Dept. 1
Civil Law and Motion Tentative Rulings for Friday, July 18, 2025, at 8:30 a.m.

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

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1. **CV66458** **Aguayo v. BestNest Management LLC**
   Hearing on: Motion to Compel Arbitration
   Moving Party: Defendant
   Tentative Ruling: Grant

This case involves an individual and putative class wage/hour dispute in the health care industry. Before the Court this day is a defense motion to strike the class allegations and refer the matter to binding contractual arbitration (defendant also seeks a reference to "mandatory mediation" but of course there is no such legal referral). Although the action may indeed have a number of very interesting disputes, the forum in which it will be resolved is apparently not going to be one of them. On July 8, plaintiff filed a pleading indicating that "plaintiff does not oppose Defendant BestNest Management LLC's Motion to Compel Mediation and Arbitration and Dismiss Class Claims filed on June 3, 2025. Plaintiff will stipulate to submit the matter to arbitration." With a referral to binding arbitration, the arbitrator can of course deal with the class allegations (assuming those were indeed waived by plaintiff) and how the agreement to mediate can be enforced, if at all. These are not issues the Court must concern itself with. The petition to compel arbitration is GRANTED. Although it is customary for a trial court to "stay" the action while it works its way through the arbitral forum, there was no motion to stay (CCP §§ 1281.4, 1292.8) and no prayer for such relief as part of the motion. Without some indication that a portion of the case remains here in state court, or that there is some specific need to keep the case open for confirming or vacating an award down the road, it is this Court's preference to simply dismiss the civil action. Parties to discuss.

2. **CVL66757** **Bank of America v. Parnell**
   Hearing on: Motion to Deem RFAs Admitted
   Moving Party: Plaintiff
   Tentative Ruling: Hearing Required

This is a collections case. Before the Court this day is an unopposed motion to deem previously-served RFAs admitted. While this type of motion is fairly routine in collection cases, this is somewhat unexpected in this case because defendant is actually represented by counsel – who just recently filed a CMC statement which made no reference to the pending doomsday discovery motion. This Court reviewed the proofs of service and confirmed that the discovery/motion appear to have been served on counsel, making the silence all the more odd.

The primary purpose behind requests for admissions is to eliminate the need for proof and to set at rest triable issues so that they will not have to be tried. *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 865. Requests for admissions may be directed to any matter that is in

controversy between the parties: facts, opinions or legal conclusions. See CCP §2033.010; *Miller v. American Greetings Corp.* (2008) 161 Cal.App.4th 1055, 1066. As noted by one Court of Appeal, "the law governing the consequences for failing to respond to requests for admission may be the most unforgiving in civil procedure." *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 394-39. That is mostly true, save perhaps for one, often-overlooked, safe harbor therein, to wit: CCP §2033.280(c). Pursuant thereto, a substantially-compliant response to the RFAs made at any time "before the hearing on the motion" will moot the motion almost entirely (sanctions would still recoverable, but plaintiff did not seek those here). See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 778; in accord, *Katayama v. Continental Investment Group* (2024) 105 Cal.App.5th 898, 908.

Thus, it is not feasible to grant a motion to deem RFAs admitted unless there is a contemporaneous confirmation at the hearing that substantially compliant responses have never been received. There is, however, a basis for awarding fees either way: "it is mandatory that the court impose a monetary sanction on the party whose failure to serve a timely response necessitated this motion." CCP §2033.280(c). Plaintiff did not seek fees.

3. CV65720 **Cordoza v. Avalon Care Center**
Hearing on: Dismissal
Moving Party: n/a
Tentative Ruling: Dismissal already filed

4. CV67265 **Moyle v. Rockon Propane Tank Covers LLP**
Hearing on: Petition for Alternative Writ of Mandamus
Moving Party: Petitioner
Tentative Ruling: Grant Alternative Writ; hold for 15 days

This is a special proceeding to enforce the rights of limited partners to inspect the books of a limited partnership. Service appears to have been made on Respondent, but no appearance or request for additional time has been made. The issue is remarkably succinct: petitioners would like an order compelling the general partner – who apparently holds the books – to open the books for inspection to assess the propriety of profit distributions and membership values. Both the partnership agreement and the controlling statutes anoint Petitioners with the basic right of inspection, and so it is with relative ease that matters such as these are quickly resolved *without* judicial intervention. This Court intends to give Respondent a modicum of time to provide a response before issuing the alternative writ, but does not see on the verified papers before it much in the way of a controversy.

