

**Tentative Rulings for April 19, 2022**  
**Department 501**

---

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.

20CECG02790      *Benavides v. Gudino Hauling and Transport* is continued to  
Tuesday, May 10, 2022 at 3:30 p.m. in Dept. 501

---

(Tentative Rulings begin at the next page)

## **Tentative Rulings for Department 501**

Begin at the next page

(24)

**Tentative Ruling**

Re: ***Yarnell v. Michael Cadillac, Inc.***  
Superior Court Case No. 20CECG02289

Hearing Date: April 19, 2022 (Dept. 501)

Motion: Unopposed Motion for Complex Designation Pursuant to California Rules of Court, rules 3.400 and 3.403(b) and Fresno Superior Court Local Rules, Rule 1.1.4 and 2.1.11

**Tentative Ruling:**

To grant. Orders signed. No appearances necessary.

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: DTT on 4/15/2022.  
(Judge's initials) (Date)

(34)

**Tentative Ruling**

Re: ***Pittenger v. Nunno***  
Superior Court Case No. 21CECG00097

Hearing Date: April 19, 2022 (Dept. 501)

Motion: Defendants' Demurrer to the First Amended Complaint

**Tentative Ruling:**

To overrule the demurrer, with defendants Nick Nunno and Aion Robotics, LLC granted 10 days' leave to file their Answer(s) to the First Amended Complaint. The time in which the answer can be filed will run from service by the clerk of the minute order.

**Explanation:**

It is "the established rule that as against a general demurrer a complaint will be liberally construed[...]; that any mere ground of special demurrer for uncertainty will be resolved in support of the complaint and the demurrer overruled, when the necessary facts are shown to exist, although inaccurately or ambiguously stated, or appearing only by necessary implication." (*Hunter v. Freeman* (1951) 105 Cal.App.2d 129, 133; see *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238 [pursuant to rule of liberal construction, court draws inferences favorable to plaintiff, not defendant].)

In testing a pleading against a demurrer, the facts alleged are deemed to be true, as it is "not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which [plaintiff] describes the defendant's conduct." (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47.) Pleadings are to be reasonably interpreted, read as a whole and in context. (*Fundin v. Chicago Pneumatic Tool Co.* (1984) 152 Cal.App.3d 951, 955.) Plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises defendant of the factual basis for plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6; see *Fundin*, supra, 152 Cal.App. 3d at p. 955 ["All that is necessary as against a general demurrer is to plead facts showing that the plaintiff may be entitled to some relief."].)

The First Amended Complaint alleges an agreement was entered into on February 11, 2019, between Tom Pittenger, Nick Nunno and Aion Robotics, LLC and that agreement was breached on or about March 28, 2019, by Defendants "failing to pay the loan when due, including but not limited to the payment of any interest payments." (FAC, ¶¶ BC-1 and BC-2.) Plaintiff's First Amended Complaint is pled on Judicial Council Forms and attaches the contract as Exhibit A.

Defendants bring this demurrer on two grounds: (1) the causes of action for breach of contract and common counts fail to state a cause of action against Nunno on an individual basis; and (2) the cause of action for breach of contract fails because by the terms of the contract there has not yet been a breach. Because the breach of

contract cause of action fails, so too would the cause of action for common counts based upon the breach of contract.

Defendants contend there is a conflict between the pleading of the contract in the First Amended Complaint and the contract itself. According to the pleading, the parties to the contract are Plaintiff and both Nunno and Aion Robotics. The contract at issue describes the contracting parties as Plaintiff and "Nick Nunno or Aion Robotics." (FAC, Exh. A.) Additionally, the signature block on the contract indicates Nick Nunno is signing the contract and under his name is the title "CEO of Aion Robotics." (Id.) The signature block does not indicate that this is Defendant Nunno signing "on behalf of" the limited liability company as defendants contend. It is, however, a reasonable interpretation of the contract.

Plaintiff contends that he understood the contract to be between himself and both Defendant Nunno as an individual and Aion Robotics, otherwise naming Nunno as a party to the loan in the first line of the document would be surplusage. (*Appalachian Ins. Co. v. McDonnell Douglas Corp.* (1989) 214 Cal.App.3d 1, 12.) This also appears to be a reasonable interpretation of the contract, as the signature block does not explicitly state that Nunno's signature is on behalf of Aion Robotics and Nick Nunno was specifically named as a party.

