

Tentative Rulings for January 30, 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.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

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(20)

Tentative Ruling

Re: **Fontes v. Guard Force Inc., et al.**
Superior Court Case No. 21CECG02857

Hearing Date: January 30, 2025 (Dept. 501)

Motion: by Plaintiff to Compel Response by Defendant Guard Force, Inc., to Special Interrogatories, Set One.

Tentative Ruling:

To deny.

Explanation:

On 1/4/2022, plaintiff served on defendants Special Interrogatories, Set One. ("SI"). Plaintiff moves to compel an initial response to the SI. The court intends to deny the motion for a number of procedural deficiencies.

The motion is styled as one to compel an initial response to the SI, brought pursuant to Code of Civil Procedure section 2030.290. (See MPA 6:19.) However, plaintiff's counsel makes clear that a response was in fact served on 3/31/2023. (Spivak Decl., ¶ 12.) The motion addresses "Defendant's inadequate responses" to the SI. (Spivak Decl., ¶ 16.) Accordingly, the motion should have been made pursuant to Code of Civil Procedure section 2030.300, which governs motions to compel *further* responses. Plaintiff was also required to submit to the court the responses at issue. Though plaintiff's counsel states that responses were served, the responses are not provided with the motion (see Spivak Decl., ¶ 12), making it impossible to evaluate the merits of the motion. Plaintiff also neglected to file the *required* separate statement of interrogatories in dispute. (See Cal. Rules of Court, rule 3.1345(c).)

It also appears that the motion is untimely. A motion to compel further responses must be filed within 45 days of service of the response, unless the parties agree in writing to extend the motion filing deadline to a specific date. (Code Civ. Proc., § 2030.300, subd. (c).) Though plaintiff contends that the parties agreed to an indefinite stay of discovery, there is no evidence of such an agreement. (See Spivak Decl., ¶ 13, Exh. 10.) Exhibit 10 is an email from plaintiff's counsel reciting what he believed the parties agreed to in a phone call (including a stay of discovery). Plaintiff's counsel closed the email stating, "Please let me know if you agree to these terms", but no response from defendant is provided. Accordingly, it is not clear that there was an agreement in writing. Moreover, the statute does not authorize an open-ended extension of time. The parties may extend the 45-day limit on making a motion to compel by written agreement specifying a later date. (Code Civ. Proc., § 2030.300, subd. (c).) Even if Exhibit 10 did evidence a written agreement, no specific date was set forth. Because the responses

were served on 3/31/2023, and a motion to compel was not filed until 6/3/2024, the motion is untimely.

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** 1/23/2025 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***In re: Naomi Grace Larrivee-Silva***
Superior Court Case No. 25CECG00047

Hearing Date: January 30, 2025 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant the Petition. The court intends to sign the proposed order. No appearances are 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: DTT **on** 1/27/2025.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: **Gloria Williams v. Brisa Martinez Venegas**
Superior Court Case No. 23CECG03817

Hearing Date: January 30, 2025 (Dept. 501)

Motion: for Terminating Sanctions

Tentative Ruling:

To grant terminating sanctions and order this action dismissed pursuant to Code of Civil Procedure Section 2023.030, subdivision (d)(3). The trial date set for October 20, 2025, is vacated, as are the dates for Mandatory Settlement Conference, Trial Readiness and Order to Show Cause. Plaintiff Gloria Williams is further ordered to pay additional monetary sanctions to defendant Brisa Nancy Martinez Venegas in the amount of \$260.00, payable within 20 calendar days of the date of this order, with the time to run from the service of this minute order. Defendant Brisa Nancy Martinez Venegas is directed to submit to this court, within 7 days of service of the minute order, a revised proposed judgment dismissing the action and specifying the sanctions amount.

Explanation:

Legal Standard

Code of Civil Procedure section 2023.010, subdivision (g), makes “[d]isobeying a court order to provide discovery” 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. (*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).)

