

Tentative Rulings for May 5, 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.

16CECG01159 *Robert Sandoval v. City of Fresno* is continued to Tuesday, May 10, 2022 at 3:30 p.m. in Department 501

20CECG00418 *Adamo et al. v. Clark Pest Control, Inc. et al.* is continued to Tuesday, May 10, 2022 at 3:30 p.m. in Department 501

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Tentative Rulings for Department 501

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(03)

Tentative Ruling

Re: ***Thelen v. City of Fresno, et al.***
Superior Court Case No. 21CECG01487

Hearing Date: May 5, 2022 (Dept. 501)

Motion: by Plaintiff:

- (1) For Order Deeming Requests to Admit Truth of Facts against Defendant Hart Family Trust;
- (2) For Order Compelling Defendant Hart Family Trust's Responses to: (1) Form Interrogatories, Set One; (2) Special Interrogatories, Set One; and (3) Requests for Production, Sets One and Two;
- (3) For Order Imposing Monetary Sanctions

Tentative Ruling:

To grant, but to require plaintiff to pay \$240 for motion fees to the clerk (in addition to the \$60 for the motion fees already paid) for the correct total motion fee of \$300 (5 motions x \$60 each). The additional filing fees must be paid on or before May 25, 2022.

Defendant Hart Family Trust is ordered to serve verified responses, without objections, to plaintiff Terry L. Thelen's Form Interrogatories, Set One, Special Interrogatories, Set One, Requests for Production, Set One, and Requests for Production, Set Two, 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.

The matters specified in plaintiff's Request for Admission, Set One, are deemed admitted, unless defendant serves, before the hearing, a proposed response to the requests for admission that is in substantial compliance with Code of Civil Procedure, Section 2033.220.

To award monetary sanctions in the total amount of \$1,950, for all motions, in favor of plaintiff and against defendant Hart Family Trust and its counsel of record, John T. Aldrich, 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:

Interrogatories and Document Production:

If a party to whom discovery was directed fails to serve a timely response, the propounding party may move for an order compelling responses and for a monetary sanction. (Code Civ. Proc., § 2030.290, subd. (b) [Interrogatories]; Code Civ. Proc., § 2031.300 [Document demands].) Moreover, failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and "work

product" protection. (Code Civ. Proc. § 2030.290, subd. (a), 2031.300, subd. (a); see *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.)

Here, defendant Hart Family Trust served untimely unverified responses consisting of objections. (Kalajian, Decl., ¶6, 7.) It is unclear whether the response consisted of both answers and objections or whether the response consisted entirely of objections. Defendant argues that (1) her objections have not been waived; (2) plaintiff has inappropriately filed motions to compel *initial* responses, where motions to compel *further* responses are required; and (3) plaintiff's time to file such motion(s) has expired.

First, by failing to timely respond, defendant has waived all objections to plaintiff's requests for admission. Defendant relies on *Food 4 Less Supermarkets* to argue that its objections have not been waived. (*Food 4 Less Supermarkets, Inc. v. Superior Court* (1995) 40 Cal.App.4th 651, 657 [An unverified response containing both answers and objections is effective to preserve those objections. The lack of verification renders the fact-specific answers untimely; but that only creates a right to move for orders and sanctions. It does not result in a waiver of the objections made].) However, the rationale in *Food 4 Less Supermarkets* is inapplicable here, because the issue addressed was whether the lack of verification resulted in a waiver of the objections where "a party files a *timely* but unverified response raising objection..." (*Id.*, 652 [emphasis added; emphasis in original omitted].) Here, defendant's response raising objections was untimely served; thus, all objections are waived.

Second, an unverified response renders the fact-specific answers untimely. (*Id.*, 657.) Where verification is required, an unverified response is equivalent of no response at all. (*Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636.) But no verification is required to preserve objections. (Code Civ. Proc., § 2033.240, subd. (a).) Thus, defendant's unverified fact-specific answers are untimely and equivalent of no response at all. Additionally, while no verification is required to preserve objections, as previously explained, defendant waived all objections prior to the service of her responses. Since defendant has essentially failed to respond by serving unverified responses and objections (where objections have been waived), plaintiff's motions to compel initial responses are appropriate.