Where a complaint is based on a written contract which it sets out in full, a general demurrer to the complaint admits not only the contents of the instrument but also any pleaded meaning to which the instrument is reasonably susceptible. (*Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 239.) " '[W]here an ambiguous contract is the basis of an action, it is proper, if not essential, for a plaintiff to allege its own construction of the agreement. So long as the pleading does not place a clearly erroneous construction upon the provisions of the contract, in passing upon the sufficiency of the complaint, we must accept as correct plaintiff's allegations as to the meaning of the agreement.' " (*Ibid.*) The pleaded interpretation of this contract is that it is between plaintiff and Defendants Nunno and Aion Robotics, LLC. This is a not a "clearly erroneous" interpretation of the contract and for purposes of a demurrer is sufficient to state a cause of action against Defendant Nunno as an individual.

The demurrer to the first and second causes of action for failure to state a cause of action against Nick Nunno individually is overruled.

Defendant disputes that there has been a breach of contract as plead in the First Amended Complaint. In Defendants' interpretation of the contract, "the \$50,000 loan will accrue interest for 45 days at 10% per year and then, upon securing a line of credit, the parties would discuss how to pay it off." (Reply 2:16-17.) Plaintiff interprets the contract to read that payment was due beginning after the 45th day and has pled the breach occurred on or about March 28, 2019, when Defendants failed to pay on the loan. (Opposition 3:9-12; FAC, ¶ BC-2.) Again, the parties have different interpretations of what constitutes a breach under the agreement and where, as here Plaintiff's allegations are a reasonable interpretation of the contract, the breach as pled is sufficient to withstand demurrer. (*Aragon-Haas v. Family Security Ins. Services, Inc.*, *supra*, 231 Cal.App.3d at p. 239.) The demurrer to the first cause of action is overruled.

Defendants premise their demurrer to the cause of action for common counts on the cause of action for breach of contract being subject to demurrer for failure to state a cause of action. (*Hays v. Temple* (1937) 23 Cal.App.2d 690, 695.) As discussed above, the cause of action for breach of contract is sufficient to withstand demurrer. It follows that the demurrer to the common counts cause of action is overruled as well.

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:** DTT **on** 4/13/2022.  
(Judge's initials) (Date)

(20)

**Tentative Ruling**

Re: **Coe v. Pinehurst Lodge et al.**  
Superior Court Case No. 20CECG03370

Hearing Date: April 19, 2022 (Dept. 501)

Motion: by Defendants Karen Mann (individually and dba Pinehurst Lodge), George Mann and Georgia Mann to Strike Punitive Damages Allegations

**Tentative Ruling:**

To grant in part and strike the words "punitive damages" from ¶ 14(a)(2) of the Complaint, without leave to amend. Moving defendants shall file their Answer to the Complaint within 10 days of service of the order by the clerk.

**Explanation:**

Contending that the Complaint alleges insufficient facts to state a claim for punitive damages, defendants move to strike the following from the Complaint:

Item 1: Page 3, section 14, paragraph (2), which states: "Plaintiff prays for judgment for costs of suit for such relief as is fair, just and equitable; and for punitive damages."

Item 2: Page 5, section Prem.L.-3., which states: "Count Two – Willful Failure to Warn [Civil Code section 846] The defendant owners who willfully or maliciously failed to guard or warn against a dangerous condition, use, structure, or activity were (names): PINEHURST LODGE; GEORGIA MANN; GEORGE MANN; KAREN MANN."

Initially the court notes that, even if the allegations are insufficient as to punitive damages, not all of the language in Item 1 should be stricken. At most from that item the words "and for punitive damages" should be stricken.

The motion is denied as to Item 2 because the moving papers do not show or even argue that this count is specifically or solely related to the prayer for punitive damages. Rather, this is a separate count brought pursuant to Civil Code section 846. Subdivision (a) thereof provides that property owners owe no duty of care to keep property safe for recreational use by others except as otherwise provided for in the section. As relevant here, subdivision (d)(1) provides that section 846 does not limit liability which otherwise exists for "[w]illful or malicious failure to guard or warn against a dangerous condition, use, structure or activity." This is not a punitive damages issue, but a premises *liability* issue. As the motion is brought solely on the grounds that the facts do not support a prayer for punitive damages, the motion should be denied as to Item 2.