The imposition of terminating sanctions is a drastic consequence, one that should not lightly be imposed, or requested. (*Ruvalcaba v. Government Employees Ins. Co.* (1990) 222 Cal.App.3d 1579, 1581.) However, where lesser sanctions have been ordered, such as an order compelling compliance with discovery requests, and the party persists in disobeying, the party does so “at his own risk, knowing that such a refusal provided the court with statutory authority to impose other sanctions” such as dismissing the action. (*Id.* at p. 1583; *Todd v. Thrifty Corp.* (1995) 34 Cal. App. 4th 986 [appropriate to dismiss action without resort to lesser sanctions where plaintiff had failed to respond to discovery and further failed to comply with the court's order compelling the requested discovery.])

(37)

Tentative Ruling

Re: ***Maria Cancino v. Costco Wholesale Corporation***
Superior Court Case No. 24CECG02417

Hearing Date: January 30, 2025 (Dept. 501)

Motion: by Defendants to Compel Responses to Form Interrogatories, Set One, and for an Order Deeming Admissions Admitted

Tentative Ruling:

To find the motion to compel responses to Form Interrogatories, Set One, moot.

The request for an order deeming admissions admitted was untimely filed on January 13, 2025. (Code Civ. Proc., § 1005, subd. (b).) The court will not consider the untimely motion. (Cal. Rules of Court, rule 3.1300(d).)

The court notes that defendants withdrew the motions to compel responses to Special Interrogatories, Set One, and Requests for Production, Set One, on January 23, 2025.

Explanation:

In the case at bench, defendants served plaintiff with Form Interrogatories, Set One, on July 11, 2024. (Jaime Decl., ¶ 3.) As of the filing of the motion to compel on December 19, 2024, no responses had been received. (Id. at ¶ 6.) On January 16, 2025, plaintiff served defendants with the responses. (See Defendants' Non-Opposition, p. 1.) Accordingly, the motion is moot. To the extent that defendants argue that the responses received were insufficient, defendants' remedy is to follow the procedures as outlined in The Superior Court of Fresno County, Local Rules, rule 2.1.17.

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 1/28/2025.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: **Robin Benites v. FCA US, LLC**
Superior Court Case No. 24CECG03858

Hearing Date: January 30, 2025 (Dept. 501)

Motion: by Defendant Demurring to Complaint

Tentative Ruling:

To sustain defendant's demurrer to the third and fifth causes of action, with leave to amend. Plaintiff is granted 20 days' leave to file the First Amended Complaint, which shall run from service by the clerk of the minute order. New language must be set in **boldface** type.

Explanation:

In July 2024, plaintiff purchased a 2022 Chrysler Pacifica, which "was manufactured and/or distributed" by defendant FCA US, LLC. Problems with the vehicle ensued, specifically stalling defects and engine defects, which plaintiff alleges may result in stalling, shutting off, and/or loss of power. Plaintiff alleges these safety defects have been known to defendant and concealed to consumers like plaintiff. Defendant demurs to plaintiff's third and fifth causes of action.

Meet and Confer

Counsel for defendant filed and served a declaration stating counsel met and conferred with plaintiff's counsel by telephone, and followed up with a confirming email, but the parties were unable to resolve their differences. This satisfies the requirements of Code of Civil Procedure section 430.41 to meet and confer before filing a demurrer.

Third Cause of Action – Violation of Civil Code Section 1793.2, Subdivision (a)(3)

Defendant demurs to the third cause of action for violation of Civil Code section 1793.2, subdivision (a)(3), on the ground that the Complaint fails to state facts sufficient to state a claim.

The relevant provisions of Civil Code section 1793.2, subdivision (a)(3), provide:

- (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall: ...
- (3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.

(Civ. Code, § 1793.2, subd. (a)(3).)

Here, plaintiff alleges “Defendant FCA failed to make available to its authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.” (Compl., ¶ 73, p. 11:18-20.) However, plaintiff does not plead any facts to support this conclusory allegation. Where statutory remedies are invoked, the cause of action “must be pleaded with particularity.” (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 410, internal quotation marks and citation omitted.)