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5. CV66328 Schweickert v. Parrish
Hearing on: Misc. Motions
Moving Party: Plaintiff and Cross-Defendants
Tentative Ruling: Default set aside; Trial date vacated

This case arises from a family dispute involving the management of closely-held joint venture (Phoenix Lake Enterprises LLC) owned equally in three parts by three siblings: Susan, Stanley, and Desmond. Pursuant to the LLC operating agreement, the siblings decided that virtually all decisions had to be made by majority rule (see Paras 5.4, 7.1), including a member's decision to transfer his or her membership interest to another (see Paras 8.2-8.8). In 2009, Susan and Stanley helped Desmond created an irrevocable trust for Desmond's daughter Hannah, transferring Desmond's 1/3 interest in the LLC to the trust. Since this was a complete transfer of Desmond's interest, Susan and Stanley had a first right of redemption (see Para 8.3) which they obviously declined to exercise. Since Hannah did not execute a counterpart to the operating agreement, she was not yet a full-fledged "substituted member" and acquired only "an economic interest" at that time (see Para 8.8). However, in 2013, Susan and Stanley issued a resolution on behalf of the LLC stating that the 1/3 share would remain "in" Hannah's trust until 2022 – presumably suggesting that Hannah could request at that time to become a full-fledged substituted member. According to Susan, in 2023, when she was out of town, Stanley and Hannah called a "fake" meeting and made material changes to the operations of the LLC. Susan filed suit, claiming that Hannah was never made a substituted member of the LLC with voting rights. Hannah filed a cross-complaint against Susan (which included Richard for no apparent reason).

Before the Court this day is plaintiff/cross-defendant's motion to continue the current trial date and extend permissible discovery to track the new trial date. It seems to this Court that the "main" issue underlying the request for a continuance is a challenged default entered against co-defendant Richard Schweickert. This is also the subject of another motion set for hearing on August 15. Since opposition has already been filed, and the outcome of the set aside motion factors in heavily with the motion to continue trial, it seems to this Court that the set aside motion ought to be advanced to this date and resolved at this time.

Hannah caused to have Richard's default on the cross-complaint entered on 05/27/2025. According to Hannah, Richard was served with a copy of the original Cross-Complaint via first class mail with return receipt to his residence in Reno, Nevada, on 03/10/2025. The mail was held at the post office pursuant to a "vacation hold" service, and delivered to the residence on 03/29/2025. Also, in the "vacation hold" bundle was a copy of the First Amended Cross-Complaint, which was mailed out during the vacation hold. (Since Richard admits to receiving

both versions in the mail on the same day, the fact that the summons only referred to the original pleading is of no consequence.)

Richard states under penalty of perjury that the service envelope with the return receipt "did have two green parallel adhesive strips attached to the envelope, but there was no return receipt remaining between the two green strips." Richard further states under penalty of perjury that "I did not sign the Return Receipt which [Hannah] has referenced. That is not my signature or initials" on the receipt attached to the declaration is support of the request to enter default. See R. Schweickert Decl Para 7. This Court notes that Richard's signature on his passport (exemplar provided) does not come close to matching that on the return receipt. Moreover, since Richard's wife already had counsel in this case, and that counsel is presently representing both of them, it defies logic for Richard to have accepted service of process on the cross-complaint and not mentioned having done so to the family lawyer. The evidence supports a finding that Richard did not sign the return receipt, which means service was never perfected and the default must be set aside.

