

**Tentative Rulings for April 17, 2025**  
**Department 403**

**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)**

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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.*

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

<b>24CECG04090</b>	<b><i>P.C. v. Fresno Unified School District</i></b> is continued to Thursday, May 15, 2025, at 3:30 p.m. in Department 403
<b>24CECG04442</b>	<b><i>Susan Biechler v. FCA US, LLC.</i></b> is continued to Thursday, May 15, 2025, at 3:30 p.m. in Department 403

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# **Tentative Rulings for Department 403**

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**Tentative Ruling**

Re: ***Denham v. Powell et al.***  
Superior Court Case No. 21CECG00731

Hearing Date: April 17, 2025 (Dept. 403)

Motion: by Plaintiff for Order (1) Appointing Medical Expert Pursuant to Evidence Code § 730, and (2) Allowing Written Discovery Requests Served Upon Officer Hendrix

**Tentative Ruling:**

To deny.

**Explanation:**

*Motion to Appoint Medical Expert*

Plaintiff Paul Denham, who is incarcerated at Corcoran Prison, alleges that he suffered damages when a nurse, defendant Kayleen Powell, delayed treating him for chest pains while she slept, and also fell asleep three times during the examination. Plaintiff asserts five causes of action, which essentially claim that Nurse Powell, and several other defendants, violated his Eighth and Fourteenth Amendment protections, as well as 42 U.S.C. sections 1983 and 1985 and that Nurse Powell and her supervisors were negligent.

Plaintiff requests that the court appoint a medical expert to present evidence on whether defendants breached the standard of care in providing him medical care. He explains that Nurse Powell told plaintiff he did not need to see a cardiologist because his EKG was normal, despite plaintiff's physician advising the contrary. The motion is brought pursuant to Evidence Code § 730, which provides,

When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required. The court may fix the compensation for these services, if any, rendered by any person appointed under this section, in addition to any service as a witness, at the amount as seems reasonable to the court.

Nothing in this section shall be construed to permit a person to perform any act for which a license is required unless the person holds the appropriate license to lawfully perform that act.

Analyzing a predecessor statute, Code of Civil Procedure section 1871, the Court of Appeal in *Pink v. Slater* (1955) 131 Cal.App.2d 816 held in a medical malpractice case: "There is nothing in our law which makes it mandatory for a trial court to appoint a



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**Tentative Ruling**

Re: ***Kaur v. Rai, et al.***  
Superior Court Case No. 22CECG00332

Hearing Date: April 17, 2025 (Dept. 403)

Motion: by Plaintiff for an Order to Deem Requests for Admissions  
Admitted by Defendant Resham Singh

**Tentative Ruling:**

To grant Plaintiff's Requests for Judicial Notice Nos. 1-3.

To deny Plaintiff Nivninder Kaur's motion to deem Requests for Admissions, Set One, admitted by Defendant Resham Singh.

Defendant Resham Singh is ordered to serve the responses to requests for admissions filed on June 23, 2022 within 15 days of the clerk's service of the minute order.

**Explanation:**

Under Code of Civil Procedure section 2033.280,

If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:

(a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

(b) 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 under Chapter 7 (commencing with Section 2023.010).

(c) 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. It is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.

Thus, “In the event responses to RFAs are not timely served, the responding party waives any objections thereto (§ 2033.280, subd. (a)), and ‘[t]he 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.’ 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 attempt under section 2033.280 to have the RFAs deemed admitted.” (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 775–776, citations and footnote omitted.)

““Substantial compliance, as the phrase is used in the decisions, means actual compliance in respect to the substance essential to every reasonable objective of the statute.’ Where there is compliance as to all matters of substance technical deviations are not to be given the stature of noncompliance. Substance prevails over form.’ Our high court has more recently explained with respect to the above-quoted passage from *Stasher*: ‘This formulation is unobjectionable so long as it is understood to mean that each objective or purpose of a statute must be achieved in order to satisfy the substantial compliance standard, but this language cannot properly be understood to require “actual compliance” with every specific statutory requirement.’ An appellate court in a more recent case succinctly observed: ‘Substantial compliance with a statute is dependent on the meaning and purpose of the statute.’” (*Id.* at p. 779, citations omitted.)

Here, plaintiff has requested the court take judicial notice of defendant Resham Singh’s responses to requests for admission filed with the court on June 23, 2022 while also requesting the court deem the admissions admitted as though the filed responses did not exist. Although the responses have not been formally served, they are free from objections and substantially comply with the requirements of Code of Civil Procedure section 2033.220. The verification also appears to substantially comply with the requirements of Code of Civil Procedure section 2015.5, subdivision (b).

