December 6, 2024
Dept. 9
Tentative Rulings

1.	**24CV1559**	**ARCHIBEQUE v. FCA US, LLC**
Motion to Deem Matters Admitted		

The Notice does not comply with Local Rule 7.10.05.

Plaintiff states on August 22, 2024, counsel served Defendant via email with Requests for Admission, Set One. After an extension, Plaintiff states that Defendant's attorney served unverified responses on October 4, 2024. Thereafter, Plaintiff's counsel states they attempted to meet and confer regarding the requested verification and alleged substantive deficiencies of Defendant's responses. Plaintiff filed the instant motion along with a Motion to Compel Verified Responses to Plaintiff's Requests for Production, Set One, and Motion to Compel Verified Responses to Plaintiff's Form Interrogatories, Set One. The other two motions were recently withdrawn.

Plaintiff requests that the Court order that the matters in Plaintiff's Requests for Admission, Set One, be deemed admitted for Defendant's failure to provide a timely verified response. California Code of Civil Procedure section 2033.240(a) provides that "[t]he party to whom the requests for admission are directed shall sign the response under oath, unless the response contains only objections." Where a party serves responses that are not verified, the unverified responses are tantamount to no response at all. (*See Appleton v. Superior Court* (1988) 206 Cal. App.3d 632, 636 [unverified or unsworn responses to requests for admission are tantamount to no response at all].) Where a party fails to serve timely verified responses, the requesting party may move the Court for order deeming the matters admitted. (Cal. Code Civ. Proc., § 2033.280(b).)

In its opposition, Defendant states that it had already provided Plaintiff with executed verifications for Plaintiff's Requests for Production, Form Interrogatories, and Requests for Admissions.

Plaintiff replies, stating that while Defendant has since provided the verification, it was untimely and the Court shall make the order, because Defendant's responses are not substantially compliant, and Defendant provided no justification for not providing the verified responses in a timely manner. Plaintiff asserts that the court "shall" make this order unless the responding party does two things: (1) serves substantially compliant responses and (2) the failure to serve timely responses was the result of mistake, inadvertence, or excusable neglect, citing CCP § 2033.280(c). However, the second condition noted above is in relation to a relief from a waiver of objections under subdivision (b). Subdivision (c) mandates a court to make an order deeming the matters admitted "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."

From its review of the pleadings, the court finds that Plaintiff's initially objected to lack of a verified response, only later focusing in its reply on Defendant's alleged failure to serve a substantially compliant response as a basis for deeming the matters admitted. The court orders the parties to appear to resolve the motion. Prior to hearing oral argument, the court will direct the parties to meet and confer.

TENTATIVE RULING #1:

APPEARANCES REQUIRED ON FRIDAY, DECEMBER 6, 2024, AT 8:30 AM IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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2.	PC20200635	BELAND et al v. LAKE POINTE VIEW ROAD OWNERS
Motion to Continue Trial		

Defendants Lake Pointe View Road Owners Association fka Guadalupe Property Owners Association ("ROA"), and individual members of the Board of the ROA, Gina Haynes[1], James Gallego, Leonard Crawford, Norbert Witt, Thomas Borge, and the Estate of Roland Brecek (collectively "Defendants") bring this Motion to request that the Court grant a 75-day continuance of the January 21, 2025 trial date in order to accommodate a personal conflict that has arisen for one of the Defendants.

Plaintiffs filed their Complaint on December 16, 2020. On August 27, 2024, Defendants sought and were granted a continuance of the initial trial date, in order to accommodate a hearing on Defendants' pending Motion for Summary Judgment.[2]

Defendants now request another continuance of trial, because Defendant Gina Hayes will be out of the country on the scheduled trial date, due to an ailing relative. Plaintiffs did not agree to stipulate to a 90-day continuance.

Pursuant to California Rule of Court 3.1332, a court may grant a continuance of trial if there is an "affirmative showing of good cause requiring a continuance." Moreover, "each request for a continuance must be considered on its own merits." (Cal. Rules of Court, Rule 3.1332(c).) Courts have held that a "request for a continuance supported by a showing of good cause usually ought to be granted." (*Estate of Meeker* (1993) 13 Cal.App.4th 1099, 1105). The granting of a trial continuance is within the sound discretion of the trial court. (*Cade v. Mid-City Hospital Corp.* (1975) 45 Cal. App. 3d 589, 599; *Taylor v. Bell* (1971) 21 Cal. App. 3d 1002.) Liberality should be exercised in the granting of continuances to obtain the presence of material evidence and to prevent miscarriages of justice. (*Cohen v. Herbert* (1960) 186 Cal.App.2d 488, 493; see also, *Whalen v. Superior Court* (1961) 184 Cal.App.2d 601.)

