Tentative Rulings for December 9, 2021
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.

14CECG02461 ***Anderson v. Western Health Resources*** **is continued to Thursday, May 26, 2022 at 3:30 p.m. in Dept. 503**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(36)

Tentative Ruling

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

Hearing Date: December 09, 2021 (Dept. 503)

Motions: Defendant Falcon Private Security, Inc.'s Motions for Order Deeming Requests to Admit Truth of Facts Against Plaintiff David Herrera and to Compel Plaintiff David Herrera's Responses to (1) Form Interrogatories—General; (2) Form Interrogatories—Employment Law; (3) Special Interrogatories; and (4) Request for Production of Documents; and Request for Monetary Sanctions

Tentative Ruling:

To grant and to award monetary sanctions in the total amount of $730 against plaintiff David Herrera, and his attorney Justin B. Toobi, 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.

Plaintiff shall serve verified responses without objections, to defendant Falcon Private Security, Inc.'s Form Interrogatories—General, Set One; Form Interrogatories—Employment Law, Set One; Special Interrogatories, Set One; and Request for Production of Documents, Set One, no later than 10 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 defendant Falcon Private Security, Inc.'s Requests for Admissions, Set One, are deemed admitted, unless plaintiff 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.

Explanation:

Interrogatories and Document Production

Plaintiff had ample time to respond to the discovery propounded by defendant, even after obtaining new counsel, and he has not done so. 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. Sup.Ct. (Markum)* (1980) 111 Cal.App.3d 902, 905–906.)

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 [Code of Civil Procedure] section 473. The defaulting party is limited to the remedies available in the statute specifically governing requests for admission, [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.)

But 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, subds. (a)-(c); see also *Brigante v. Huang* (1993) 20 Cal.App.4th 1569, 1584, disapproved on other grounds in *Wilcox v. Birtwhistle*, *supra*, 21 Cal.4th at p. 983, fn. 12.) "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*, *supra*, 36 Cal.App.4th at pp. 395-396.)[1]

Monetary 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].) No opposition was filed, so no facts were presented to warrant finding sanctions unjust. The sanction amount awarded does not include the time for responding to an opposition and for appearing at the hearing, as this proved unnecessary. The court finds it reasonable to allow two hours for preparation of these discovery motions at the hourly rate of $215 provided by counsel, and $300 for the cost of filing the motions. Therefore, the total amount of sanctions awarded against plaintiff is $730.

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 12/6/2021 .
(Judge's initials) (Date)

[1] The court acknowledges defendant's additional request to order plaintiff to "serve a response that reflects the court's order"; however, the court declines to grant this request.

(27)

Tentative Ruling

Re: ***Praetorian Insurance Company v. Haight Brown & Bonesteel***
Superior Court Case No. 20CECG01978

Hallmark Specialty Insurance Company v. Haight Brown & Bonesteel
Superior Court Case NO. 20CECG03200

Hearing Date: December 9, 2021 (Dept. 503)

Motion: By Plaintiff Praetorian Insurance Company to Consolidate

Tentative Ruling:

To deny, without prejudice. To grant the requests for judicial notice.

Explanation:

"When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." (Code Civ. Proc., §1048, subd. (a).)

Consolidation promotes trial convenience by avoiding duplicative procedures, particularly in proving issues common to both actions. (See *McClure v. Donovan* (1949) 33 Cal.2d 717, 722.) Furthermore, "[t]he fact that evidence in the one case might not have been admissible in the other does not bar a consolidation. Nor does the fact that all the parties are not the same." (*Jud Whitehead Heater Co. v. Obler* (1952) 111 Cal.App.2d 861, 867.) Accordingly, where the witness testimony is the same and the court clearly instructs the jury concerning the evidence to be considered in each case, consolidation is a reasonable exercise of the court's discretion. (*Johnson v. Western Air Exp. Corp.* (1941) 45 Cal.App.2d 614, 622 [consolidation of a personal claim for damages with a survivor claim for damages arising from a single plane crash]; see also *Todd-Stenberg v. Delkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 979 [consolidation appropriate where witnesses in consolidated actions addressed probable cause, extent and result of a particular product].)

In ruling on a motion for consolidation, a court should consider: (1) the timeliness of the motion: i.e., whether granting consolidation would delay the trial of any of the cases involved; (2) the complexity of the resulting case: i.e., whether joining the actions involved would make the trial too confusing or complex for a jury; and (3) any resulting prejudice: i.e., whether consolidation would adversely affect the rights of any party. (See *State Farm Mut. Auto. Ins. Co. v. Superior Court* (1956) 47 Cal.2d 428, 430-431 [consolidation inappropriate because "[t]he tests for determining the[] respective issues in the actions thus consolidated would not be the same."].)

In addition, the California Supreme Court has found that the interests of a primary and excess insurer can be adverse in a variety of circumstances, in particular, "the excess carrier may maintain an action against the primary carrier for [ ] [wrongful] refusal to settle within the latter's policy limits." (*Commercial Union Assurance Companies v. Safeway Stores, Inc.* (1980) 26 Cal.3d 912, 917; see also *Northwestern Mut. Ins. Co. v. Farmers' Ins. Group* (1978) 76 Cal.App.3d 1031, 1048 [permitting an excess insurer to recover for unreasonable failure to settle could promote settlement].) Similarly, adversarial interests between primary and excess insurers can arise from questions involving the exhaustion of the primary policy and whether other contractual conditions have been activated. (*Travelers Casualty & Surety Co. v. Transcontinental Ins. Co.* (2004) 122 Cal.App.4th 949, 956.)

Praetorian Insurance Company ("Praetorian") moves to consolidate its case, Case No. 20CECG01978, with *Hallmark Specialty Insurance Company v. Haight Brown & Bonesteel*, Case No. 20CECG03200, contending that because each case alleges the same defendant, conduct, and injury, common questions of law or fact exist such that consolidation is a reasonable exercise of the court's discretion. The two cases are similar in that each asserts breach of contract and negligence claims arising from the representation provided in the underlying matter, *Bernardo Hernandez Ramirez, et al. v. Interstate Logistics, et al.*, Case No. 15CECG01733. Nevertheless, important case distinctions exist which render consolidation impractical at this time.

In particular, Case No. 20CECG01978 involves a policy of primary insurance, whereas the policy alleged in Case No. 20CECG03200 involves a policy of excess insurance. The interests of a primary and excess insurer can be fundamentally adverse, especially where, as here, the duties and liabilities of one may affect the other. Furthermore, Haight Brown & Bonesteel ("Haight") contends that Praetorian's interests are more than just theoretically adverse to those of Hallmark Specialty Insurance Company ("Hallmark") and asserts that Hallmark's U.S. District Court complaint against Praetorian arising from the same truck accident to demonstrate the existence of an actual conflict. If nothing else, the U.S. District Court litigation obviates Praetorian's concerns of judicial economy because additional measures will likely be sought to mitigate claims of prejudice through separate orders and rulings.

Finally, Haight also argues that consolidation is premature and likely moot because Hallmark lacks standing to sue Haight. These arguments, however, are better determined through a demurrer or other pleadings challenge. (*Barefoot v. Jennings* (2020) 8 Cal.5th 822, 827 [standing is properly a subject tested by demurrer]; *Jensen v. Royal Pools* (1975) 48 Cal.App.3d 717, 721.) Therefore, the motion to consolidate is denied, without prejudice.

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 12/7/2021 .
(Judge's initials) (Date)