

**Judge Benson – Law & Motion – Wednesday, December 10, 2025 @ 9:00 AM**  
**TENTATIVE RULINGS**

**1. 20CV01781 Leland, Morrissey & Knowles, LLP v. Bailey, Catherine et al**

*EVENT: Cross-Complainant's Motion to Compel Responses to Request for Production of Documents, Set One, Form Interrogatories, Requests for Admissions, and for Sanctions*

Cross-Complainant's Motion to Compel Responses to Request for Production of Documents, Set One, Form Interrogatories, Requests for Admissions, and for Sanctions is denied.

Preliminarily, there appears to be no proof of service demonstrating when and how the discovery requests were served. As a result, with respect to the requests for admissions and form interrogatories which Ms. Knowles acknowledged receipt on August 25, the Court finds her responses were timely.

Regarding the production of document requests, because there is no proof of service, the Court accepts Ms. Knowles' representations that she did not receive the production of document requests until she was served with the instant motion. Thus, the Court finds the subsequent responses were timely.

With respect to the adequacy of the responses to form interrogatories and requests for admissions, the motion fails to comply with CRC 3.1345.

CRC 3.1345

(a) Separate statement required Any motion involving the content of a discovery request or the responses to such a request must be accompanied by a separate statement.

....

(b) Separate statement not required A separate statement is not required under the following circumstances:

(1) When no response has been provided to the request for discovery; or

(2) When a court has allowed the moving party to submit--in place of a separate statement--a concise outline of the discovery request and each response in dispute.

[Emphasis Added]

Here, the Court did not authorize a “concise outline” in lieu of a separate statement. Further, the motion does not amount to a concise outline because it does not address each response, rather the motion makes a generalized argument as to why all responses are defective.

All requests for sanctions are denied,

Defendant shall prepare and submit a form of order consistent with this ruling within two weeks.

**2. 22CV00273 Edwards, Marsha J v. Daugherty, Ira**

*EVENT: OEX (Ira Daugherty)*

The Court will swear in the witness.

**3. 23CV00528 Rosinski, Melinda, et al. v. Piercey, Matthew et al.**

*EVENT: Defendants’ Motion to Compel Further Responses to Special Interrogatories and for Sanctions*

*Defendants Substantially Complied with CCP § 2030.040*

Defendants substantially complied with the declaration requirements for interrogatories exceeding 35. Defendants filed declarations pursuant to section 2030.040 captioned as a declarations regarding special interrogatories. It is readily apparent that the reference to admissions in the body of the declarations was a typo. The Court finds defense counsel substantially complied with the code requirements. The motion will not be denied on this technicality.

*Defense Counsel Met Their Meet and Confer Obligations*

Defense counsel sent two meet and confer communications, one on 7/18 and one on 9/18. The 7/18 meet and confer explained many responses were devoid of facts and improperly referenced the entire compendium of evidence. After the supplemental responses were served, the 9/18 meet and confer letter restated those concerns. Because these defects were previously addressed in the 7/18 letter, defense counsel was justified in providing a short

period of time (24 hours) to permit a further response. The circumstances indicate the parties were at an impasse, see *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1293-1294.

*In Light of the “Second Supplemental Responses” the Motion is Moot*

Although the Court has discretion to consider the adequacy of the supplemental or amended responses served after the motion was filed (see *County of San Benito v. Superior Court* (2023) 96 Cal.App.5th 243, 256) the Court declines exercising its discretion to evaluate the “Second Supplemental Responses”. Thus, service of the “Second Supplemental Responses” moots this motion.

However, the fact that the “Second Supplemental Responses” were served while this motion was pending is a tacit admission by Plaintiffs that prior responses, or at least some of them, were not code compliant. As a corollary, the “Second Supplemental Responses” should have been served prior to the filing of this motion, and this motion should not have been necessary. As a result, sanctions are imposed on Plaintiffs and Plaintiffs’ counsel (jointly and severally), in the amount of \$1,000.00.

As an aside, it is unclear to the Court whether the verifications were or were not provided prior to the filing of the motion. Defense counsel seems to suggest that they were not, but the email dated 9/18 suggests the verifications were provided several weeks before this motion was filed.

Defendants shall prepare and submit a form of order consistent with this ruling within 2 weeks.