Code of Civil Procedure section 436 provides, "The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading,

(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."

A motion to strike may be used to remove a claim for punitive damages that is not adequately supported by the facts alleged in the complaint. (*Cryolife, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1145; *Kaiser Foundation Health Plan, Inc. v. Superior Court* (2012) 203 Cal.App.4th 696.)

Civil Code section 3294, subdivision (a) provides:

In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

(Emphasis added.)

The court agrees that the Complaint falls shy of meeting the threshold for advancing a prayer for punitive damages. Here we have multiple individual defendants with no specific allegations against any of them. Their individual roles in the events leading up to plaintiff's injuries are unclear. Nor are facts alleged showing defendants had knowledge of the attacker(s)' violent propensities, that each defendant continued serving them alcohol knowing they were intoxicated and were likely to injure others. "Not only must there be circumstances of oppression, fraud or malice, but *facts must be alleged in the pleading to support such a claim.*" (*Grieves v. Superior Court* (1997) 157 Cal.App.3d 162, 166, emphasis added.) A conclusory characterization of defendants' conduct as intentional, willful and fraudulent is a patently insufficient statement of oppression, fraud, malice, express or implied within the meaning of §3294." (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.)

Plaintiff bears the burden of explaining how he could potentially amend his pleadings to sufficiently allege punitive damages. (*Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400-01.) Given plaintiff's lack of opposition to the motion to strike, and failure to request leave to amend or show that the Complaint could be effectively amended, leave to amend will not be granted.

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:** DTT **on** 4/14/2022 .  
(Judge's initials) (Date)

(03)

**Tentative Ruling**

Re: ***Molina v. City of Fresno***  
Superior Court Case No. 19CECG01538

Hearing Date: April 19, 2022 (Dept. 501)

Motion: by Plaintiff's to Continue Pending Action by Successor In  
Interest to Decedent Plaintiff Leonardo Molina

**Tentative Ruling:**

To grant plaintiff's motion to appoint Laurie Romero as successor in interest to decedent plaintiff Leonardo Molina so that she may continue to prosecute the action. (Code Civ. Proc. §§ 377.31; 377.32.)

**Explanation:**

"Except as otherwise provided by statute, a cause of action for or against a person is not lost by reason of the person's death, but survives subject to the applicable limitations period." (Code Civ. Proc., § 377.20, subd. (a).) Also, "A pending action or proceeding does not abate by the death of a party if the cause of action survives." (Code Civ. Proc., § 377.21.)

However, in order to prosecute the causes of action, another person must be substituted into the action in place of the deceased plaintiff. "On motion after the death of a person who commenced an action or proceeding, the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest." (Code Civ. Proc., § 377.31.)

"For the purposes of this chapter, 'decedent's successor in interest' means the beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action." (Code Civ. Proc., § 377.11.)

Under Code of Civil Procedure section 377.32,

(a) The person who seeks to commence an action or proceeding or to continue a pending action or proceeding as the decedent's successor in interest under this article, shall execute and file an affidavit or a declaration under penalty of perjury under the laws of this state stating all of the following:

- (1) The decedent's name.
- (2) The date and place of the decedent's death.

(3) "No proceeding is now pending in California for administration of the decedent's estate."

(4) If the decedent's estate was administered, a copy of the final order showing the distribution of the decedent's cause of action to the successor in interest.

(5) Either of the following, as appropriate, with facts in support thereof:

(A) "The affiant or declarant is the decedent's successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) and succeeds to the decedent's interest in the action or proceeding."

(B) "The affiant or declarant is authorized to act on behalf of the decedent's successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) with respect to the decedent's interest in the action or proceeding."

(6) "No other person has a superior right to commence the action or proceeding or to be substituted for the decedent in the pending action or proceeding."

(7) "The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

(b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.

(c) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration. (Code Civ. Proc. 377.32.)

"Because a trial cannot proceed without adverse parties, judgment cannot be given for or against a decedent, or for or against the decedent's personal representative, until the personal representative has been made a party by substitution." (4 Witkin, Cal. Procedure, Pleading (5th ed. 2008) § 259, p. 334.)

