## <u>Tentative Rulings for June 18, 2024</u> <u>Department 502</u>

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)

# <u>Tentative Rulings for Department 502</u>

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## **Tentative Ruling**

Re: Norma Sarmiento Aguilar v. Filberto Perez

Superior Court Case No. 23CECG01805

Hearing Date: June 18, 2024 (Dept. 502)

Motion: by Plaintiff Norma Angelica Sarmiento Aguilar for Orders Compelling

Defendant Filberto Agavo Perez to Provide Initial Responses to Form Interrogatories, Set One; Special Interrogatories, Set One; Demand for Production of Documents, Set One; Deeming Matters in Requests for Admissions Admitted, Set One; and Imposing Monetary

Sanctions.

## **Tentative Ruling:**

To grant plaintiff Norma Angelica Sarmiento Aguilar's motions 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 Filberto Agavo Perez shall serve objection-free responses to Form Interrogatories, Set One; Special Interrogatories, Set One; and Demand for Production, Set One.

To grant plaintiff Norma Angelica Sarmiento Aguilar's motion to deem matters admitted unless defendant serves, before the hearing, proposed responses to the requests for admissions that is in substantial compliance with Code of Civil Procedure section 2033,220. (Code Civ. Proc., § 2033,280, subd. (c).)

To grant sanctions against defendant Filberto Agavo Perez and his counsel, Martinez, Dieterich & Zarcone Legal Group, jointly and severally, in the amount of \$1,140.00, to be paid within 20 calendar days from the date of service of the minute order by the clerk.

#### **Explanation:**

Plaintiff served discovery requests on defendant via electronic mail on October 26, 2023, consisting of (1) Form Interrogatories, Set One; (2) Special Interrogatories, Set One; (3) Demand for Production, Set One, and (4) Request for Admissions. Responses were due within 32 days after service, and should have been received by November 29, 2023. (Code Civ. Proc. §§ 2030.260, 2031.260, 2033.280, 1010.6(a)(3)(B).) Defendant did not provide responses to plaintiff and did not file opposition to these motions. Therefore, the motions are granted.

Defendant's failure to provide responses to plaintiff's propounded discovery subjects him to sanctions. (Code Civ. Proc. § 2023.010, subd. (d).) The court may award sanctions in favor of a party who files a motion to compel discovery, even if no opposition to the motion was filed. (Cal. Rules of Court, rule 3.1348(a).) Thus, defendant is entitled to monetary sanctions.

However, the amount of sanctions sought by plaintiff's counsel is excessive, as he seeks \$2,185.00 for each of the four motions filed, even though the motions are fairly straightforward and virtually identical. Further, he includes time for reading, reviewing, and replying to opposition, and none was filed. He also includes time for attending the hearing, which will be unnecessary. Awarding \$8,740.00 in sanctions for bringing four nearly identical motions would be excessive and unduly punitive. The court is inclined to impose sanctions in the amount of \$1,140.00, comprised of two hours of preparation on all four motions billed at a reduced hourly rate of \$450.00 (since an hourly rate of \$850.00 is not reasonable for this community), also to include the \$60.00 filing fees for each 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.

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Issued By:	KCK	on	06/14/24	
	(Judge's initials)	(Date)		

(24)

## **Tentative Ruling**

Re: Hailey Ellis v. Wallowa Bates

Superior Court Case No. 23CECG02526

Hearing Date: June 18, 2024 (Dept. 502)

Motion: Two Petitions to Approve Compromise of Disputed Claim of

Minors

#### **Tentative Ruling:**

To deny without prejudice. In the event that oral argument is requested the minor is excused from appearing.

### **Explanation:**

Under California law, in addition to ensuring that a minor's settlement is reasonable and in the best interest of the minor, the court "shall make a further order authorizing and directing that reasonable expenses, medical or otherwise . . . as the court shall approve and allow therein, shall be paid from the money . . . to be paid or delivered" to the minor. (Prob. Code § 3601, emphasis added.) In short, the court's power to authorize and direct these payments necessarily creates a concomitant duty for the court to ensure that these costs are satisfied. But if the court simply approves both petitions as currently set forth, it cannot perform this duty; it has no power to order petitioner to pay these costs from his own settlement, and there is no way of assuring that the medical bills will either be paid in full, or will be paid in some lower amount the medical provider agrees to.

The court at least needs to see the medical and legal expenses set out in the petition, and a declaration from petitioner which indicates his willing assumption of the duty to pay these costs, and his willingness to report back to the court once they are paid. That way the court could set a status hearing to determine that this has been done to the satisfaction of the medical providers and the attorney.

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.

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Issued By: _	KCK	on 06/17/24	
, –	(Judge's initials)	(Date)	