

Tentative Rulings for January 28, 2025
Department 501

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

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 above rule also applies to cases listed in this "must appear" section.*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

22CECG03678 *Carreon v. Sanathara* is continued to Thursday, January 30, 2025 at 3:30 p.m. in Department 501

24CECG02937 *Yee v. CHCC* is continued to Thursday, January 30, 2025 at 3:30 p.m. in Department 501 (for oral argument)

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Tentative Rulings for Department 501

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Tentative Ruling

Re: **Phengdara v. Willis**
Superior Court Case No. 22CECG02938

Hearing Date: January 28, 2025 (Dept. 501)

Motion: by Defendant For Terminating and Monetary Sanctions

Tentative Ruling:

To continue the hearing on the motion to Thursday, March 20, 2025, at 3:30 p.m. in Department 501, to afford plaintiff one final opportunity to comply with the court's order dated 9/5/2024. Defendant shall file with this court an update on the status of the discovery nine court days before the continued hearing.

If oral argument is timely requested, such argument will be entertained on Thursday, January 30, 2025, at 3:30 p.m. in Department 501.

Explanation:

On 9/14/2023, defendant propounded on plaintiff form interrogatories, special interrogatories, request for production of documents, and requests for admission (set one each). Plaintiff did not serve any responses. On 9/5/2024, the court granted defendant's motion to compel responses, and imposed \$1,880 in monetary sanctions. Responses were to be served by 9/20/2024. To date, no responses have been served and sanctions remain unpaid. Defendant now moves for terminating sanctions or, alternatively, for an order compelling compliance.

An order compelling compliance is not necessary, as there exists an order to provide discovery responses.

Once a motion to compel discovery is granted, continued failure to comply may support a request for more severe sanctions. Code of Civil Procedure section 2023.010, subdivision (g), makes "[d]isobeying a court order to provide discovery" a "misuse of the discovery process." For failure to obey the court's discovery orders, the court may:

"[M]ake those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010)...."

(Code Civ. Proc., § 2025.450, subd. (d).)

"A decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court

is justified in imposing the ultimate sanction. [Citation.]" (*Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279-280.)

In light of plaintiff's failure to comply with the court order on this discovery dispute, the court is inclined to grant terminating sanctions, but after giving plaintiff one last chance to comply. Accordingly, the motion will be continued and if full and complete responses are not provided, terminating sanctions (dismissal of this action) will likely 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 1/21/2025.
(Judge's initials) (Date)

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Tentative Ruling

Re: ***Elena Arguello v. American Honda Motor Company, Inc.***
Superior Court Case No. 24CECG00868

Hearing Date: January 28, 2025 (Dept. 501)

Motion: by Plaintiffs Elena Inez Arguello and Osmundo Arguello for Orders Compelling Defendant American Honda Motor Co., Inc. to Provide Initial Verified Responses to Form Interrogatories, Set One; Special Interrogatories, Set One; Demand for Production of Documents, Set One; and Deeming Matters in Requests for Admissions Admitted, Set One

Tentative Ruling:

To grant the motion of plaintiffs Elena Inez Arguello and Osmundo Arguello to compel initial responses to form and special interrogatories, and request for production. Within 20 days of service of this order by the clerk, defendant American Honda Motor Co., Inc., shall serve **verified objection-free responses** to Form Interrogatories, Set One; Special Interrogatories, Set One; and Request for Production, Set One.

To deem plaintiffs' Request for Admissions, Set One, admitted by American Honda **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. (Code Civ. Proc. § 2033.280, subs. (b) and (c).)

To strike the objections of American Honda's objections in the responses, as defendant waived the right to object when it failed to serve timely responses and thus the objections are improper.

If oral argument is timely requested, such argument will be entertained on Thursday, January 30, 2025, at 3:30 p.m. in Department 501.

Explanation:

Meet and Confer

“Unlike a motion to compel further responses, a motion to compel responses is not subject to a 45–day time limit, and the propounding party does not have to demonstrate either good cause or that it satisfied a ‘meet and confer’ requirement.” (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404.) Pursuant to Fresno Superior Court, Local Rule 2.1.17, the moving party is not required to request a Pretrial Discovery Conference prior to filing motions to compel initial responses to interrogatories, requests for production, and requests for admissions.

Motions to Compel Initial Responses

Legal Standard

A propounding party may move for an order compelling response to its propounded interrogatories and/or demand. (Code Civ. Proc., §§ 2030.290, 2031.300.) For a motion to compel initial responses, no meet and confer is required. (Fresno Superior Court, Local Rule 2.1.17(A)(2).) All that needs to be shown is that a set of interrogatories was properly served on the opposing party, that the time to respond has expired, and that no response of any kind has been served. (*Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.) Timely and verified responses are due from the party on which discovery is propounded within 30 days after service, plus the additional time provided for service by e-mail. (Code Civ. Proc. §§ 2030.260, 2031.260, 1005.) 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).) The court, on motion, may relieve that party from this waiver if the party has subsequently served a substantially compliant response and if the party's failure to respond timely was due to mistake, inadvertence, or excusable neglect. (*Ibid.*)

A motion to compel may be heard even if late responses are served after the motion is filed. Unless the propounding party takes the matter off calendar, the court may determine whether the responses are legally sufficient and award sanctions for the failure to respond on time. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants*, (2007) 148 Cal.App.4th 390, 410-411.)