Here, plaintiff's granddaughter, Laurie Romero, has submitted a declaration that complies with the requirements of section 377.32. She has also provided a copy of decedent's death certificate, as well as a power of attorney that decedent executed when he was alive that gave Romero the authority to conduct his personal affairs. She has also submitted a copy of an affidavit she executed after decedent's death for collection of his personal property, which states that she is the successor in interest of decedent. Therefore, it appears that Romero is qualified to act as decedent's successor

in interest, and the court intends to grant the motion to appoint her as successor in interest to continue prosecuting the litigation.

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:** DTT **on** 4/13/2022.  
(Judge's initials) (Date)

(34)

**Tentative Ruling**

Re: ***Santiago-Lugo v. The Neil Jones Food Company***  
Superior Court Case No. 21CECG01408

Hearing Date: April 19, 2022 (Dept. 501)

Motion: by Defendant for Stay Action

**Tentative Ruling:**

To deny.

**Explanation:**

Defendant contends this case must be stayed due to the exclusive concurrent jurisdiction of Superior Court of California, San Benito County in an earlier-filed action, *Sarmiento v. The Neil Jones Food Company* ("Sarmiento"). Based upon the change of venue in *Sarmiento*, the motion is denied.

When two superior courts have concurrent jurisdiction over the subject matter and parties involved in litigation, the first court to assume jurisdiction has exclusive and continuing jurisdiction over the parties and subject matter until all related matters are resolved. (*Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 787.) The public policy involved is avoiding conflicts between courts and preventing vexatious litigation and multiplicity of suits. (*Id.*) Where conditions exist warranting application of the doctrine, abatement of the second action is not discretionary, but is mandatory. (*Id.*) The rule of exclusive concurrent jurisdiction does not require absolute identity of parties, claims or remedies between the actions; it is sufficient if both actions arise from the same transaction or subject matter. (*Id.* at pp. 788-789—subject matter test is expansive.)

The doctrine of exclusive concurrent jurisdiction does not apply here. The court has taken judicial notice of Case No. 21CECG03825 in the court's online case management system, and notes that on January 5, 2022, *Sarmiento v. The Neil Jones Food Company* was transferred to Fresno County. The division of a Superior Court of one county into separate departments does not make those departments "separate courts." (*Schlyen v. Schlyen* (1954) 43 Cal.2d 361, 375-377.) Unlike the two matters in *Schlyen*, these case are arguably in less distinct "jurisdictions" as they are both in the Unlimited Civil Department of the Superior Court of California, Fresno County as opposed to Probate and Civil Departments of the same county superior court. Therefore, the court is unable to stay the case at bench under the doctrine of exclusive concurrent jurisdiction as the two matters are no longer in different superior courts.

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: Judge Tharpe on 4/15/2022.**

(36)

**Tentative Ruling**

Re: ***Samaniego v. Country Club Mortgage, Inc.***  
Superior Court Case No. 21CECG00658

Hearing Date: **April 19, 2022** (Dept. 501)

Motion: by Defendant for Orders:

- (1) Compelling Plaintiff's Supplemental Responses to Form Interrogatories, Set One;
- (2) Compelling Plaintiff's Supplemental Responses to Requests for Admission, Set One; and
- (3) Imposing Monetary Sanctions

**Tentative Ruling:**

To grant defendant's motion to compel plaintiff's supplemental responses to defendant's Form Interrogatories, Set One, as to Request Nos. 2.12, 2.13, 4.1, 6.3, 6.4, 6.5, 10.1, 10.3 and 12.1. As to Request No. 17.1, defendant's request to compel plaintiff's supplemental response is denied.

To grant defendant's motion to compel plaintiff's supplemental responses to defendant's Request for Admission, Set One, Requests Nos. 1, 2, 12 and 15.

Plaintiff shall serve verified supplemental responses in full compliance with Code of Civil Procedure, sections 2030.210-2030.310 and 2033.210-2033.300, without objections, 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 \$4,146 against plaintiff, 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:**

On April 21, 2021, defendant propounded the subject discovery requests: Form Interrogatories, Set One ("Interrogatories"), and Requests for Admission, Set One ("Requests for Admission"), on plaintiff. On or around June 18, 2021, plaintiff served his unverified responses, including objections, to defendant's discovery requests. On October 6, 2021, plaintiff served his verifications for his responses. On October 15, 2021, the court issued an order that defendant may proceed with a motion to compel further responses to the subject discovery requests.

