

Tentative Rulings for April 21, 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.

20CECG00029	<i>Chi v. Community Regional Anesthesia Medical Group, Inc.</i> is continued to Thursday, May 12, 2022 at 3:30 p.m. in Dept. 503
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(03)

Tentative Ruling

Re: **Higgins v. SWH Mimi's Café, LLC**
Superior Court Case No. 20CECG02931

Hearing Date: April 21, 2022 (Dept. 503)

Motions: Plaintiffs' Motions to Compel Defendants SWH Mimi's Café, LLC and Brian Gooch to Respond to Discovery, to Deem Matters in the Requests for Admissions to Be Admitted, and for Monetary Sanctions

Tentative Ruling:

To grant plaintiffs' motions to compel defendants SWH Mimi's Café, LLC and Brian Gooch to respond to the interrogatories and demands for production of documents served on them. (Code Civ. Proc., §§ 2030.290, subd. (b); 2031.300, subd. (b).) Defendants are deemed to have waived all objections to the discovery requests. (Code Civ. Proc., §§ 2030.290, subd. (a); 2031.300, subd. (a).) Defendants shall serve verified responses to the discovery requests without objections within 20 days of the date of service of this order.

To grant the motions to deem defendants to have admitted the truth of the matters and the genuineness of all documents in the requests for admissions. (Code Civ. Proc., § 2033.280, subd. (b).) Defendants are deemed to have waived all objections to the requests for admissions. (Code Civ. Proc., § 2033.280, subd. (a).)

To grant plaintiffs' request for monetary sanctions against each defendant in the amount of \$500 per defendant, for their willful and unjustified failure to respond to the discovery requests. (Code Civ. Proc., §§ 2030.290, subd. (c); 2031.300, subd. (c); 2033.280, subd. (b).) Defendants shall pay monetary sanctions to plaintiffs' counsel within 30 days of the date of service of this order.

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

(20)

Tentative Ruling

Re: ***Miller v. Parson Environmental & Infrastructure Group, Inc., et al.***
Superior Court Case No. 19CECG03529

Hearing Date: April 21, 2022 (Dept. 503)

Motion: Cross-Complainants' Motion for Summary Adjudication of Issues of Duty

Tentative Ruling:

To grant summary adjudication of Issue 1: cross-defendant Securitas Security Services USA, Inc. ("Securitas") owes cross-complainants Parsons Environment & Infrastructure Group, Inc. ("Parsons") and FMC Corporation ("FMC") (collectively, "cross-complainants") an immediate duty to defend against plaintiff Gene Miller's ("plaintiff") claims pursuant to the contractual language.

To grant, in part, summary adjudication of Issue 3: Parsons and FMC's November 18, 2019 tender letter triggered Securitas' duty to immediately defend ~~and indemnify~~ Parsons and FMC against plaintiff's complaint.

To deny summary adjudication of Issue 2: Securitas must indemnify Parsons and FMC from liability for plaintiff's complaint.

Explanation:

Duty to Defend (Issues 1 and 3)

Plaintiff filed a personal injury complaint against Parsons, erroneously sued as Parsons Corporation, and FMC alleging that he was injured on the job on January 31, 2018.

The first cause of action for negligence alleges that "on or about the 31st day of January, 2018, defendants, and each of them, were negligent and careless in all that they did in connection with the ownership, operation, maintenance, inspection, repair, and provision of the means for safe access and egress to and from a 'guard' trailer located at said premises and provided for the use of plaintiff and his co-workers, thereby causing plaintiff to sustain severe personal injuries and damages when he fell while exiting the trailer due to the unsafe step and/or platform used to access and egress said trailer at said location." (Complaint, p. 4.)

The second cause of action for premises liability alleges that "the step/platform allowing access/egress to the "guard trailer" on the premises located at or near 2501 Sunland Avenue, Fresno, California, while within the course and scope of his employment [sic], plaintiff was caused to sustain severe personal injuries and damages when he fell while exiting the trailer using said step/platform at said premises." (Complaint, p. 5.)