Even if the default were righteous, it still must be set aside. Hannah knew that Attorney Chenault would be representing Richard once he was involved in the case, and Hannah was aware that Attorney Chenault believed that Richard had not yet been served when the demurrer for Susan was filed. Hannah had a legal obligation at that moment to warn Attorney Chenault about Richard's plight and the risk of default. As the Court in *Lasalle v. Vogel* (2019) 36 Cal.App.5th 127 observed (at 137), the *ethical* obligation to warn opposing counsel before seeking entry of default has morphed into a *legal* obligation for all parties to cooperate with one another in bringing an action to effective disposition without wasteful practices like defaults that will never stick. Had Hannah given the warning, Richard would have been added to the demurrer and significant time/effort would have been saved. Instead, Hannah hoped to secure a sneaky victory that was never hers to savor. The quantum of evidence needed to set aside a default – even one righteously obtained – is very low: "it is the policy of the law to favor, whenever possible, a hearing on the merits … when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default." *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479; in accord, *Bonzer v. City of Huntington Park* (1993) 20 Cal.App.4th 1474, 1478. Richard was just returning from vacation overseas, and has no recollection of signing the receipt. If he had, and sent it back (which seems unlikely), he did so laboring under a mistake or inadvertence. Relief is clearly warranted, and no prejudice is shown to Hannah who has to mount the exact same assault either way. In fact, with no statement of damages served with the cross-complaint, a default against Richard is meaningless.

This Court easily concludes that the default must be set aside. With that, Richard will need time to make a general appearance. As such, the trial set for next month cannot proceed as scheduled. Because trial continuances are strongly disfavored, any request to continue a trial must be supported by an affirmative showing of good cause, and must be made as soon as possible once the necessity for a continuance is discovered. See CRC 3.1332; *Reales Investment, LLC v. Johnson* (2020) 55 Cal.App.5th 463, 468-469. Every motion for continuance "is addressed to the sound discretion of the trial court;" however, "the refusal of a continuance which has the practical effect of denying the applicant a fair hearing is reversible error." *Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389, 1395; in accord, *Hamilton v. Orange County Sheriff's Department* (2017) 8 Cal.App.5th 759, 766. The factors which a trial court is to consider when weighing the various interests implicated include:

(1) The proximity of the current trial date (one months away);

(2) Whether there were any previous continuances (none);

(3) The length of the continuance requested (> 90 days);

(4) The availability of alternative means to address the problem that gave rise to the motion or application for a continuance (none shown, but perhaps diligent discovery);

(5) The prejudice that parties or witnesses will suffer as a result of the continuance (none shown);

(6) If the case is entitled to a preferential trial setting, the reasons for that status and whether the need for a continuance outweighs the need to avoid delay (none);

(7) The court's calendar and the impact of granting a continuance on other pending trials (none);

(8) Whether trial counsel is engaged in another trial (no contentions made);

(9) Whether all parties have stipulated to a continuance (no);

(10) Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance (Richard requires time to mount a defense to the cross-complaint); and

(11) Any other fact or circumstance relevant to the fair determination of the motion or application (none apparent).

Based on a totality of the circumstances, and the fact that this case has not yet reached the 18-month presumptive deadline under the Fast Track guidelines (see TCSC Rule 2.06.0), a continuance to complete discovery is reasonable. See CCP §§ 2024.020(b), 2024.050. The trial date is hereby VACATED, and discovery shall commence anew as if no trial date had been set in the first instance. A case management conference shall be set for October 24, 2025 at 9:30 a.m. in Dept 1.

6. **CV66328** **Starks v. Curtis Creek Elementary School District**
   Hearing on: Misc. Motions
   Moving Party: Both
   Tentative Ruling: See Discussion

This is a special proceeding commenced by way of a single operative pleading styled as a "writ of administrative mandate and monetary relief." The pleading itself is ambiguous in that it appears to combine a complaint for damages (i.e., wrongful discharge or retaliation) with a writ of mandamus (i.e., CCP §1085 or CCP §1094.5). However, based on the relief sought, this Court will assume that petitioner is seeking mandamus relief.

As previously noted, by treating this case as one for mandamus only, it is proper to disregard new fact declarations and limit the record to that which was before the school board in making its decisions regarding petitioner. To aid in that endeavor, Respondent was ordered to prepare the administrative record, with Bates numbering in the lower right corner, to be filed and served within 60 days. See §1094.5(a) and CRC 3.1140. The record has not been completed, and of course Petitioner has 30 days thereafter to object/augment that record before it is deemed complete and final. Once a complete and final record is submitted, only then can a proper briefing schedule take place.