> The factors which influence the granting or denying of a continuance in any particular case are so varied that the trial judge must necessarily exercise a broad discretion. On an appeal from the judgment (the order itself being nonappealable) it is practically impossible to show reversible error in the Granting of a continuance.
>
> (4 Witkin, Cal. Procedure (2d ed. 1971) Trial, s 7, p. 2865.)

Defendants argue that good cause exists to grant the continuance because Ms. Haynes is a named defendant, a member of the board of directors of the ROA, will be in a time zone eight hours ahead, and it will be impossible for her to even attend remotely. Defendants argue that

[1] The Memorandum of Points and Authority refers to Gina Hayes and Gina Haynes. It is unclear which is correct; however, based on her Declaration, the Court assumes Gina Haynes is the correct name.
[2] The Motion for Summary Judgment is set to be heard next week, on December 13, 2024.

there will be no harm to either party by allowing a continuance of trial. Ms. Haynes states she will be out of the country from January 18, 2025, until April 1, 2025, to help care for her brother and brother-in-law as they both undergo surgery and chemotherapy.

Plaintiffs oppose the opposition, arguing that Defendants will not be denied a fair trial if the continuance is denied, because there is no actual unavailability of a witness/party since a remote appearance is feasible. While this may be true, Ms. Haynes is a party to the matter and not merely a witness. The court finds she has a right to be personally present at trial and cannot require her to appear remotely if that is not her choice, particularly given the court finds that there is good cause for her not being physically present in the county. The court grants the request for the continuance and orders the parties to appear in court to select a new trial date.

TENTATIVE RULING #2:

MOTION FOR CONTIUANCE IS GRANTED. APPEARANCES REQUIRED ON FRIDAY, DECEMBER 6, 2024, AT 8:30 AM IN DEPARTMENT NINE.

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3.	**24CV1253**	**CAPITAL ONE, NA v. GANSBERG**
Deem Matters Admitted		

The Court notes that the Notice does not comply with Local Rule 7.10.05.

Plaintiff served Requests for Admissions, Set One, on Defendant on or about August 16, 2024, and her responses were due no later than September 23, 2024. (Decl. D'Anna, ¶2) Plaintiff's counsel states there have been no communications received from Defendant. (*Id.*, ¶3)

Plaintiff requests an Order establishing Defendant's admission of the Requests pursuant to California Code of Civil Procedure § 2023.010. That section also mandates that the Court impose a monetary sanction for failure to serve timely responses.

TENTATIVE RULING #3:

1. **THE COURT ORDERS THAT THE MATTERS IN PLAINTIFF'S REQUESTS FOR ADMISSIONS, SET ONE, BE DEEMED ADMITTED.**
2. **SANCTIONS IN THE AMOUNT OF $50 ORDERED PAYABLE BY DEFENDANT BY JANUARY 24, 2025.**

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4.	**24CV0424**	**LANE v. GREY**
Motion to Quash Summons		

Defendant Nicholas Gray requests that the Court quash the service of summons and dismiss the Complaint without prejudice, on several different grounds.

Plaintiff opposes Defendant Gray's Motion on the grounds that the process server followed Mr. Gray's directions to leave the paperwork under his doormat and because Defendant Gray was later personally served on May 22, 2024[1]. Pursuant to California Code of Civil Procedure §418.10, a Motion to Quash service of the summons must be filed within 30 days of service. This Motion was not filed until September 16, 2024 and is therefore untimely.

TENTATIVE RULING #4:

MOTION TO QUASH SUMMONS IS DENIED.

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[1] Paragraph 2 of the Opposition states Defendant Nicholas Gray was personally served on October 29, 2024. However, as stated in paragraph 3 of the Opposition, and as seen in Exhibit A, Defendant was served on May 22, 2024.