Parsons and FMC filed a cross-complaint against plaintiff's employer, Securitas, seeking to enforce the defense and indemnity provisions of the Parsons/Securitas subcontract pursuant to which Securitas provided security services at the jobsite. The undisputed evidence shows that Securitas personnel worked out of a trailer provided by and owned by Parsons. Securitas personnel worked out of the trailer 24 hours per day, 7 days per week, and 365 days per year. After plaintiff's accident, however, it was Parsons that replaced the allegedly dangerous step, as the trailer and step were the property of cross-complainants, not Securitas.

Cross-complaints move for summary adjudication, seeking a determination that Securitas owes a duty to defend cross-complaints against plaintiff's complaint, and that their November 18, 2019 letter triggered Securitas' defense and indemnity obligations.

A motion for summary adjudication asks the court to adjudicate the merits of a particular cause of action, affirmative defense, issue of duty, or claim for damages, including a punitive damage request. (See Code Civ. Proc., § 437c, subd. (f).) Courts may summarily adjudicate "that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs." (Code Civ. Proc., § 437c, subd. (f)(1); see *Linden Partners v. Wilshire Linden Assocs.* (1998) 62 Cal.App.4th 508, 518.)

Duties to defend or to indemnify are not identical (the insurer's duty to defend is broader than its duty to indemnify). Thus, the court could summarily adjudicate that the insurer owes a duty to *defend* an action against its insured *without* determining its duty to *indemnify* any judgment rendered against the insured. (See *Montrose Chemical Corp. of Calif. v. Superior Court* (1993) 6 Cal.4th 287, 298; *Transamerica Ins. Co. v. Superior Court* (1995) 29 Cal.App.4th 1705, 1712-1713; *Regan Roofing Co., Inc. v. Superior Court* (1994) 24 Cal.App.4th 425, 435.)

A contractual promise to defend another against specified claims "connotes an obligation of active responsibility, from the outset, for the promisee's defense against such claims. The duty promised is to render, or fund, the service of providing a defense on the promisee's behalf—a duty that necessarily arises as soon as such claims are made against the promisee, and may continue until they have been resolved." (*Crawford v. Weather Shield Mfg., Inc.* (2008) 44 Cal.4th 541.)

As the moving papers note, the duty to defend is owed immediately when the promising party (in this case Securitas) learns of allegations that fall within the scope of the promise. (Civ. Code, § 2778, subd. (4); *Crawford v. Weather Shield Mfg. Inc.*, *supra*, 44 Cal.4th at pp. 553-554, 558 ["the duty arises immediately upon a proper tender of defense"].)

Securitas' "work" or "services," as defined by the Securitas Subcontract Agreement, was subject to the Attachment 2/General Conditions in that agreement. Section GC.13, in turn, states:

Indemnification - To the fullest extent permitted by law, [Securitas] shall be responsible for and shall defend, protect, indemnify and hold harmless Parsons, its affiliated entities, and their employees, offices and agents, ... from and against any and all liabilities, claims demands, causes of action,

penalties, loss, costs, damage and expenses, including reasonable attorney's fees, expert and Parsons' fees (collectively, "Liability") arising from, connected with, or otherwise relating to:

A. [Securitas'] breach of this Agreement or any Agreement issued hereunder; or

B. the performance of, or the acts missions of one or more Subcontract Parties in connection with, the Work, the Services and/or this Agreement[.]

(Cross-Complainants' Compendium of Evidence, Ex. A, Attachment 2/General Conditions, § GC.13, emphasis added.)

Because plaintiff alleges that, at the time he was injured, he was acting in the course and scope of his employment with Securitas at the Sunland Site, when he fell on the step used for access and egress to the security guard trailer, cross-complainants contend that Securitas has a duty to defend and indemnify them.

