

Tentative Rulings for June 25, 2024 Department 7

**To request oral argument, you must notify Judicial Secretary
Vanessa Siojo at (760) 904-5722
and inform all other counsel no later than 4:30 p.m.**

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 7 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear remotely, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

For information and instructions on remote appearances via **ZOOM**, visit the court's website at <https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php>

You may also make a Telephonic Appearance: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number (followed by #):

- Call-in Numbers: 1-833-568-8864 (Toll Free), 1-669-254-5252, 1-669-216-1590, 1-551-285-1373 or 1-646-828-7666
- Meeting Number: **161 766 6465**

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

Riverside Superior Court provides official court reporters for hearings on law and motion matters only for litigants who have been granted fee waivers and only upon their timely request. (See General Administrative Order No. 2021-19-1) Other parties desiring a record of the hearing must retain a reporter pro tempore.

1.

CVRI2204423	OZKAN VS THE REGENTS OF THE UNIVERSITY OF CALIFORNIA	MOTION FOR JUDGMENT ON THE PLEADINGS ON 1ST AMENDED COMPLAINT OF MIHRI OZKAN BY JAY FARRELL
-------------	--	---

Tentative Ruling:

The hearing on the defendants' motion for judgment on the pleadings, currently set for June 25, 2024, is vacated. If the defendants still wish to challenge the plaintiff's pleading, the defendants shall fully comply with Code of Civil Procedure section 439 by, *inter alia*, meeting and conferring with plaintiff's counsel, either in person or by telephone, concerning the sufficiency of that pleading. If that effort is unsuccessful, the moving parties shall file a new motion that fully complies with subdivision (a)(3).

Analysis:

"Before filing a motion for judgment on the pleadings pursuant to this chapter, the moving party shall meet and confer *in person or by telephone* with the party who filed the pleading that is subject to the motion . . ." (Code Civ. Proc., § 439, subd. (a), emphasis added.)

No evidence has been presented that the parties met and conferred in that fashion, or at all. Indeed, despite the express requirements of section 439, subdivision (a)(3), no declaration was filed by the moving party at all.

2.

CVRI2302344	LADIANA VS THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION	MOTION TO SET ASIDE DISMISSAL ON COMPLAINT FOR AUTO (OVER \$25,000) OF MALLORY LADIANA BY MALLORY LADIANA
-------------	--	---

Tentative Ruling:

The hearing on the motion is continued to July 15, 2024. No later than July 8, 2024, plaintiff's counsel shall file a supplemental declaration that describes in detail why he failed to respond to the second OSC, including all relevant dates, and specifically addressing whether he was hospitalized during any period after the OSC was issued on 3-19-24, and if so, during what time period.

Analysis:

The motion to vacate the dismissal does not address the procedural circumstances that resulted in the dismissal ordered on 4-10-24.

The action was filed on 5-4-23, naming two defendants. Both defendants were served in October of 2023. Late in that same month, the Court issued an OSC re dismissal for the failure to request entry of default, returnable on 1-9-24. On 1-8-24, after no responsive pleadings had been filed, no defendants had been defaulted, and no declaration in response to the OSC had been filed as required by RSC Local Rule 3116, the Court dismissed the action. The plaintiff promptly moved for relief from that dismissal on 1-29-24, and the motion was granted on 3-19-24.

Concurrently with the order granting the motion, the Court issued another OSC for dismissal for the failure to request entry of default, this time returnable on 4-15-24. On 4-10-24, after the defendants had still failed to file any responsive pleadings, the plaintiff had still not filed a request for entry of default, and the plaintiff had still not filed a declaration in response to the OSC, the Court again dismissed the action.

The plaintiff for the second time moves to vacate a dismissal in the same case. The plaintiff relies upon the “attorney-fault” provision of Code of Civil Procedure section 473, subdivision (b). However, counsel’s declaration says nothing about what caused his failure to respond to the second OSC. His declaration vaguely states that sometime after 12-15-23, he “became very ill and eventually hospitalized, and placed on new medication for a new diagnosis and was unable to effectively address the issues at that time.” (Decl., para 7.) Missing is any information as to what “that time” was. More generally, missing is any information about his ability to perform his professional obligations between 3-19-24 when the OSC was issued, and 4-10-24 when the case was dismissed for a second time.

To prevent any loss of rights to the innocent plaintiff, the Court will continue the hearing to allow his counsel one last opportunity to properly support the motion for relief.