In the meanwhile, a number of motions have been filed in the case. First, there is a motion for reconsideration under CCP §1008 filed by Petitioner, asking this Court to revisit the order denying provisional relief based upon a contention that – in all candor – was not carefully explained by Petitioner in the first round of briefing. Second, there is a motion for "permission" to file a first amended petition, which Petitioner does not actually need because the authority to amend an original pleading exists as a matter of right provided that a pleading attack has not passed the opposition window. Third, there is a demurrer filed by Respondent, directed at the original petition – which would be deemed moot if that pleading is subsequently amended. motion to ensure proper citation to the administrative record. Finally, though not a

motion, there is a CMC set for 08/29/2025 at which time a briefing schedule and trial date would presumably be set. All of these matters can be easily resolved here in one quick swipe.

As it pertains to Petitioner's operative pleading, each party has the right to amend its pleadings once, without leave of court, before its original pleading is set at issue. See *Hedwall v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 574. Because cases defined "at issue" differently, the Legislature clarified that a party could amend its pleading without leave of the court *after* a demurrer or motion to strike is filed but *before* the hearing so long as "the amended pleading is filed and served no later than the date for filing an opposition to the demurrer or motion to strike." CCP §472(a). Although this version requires a bit of math, the calculus is easy here since Petitioner sought permission to amend the petition only four days after the demurrer was filed. Since this Court accepts the fact that Petitioner likely did not realize he could amend without asking permission, this Court will treat his inquiry as the equivalent of having filed the amendment. Petitioner shall file his First Amended Petition as soon as the administrative record is complete. That will eliminate the need for a hearing on July 25, so that hearing will now be off-calendar. Given that an amended pleading is on its way, Respondent's pending demurrer, set for hearing August 1, is hereby deemed to be MOOT and also taken off-calendar. See *JKC3H8 v. Colton* (2013) 221 Cal.App.4th 468, 477-478. Since the pleadings are still not at issue, and the administrative record is not yet complete, the CMC scheduled for late August is manifestly premature. The CMC shall instead be reset for October 24, 2025, at 9:30 a.m. in Dept 1.

That just leaves Petitioner's motion for reconsideration. The notice of motion is somewhat ambiguous, which presents a challenge in terms of resolution. The notice of motion must state with precision the nature of the relief sought and the grounds therefore. CCP §1010; CRC 3.1110(a). In fact, it is a basic tenant of motion practice that the moving party define the issues for the information and attention of the adverse party and the court. See *Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1277. Here, it appears that Petitioner is asking this Court to reconsider a *tentative* ruling posted on the website, which became a final ruling only because Petitioner failed to timely request oral argument. Tentative rulings are not binding, and therefore lack the finality needed for reconsideration. See *Trujillo v. City of Los Angeles* (2022) 84 Cal.App.5th 908, 919; *Silverado Modjeska Recreation & Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 300. Moreover, CCP §1008(a) requires that any motion for reconsideration be supported by an affidavit from the moving party setting forth "what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown." The motion is not properly presented as one for statutory reconsideration under CCP §1008 because the papers do not specify what no new facts or law support a new look. See *Hennigan v. White* (2011) 199 Cal.App.4th 395, 406.

That being said, this Court does possess inherent authority to revisit certain material pretrial rulings and notes that Petitioner describes a slightly different theory of relief here than what was proffered in the original papers. Previously, this Court understood that Petitioner was upset because he was not re-elected or subject to guaranteed tenure. Now, it seems, Petitioner acknowledges that the District had the right not to re-elect him, but that the District could not remove him from the classroom (paid leave) for the balance of the 2024-2025 school year without "cause" and that he had a right to be left in the classroom for the balance of the 2024-2025 school year on the off-chance that (a) the District changed its mind after seeing his improvement or (b) his application to other Districts would at least not show "paid leave" with its implied negative connotation. This alternate theory is not fleshed out well in the operative pleading, and may not support any damages at all – but since this is a mandamus action, damage is not the issue. If Petitioner had a right to be in the classroom for the balance of the 2024-2025 school year absent "good cause," and having a record of "paid leave" has made it provably burdensome to find employment, Petitioner may indeed be entitled to some kind of reputational relief. It may also be that the District had more than enough "good cause" to place him of leave and keep him out of the classroom, and was trying to do something nice for him. The administrative record will (hopefully) shed some light on this.

Thus, the motion for reconsideration is GRANTED in part. Once the administrative record is complete, and the First Amended Petition is on file, Petitioner is free to re-file his request for a TRO. While this will technically be a renewed motion, rather than the same motion reconsidered, reconsideration will avoid any claim of estoppel.