Securitas correctly points out in the opposition that an agreement to defend and indemnify against *the indemnitee's own negligence* must be clear and explicit and is strictly construed against the indemnitee. (*Rossmoor Sanitation, Inc. v. Pylon, Inc.* (1975) 13 Cal.3d 622, 628.) Absent such clear and explicit language, a subcontractor owes a general contractor no defense or indemnity unless it, the subcontractor, was negligent in performing its work under the subcontract. (*Baldwin Builders v. Coast Plastering Corp.* (2005) 125 Cal.App.4th 1339, 1347.)

Securitas contends that, because the trailer and step were the property of cross-complainants, and plaintiff's complaint only alleges negligence on the part of cross-complainants, the instant motion seeks to have Securitas defend and indemnify cross-complainants from a claim arising from their own negligence.

This is a compelling argument, but, as cross-complainants note, the subcontract states that "[s]ubcontractor [Securitas] shall be solely responsible for the safety and health of its personnel and its subcontractors and the environment." (Cross-Complainants' Compendium of Evidence, Ex. A, Attachment 1/Safety, Health and Environmental Requirements, § 1.0(A)(3).) Although the security trailer was the property of cross-complainants, it was the workspace used and occupied 24 hours per day, 7 days per week, 365 days per year, by Securitas. In light of this subcontract language making Securitas responsible for the health and safety of its personnel, as well as "the environment," the court finds that plaintiff's complaint seeks to hold cross-complainants liable for matters potentially falling within the scope of Securitas' duties under the subcontract.

Because the complaint alleges facts giving rise to the potential for coverage under the subcontract's defense and indemnity provision, Securitas does owe cross-complainants a duty to defend against plaintiff's claims. (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 19.) That duty to defend was triggered by cross-complainants' November 18, 2019 tender letter. Accordingly, summary adjudication is granted as to Issue/Duty 1 and, in part, as to Issue/Duty 3.

Present Duty to Indemnity (Issue 2)

An indemnitee does not owe indemnity in the absence of a determination of liability to the plaintiff. (*Regan Roofing Co. v. Superior Court* (1994) 24 Cal.App.4th 425.) “[T]here can be no indemnity without liability.” (*Munoz v. Davis* (1983) 141 Cal.App.3d 420, 425.)

As cross-complainants have not yet been found to bear any liability to plaintiff, no indemnity is owed at this point in time. Summary adjudication of Issue/Duty 2 is denied.

Objections

The court declines to rule on cross-complainants' evidentiary objections because the objections are not consecutively numbered, as explicitly required by California Rules of Court, rule 3.1354(b). The court notes that it would have sustained objections to the photographs, but not the deposition transcript. Sustaining these objections would not change the outcome of the motion.

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: KAG on 4/20/2022.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Herrera, et al. v. Falcon Private Security, Inc., et al.***
Superior Court Case No. 20CECG03491

Hearing Date: April 21, 2022 (Dept. 503)

Motion: By Defendant Falcon Private Security, Inc. for Terminating
Sanctions against Plaintiffs David Herrera and Tiernan Deedon

Tentative Ruling:

To continue the hearing to Thursday, May 26, 2022, at 3:30 p.m., in Department 503, to allow defendant Falcon Private Security, Inc. ("defendant") to submit supplemental briefing addressing the issues set forth below. All briefing must be filed on or before May 14, 2022.

To vacate the existing trial date, trial readiness date, and mandatory settlement conference and schedule a trial setting conference on May 26, 2022, at 3:30 p.m., in Department 503.

Explanation:

Reconsideration of Court's December 9, 2021 December 21, 2021 Orders Deeming Requests to Admit Truth of Facts against Plaintiffs, Granting Defendant's Motions to Compel Plaintiffs' Discovery Responses, and Awarding Sanctions

Code of Civil Procedure section 1013, subdivision (a) provides that service by mail is effective if the documents are "addressed to the person on whom it is to be served, *at the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence.*" (Code Civ. Proc., § 1013, subd. (a), emphasis added.)