5.	**24CV0105**	**COCHRAN v. MARSHALL MEDICAL CENTER**
Motion		

Defendant Marshall Medical Center ("Marshall Medical" or "Defendant") brings this Motion for Protective Order and Stay, which is opposed by Plaintiff Cindy June Cochran ("Cochran" or "Plaintiff").

Plaintiff has filed a class action complaint against Defendant, her former employer. Plaintiff had a previous lawsuit against Defendant which settled via written settlement agreement ("Agreement") executed by all parties. Defendant asserts that Agreement included a waiver and release of all claims, and that Defendant paid the settlement funds and fulfilled the terms of the Agreement on December 29, 2023.

Plaintiff then obtained different counsel and filed the Class Action Complaint ("Complaint") that is currently at issue. Defendant claims that the Agreement is a complete bar to each cause in the Complaint and that Marshall Medical is entitled to summary judgment to all claims. Defendant's Motion for Summary Judgment ("MSJ") is pending before the Court. Plaintiff served discovery requests on Defendant related to the facts and circumstances related to the wage and hour claims of the Complaint. Defendant argues that because Plaintiff is barred from bringing the claims asserted in the Complaint, she does not meet the necessary requirements to represent the class, and discovery should not be allowed on a claim that has no legal basis or merit until a determination is made on the Complaint. Plaintiff is seeking a protective order with respect to the discovery requests and a stay of all discovery until the Court decides on Defendant's MSJ which is set for hearing on February 14, 2025.

The Code of Civil Procedure ("CCP") allows for a motion for a protective order for interrogatories, requests for admission and requests for production of documents. (CCP §2030.090(a), §2033.080, §2031.060) Furthermore, Defendant argues that courts are authorized to issue protective orders "based on justice and equity." *Brigante v. Huang* (1993) 20 Cal.App.4th 1569, 1582. A party seeking a protective order must show good cause for the order. *Fairmont Ins. Co. v. Sup. Ct.* (*Stendell*) (2000) 22 Cal.4th 245, 255. Defendant argues it has good cause and that Plaintiff should be prohibited from conducting discovery in an action barred by a prior Settlement Agreement which effectively blocks Plaintiff from bringing any of the claims in the Complaint, and which also precludes her from acting as a class representative. Defendant's MSJ has been concurrently filed. Defendant asserts that it should not be forced to respond to Plaintiff's discovery in a matter where Plaintiff had no legal basis to bring the action, and no right to designate herself as a class representative, given her prior settlement with Defendant and the execution of a Settlement Agreement in December 2023, wherein Plaintiff waived and released all claims against Defendant and coveted not to bring an action based on the claims released.

Defendant states they made efforts to meet and confer with Plaintiff's counsel.

Plaintiff opposes the Motion and argues that protective orders are intended to temper the otherwise broad rights to discovery. The trial courts have discretion to decide when a protective order is appropriate and to what degree one is required. (*Nativi v. Deutsche Bank National Trust Co.* (2014) 223 Cal.App.4th 261, 317.) "While the trial court bears primary responsibility for the conduct of civil discovery and possesses a concomitant wide discretion in ruling upon discovery matters (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 380, 383- 384), an order of the trial court denying discovery will be overturned upon a prerogative writ if there is no substantial basis for the manner in which trial court discretion was exercised or if the trial court applied a patently improper standard of decision [Citation.]" (*Coriell v. Superior Court* (1974) 39 Cal.App.3d 487, 481, fn. 1.)

Plaintiff argues that Defendant failed to reasonably meet and confer, however, the Court is satisfied with the efforts made as outlined in the Woodward Declaration. Plaintiff further argues that Defendant's Motion is not "prompt" and admits that the CCP does not contain express time limits. Plaintiff points to *Nativi* in arguing that this Motion was untimely, however, in that case, the motion was not made until after an order compelling further discovery, which is not the case here. Defendant was served with discovery on July 23, 2024, and made this Motion on September 16, 2024. While the Motion was not immediate, the Court does not agree that it was not prompt.

Plaintiff also argues that Defendant failed to provide any evidence, factual support or applicable caselaw in its Memorandum, but the Court does not agree. Lastly, Plaintiff argues Defendant's Motion must be denied for failing to meet its burden establishing good cause. Based on the included language of the Agreement, and the argument in the Motion as well as the Woodward Declaration, including assurances from Plaintiff's prior counsel that the Agreement was satisfied, the Court finds there is good cause to support Defendant's Motion.

