 2021, and thus the motion to compel is unnecessary and frivolous. (Dawood decl., ¶¶ 15, 16, 19, 20.) Yet, plaintiffs' counsel's declaration is vague about which plaintiff actually served supplemental responses, and he has not attached copies of any of the supplemental responses to his declaration for the court to review. He refers to several exhibits that allegedly contain the responses, but no exhibits are actually attached to his declaration.

On the other hand, defendants claim that only plaintiff Dawood served supplemental responses in compliance with the court's order, and that plaintiff Ultimate

Solar has not served any supplemental responses. Therefore, the court intends to find that Ultimate Solar failed to serve responses as ordered by the court. Thus, the court orders Ultimate Solar to serve further responses to form interrogatories 17.1 and 50.1 to 50.6, as well as requests for production 1 to 14. Verified responses shall be served within 10 days of the date of service of this order.

The court also intends to order plaintiff Ultimate Solar and its counsel Mr. Dawood to pay monetary sanctions for their unjustified refusal to comply with its discovery obligations as well as the court's order. (Code Civ. Proc. §§ 2030.300; 2031.310.) Defense counsel has requested an award of \$1,695 in sanctions based on 7 hours of attorney time billed at \$165 per hour, plus filing fees and Court Call fees. (Benton decl., ¶ 13.) The court finds that the requested amount of sanctions is reasonable, and the court therefore grants \$1,695 in sanctions against Ultimate Solar and its counsel, Mr. Dawood.

Defendants have also requested evidentiary sanctions against plaintiff, as it refused to comply with the court's order compelling it to serve supplemental responses within 10 days. Evidentiary sanctions are authorized under Code of Civil Procedure sections 2030.300, subdivision (e), and 2031.310, subdivision (i), where a party fails to obey an order compelling the party to provide further responses to discovery requests. Here, plaintiff Ultimate Solar did disobey the court's May 14, 2021 order requiring it to serve further responses to the form interrogatories and requests for production within 10 days. However, the court believes that it would be premature to impose evidence sanctions against plaintiff at this time, and therefore will deny the request for evidence sanctions without prejudice. On the other hand, if plaintiff fails to serve verified further responses within 10 days, then defendants may bring a motion for further sanctions, including evidence sanctions.

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: RTM **on** 2/3/2022.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: **Ross v. Netafim Irrigation, Inc.**
Superior Court Case No. 15CECG02493

Hearing Date: February 9, 2022 (Dept. 502)

Motion: Motion for Final Approval of Class Action Settlement,
Attorneys' Fees, Costs and Incentive Award

Tentative Ruling:

To grant final approval of the settlement and sign the proposed Final Approval Order and Judgment. To grant attorney costs in the amount of \$18,203.91 and administrator costs in an amount of \$6,967. To grant the named plaintiff (class representative) an incentive award in the amount of \$8,000. To award attorney fees in the amount of \$157,500.

To set a hearing at April 21, 2022, at 3:30 p.m. in Department 502 as a hearing date for an Amended Judgment pursuant to Code of Civil Procedure section 384. A verified report of payouts of settlement funds and a proposed amended judgment shall be submitted no later than April 11, 2022.

Explanation:

Final Approval of Settlement

California Rules of Court, rule 3.769(g) states: "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." Subsection (h) states: "If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment." The proposed Final Approval Order and Judgment complies with these requirements.

The Court has vetted the fairness of the settlement through prior hearings, each with its own filings. The settlement here generally meets the standards for fairness, and the class has approved it, with no objections, and no opt-outs. Ultimately there were only seven notices which were undeliverable. However, the Court finds that the method of notice followed, which this Court approved at the prior hearing, comports with due process and was reasonably calculated to reach the absent class members:

"Individual notice of class proceedings is not meant to guarantee that every member entitled to individual notice receives such notice," but "it is the court's duty to ensure that the notice ordered is reasonably calculated to reach the absent class members." *Hallman v. Pa. Life Ins.*

Co., 536 F.Supp. 745, 748–49 (N.D. Ala. 1982) (quotation marks and citation omitted); see also *In re Viatron Computer Sys. Corp. Litig.*, 614 F.2d 11, 13 (1st Cir. 1980); *Key v. Gillette Co.*, 90 F.R.D. 606, 612 (D.Mass.1981); cf. *Lombard*, at 155. After such appropriate notice is given, if the absent class members fail to opt out of the class action, such members will be bound by the court's actions, including settlement and judgment, even though those individuals never actually receive notice. *Cooper*, 467 U.S. at 874, 104 S.Ct. 2794; 7B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1789 (2d ed. 1986).

(*Reppert v. Marvin Lumber and Cedar Co., Inc.* (1st Cir. 2004) 359 F.3d 53, 56-57, emphasis added.)