The last address of record for plaintiffs' counsel, Justin B. Toobi, as evidenced in the court's file, is 724 S. Spring Street, Suite 201, Los Angeles, CA 90014. However, the proofs of service for defendant's motions to deem requests to admit truth of facts against plaintiffs, to compel discovery responses to plaintiffs, and to award sanctions, all of which were filed on July 8, 2021, indicate that plaintiffs were served by mail to Mr. Toobi, at 5101 Santa Monica Blvd., Suite 291, Los Angeles, CA 90029. The court received no opposition from plaintiffs to the motions. The court notes that the initial discovery was served on plaintiffs' counsel at the 724 S. Spring Street address. Thus, the service of defendant's motions appears to have been defective, and the motions should not have been considered on their merits.

The court has inherent power to correct its own errors when they are called to the court's attention by way of an improperly filed motion or by arguments on a related motion. (*Boschetti v. Pacific Bay Investments Inc.* (2019) 32 Cal.App.5th 1059, 1070 [10-day time frame in Code of Civil Procedure, section 1008 does not limit the court's ability

to reconsider].) “[T]o grant reconsideration on its own motion, the trial court must conclude that its earlier ruling was wrong, and change that ruling based on the evidence originally submitted.” (*Marriage of Ankola* (2020) 53 Cal.App.5th 369, 383, internal citations omitted.) Further, the court must notify the parties that it may do so, solicit briefing, and conduct a hearing. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1108.)

Since the court is reconsidering its December 9 and December 16, 2021 orders deeming requests to admit truth of facts against plaintiffs, granting defendant's motions to compel plaintiffs' discovery responses, and awarding sanctions, the court provides defendant the opportunity to submit supplemental briefing.

Defendant's Motion for Terminating Sanctions Against Plaintiffs

Code of Civil Procedure section 2023.010, subdivision (g) construes “[d]isobeying a court order to provide discovery” to be a “misuse of the discovery process,” but sanctions are only authorized to the extent permitted by each discovery procedure. Once a motion to compel answers is granted, continued failure to respond or inadequate answers may result in more severe sanctions, including evidence, issue or terminating sanctions, or further monetary sanctions. (Code Civ. Proc., §§ 2030.290, subd. (c); 2031.300, subd. (c).)

Sanctions for failure to comply with a court order are allowed only where the failure was willful. (*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 495; *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545; *Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1327.) If there has been a willful failure to comply with a discovery order, the court may strike out the offending party's pleadings or parts thereof, stay further proceedings by that party until the order is obeyed, dismiss that party's action, or render default judgment against that party. (Code Civ. Proc., § 2023.030, subd. (d).)

Here, defendant moves for terminating and monetary sanctions and, alternatively, evidence and/or issue sanctions based on plaintiffs' noncompliance with the December 9 and December 16, 2021 court orders. However, since the court intends to reverse those prior orders based on the defective service, the motion for terminating sanctions would also be denied. (See Code Civ. Proc., § 1013, subd. (a).)

Thus, the court continues the hearing to May 26, 2022, to allow plaintiff file supplemental briefing on the issues addressed herein. Alternatively, if defendant provides proof that the motions were properly served—either by mail to the proper address or an alternative method of service, and files corrected proofs of service, the court's prior orders will remain and the court will consider the motion for terminating sanctions on its merits.

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

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Tentative Ruling

In re: Paul Martinez, Jr.
Superior Court Case No. 21CECG03621

April 21, 2022 (Dept. 503)

Petition to Compromise Minor's Claim

Tentative Ruling:

To grant and sign the proposed orders. No appearance is 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: KAG on 4/20/2022.
(Judge's initials) (Date)

Tentative Ruling

In re: Lilly Stodden

April 21, 2022 (Dept. 503)

Petition to Compromise Minor's Claim

To grant and sign the submitted order approving compromise. No appearance necessary.

Tentative Ruling

Issued By: KAG on 4/20/2022.
(Judge's initials) (Date)