

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

Civil Law and Motion Tentative Rulings
Hon. Brian L. McCabe
Courtroom 8

627 W. 21st Street, Merced

November 13, 2018
8:15 a.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4240 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying Court Call of your intent to appear does not satisfy the requirement of notifying the court.

Case No. Title / Description

17CV-02083 Ruben Chavez, et al. vs. Wells Fargo Home Mortgage

Motion for Order Deeming Admitted Requests for Admission

Defendant Wells Fargo Home Mortgage's unopposed motion for an order that any matters specified in defendant's Request for Admissions, Set One, served on plaintiffs Ruben Chavez and Michelle Chavez be deemed admitted is GRANTED. (Code Civ. Proc., § 2033.280, subd. (b).) It is undisputed that neither plaintiff has served responses to defendant's separate requests for admissions.

In accordance with Code of Civil Procedure sections 2023.030 and 2033.280(c), the Court imposes a monetary sanction in the amount of \$457.80 against plaintiffs Ruben Chavez and Michelle Chavez for which they are jointly and severally liable and which is due and payable to defendant Wells Fargo Home Mortgage ten days after notice of entry of order.

The prevailing party is directed to prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, rule 3.1312, and to provide notice thereof to the opposing party/counsel as required by law and the California Rules of Court. The order is to be submitted by electronic filing to Hon. Brian McCabe.

Motion for Terminating Sanctions

Defendant Wells Fargo Home Mortgage's unopposed motion is GRANTED but in lieu of a terminating sanction, which appears premature, the Court will impose a monetary sanction against plaintiffs Ruben Chavez and Michelle Chavez for misuse of the discovery process. (Code Civ. Proc., §§ 2023.010(d), 2023.030(a).) Before imposing a terminating ("doomsday") sanction, courts normally impose lesser sanctions. (See *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796-797.) In this case, the Court notes that before bringing this motion requesting dismissal of plaintiffs' complaint defendant has not obtained a court order compelling plaintiffs to provide discovery responses or compelling plaintiffs to appear at their depositions and provide testimony. The Court also notes that defendant's supporting declaration does not indicate whether defense counsel ever sent plaintiffs correspondence regarding their outstanding discovery responses or inquiring about the reasons they did not appear for their noticed depositions.

In accordance with Code of Civil Procedure section 2023.030, subdivision (a), the Court imposes a monetary sanction in the amount of \$1,804.55 against plaintiffs Ruben Chavez and Michelle Chavez for which they are jointly and severally liable and which is due and payable to defendant Wells Fargo Home Mortgage ten days after notice of entry of order. The purpose of the monetary sanction is to reimburse defendant for the costs of bringing this motion and the costs of the depositions.

The prevailing party is directed to prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, rule 3.1312, and to provide notice thereof to the opposing party/counsel as required by law and the California Rules of Court. The order is to be submitted by electronic filing to Hon. Brian McCabe.

18CV-03900 Petition of: Omaray Martinez-Pina

Petition for Name Change

Appearance required.

18CV-03930 Connie Kilgore vs. Crystal Ramos

Request for Civil Harassment Restraining Orders

Appearance required.

18CV-04216 Adam Ortiz vs. Malia Isaacson

Request for Civil Harassment Restraining Orders

Appearance required.