Given that defendants brought this motion within the statutory time limit of 45-days, which started to accrue upon plaintiff's service of his verification on October 6, 2021, this motion is timely. (Code Civ. Proc., § 2030.300, subd. (c)—Interrogatories; 2033.290, subd. (c)—Admissions; 2031.310 [A notice of motion to compel further response

must be served within 45 days after the verified responses in question were served.].) Additionally, the court finds plaintiffs' meet and confer efforts to be sufficient.

In support of a motion to compel further or supplemental responses, the moving party must also submit a separate statement listing each interrogatory (or request for admission) to which a further response is requested, the response given, and the factual and legal reasons for compelling it. (Cal. Rules of Court, rule 3.1345, subd. (a)(2); (c).) "The separate statement must be full and complete so that no person is required to review any other document in order to determine the full request and the full response. Material must not be incorporated into the separate statement by reference." (Cal. Rules of Court, rule 3.1345, subd. (c).) Alternatively, the moving party may "submit a concise outline of the discovery request and each response in dispute." (Code Civ. Proc., § 2030.300, subd. (b)(2).)

Although defendant has not provided the requisite separate statement/outline of the discovery request to support its motion, the court finds defendant's points and authorities to be in substantial compliance with the requirements of the California Rules of Court. The court will consider the merits of the motion and review defendants' Memorandum of Points and Authorities in Support of Defendant's Motion to Compel Plaintiff's Supplemental Responses to Form Interrogatories, Set One ("Memo. re Interrogatories") and Memorandum of Points and Authorities in Support of Defendant's Motion to Compel Plaintiff's Supplemental Response to Request for Admissions, Set One ("Memo. re Request for Admission") in lieu of the separate statements in this instance only. The court emphasizes that, in the future, all parties are expected to adhere to the California Rules of Court.

Form Interrogatories:

- Request Nos. 2.12, 2.13, 4.1, 10.3 and 12.1:

Plaintiff raises objections to Request Nos. 2.12, 2.13, 4.1, 10.3 and 12.1 on multiple grounds: vague, ambiguous, overbroad, nonsensical and unintelligible. Vagueness and ambiguity are valid grounds for objection only where the question is wholly unintelligible. (*Deyo v. Kilborne* (1978) 84 Cal.App.3d 771, 783 [An interrogatory must be answered if "the nature of the information sought is apparent."].) Since the questions objected to are those that appear on the Official Form Interrogatories approved by the Judicial Council for optional use, no serious contention can be made that the questions are wholly unintelligible. Moreover, the objecting party has the burden of justifying the objection, which plaintiff has not done so. (*Coy v. Superior Court* (1962) 58 Cal.2d 210, 220.)

The court does not find the overbroad, nonsensical and unintelligible assertions to be valid grounds for an objection to an interrogatory. Where interrogatories are overly broad, an objection may be found if the breadth of the question imposes undue burden to the answering party or the question is irrelevant to the subject matter of the action, which plaintiff has not asserted here. (Code Civ. Proc., § 2017.010; 2017.020, subd. (a).) Additionally, plaintiff has provided no authority show that his nonsensical and unintelligible assertions are valid grounds for objections to interrogatories. Thus, plaintiff's objections are entirely without merit.

Additionally, plaintiff also answers Request No. 2.12, stating, “[s]ubject to and without waiving this objection, [p]laintiff was terminated because of his disability.” (Memo. re Interrogatories, 4:19-20.) Request No. 2.12 provides:

At the time of the INCIDENT did you or any other person have any physical, emotional, or mental disability or condition that may have contributed to the occurrence of the INCIDENT? If so, for each person state: (a) the name, ADDRESS, and telephone number; (b) the nature of the disability or condition; and (c) the manner in which the disability or condition contributed to the occurrence of the INCIDENT.

(Memo. re Interrogatories, 4:13-17.)

The answer to each interrogatory must be “as complete and straightforward as the information reasonably available to the responding party permits.” (Code Civ. Proc., § 2030.220, subd. (a). When a question is specific and explicit, an answer that supplies only a portion of the information sought is wholly insufficient. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782.) Moreover, answers that deliberately misconstrue the questions or are “deftly worded conclusionary answers designed to evade a series of explicit questions...” are evasive. (*Id.*, 783.) Plaintiff’s response completely fails to answer the question presented.