In opposition, plaintiff argues that further particularity cannot be pled, as the information is known only to defendant. However, plaintiff fails to allege what parts or literature defendant failed to provide or when the alleged violation occurred. Accordingly, the court sustains the demurrer to the third cause of action, with leave to amend.

Fifth Cause of Action – Fraudulent Concealment

Next, defendant demurs to the fifth cause of action, for fraudulent concealment. Plaintiff opposes the demurrer by contending the specificity requirement is unnecessary to state a cause of action for fraudulent concealment where there exists a duty to disclose, and relies primarily on *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828. The necessary elements of a fraud claim based on concealment or suppression consist of: (1) a misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity; (3) intent to defraud; (4) justifiable reliance; and (5) resulting damage. (*Id.*, at p. 843.)

“Fraud, including concealment, must be pleaded with specificity. [Citation.]” (*Dhital v. Nissan North America, Inc.*, *supra*, 84 Cal.App.5th at pp. 843-844.) “Suppression of a material fact is actionable when there is a duty of disclosure, which may arise from a relationship between the parties, such as a buyer-seller relationship. [Citation.]” (*Id.*, at p. 843.) The First District Court of Appeal in *Dhital* determined a cause of action for fraudulent concealment was sufficiently pled, based on the plaintiffs’ allegations that:

[T]he CVT transmissions installed in numerous Nissan vehicles (including the one plaintiffs purchased) were defective; Nissan knew of the defects and the hazards they posed; Nissan had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; Nissan intended to deceive plaintiffs by concealing known transmission problems; plaintiffs would not have purchased the car if they had known of the defects; and plaintiffs suffered damages in the form of money paid to purchase the car.

(*Id.*, at p. 844.) It was held that the plaintiffs sufficiently alleged the existence of a buyer-seller relationship between the parties by alleging that “they bought the car from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan’s authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers.” (*Ibid.*)

Here, as in *Dhital*, plaintiff alleges the stalling defects exist in numerous vehicles, including the one plaintiff purchased; defendant knew of the defects and the hazards

they posed; defendant had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; plaintiff would not have purchased the vehicle if she had known of the defects; and plaintiff suffered damages in the form of money paid to purchase the vehicle. (E.g., Compl. ¶¶ 81-87.) Notably, however, plaintiff fails to allege from whom she purchased the car and whether the seller was defendant's agent. Accordingly, the court sustains the demurrer to the fifth cause of action with leave to amend.

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** 1/28/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Seeboth v. California Department of State Hospitals Coalinga, et al.***
Superior Court Case No. 24CECG02968

Hearing Date: January 30, 2025 (Dept. 501)

Motion: by Respondents Demurring to the Petition

Tentative Ruling:

To sustain the demurrer to the Petition, with leave to amend. (Code Civ. Proc., § 430.10, subds. (e), (f).)

Petitioner is granted 20 days' leave to file an amended petition. The time in which the amended petition can be amended will run from service by the clerk of the minute order. All new allegations in the amended petition are to be set in **boldface** type.

Explanation:

On July 12, 2024, petitioner Timothy J. Seeboth filed a Petition for declaratory relief and writ of mandate regarding the validity of: (1) Respondent California Department of State Hospitals Coalinga's ("CSH") policy in pre-screening by x-ray of all incoming mail and opening patient mail outside of the patient's presence; and (2) California Code of Regulations, title 9, section 884. Petitioner seeks a declaration that CSH's policy regarding the incoming mail is unenforceable and that California Code of Regulations, title 9, section 884, subdivision (b)(6) – (b)(7) is unconstitutionally vague as it conflicts with California Welfare and Institutions Code section 5325. Petitioner also seeks the issuance of a peremptory writ of mandate commanding that, the respondents must obtain a waiver in order to open mail outside of the patient's presence.

Respondents CSH and Howard Rake demur to the Petition on the grounds that the Petition fails to state facts sufficient to constitute a cause of action and for uncertainty. (Code Civ. Proc., § 430.10, subds. (e), (f).)