Analysis

Here, it is not disputed that American Honda has subsequently served some type of responses to discovery on plaintiffs Elena Inez Arguello and Osmundo Arguello. The question then becomes whether the responses are legally sufficient.

While typically a party to whom interrogatories and requests have been propounded may respond with an answer or objection, the ability to object to the requests propounded is waived by the responding party's failure to timely respond. (Code Civ. Proc., §§ 2030.290, subd. (a), 2031.300, subd. (a).) The party may be relieved from this waiver, but only upon motion to the court for such relief. Here, discovery requests were served on May 1, 2024 (Production) and September 10, 2024 (Interrogatories). (Theophil Decl., ¶¶ 5-7, see Exhs. 5-6.) American Honda did not serve responses until December 18, 2024. (Foley Decl., ¶ 4.) These responses were untimely served, and subsequently American Honda waived objections to the discovery.

American Honda's responses to discovery are attached to plaintiffs' reply briefs. Some of the propounded discovery requests were only objected to and left unanswered by American Honda. The court intends to strike the objections that were served with the responses, as American Honda automatically waived the right to make objections when it failed to serve timely responses. American Honda has not moved for or received relief from its waiver of the objections. Consequently, the objections are improper and will be stricken. Inasmuch as American Honda has not provided initial responses to the requests, the court intends to grant the motions to compel initial responses and American Honda

must serve verified responses, without objections, to plaintiffs' interrogatories and request for production.

Motion to Deem Matters in Request for Admissions Admitted

Legal Standard

If a party fails to serve a timely response to requests for admission propounded upon that party, the requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction. (Code. Civ. Proc., § 2033.280, subd. (b).) Failing to respond within the 30-day time limit waives objections to the discovery, including claims of privilege and work product protection. (*Id.*, subd. (a).) The court, on motion, may relieve that party from this waiver if the party has subsequently served a substantially complaint response and if the party's failure to respond timely was due to mistake, inadvertence, or excusable neglect. (*Ibid.*) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. (*Id.*, subd. (c).)

Code of Civil Procedure section 2033.220 provides that for a response to be substantially compliant, it must either (1) admit, (2) deny, or (3) specify that the party lacks sufficient information or knowledge to answer.

Analysis

Here, it is not disputed that American Honda has subsequently served some type of responses to discovery on plaintiffs. The question then becomes whether the responses are in substantial compliance with Code of Civil Procedure section 2033.220.

Here, requests for admission were served on September 10, 2024. (Theophil Decl., ¶ 8, see Exhs. 4, 6.) American Honda did not serve responses until December 18, 2024. (Foley Decl., ¶ 4.) These responses were untimely served, and subsequently American Honda waived objections to the discovery.

American Honda's responses to the requests for admissions are attached to plaintiffs' reply brief. Some of the propounded discovery requests were only objected to and left unanswered by American Honda. The court intends to strike the objections that were served with the responses, as American Honda automatically waived the right to make objections when it failed to serve timely responses. American Honda has not moved for or received relief from its waiver of the objections. Consequently, the objections are improper and will be stricken.

"Unless the court determines that the responding party 'has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220,' it must order the RFAs deemed admitted... But a responding party's service, prior to the hearing on the 'deemed admitted' motion, of substantially compliant responses, will defeat a propounding party's

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Tentative Ruling

Re: ***In re: Yazleemar Leenor-Franco***
Superior Court Case No. 24CECG02197

Hearing Date: January 28, 2025 (Dept. 501)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To grant, with revisions to the Orders as explained below. No appearances necessary.

The court sets a status conference on Tuesday, April 29, 2025, at 3:30 p.m. in Department 501 for confirmation of deposit of the minor's funds into a blocked account. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

If oral argument is timely requested, such argument will be entertained on Thursday, January 30, 2025, at 3:30 p.m. in Department 501.

Explanation:

The court has reviewed the original and first amended petitions in addition to the second amended petition, since the first and second both amended petitions simply added additional materials to address the issues previously mentioned by the court rather than restating all the necessary information, as should have been done. An amended petition is intended to entirely *replace* an earlier pleading; it is not an *addition* to the pleading, as counsel has treated the first and second amended petitions. In the interest of moving this matter to completion, the court has reviewed all three petitions, but counsel is advised to adjust this practice in the future.

The two orders have been revised to include the hearing information, and also to remove the words "Second Amended" wherever it occurred, since these orders are not amended orders since no orders have been signed before now.

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 1/27/2025.
(Judge's initials) (Date)