Incentive Award

Plaintiff asks the Court to confirm that the class representative be paid \$8,000 from the settlement. The Court has read the declarations of Plaintiff Robert Ross. He has expended considerable time and effort producing relevant documents and past employment records, providing the facts and evidence necessary to attempt to prove the allegations, preparing for and attending a full-day deposition, reviewing his deposition transcript, and meeting with class counsel. The Court finds the amount requested to be reasonable, and approves the request.

Costs

Class counsel presents evidence of the actual costs incurred in the litigation to date, and requests cost reimbursement in the amount of \$18,203.91. All costs are permissible and are granted.

Attorney Fees

The settlement provides that the parties agreed (i.e., defendant agreed not to oppose) fees calculated at 35% of the gross settlement amount.¹ Counsel has provided evidence of the actual time expended by the various attorneys, paralegals and law clerks at the firm, as a cross-check of the lodestar. The Court finds that the amount requested in fees is reasonable and justified by the efforts made and results obtained with this settlement, and awards attorney fees in the amount of \$157,500.

Administrator's Costs

The Court finds the amount requested, and as provided for in the settlement agreement, to be reasonable, and approves the administration costs as requested.

¹ The memorandum has a typographical error at page 1, line 19, in stating that the amount requested is 30 percent of the gross settlement amount, but the dollar amount requested is 33 percent of the gross settlement, which is also what is provided in the settlement agreement. As a result, the Court disregards the error.

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: RTM **on** 2/4/2022.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Bertelesen v. GSF Jackson Park Place Investors, L.P.***
Superior Court Case No. 20CECG02306

Hearing Date: February 9, 2022 (Dept. 502)

Motion: By Defendant/Cross Defendant GSF Jackson Park Place Investors, L.P. to compel deposition of defendant Angel Hernandez, dba Costless Plumbing Heating & Air Conditioning's person most qualified

Tentative Ruling:

To grant. The person most qualified for defendant Angel Hernandez dba Costless Plumbing Heating & Air Conditioning shall appear for a deposition within thirty (30) days of the hearing on this motion. (Code Civ. Proc., §§ 2025.450, subd. (a), 2025.280, subd. (a).)

To impose monetary sanction in the amount of \$1,295.00, payable to counsel for Defendant/Cross Defendant GSF Jackson Park Place Investors, L.P. within 30 days of the clerk's service of this minute order.

Explanation:

Motion to Compel Deposition Testimony

Proper service of a notice of deposition compels any deponent who is a party to the action to attend, to testify, and to produce documents if requested. (Code Civ. Proc., § 2025.280, subd. (a).) Where a party deponent fails to appear at a properly noticed deposition, and no valid objection under section 2025.410 has been served, the party giving the notice may move for an order compelling the deponent's attendance and testimony. (Code Civ. Proc., § 2025.450, subd. (a).)

Defendant GSF Jackson Park Place Investors, L.P. ("GSF") served defendant Angel Hernandez, dba Costless, Plumbing, Heating, and Air Conditioning ("Costless") with a notice of deposition of its person most qualified August 17, 2021 setting forth a deposition date of September 8, 2021. (Benton Decl., Ex. A.) Counsel for the deponent cancelled the day the deposition was scheduled (Benton Decl., ¶ 5), causing the deposition to be re-noticed for October 6, 2021. (Benton Decl., Ex. C.) The deponent again failed to appear, this time without notice. (Benton Decl., ¶ 10.) Furthermore, although the opposition attaches document objections, there is no objection to the validity of the deposition notice. (Code Civ. Proc., §§ 2025.450; 2025.410.)

Therefore, as the person most knowledgeable for defendant Angel Hernandez, dba Costless Plumbing, Heating, and Air Conditioning did not appear for deposition, and because there was no objection served objecting to the validity of the deposition notice,

the motion to compel is granted. (Code Civ. Proc., §§ 2025.280, subd. (a), 2025.450, subd. (a).)

Monetary Sanctions

If a motion to compel is granted, the court shall impose a monetary sanction “unless the court 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., § 2025.450, subd. (g)(1); see also *Creed-21 v. City of Wildomar* (2017) 18 Cal.App.5th 690, 701 [discovery sanction should be appropriate to the dereliction]; *Diepenbrock v. Brown* (2012) 208 Cal.App.4th 743, 749 [sanctions improper where substantial justification shown].)

GSF's motion includes an email from Costless' counsel which attributes the failure to appear and delay in communication to client unresponsiveness. (See Ex. E.) Opposing counsel, however, did not send the email until October 7 – after the scheduled time for taking the depositions had already expired. Furthermore, there is no indication that opposing counsel communicated or offered options as alternative to GSF filing this motion to compel. Therefore, the imposition of monetary sanctions is not 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.