On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114.) It is error to sustain a demurrer where plaintiff "has stated a cause of action under any possible legal theory. In assessing the sufficiency of a demurrer, all material facts pleaded in the complaint and those which arise by reasonable implication are deemed true." (*Bush v. Cal. Conservation Corps* (1982) 136 Cal.App.3d 194, 200.) Additionally, the court may consider, as ground for demurrer, any matter which the court must or may judicially notice under Evidence Code sections 451, 452. (Code Civ. Proc., § 430.30, subd. (a).)

Judicial Notice

Respondents request the court to take judicial notice of the Department of State Hospital Statewide Property Contraband List (Exhibit A), Department of State Hospital—Coalinga's Administrative Directive 624 – Patient Mail and Packages (Exhibit B), and Department of State Hospital—Coalinga's Administrative Directive 820—Search Policy and Procedures (Exhibit C). The requests are granted. (Evid. Code, § 452, subd. (c).)

Declaratory Relief

“Section 1060 of the Code of Civil Procedure provides: ‘Any person interested under a written instrument ... or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property ... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action ... for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument’ To allege facts sufficient to state a cause of action for declaratory relief, the plaintiff must allege ‘two essential elements: “(1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party.” ’ [Citation.] ” (*Childhelp, Inc. v. City of Los Angeles*) (2023) 91 Cal.App.5th 224, 235.)

California Welfare and Institutions Code section 5325 affords involuntarily detained and voluntary patients the right “to mail and receive unopened correspondence.” (*Id.*, at subd. (e).) However, California Code of Regulations, title 9, section 884, subdivisions (b)(6) – (b)(7) provides that “[d]esignated facility employees shall open and inspect all incoming and outgoing mail [and packages] addressed to and from patients for contraband.”

California Code of Regulations, title 9, sections 880-884 describe the rights of non-LPS patients. “ ‘Non-LPS’ means that the placement in or commitment to the facility is pursuant to legal authority other than the Lanterman-Petris-Short (LPS) Act, commencing with Section 5000, of Part 1, Division 5 of the Welfare and Institutions Code).” (Cal. Code Regs., tit. 9, § 881, subd. (o).) Accordingly, the statute and regulation do not appear to be in conflict, as the regulation governs the rights of Non-LPS patients and the statute governs patients who are committed under the LPS Act.

While the Petition does not identify whether petitioner is a LPS or Non-LPS patient, respondents draw the court's attention to the fact that, generally, sexually violent predators (whose placement in or commitment to the facility is pursuant to legal authority commencing with Welfare and Institutions Code section 6300), must be housed at CSH. (Welf. & Inst. Code, § 6600.05, subd. (a).) Since there are sufficient allegations implying petitioner's status as a patient at CSH, the court may reasonably conclude that petitioner's placement at CSH is pursuant to legal authority commencing with Welfare and Institutions Code section 6300, i.e., that petitioner is a Non-LPS patient.

Here, petitioner alleges that respondents enacting a policy requiring pre-screening x-ray of all incoming mail. (Petn., ¶ 6.) The x-ray process is capable of determining whether the mail contains a check, money order, bank card, or some other

form of identification. Mail that contains any item other than written correspondence is separated and opened. (Petn., ¶ 7.) On May 8, 2024, respondents, or respondents' agents opened his mail outside of his presence and without his permission. Respondents confiscated an item described as a "Paladin Fiduciary Service [V]isa Card." (Petn., ¶ 8.) Such a card appears to fall within the enumerated list of contraband provided by Department of State Hospital Statewide Property Contraband List.

Since the Petition does not otherwise allege a controversy between Welfare and Institutions Code section 5325 and California Code of Regulations, title 9, section 884, or that he is in fact, a LPS patient, the demurrer is sustained as to petitioner's request for declaratory relief.

