

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-7858 (Department 53) by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 3.04.

**Department 53
Superior Court of California
800 Ninth Street, 3rd Floor
LOREN E. MCMASTER, Judge
T. West, Clerk
V. Carroll, Bailiff**

Thursday, February 08, 2007, 2:00 PM

This minute order is effective immediately and no formal order is required.

Item 3 **05AS00919 ALAN BENDER VS. WILLIAM D. HOPPER**

Nature of Proceeding: Motion for Entry of Judgment

Filed By: Rosenberg, Sid M.

Plaintiff's motion to have the written stipulation entered as a judgment pursuant to CCP 664.6 is unopposed and granted.

Plaintiff shall submit a formal order and judgment for the Court's signature.

Item 4 **05AS02937 MARIO DUBININ VS. SACRAMENTO #3, INC., ET AL**

Nature of Proceeding: Motion To Compel - Production of Documents

Filed By: Cassandra M. Ferrannini

This matter is continued to 3/13/2007 at 02:00PM in this department.

Item 5 **05AS03809 CATHY L. BURT VS. ELK GROVE UNIFIED SCHOOL DISTRICT ET AL**

Nature of Proceeding: Demurrer to Second Amended Complaint

Filed By: James T. Anwyl

Defendants' demurrer is sustained without leave to amend as to all causes of action.

The first, second, and third causes of action for violation of the FEHA are barred by the statute of limitations because plaintiff did not file her claim with the DFEH until more than one year after the alleged acts of defendants.

Plaintiff argues "continuing violation." However, that theory only applies when the unlawful conduct occurs within the one year period preceding the FEHA claim. Here the the last act occurred on April 16, 2004 when plaintiff was recommended for termination. Subsequent participation in the administrative process is not a violation of the FEHA and there are no allegations that these procedures were taken for a unlawful purpose. The only act which occurred within one year of the complaint was In August 2004 when plaintiff renewed a request for "demotion" and defendants declined. This was after completion of the administrative hearings and does not relate to discrimination or harassment. Furthermore this alleged failure to demote was not included in plaintiff's DFEH claim.

The fourth cause of action for violation of Labor Code section 230(a) is also time barred. Here plaintiff was required to comply with the Tort Claims Act and she has not done so. This cause of action is not one for which a claim with the DFEH is a substitute for a tort claim.

When the Court ruled on defendants' motion for judgment on the pleadings it gave plaintiff leave to amend the first through fourth causes of action only. The Court

specifically ruled that she was not given leave to amend the fifth through ninth causes of action. The demurrer to the fifth cause of action is also sustained.

Defendants shall submit a formal order and judgment of dismissal.

Item 6 **05AS05169** **JAMES B. CHAPMAN VS. COUNTY OF SACRAMENTO ET AL**

Nature of Proceeding: Motion To Compel

Filed By: Loewen, Michael R.

Plaintiff's motion to compel further responses to requests for production is granted as to requests one and two and denied as to request three.

Plaintiff is entitled to all documents that concern the maintenance, safety, and inspection of the property and the respective responsibilities of the defendants. This includes the franchise agreement. As the agreement contains a confidentiality clause, defendants shall produce those parts of the agreement that relate to responsibilities and liabilities of each of them for maintenance, safety, and inspection of the property. Production shall be subject to a protective order that the agreement shall not be used outside this litigation and shall be returned to defendants at the conclusion of litigation.

Request three, "any and all surveillance" is so vague it is meaningless. Does this mean a video tape, photographs, reports by security guards?

Sanctions are denied.

This minute order is effective immediately and no formal order is required.

Item 7 **05AS05768** **MARANATHA CORRECTIONS VS. STATE OF CALIFORNIA, ET AL.**

Nature of Proceeding: Motion To Compel Responses to Special Interrogatories

Filed By: Vincent, Jeffrey R.

This matter is dropped from calendar.

Item 8 **06AS00341** **ERIK GENSLER ET AL VS. DANIEL NAVARRO ET AL**

Nature of Proceeding: Motion To Compel Discovery Responses

Filed By: Gatheru, Angela W.

Defendant's motion to compel plaintiffs to respond to discovery requests and for an order that matters be deemed admitted is unopposed and granted. Compliance without objections shall be by February 20, 2007. The motion that matters be deemed admitted is denied as plaintiffs served responses on February 6, 2007.

Mandatory sanctions on the requests for admissions are ordered in the amount of in the amount of \$360.00 (two hours plus filing fee) against plaintiffs. Sanctions shall be paid by March 8, 2007.

Sanctions are otherwise denied because the motion was not opposed. Although CRC 3.1030 purports to authorize sanctions if a motion is unopposed, the Court declines to do so, as the specific statutes governing this discovery (CCP 2030.290(c), 2031.300(c)) authorize sanctions only if the motion was unsuccessfully made or opposed. Any order imposing sanctions under the CRC must conform to the conditions of one or more of the statutes authorizing sanctions. *Trans-Action Commercial Investors, Ltd. v Firmater Inc.* (1997) 60 Cal.App.4th 352, 355. However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. See *Laguna Auto Body v. Farmers Insurance Exchange* (1991) 231 Cal. App. 3d 481.

This minute order is effective immediately and no formal order is required.

Item 9 **06AS00471** **BARBARA NICHOLLS, ET AL VS. IL FORNAIO RESTARUANT, ET AL**

Nature of Proceeding: Demurrer

Filed By: Chance L. Trimm

This matter is dropped from calendar.

Item 10 **06AS01173** **DEBI BROWNELL ET AL VS. FORD MOTOR COMPANY ET AL**

Nature of Proceeding: Motion To Compel Responses to Request for Production of Documents

Filed By: Gormican, Laurie S.