As such, further responses in compliance with Code of Civil Procedure, sections 2030.210-2030.310 are necessary.

- Request Nos. 6.3, 6.4, 6.5 and 10.1:

Request Nos. 6.3, 6.4, 6.5 and 10.1 pertained to information relating to plaintiff’s prior and current medical condition, and any subsequent treatment, examinations and/or medications prescribed as a result of the disabilities which are the subject of this action. Plaintiff’s answers to these interrogatories are as follows: (1) as to 6.3: “Plaintiff’s emotional distress remains the same[...];” (2) as to 6.4: “Plaintiff is not making a claim for any medically diagnosed emotional distress.”; (3) as to 6.5: “Plaintiff is not making a claim for any medically diagnosed emotional distress...”; (4) as to 10.1: “Not applicable.” (Memo. re Interrogatories, 7:6, 7:19, 8:28, 9:27.)

The answer to each interrogatory must be “as complete and straightforward as the information reasonably available to the responding party permits.” (Code Civ. Proc., § 2030.220, subd. (a). When a question is specific and explicit, an answer that supplies only a portion of the information sought is wholly insufficient. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782.) Moreover, answers that deliberately misconstrue the questions or are “deftly worded conclusionary answers designed to evade a series of explicit questions...” are evasive. (*Id.*, 783.)

Defendants’ interrogatories are not limited to plaintiff’s emotional distress. In fact, nowhere does plaintiff’s emotional distress even appear on the face of any of these requests. The court finds plaintiff’s answers to be evasive and intends to order plaintiff to provide supplemental responses in compliance with Code of Civil Procedure, sections 2030.210-2030.310.

- Request No. 17.1:

There is insufficient information to determine whether a supplemental response is necessary here, because the moving party has not provided the court with plaintiff's response for Request No. 17.1. (See Memo. re Interrogatories, page 12.) Moreover, as previously stated, since the court has reviewed the Memo. re Interrogatories in lieu of the separate statement, it should follow that the court will not consider material outside of the Memo. re Interrogatories. (Cal. Rules of Court, rule 3.1345, subd. (c) ["The separate statement must be full and complete so that no person is required to review any other document in order to determine the full request and the full response. Material must not be incorporated into the separate statement by reference."].)

Requests for Admission:

- Request Nos. 1, 2, 12 and 15:

Request Nos. 1, 2, 12 and 15 seek admissions pertaining to plaintiff's ability to perform his job functions, plaintiff's disclosure of that ability, or lack thereof, to perform, and defendants' inquiry to plaintiff regarding reasonable accommodation at or around September – November, 2020. Plaintiff raises objections to Request Nos. 1, 2, 12 and 15 for the following grounds: vague, compound and overbroad.

First, an objection based on vagueness or ambiguity is valid only where the ambiguity precludes an intelligent reply. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 430.) Since the requests are clearly relevant and straightforward, and plaintiff provides no reason that makes him unable to reply, the court finds the requests to be void of ambiguity.

Second, while "[n]o request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request unless it has been approved[.]"<sup>1</sup> the objecting party has the burden of justifying the objection. (*Coy v. Superior Court* (1962) 58 Cal.2d 210, 220.) Each request, on its face, does not include any subparts and no evidence has been provided to show that any of the requests in question are compound.

Finally, as previously explained, an overly broad request, without more—i.e. undue burden, is not a valid ground for objection. (Code Civ. Proc., § 2017.020, subd. (a).)

Since plaintiff's objections are without merit, the court intends to order plaintiff to provide supplemental responses in compliance with Code of Civil Procedure, 2033.210-2033.300.

Monetary Sanctions:

Sanctions are mandatory unless the court finds that the party acted "with substantial justification" or other circumstances that would render sanctions "unjust."

---

<sup>1</sup> Code of Civil Procedure, section 2033.060, subdivision (f) [brackets added].