Traditional Mandamus

"To obtain a traditional writ of mandate ... plaintiffs must plead sufficient ultimate facts establishing three elements. First, they must demonstrate they seek to compel the Department to perform "an act which the law specially enjoins, as a duty resulting from an office, trust, or station," and which the Department refuses to perform. (Code Civ. Proc., § 1085, subd. (a).) Such acts consist of ministerial actions or mandatory duties to exercise discretion. [Citations.]" (*Pich v. Lightbourne* (2013) 221 Cal.App.4th 480, 490, citations omitted.) "Second, plaintiffs must plead they have a beneficial interest in the outcome of the proceedings. (Code Civ. Proc., § 1086.)" (*Ibid.*) "Third, plaintiffs must plead facts showing they have no other plain, speedy, or adequate remedy at law. (Code Civ. Proc., § 1086.)" (*Ibid.*)

The Petition fails to allege that respondents have performed any act which the law specifically enjoins for the reasons previously explained above. Accordingly, the demurrer is sustained as to petitioner's request for writ of mandate.

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 1/28/2025.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Vernick v. Costco Wholesale Corporation***
Superior Court Case No. 22CECG01113

Hearing Date: January 30, 2025 (Dept. 501)

Motion: by Defendant Costco Wholesale Corporation to Disqualify
Downtown L.A. Law Group

Tentative Ruling:

To continue to Thursday, February 27, 2025, at 3:30 p.m., in Department 501. On or before February 18, 2025, plaintiff shall file a supplemental declaration of Amira Rezkallah which attaches clear and legible copies of Exhibits 1 and 2.

Explanation:

The court agrees with defendant's observation that the critical exhibits attached to the Declaration of Amira Rezkallah are illegible, so plaintiff is given an opportunity to correct this issue before the court rules on 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: DTT on 1/28/2025.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: **Lovette v. Bezwada, M.D. et al.**
Superior Court Case No. 23CECG04477

Hearing Date: January 30, 2025 (Dept. 501)

Motion: by Defendants Hanford Community Hospital, Adventist Health System/West and Vishnu V. Bezwada, M.D., to Bifurcate

Tentative Ruling:

To deny, without prejudice.

Explanation:

Defendants Hanford Community Hospital, Adventist Health System/West and Vishnu V. Bezwada, M.D. (collectively "defendants") move to bifurcate trial into a liability phase and a damages phase. The decision to grant or deny a motion to bifurcate issues and to have separate trials, lies within the court's sound discretion. (Code Civ. Proc. §§ 598, 1048, subd. (b); *Grappo v. Coventry Financial Corp.* (1991) 235 Cal.App.3d 496, 503-504; see also *Cook v. Superior Court* (1971) 19 Cal.App.3d 832, 834.) The court also has the power to "provide for the orderly conduct of proceedings before it," and to "amend and control its process and orders so as to make them conform to law and justice." (Code Civ. Proc. § 128, subd. (a)(3),(8).)

Defendants initially speculate that the witnesses to a proposed liability phase and damages phase will have minimal overlap. Defendants further speculate that if evidence of liability and damages are separated and they prevail as to liability, trial time will be cut in half. Finally, defendants submit that prejudice will occur if evidence of liability and damages were presented together due to the possibility of emotional testimony elicited from plaintiffs Kenneth Lovette and Cecelia Lovette (together "plaintiffs") due to the significant, permanent injuries of Kenneth¹.

Defendants Hanford Community Hospital and Adventist Health System/West are the original moving parties. Defendant Vishnu V. Bezwada, M.D., filed a joinder to the motion. Each submits that an expectation of 9 retained experts and 10 to 15 percipient witnesses as to liability; and 10 to 11 retained experts, 10 to 20 non-retained medical experts, and 4 percipient witnesses as to damages. Defendants estimate a 5-week trial for the presentation of the above sets of evidence.

Plaintiffs oppose. Plaintiffs argue as a threshold matter that the court is without jurisdiction to bifurcate trial due to this matter being granted trial preference. Plaintiffs cite to no direct authority that divests the court of the ability to bifurcate a trial that has been given preference, nor is such a restriction plain on the face of the preference

¹ With respect, first names are used for clarity.

