Tentative Rulings for June 14, 2022
Department 403

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.

19CECG02105 ***Alfredo Flores v. Ford Motors Company*** **is continued to Tuesday, August 2, 2022 at 3:30 p.m. in Department 403**

18CECG04150 ***Natcho Ramirez v. CSI Electrical Contractors, Inc.*** **is continued to Thursday, July 7, 2022 at 3:30 p.m. in Department 403**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(20)

Tentative Ruling

Re: ***Alejandra Blanco v. David J. Wright, D.D.S., Inc.***
Superior Court Case No. 17CECG04095

Hearing Date: June 14, 2022 (Dept. 403)

Motion: Default Prove-up

Tentative Ruling:

To take the hearing off calendar as no default has been entered.

Explanation:

The court noted in its 4/27/22 Minute Order that a prove-up hearing is premature, since defendant's default had not yet been entered. The court instructed plaintiff that the default had to be entered first, and also that plaintiff must submit mandatory Judicial Council form CIV-100, Request for Court Judgment. (*Simke, Chodos, Silberfeld & Anteau, Inc. v. Athans* (2011) 195 Cal.App.4th 1275, 1287.) Instead of denying the request for court judgment, the court continued the hearing to allow plaintiff to have defendant's default entered and to file the proper form for requesting court judgment.

Though plaintiff submitted a request for entry of default, the default was not entered as requested because counsel used an outdated form and did not fill it out correctly. The court requests that counsel *not* set hearings for which they are not prepared to proceed.

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: KCK on 06/13/22.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Angelita Campa v. Philip Call dba The Philip Call Agency***
Superior Court Case No. 21CECG02906

Hearing Date: June 14, 2022 (Dept. 403)

Motion: Defendant's Demurrer to the Complaint

Tentative Ruling:

To sustain, with leave to amend, the demurrer to the sixth cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

Explanation:

Opposition Untimely Filed:

"All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days […] before the hearing." (Code Civ. Proc., § 1005, subd. (b).)" Here, as the moving party points out, plaintiff untimely filed her opposition on June 2, 2022, eight court days before the hearing, and did not serve her opposition until June 6, 2022, six court days before the hearing. The moving party does *not* waive proper service. "No paper may be rejected for filing on the ground that it was untimely submitted for filing. If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must so indicate." (Cal. Rule of Court, rule 3.1300, subd. (d).)

In determining whether to consider a late filed paper, one court provides that a trial court must "properly exercise its discretion by considering all factors relevant to granting relief under [Code of Civil Procedure] section 473." (*Kapitanski v. Von's Grocery Co.* (1983) 146 Cal.App.3d 29, 30.) However, another court has held that "[i]n view of the strong policy of the law favoring the disposition of cases on the merits…" a trial court has discretion to consider late-filed papers even without a Code of Civil Procedure, section 473 showing. (*Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal.App.5th 1197, 1202 [Since the filing was only two days late and no showing of prejudice was made by the moving party, the trial court did not abuse its discretion by considering the late-filed papers.].)

Once a published Supreme Court or appellate court decision becomes final, it is binding on lower courts under the doctrine of "stare decisis". (*Sierra Club v. San Joaquin Local Agency Formation* (1999) 21 Cal.4th 489, 503-505; see also *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 [a court of appeal decision must be followed by all superior courts, regardless of which appellate district rendered the opinion.).] When there are conflicting court of appeal decisions on point, the trial court can choose to follow *either* of them. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456.)

Here, plaintiff has made no showing of mistake or excusable neglect for her untimely response. Similarly, no showing has been made to establish prejudice to the moving party. "The salutary purpose of such rules regulating the filing of opposing papers

is to '... ensure that the court and the parties will be familiar with the facts and the issues so that meaningful argument can take place and an informed decision rendered at the earliest convenient time.'" (*Kapitanski v. Von's Grocery Co. (1983) 146 Cal.App.3d 29,* 33 [internal citations omitted].) Since defendant has timely filed its reply on the merits, and in light of the strong policy of law favoring the disposition of cases on the merits, the court intends to consider plaintiff's late-filed opposition, despite there being no section 473 showing.

Demurrer to the Sixth Cause of Action for Violation of California Labor Code, Sections 98.6 and 1102.5:

Defendant demurs to the sixth cause of action on the ground that the complaint fails to state facts sufficient to constitute a cause of action.

Labor Code, section 1102.5, subdivision (b), states that it is an unlawful employment practice for "[a]n employer, or any person acting on behalf of the employer, [to] retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties. (Lab. Code, § 1102.5, subd. (b) [brackets added].)