TENTATIVE RULING #5:

MOTION FOR PROTECTIVE ORDER AND STAY IS GRANTED.

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6.	**24CV2302**	**MATTER OF MIC-BRY8, LLC**
Transfer of Structured Settlement Payment Rights		

Prior to approving a petition for the transfer of payment rights, this court is required to make a number of express written findings pursuant to Cal. Insurance Code § 10139.5, including the following:

1. That the transfer is in the best interests of the Payee, taking into account the welfare and support of Payee's dependents.
2. That the Payee has been advised in writing by the Petitioner to seek independent professional advice) and has either received that advice or knowingly waived in writing the opportunity to receive that advice. This finding is supported by Exhibit E to the Petition.
3. That the transferee has complied with the notification requirements and does not contravene any applicable statute or the order of any court or government authority. In this case, it is not clear that the required disclosure statement was provided at least ten days prior to the execution of the transfer agreement, as required by Cal,. Ins. Code § 10136, because both documents were executed on October 2, 2024. See Exhibits A and B. However, by his declaration, payee states that he received and read a separate written disclosure statement no less than 10 days prior to when he signed the transfer agreement.
4. That the transfer does not contravene any applicable statute or the order of any court or government authority. Exhibit C notes that the payee has no dependents.

In addition to the express written findings required by the applicable statutes, Cal. Ins. Code § 10139.5(b) requires the court to determine whether, based on the totality of the circumstances and considering the payee's age, mental capacity, legal knowledge, and apparent maturity level, the proposed transfer is fair and reasonable, and in the payee's best interests**.** The court may deny or defer ruling on the petition if the court believes that the payee does not fully understand the proposed transaction, and/or that the payee should obtain independent legal or financial advice regarding the transaction.

Some information required by the statutes was included in the Petition through a verified statement of the payee, such as:

1. Whether there are any court orders for child or spousal support;
2. The purpose of the proposed transfer;
3. The payee's financial/economic situation;

4. Whether the payments to be transferred are required for future medical care or necessary living expenses;
5. Whether the payee was satisfied with the terms of prior payment transfer agreements that he had entered into;
6. Whether, within the past five years, the payee has attempted to enter into any such agreement with this Petitioner or any other entity that were denied by a court, or that were withdrawn or dismissed prior to a determination on the merits;
7. Whether the payee or his family are facing a hardship situation.

TENTATIVE RULING #6:

PETITION FOR TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS IS GRANTED.

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7.	**23CV0670**	**LUCAS et al v. FAGAN et al**
Motion to Compel (2)		

Plaintiff Kimberlee Lucas ("Plaintiff") brings two Motions – first, a Motion to Compel Defendant Michael Fagan's ("Defendant") Responses to Plaintiff's Requests for Production, and second, a Motion to Compel Defendant Michael Fagan's Responses to Plaintiff's Special Interrogatories. The underlying lawsuit alleges causes of action under California's Fair Employment and Housing Act. Defendant filed an Answer with a general denial.

Pursuant California Code of Civil Procedure ("CCP") § 2031.300, Plaintiff moves for an Order compelling Defendant to respond to the Requests for Production, Set One, finding Defendant waived his right to object to the production requests, and awarding Plaintiff costs and fees in conjunction with this motion. After Plaintiff propounded discovery on or around May 16, 2024, Defendant allegedly failed to respond.

Pursuant to CCP § 2030.290, Plaintiff moves for an Order compelling Defendant to respond to Plaintiff's First Set of Special Interrogatories, finding Defendant waived his right to object to these special interrogatories or to produce writings under CCP § 2030.210, and awarding Plaintiff costs and fees in conjunction with this motion. After Plaintiff propounded discovery on or around May 16, 2024, Defendant allegedly failed to respond.

The declaration from counsel merely states: "I have made a reasonable and good faith attempt at an informal resolution of each issue presented by this motion." While Plaintiff cites *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906 in support of the proposition that no meet and confer efforts are required when there is no response, the case cited appears to predate the enactment of CCP § 2016.040 which requires that, "[a] meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." The Court is not satisfied that any meet and confer efforts took place, nor do either of the Notices comply with Local Rule 7.10.05.