Third, no statute contains any time limitation for a motion to compel where *no* responses have been served. (Code Civ. Proc., § 2030.290; *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants*, (2007) 148 Cal.App.4th 390, 410-411.) A motion to compel further responses must be served "within 45 days of the service of the *verified* response..." (Code Civ. Proc., § 2030.300, subd. (c).) Here, no verified response has been served to start the accrual of the 45-day timeframe.

Plaintiff had ample time to respond the discovery propounded by defendant, and it has not done so; therefore, the motions are granted.

Requests for Admissions:

Failure to timely respond to Requests for Admission results in a waiver of all objections to the requests. (Code Civ. Proc., § 2033.280, subd. (a).) The statutory language leaves no room for discretion. (*Tobin v. Oris* (1992) 3 Cal.App.4th 814, 828.) "The

law governing the consequences for failing to respond to requests for admission may be the most unforgiving in civil procedure. There is no relief under section 473. The defaulting party is limited to the remedies available in [Code of Civil Procedure section 2033.280]....” (*Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 394–395, disapproved on other grounds in *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 983, fn. 12.)

However, the court may relieve the party who fails to file a timely response if, before entry of the order deeming the requested matters admitted, the party in default (1) moves for relief from waiver and shows that the failure to serve a timely response was due to “mistake, inadvertence or excusable neglect;” and (2) serves a response in “substantial compliance” with Code of Civil Procedure section 2033.220. (Code Civ. Proc., § 2033.280(a)-(c); See *Brigante v. Huang* (1993) 20 Cal.App.4th 1569, 1584.) “If the party manages to serve its responses before the hearing, the court has no discretion but to deny the motion . . . Everything, in short, depends on submitting responses prior to the hearing.” (*Demyer v. Costa Mesa Mobile Homes Estates* (1995) 36 Cal. App. 4th 393, 395–396.) However, unsworn responses are equivalent to no response at all and therefore not in substantial compliance with section 2033.240, subd. (a). (*Allen-Pacific, Ltd. V. Superior Court* (1997) 57 Cal.App.4th 1546, 1551.)

Here, defendant served untimely unverified responses, consisting of objections. (Kalajian, Decl., ¶6, 7.) As explained above, since defendant did not comply with responding to the Requests for Admission, and there is no evidence that it has either requested relief from its failure to respond or submitted proper responses before the hearing, the motion is granted.

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].) Moreover, the California Rules of Court authorizes an award of sanctions for failure to provide discovery even if “the requested discovery was provided to the moving party after the motion was filed.” (Cal. Rules of Court, rule 3.1348, subd. (a).) Here, defendant indicates that circumstances including her age, health, relocation and the loss of her husband precluded her from being able to comply with responding to the discovery requests. Defense counsel also claims that it was difficult to contact defendant, because she did not provide her new address to counsel. While the court appreciates the difficulties defendant is facing, plaintiffs have had almost eight months to serve meaningful responses to plaintiff. During the course of this time, defendant was at all times represented by counsel and plaintiff granted defendant's requests for extensions of time to respond, to no avail. Moreover, if counsel was struggling to communicate with his client, he could have sought an order to be relieved as counsel.

The court finds it reasonable to allow 4 hours for the preparation of these simple discovery motions and 1.5 hours for the preparation of plaintiff's reply brief, at the hourly rate of \$300. The court also allows \$300 for the cost of filing these motions. Therefore, the total amount of sanctions award against defendant and her counsel of record, John T. Aldrich, is \$1,950. Should the parties' appearance be necessary at hearing, the court will consider awarding additional time.

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** 4/28/2022.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Nationstar Mortgage LLC v. State Street Bank and Trust Company of California, N.A.***
Superior Court Case No. 19CECG03608

Hearing Date: May 5, 2022 (Dept. 501)

Motion: Default Prove Up

Tentative Ruling:

To deny without prejudice. To set aside the default entered on September 24, 2021, unless plaintiff requests oral argument and files prior to the hearing proof of recording of the lis pendens and posting of the Summons and Complaint as discussed below.