In order to establish a prima facie case for unlawful retaliation, the plaintiff must allege sufficient facts showing that she engaged in legally protected activity, that the employer subjected her to an adverse employment action, and that there is a causal connection between the protected activity and the adverse action. (*Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1384 ("*Patten*"). Although the moving party argues that *Patten* has been overruled by the recent California Supreme Court decision in *Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703 ("*Lawson*"), *Lawson* only discusses the evidentiary burden-shifting standard, specifically holding that, in whistleblower claims under Labor Code section 1102.5, the plaintiff is not required to show that the defendant employer's reasons for the adverse employment action were pretextual. (*Id*., 5-8.) She only needs to show that her whistleblowing activity was a contributing factor to her termination, even if there were other, legitimate reasons for the termination. (*Ibid*.) The defendant then needs to show that it would have taken the adverse action for legitimate and independent reasons even if the plaintiff had not engaged in the protected activity. (*Ibid*.) Here, the evidentiary standard explained in *Lawson* is immaterial to the instant demurrer, which only tests the sufficiency of the pleadings.

In the present case, plaintiff alleges she made complaints "immediately before [her] termination that [d]efendant was violating California insurance laws by selling life insurance without a license." (Compl., ¶ 12.) It is not sufficiently clear whether plaintiff engaged in legally protected activity as it is not known to whom or to what entity she

made these complaints. Plaintiff's vague recitation of Labor Code, section 1102.5—that she "disclosed unlawful information to a government or law enforcement agency and/or another employee who has the authority to investigate, discover and/or correct the violation and/or [d]efendants believed she may disclose unlawful information to a government agency and/or because she refused to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation…" (Compl., ¶ 54.), is entirely devoid of fact, and is insufficient to plead facts sufficient to state a cause of action.

Further, although there is no real question that plaintiff has sufficiently alleged that defendant subjected her to adverse employment actions by terminating her employment (Compl., ¶ 11.), as well as decreasing her hourly pay (Compl., ¶ 10.), there are no facts to even suggest a causal link between plaintiff's complaints and these adverse employment actions.

Defendant relies on *Carter v. Escondido Union High School Dist.* (2007) 148 Cal.App.4th 922 ("*Carter*") to further argue that plaintiff has failed to state a claim under Labor Code, section 1102.5, by failing to identify the specific statute, rule or regulation defendant employer violated. Although the court in *Carter* ultimately rules that, "[i]n sum, [plaintiff's] failure to identify a statutory or constitutional policy that would be thwarted by his … discharge dooms his cause of action[,]" (*Id*., 935 [internal citations omitted, brackets added]) the facts specific to that case were completely devoid of any allegation or evidence that the information disclosed pertained to any violation of law. (*Id.*, 933-934). *Carter* does not hold however, that a plaintiff must identify the specific statute, rule or regulation that was violated in a case where the plaintiff explicitly alleges that she disclosed information that the defendant employer violated a state law. "It is axiomatic that cases are not authority for propositions not considered." (*People v. Gilbert* (1969) 1 Cal.3d 475, 482; see *also Santisas v. Goodin* (1998) 17 Cal.4th 599, 620. ["[a]n appellate decision is not authority for everything said in the court's opinion but only 'for the points actually involved and actually decided.'"].)

Unlike the facts in *Carter*, here, plaintiff has affirmatively alleged that she disclosed information that defendant was violating California law by selling life insurance without a license (Compl., ¶ 12.), therefore, no further discussion on plaintiff's belief that a law had been violated, and the reasonableness of that belief is necessary.[1] Nonetheless, as discussed above, plaintiff has failed to allege sufficient facts to state a whistleblower retaliation cause of action. Thus, the court intends to sustain the demurrer with leave to amend.

[1] The issue regarding whether the disclosure was an internal personnel disclosure (i.e., the fact that plaintiff did not allege who or to what entity she disclosed that information to) is previously discussed above.

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: KCK on 06/13/22.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Trevor Phillips v. Rocket Mortgage, LLC***
Superior Court Case No. 22CECG01536

Hearing Date: June 14, 2022 (Dept. 403)

Motion: Petition for Relief from Financial Obligations During Military Service

Tentative Ruling:

To grant. The court will sign the form of order lodged by petitioner. No appearance required.

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: KCK on 06/13/22.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Erin Garcia v. Douglas Den Hartog***
Superior Court Case No. 18CECG04305

Hearing Date: June 14, 2022 (Dept. 403)

Motion: Two Petitions for Compromise of Disputed claims of Minors Justin Garcia and David Garcia

Tentative Ruling:

To grant both petitions. 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: KCK on 06/13/22.
(Judge's initials) (Date)