TENTATIVE RULING #7:

APPEARANCES REQUIRED ON FRIDAY, DECEMBER 6, 2024, AT 8:30 AM IN DEPARTMENT NINE.

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8.	**23CV1110**	**WINN v. CHARITABLE SOLUTIONS**
Motion for Attorney's Fees		

The moving Defendants, Safari Ross as Successor Trustee of the Carl Ross Trust and Angie Nga Ross as Trustee of the Angie Ross Marital Trust (collectively referred to as the "Ross Defendants") bring this Motion for Attorney's Fees ("Motion") against Plaintiff Madeleine Winn ("Plaintiff") as the prevailing parties in the instant litigation.

Plaintiff's Second Amended Complaint attaches and seeks to enforce a real estate purchase agreement, which contains a standard attorney's fee provision to the benefit of the prevailing party in any action to enforce the Contract. On August 28, 2024, the Court granted the Ross Defendants' Motion for Judgment on the Pleadings without leave to amend as to all causes of action in Plaintiff's Second Amended Complaint as to the Ross Defendants.

In any action on a contract, where the contract specifically provides that attorney's fees, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs. (Civ. Code, § 1717(a)). Three conditions must be met before the California statute governing attorney fee awards in actions on contract applies: first, the action generating the fees must have been an action on a contract; second, the contract must provide that attorney's fees incurred to enforce it shall be awarded either to one of the parties or to the prevailing party; and third, the party seeking fees must have prevailed in the underlying action. (*Bos v. Board of Trustees*, C.A.9 (Cal.) 2016, 818 F.3d 486 (applying California law)

The Ross Defendants argue that Plaintiff brought claims for Declaratory Relief, Cancellation of Instrument, and Breach of Contract, and therefore, it is undisputed that the litigation instituted by Plaintiff sought relief from the Contract. The Court agrees and finds that under California law this action is on a contract. The Ross Defendants argue that the Court should determine them to be the prevailing party, after their Motion for Judgment on the Pleadings to the Second Amended Complaint was sustained without leave to amend.

The Ross Defendants argue that their attorneys' fees are reasonable, for the expenditure of 127.2 attorney hours with an hourly rate of $375.00 (for Mr. Guèdenet) and $475.00 (for Mr. Jeppson), for a total of $47,820.00. There are additional fees for the work in progress for the month of October, and counsel asserts the actual fees incurred will exceed the $47,820.00 requested in the Motion.

Plaintiff filed no Opposition, and the Ross Defendants argue that the effect of a party's failure to oppose a motion is to deem the moving papers meritorious and grant the motion. (*Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1411; Weil & Brown, Cal. Practice Guide:

Civil Procedure Before Trial, section 9:105.10 at 9(1)-68 (The Rutter Group, 2015).) Under such circumstances, courts may refuse to hear oral argument from the party who failed to oppose the motion. (*Id*.) However, as indicated in the Notice of No Opposition, Plaintiff's counsel was relieved in July 2024, and the Ross Defendants state that since the relief of counsel, Plaintiff has failed to appear or otherwise participate in the matter.

The Court reviewed the billing invoices and finds the time expended to be reasonable.

TENTATIVE RULING #8:

PLAINTIFF IS ORDERED TO PAY THE ROSS DEFENDANTS $47,820 IN ATTORNEY'S FEES, PAYABLE BY JANUARY 10, 2025.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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The Court notes that the Notice does not comply with Local Rule 7.10.05.

Plaintiff served discovery requests, which included a Request for Admissions, on Defendant on or about June 3, 2024, and his responses were due no later than July 10, 2024. (Decl. D'Anna, ¶3-4)

Plaintiff requests an Order establishing Defendant's admission of the Requests pursuant to California Code of Civil Procedure § 2023.010. That section also mandates that the Court impose a monetary sanction for failure to serve timely responses.

TENTATIVE RULING #9:

1. **THE COURT ORDERS THAT THE MATTERS IN PLAINTIFF'S REQUESTS FOR ADMISSIONS BE DEEMED ADMITTED.**
2. **SANCTIONS IN THE AMOUNT OF $50 ORDERED PAYABLE BY DEFENDANT BY JANUARY 24, 2025.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.