Explanation:

There is no evidence that a lis pendens has been recorded or filed with the county recorder. With respect to actions to quiet title, Code of Civil Procedure section 761.010, subdivision (b), states that, "Immediately upon commencement of the action, the plaintiff shall file a notice of the pendency of the action in the office of the county recorder of each county in which any real property described in the complaint is located." (Emphasis added.) While plaintiff has filed a notice of pendency in this court, plaintiff has not submitted any proof that it has been recorded.

Plaintiff has named unknown defendants in this action as appropriate. (Code Civ. Proc., §§ 762.020, subd. (a); 762.060, subd. (a).) While plaintiff has served these unknown defendants by publication as authorized by the court, service by publication requires the plaintiff to promptly post both the summons and complaint in a conspicuous place on the subject property. (Code Civ. Proc., § 763.020, subd. (a).) "Whenever the court orders service by publication, the court before hearing the case shall require proof that the summons has been served, posted, published as required, and that the notice of pendency of action has been filed." (Code Civ. Proc., § 763.040.) The court order authorizing service by publication required that a "copy of the summons, complaint, and the order for publication is to be promptly posted in a conspicuous place on the subject property per Code Civ. Proc., § 763.020, subd. (a), and proof thereof provided to the Court." (See 5/11/21 Order.) There is no indication that the posting was accomplished along with the publication in the Fresno Bee. The proof of service only mentions the publication.

In light of the apparent failure to record the lis pendens and post the Summons and Complaint at the same time as the service by publication, the default of the named unknown defendants should be set aside. If these requirements had been timely satisfied, plaintiff may request oral argument and submit proof of such prior to the hearing, and the default will not be set aside.

Finally, plaintiff has not shown that it is entitled to judgment on the grounds requested in this action. Generally speaking, once a plaintiff has obtained a default against the defendant, the defendant no longer has any right to participate in the case; however, due to the unique nature of real property, a hearing must be held where the action is to quiet title, regardless of whether the defendant's default has been entered. (Code Civ. Proc., § 764.010; *Harbour Vista, LLC v. HSBC Mortgage Services Inc.* (2011) 201 Cal.App.4th 1496, 1504-1505; *Yeung v. Soos* (2004) 119 Cal.App.4th 576, 581 [in quiet title action, usual default prove-up methods do not suffice; court must require evidence of plaintiff's title]; see Code Civ. Proc., § 585, subd. (c).)

At the hearing, the plaintiff must present all evidence it would have had to present at trial, i.e., declarations or other summary procedures are not permitted. (*Yeung, supra*, 119 Cal.App.4th at p. 581.) "Live witnesses must testify, and complete authentication of the underlying real property records is essential. [Citations.]" (*Nickell v. Matlock* (2012) 206 Cal.App.4th 934, 945.) In sum, despite a defendant's default, in a quiet title action the plaintiff is not automatically entitled to judgment in its favor, but rather must attend an evidentiary hearing and provide live witnesses and any other admissible evidence and prove its case; if a defendant appears, the plaintiff must overcome any admissible evidence presented by the defendant. (*Id.* at p. 947.)

The premise for this action is that plaintiff is the beneficiary of a deed of trust recorded on September 25, 1997, which should have priority over an earlier Deed of Trust with Assignment of Rents that was recorded March 4, 1996. The Complaint at paragraph 9 alleges that "the Prior Deed of Trust has been paid off and should no longer cloud the Subject Property's title. NATIONSTAR anticipates that discovery will provide evidence that the Prior Deed of Trust was paid off and should have been released."

In support of the default judgment requested, the Fisher Declaration states that "The records reflect that the [earlier March 4, 1996 DOT] **should have been** satisfied at or prior to the time that the loan secured by the Deed of Trust was originated, but that such deed of trust was never properly reconveyed." (Fisher Decl., ¶ 13, emphasis added.) This statement is entirely speculative. Fisher also states, "In my experience, Deed of Trust and any other major lender would not enter into a loan transaction in such a substantial amount only to be secured in a second priority position." (Fisher Decl., ¶ 15.) Again, this is speculative, and assumes facts not in evidence. Plaintiff submits no evidence that the prior DOT had been paid off and should have been released. Plaintiff has not submitted evidence proving its case.

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 4/29/2022
(Judge's initials) (Date)