Tentative Ruling

Issued By: RTM **on** 2/7/2022.
(Judge's initials) (Date)

(30)

Tentative Ruling

Re: ***River Park Properties II v. Seema Kwatra***
Superior Court Case No. 20CECG02239

River Park Properties II v. Seema Kwatra
Superior Court Case No. 20CECG02263

Hearing Date: February 9, 2022 (Dept. 502)

Motions: Motion for Summary Judgment against Defendant Seema Kwatra,
by Plaintiff River Park Properties II

Motion for Summary Judgment against Defendants Seema and
Saaniya Kwatra, by Plaintiff River Park Properties II

Tentative Ruling:

To grant plaintiff's motions for summary judgment in both cases. Plaintiff is directed to submit to this court, within 5 days of service of the minute order, a proposed judgment for each case consistent with the court's summary judgment orders.

Explanation:

A party moving for summary judgment or adjudication has the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) A plaintiff meets that burden by showing that there is no defense to a cause of action. She does so by proving each element of the cause of action entitling her to judgment on the cause of action. (Code Civ. Proc. § 437c, subds. (p)(1).)

A commercial lease is a private contract between the landlord and the tenant. (*Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1066) "[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiffs performance or excuse for nonperformance, (3) defendant's breach, and (4) resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821)

In both cases, the undisputed facts establish: (1) the existence of commercial leases between plaintiff and defendants; (2) landlord's performance of the lease by allowing defendants to enter into possession of the leased premises and then performing its obligations under the lease; (3) defendants' breach of the leases by failing to pay the rents due under the leases and by also failing to obtain insurance required under the leases; (4) damages to plaintiff; and (5) that defendants have no valid defenses to plaintiff's claims against them.

In case ending **2263**, the undisputed material facts show that plaintiff and defendant Seema Kwatra were parties to a commercial lease. (UMF, 1.) The undisputed material facts further show that defendant did not pay any of the rents due under the

lease since March 2020, despite plaintiff's full performance of its obligations under the lease. (UMF, 1 & 2.) She also did not relinquish possession of the leased premises to plaintiff when she stopped paying rent. (UMF, 3.) The term of the lease expired on July 31, 2021. (UMF, 4.) The minimal annual rents accrued under the lease from April 1, 2020 through February 28, 2021 total \$25,930.05. (UMF, 5.) The additional rents accrued under the lease from April 1, 2020 through February 28, 2021 total \$4,180.00. (UMF, 6.) The minimum annual rents accrued under the lease from March 1, 2021 through July 31, 2021 total \$11,912.60. (UMF, 7.) The additional rents accrued under the Lease from March 1, 2021 through July 31, 2021 total \$1,900.00. (UMF, 8.) Defendant did not maintain business income replacement insurance as required by the lease (UMF, 9), and defendant has no valid defense to the claims asserted in plaintiff's complaint. (UMF, 14.)

In case ending **2239**, the undisputed material facts show that the plaintiff and defendants Seema and Saaniya Kwatra were parties to a commercial lease. (UMF, 1.) The undisputed material facts also show that defendants did not pay any of the rents due under the lease since March 2020, despite plaintiff's full performance of its obligations under the lease. (UMF, 1 & 2.) They also did not relinquish possession of the leased premises to plaintiff when she stopped paying rent. (UMF, 3.) The term of the lease expires on July 31, 2026. (UMF, 4.) The rents accrued under the lease from April 1, 2020 through October 31, 2021 total \$94,795.90. (UMF, 5.) In mitigation of the damages caused by defendants' breach of the lease, plaintiff expended \$3,540.68 to make repairs to the leased premises. (UMF, 6.) The future rents owed by defendants under the lease from January 1, 2022 through July 31, 2026, with credits for payments expected to be made by a new tenant beginning on August 1, 2022 and discounted to present value, total \$130,111.66. (UMF, 7.) The additional credits against the amounts owed by defendants total \$7,062.42, leaving a total amount of damages owed by defendants to plaintiff of \$231,481.77. (UMF, 8.) Defendants did not maintain business income replacement insurance as required by the lease. (UMF, 9.) Finally, defendants have no valid defense to the claims asserted in plaintiff's complaint. (UMF, 14.)

In part, plaintiff relies upon the admissions deemed admitted on September 22, 2021. The court finds this to be proper. Any matter admitted in response to a request for admission is conclusively established against the party making the admission in the pending action and is not subject to being contested through contradictory evidence. (Code of Civ. Proc., § 2033.410; *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 775; see also *Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429 [Requests for admission are aimed at setting to rest an issue so that it will not have to be tried].)

Plaintiff also heavily relies upon the declaration of Daniel Kuniyoshi. The court also finds this to be proper. The declaration meets summary judgment standards. Mr. Kuniyoshi demonstrates personal knowledge and competency to testify. He also states facts and not just conclusions, and does not include inadmissible hearsay or opinion in his testimony. (See Code Civ. Proc., § 437c, subd. (d); *Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 761.) Nonetheless, both of the motions at bar are unopposed, and failure to object waives the right to challenge the court's ruling based on evidence such as declarations. (Code Civ. Proc., § 437c, subd. (d); see also *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1045.)

Accordingly, both of plaintiffs' motions for summary judgment are granted.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(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: RTM **on** 2/8/2022 .
(Judge's initials) (Date)