(Code Civ. Proc., §§ 2030.290, subd. (c) [Interrogatories], 2033.290, subd. (d) [Requests for Admissions].) No opposition was filed, so no facts were presented to warrant finding sanctions unjust. The sanction amount awarded disallows time for responding to the opposition and appearing at oral argument, as this proved unnecessary. The court also notes that the moving papers for both motions, with the exception of Section IV of the Memo. re Interrogatories and Memo. re Requests for Admission, are in essence identical. The court finds it reasonable to allow:

- 8.4 hours for the preparation of these discovery motions at the hourly rate, \$185, provided by counsel (5.6 hours for the preparation of the first motion and 2.8 hours for the motion thereafter);
- 4.2 hours for research and revision of the motions at the hourly rate, \$415, provided by counsel (2.1 hours for each motion);
- 1.8 hours for preparation and attendance at the Pre-Trial Discovery Conference at the hourly rate \$405, provided by counsel (0.9 hours for each motion); and
- \$120 for the cost of filing these motions.

Therefore, the total amount of sanctions awarded against plaintiff is \$4,146.

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:** DTT on 4/14/2022.  
(Judge's initials) (Date)

(36)

**Tentative Ruling**

Re: **Hole v. Hess**  
Superior Court Case No. 21CECG02757

Hearing Date: April 19, 2022 (Dept. 501)

Motion: Default Prove-Up

**Tentative Ruling:**

To deny, without prejudice.

**Explanation:**

The following issues prevent entry of judgment at this time:

*Required Forms Not Filed:*

First, plaintiff has 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 November 1, 2021, when previously requesting court judgment by default. However, no action was taken on the November 1, 2021 form, because the filing was premature, as default against the defendant was not entered until November 17, 2021. In order for the court to consider plaintiff's request, he must resubmit the form as part of his default package in any subsequent request.

Second, a proposed judgment is not lodged with the court. (Cal. Rules of Court, rules 3.1800(a)(6).) The court notes that according to its electronic filing system there was an attempt to file a "Request for Judgment" on April 7, 2022. However, this attempt was rejected because there was insufficient information for the court to determine the relief sought and the form was outdated. Plaintiff is to submit an updated proposed judgment.

Third, plaintiff has not filed a prove-up brief or any declarations to his support his request for damages. (Cal. Rules of Court, rules 3.1800(a)(1); *Kim v. Westmoore Partners, Inc.* (2011) 201 CA4th 267, 288 - although no evidence relating to liability is necessary for a prove-up hearing, evidence establishing a prima facie case for damages is required.)

Fourth, it appears plaintiff has prayed for punitive damages in his Complaint. However, without a proposed judgment, it is impossible to determine whether plaintiff is seeking punitive damages. An award of punitive damages cannot be made without evidence of defendant's wealth, which plaintiff has not produced. (*Adams v. Murakami* (1991) 54Cal.3d 105, 109-116; 119-123.) This burden cannot be waived by the defendant's failure to object to a plaintiff's inadequate showing, because of the public interest in meaningful judicial oversight of punitive damages awards. (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1283.) Therefore, this requirement is present even in the

context of a default judgment. Moreover, if plaintiff is requesting for punitive damages, this needs to be addressed in plaintiff's prove-up brief.

Dismissal of Doe Defendants:

Plaintiff must dismiss the Doe defendants prior to seeking default judgment. (Cal. Rules of Court, rule 3.1800(a)(7).)

Proof Required for Damages:

By defaulting, defendant admits liability for the debt or obligation on all well pled causes of action. (*Morehouse v. Wanzo* (1968) 266 Cal.App.2d 846, 853. A default does not, however, admit that the amount prayed for is the proper amount. (*Brown v. Superior Court* (1966) 242 Cal.App.2d 519, 526.) The court is required to enter judgment only for such sum as appears just. (Code Civ. Proc., § 585, subd. (b).) Plaintiff must present evidence proving the amount of damages, including evidence as to any partial payments made by defendants. Without such evidence, the court may refuse to enter judgment in any amount, notwithstanding defendants' default. (*Taliaferro v. Hoogs* (1963) 219 Cal.App.2d 559, 560.)

All paperwork in conjunction with plaintiff's default prove-up hearing must be filed at least ten court days prior to the scheduled hearing date, in compliance with Fresno County Superior Court Local Rule 2.1.14.

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:** DTT on 4/14/2022.  
(Judge's initials) (Date)

(24)

**Tentative Ruling**

Re: ***White v. Kings Canyon Housing LP***  
Superior Court Case No. 20CECG00080

Hearing Date: April 19, 2022 (Dept. 501)

Motion:

**Tentative Ruling:**

To grant. Proposed Orders will be signed. No appearances necessary.

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: DTT on 4/18/2022.  
(Judge's initials) (Date)