**4. 23CV01507 Sampley, Walter K, Jr. v. Upton, Robert**

*EVENT: Motion for Judgment on the Pleadings, Appointment of a Partition Referee; and Appointment of an Elisor*

Plaintiff’s Motion for Judgment on the Pleadings is GRANTED in PART. The Court takes judicial notice of the Court Order in Butte County Superior Court case # 24PR00370 which determined Defendant is a 50% owner of the property. Thus, it is undisputed Plaintiff and Defendant are both 50% owners of the subject property. As a result, the Court will sign an interlocutory judgment ordering the partition of the property.

Paragraph 11 of the Complaint alleges the property cannot be equitably divided and therefore division by sale is necessary. The Answer denies paragraph 11. Plaintiff is mistaken when he argues the denial fails to allege sufficient facts. Affirmative defenses must plead facts, but denials are not required to plead facts. The specific denial of paragraph 11 places the manner

of division at issue, see *People ex rel. Becerra v. Superior Court* (2018) 29 Cal.App.5th 486, 499.

Plaintiff asks us to take judicial notice that the property is zoned multiple family residential stating “It is common knowledge that properties of this nature are not able to be divided in kind due to zoning regulations and the relatively small size of the property.” The Court declines the invitation to transform this motion into an evidentiary hearing.

A plaintiff's motion for judgment on the pleadings is analogous to a plaintiff's demurrer to an answer. (*Beccera, supra*, at p. 499) The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. (*Fremont Indemnity Co. v. Fremont General Corp.*, (2007) 148 Cal. App. 4th 97, 113) “Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning.” (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375)

Partition in kind is favored and a forced sale is disfavored, see *Butte Creek Island Ranch v. Crim* (1982) 136 Cal.App.3d 360, 365. This policy underscores the necessity for an evidentiary hearing considering the parcel is 20 acres and apparently has two separate residences.

An evidentiary hearing on the issue of the manner of partition will be set at the hearing. Plaintiff shall give notice. In the event the Court orders partition by sale, Plaintiff may resubmit his requests for a referee and elisor at that time. Plaintiff shall prepare an interlocutory judgment consistent with this ruling.

## **5. 23CV01681 Horn, Scott et al v. Pioneer Nut Co et al.**

*EVENT: Cross Defendant Katherine Horn's Demurrer to Cross-Complaint*

Cross Defendant Katherine Horn's Demurrer to Cross-Complaint is SUSTAINED WITHOUT LEAVE TO AMEND. The demurrer is unopposed. Plaintiff has the burden to show a reasonable possibility the complaint can be amended to state a cause of action. (*Morales v. 22nd Dist. Agricultural Assn.* (2018) 25 Cal.App.5th 85, 92) CRC 8.54(c) – “A failure to oppose a motion may be deemed a consent to the granting of the motion.”

Cross Defendant Katherine Horn shall prepare a form of order within 2 weeks.

**6-7. 24CV01499 Pete, David v. Tink, Inc.**

*EVENT: (1) Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement  
(2) Case Management Conference*

Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement is GRANTED. The final approval hearing will be scheduled for April 15, 2026 at 9:00am. The Court will sign the proposed order with this modification. The Case Management Conference is continued to April 15, 2026 at 9:00am to trail the final approval hearing.

**8. 24CV03585 Fair Political Practices Commission v. Fennell, David et al.**

*EVENT: Plaintiff Fair Political Practices Commission's Motion for Order that Matters in Requests for Admission Be Deemed Admitted*

Plaintiff Fair Political Practices Commission's Motion for Order that Matters in Requests for Admission Be Deemed Admitted is DENIED for failure to comply with the notice requirements of CCP § 1005 et seq. CCP § 1005 requires a minimum of 16 court days' notice. An additional 5 days' notice is required when serving by mail as occurred here. The proof of service states the moving papers were served on November 18, 2025. Taking into account the Thanksgiving holidays, November 18 is only 14 court days before the hearing.

The Court will prepare the order.

**9-10. 25CV01855 Jose Diaz Manzo as the Administrator and Personal Representative of the Estate of Alejandro Diaz v. Gonzalez, Graciela Banuelos**

*EVENT: (1) Defendant's Motion to Set Aside Default and Default Judgment  
(2) Defendant's Motion to Quash Service*

In light of the notice of settlement filed by Plaintiff, Defendant's Motion to Set Aside Default and Default Judgment and Motion to Quash are moot.

**11. 25CV04592 Butte County Animal Control v. Garcia, Lisa**

*EVENT: Petition to Determine if Dog is Vicious*

The Court will conduct a hearing.