[W]e cannot ignore the potentially drastic consequences to a civil litigant of having RFAs deemed admitted, given the fact that an RFA that is admitted is “conclusive in the action as to the party making it.” (*Murillo, supra*, 143 Cal.App.4th at p. 736, 49 Cal.Rptr.3d 511.) We do not read the statutes governing RFAs in a vacuum. The purpose of the RFA procedure is to expedite trials and to eliminate the need for proof when matters are not legitimately contested. (*Cembrook, supra*, 56 Cal.2d at p. 429, 15 Cal.Rptr. 127, 364 P.2d 303; *Stull, supra*, 92 Cal.App.4th at p. 864, 112 Cal.Rptr.2d 239.) The RFA device is not intended to provide a windfall to litigants. Nor is the RFA procedure a “gotcha” device in which an overly aggressive





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**Tentative Ruling**

Re: ***In Re: WePay More Funding, LLC***  
Superior Court Case No. 25CECG00200

Hearing Date: April 17, 2025 (Dept. 403)

Motion: by Petitioner WePay More Funding, LLC for Approval for  
Transfer of Payment Rights

**Tentative Ruling:**

To deny without prejudice. (Ins. Code, § 10139.5.)

**Explanation:**

The Structured Settlement Protection Act governs transfers of structured settlement payments to factoring companies for immediate cash payments. (See Ins. Code, §§ 10134 et seq.) The Act's purpose is to "protect structured settlement payees from exploitation by factoring companies." (*RSL Funding, LLC v. Alford* (2015) 239 Cal.App.4th 741, 745.) The Act provides that a transfer of structured settlement payment rights is void unless the following conditions are met:

- 1) The transfer is fair and reasonable, and in the payee's best interest, taking into account the welfare and support of the payee's dependents (Ins. Code, § 10137, subd. (a)); and
- 2) The transfer complies with the requirements of the Act, will not contravene other applicable law, and the judge has reviewed and approved the transfer (Ins. Code, § 10137, subd. (b); Ins. Code, § 10139.5.).

To determine what is fair and reasonable, and in the payee's best interest, the court is to consider the totality of the circumstances and the factors listed in Insurance Code section 10139.5, subdivision (b), including the purpose of the transfer and the payee's financial and economic situation. (Ins. Code, § 10139.5.)

**Procedural Defects**

A copy of the annuity contract, qualified assignment agreement or the underlying structured settlement agreement are not attached. Instead, the petition attaches a letter from the annuity issuer verifying Ms. Juarez's benefits. (Amended Petn., Ex. G.) These documents are ordinarily required under Insurance Code section 10139.5, subdivision (f)(2); however, if the petitioner "satisfies the court that reasonable efforts to locate and secure a copy of the[se] document[s] have been made, . . ." then these documents do not need to be attached to the petition. (*Id.*, at subd. (f)(2)(H).) There is no showing that such reasonable efforts have been made. In any future application, petitioner must either attach a copy of the annuity contract, qualified assignment agreement or the underlying structured settlement agreement, or provide a declaration establishing that these

documents could be located despite reasonable efforts to do so, and explaining the efforts made.

### Best Interest


There is an insufficient showing that the proposed transfer is in the payee's best interest. First, while the court has received Ms. Juarez's declaration and her signed waiver of independent legal or financial counsel, the court remains concerned as to why Ms. Juarez is waiving such counsel especially given her age and receipt of a lump payment of \$50,000 on September 11, 2024. According to the disclosure statement, petitioner agrees to pay the fees of Ms. Juarez's independent counsel, of up to \$1,500 should she exercise her right to seek such counsel.

Second, there is no indication that Ms. Juarez is currently experiencing a financial hardship, and her declaration indicates that if approved, she will use the funds towards purchasing reliable transportation, expanding her Lash Technician business by renting a booth, and tuition to obtain her Masters of Science in Nursing ("MSN") degree at Fresno Pacific University. However, the amounts of these proposed expenditures are not described. Nor is there any explanation for why Ms. Juarez could not use the \$50,000 lump payment she should have received seven months ago on September 11, 2024 towards her expressed goals. Further, Ms. Juarez does not indicate why transportation is currently a necessity, and how she is currently getting to and from school. Nor does she provide the prerequisites for application for the MSN program, whether she meets those prerequisites and has or has not yet applied, and if not, when she will meet the prerequisites. This is especially pertinent, since absent this transfer, Ms. Juarez is entitled to receive \$60,000 in 2027.

Accordingly, the petition 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:**          **on**     4-15-25    .

(Judge's initials) (Date)