This matter is dropped from calendar.

Item 11 **06AS01173** **DEBI BROWNELL ET AL VS. FORD MOTOR COMPANY ET AL**

Nature of Proceeding: Motion To Compel Responses to Form Interrogatories

Filed By: Gormican, Laurie S.

This matter is dropped from calendar.

Item 12 **06AS01617** **CAROLYNN COLEMAN, ET AL VS. PROTECTION ONE, ET AL**

Nature of Proceeding: Demurrer (AMENDED)

Filed By: Gatley, Steven G.

Defendant Protection One's Demurrer, joined by Defendant Tony Deater, as to the 11th, 12th and 13th causes of action for negligence of the First Amended Complaint is unopposed, taken as a concession to the merits, and is sustained without leave to amend.

The negligence claims are barred by the exclusivity provisions of the workers

compensation act.

As the motion to strike (Item 13) is granted with leave to amend, plaintiff may have leave to file and serve her Second Amended Complaint not later than Tuesday, February 20, 2007.

The minute order is effective immediately. No formal order pursuant to CRC Rule 391 or further notice is required.

Item 13 **06AS01617 CAROLYNN COLEMAN, ET AL VS. PROTECTION ONE, ET AL**

Nature of Proceeding: Motion To Strike(AMENDED)

Filed By: Gatley, Steven G.

Defendant Protection One Motion to Strike specified portions of the First Amended Complaint, joined by Defendant Tony Deater, is GRANTED in part and DENIED in part.

The motion to strike the references to non-party Monique Moreno in paragraphs 5, 13, 14, 16 and 17 are GRANTED.

The motion to strike the allegations of paragraphs 21 and 32 is GRANTED, unless plaintiff alleges that she heard, saw or was informed of the conduct.

The reply moves to strike portions of the argument in opposition. The Court does not rule on the motion to strike argument in the opposition.

The motion to strike the punitive damage allegations is also granted. Punitive damages must be pled with specificity, requiring the allegation of ultimate facts upon which the claim is based.

Plaintiff may have leave to file and serve her Second Amended Complaint not later than Tuesday, February 20, 2007.

This minute order is effective immediately. No formal order or further notice is required, the tentative ruling providing sufficient notice.

Item 14 **06AS02649 RONALD F. CARTER VS. FARMERS INSURANCE GROUP, ET AL.**

Nature of Proceeding: Motion To Compel Responses to Written Interrogatories

Filed By: Maile, Christopher S.

The motion of defendants Fire Insurance Exchange and Truck Insurance Exchange to compel plaintiff to provide further responses to interrogatories is unopposed and granted on condition proof of service of the motion is filed in Department 53 before the time of the hearing. The Court's file contains a proof of service of the separate statement but of no other papers.

Compliance shall be by February 20, 2007.

Sanctions are denied because the motion was not opposed. Although CRC 3.1030 purports to authorize sanctions if a motion is unopposed, the Court declines to do so, as the specific statute governing this discovery (CCP 2030.290(c)) authorizes sanctions only if the motion was unsuccessfully made or opposed. Any order imposing sanctions under the CRC must conform to the conditions of one or more of the statutes authorizing sanctions. *Trans-Action Commercial Investors, Ltd. v Firmater Inc.* (1997) 60 Cal.App.4th 352, 355. However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. See *Laguna Auto Body v. Farmers Insurance Exchange* (1991) 231 Cal. App. 3d 481.

This minute order is effective immediately and no formal order is required.

Item 15 **06AS02649 RONALD F. CARTER VS. FARMERS INSURANCE GROUP, ET AL.**

Nature of Proceeding: Motion To Compel Responses to Demand dor Inspection

Filed By: Maile, Christopher S.

The motion of defendants Fire Insurance Exchange and Truck Insurance Exchange to compel plaintiff to provide further responses to demand for production is unopposed and granted on condition proof of service of the motion is filed in Department 53 before the time of the hearing. The Court's file contains a proof of service of the separate statement but of no other papers.

Compliance shall be by February 20, 2007.

Sanctions are denied because the motion was not opposed. Although CRC 3.1030 purports to authorize sanctions if a motion is unopposed, the Court declines to do so, as the specific statute governing this discovery (CCP 2031.300(c)) authorizes sanctions only if the motion was unsuccessfully made or opposed. Any order imposing sanctions under the CRC must conform to the conditions of one or more of the statutes authorizing sanctions. *Trans-Action Commercial Investors, Ltd. v Firmater Inc.* (1997) 60 Cal.App.4th 352, 355. However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. See *Laguna Auto Body v. Farmers Insurance Exchange* (1991) 231 Cal. App. 3d 481.

This minute order is effective immediately and no formal order is required.

Item 16 **06AS04001 JOHN E. FERRIS VS. INTER-CON SECURITY SYSTEMS, INC.**

Nature of Proceeding: Motion To Strike and Demurrer

Filed By: Buffington, David N.

Dropped. This case is temporarily stayed pending a determination on the petition for coordination

Item 17 **06CS00405** **PEOPLE VS. \$ 3,314.00 JOSEPH A. ALMEIDA**
Nature of Proceeding: Motion To Compel Answer to Interrogatories
Filed By: Leonard, Stephanie

This matter is dropped from calendar.

Item 18 **06CS01813** **IN RE: KATHLEEN ANN ENWALD**
Nature of Proceeding: Petition For Change Of Name
Filed By: Enwald, Kathleen Ann

The petition for name change is unopposed and is granted.

Item 19 **06CS01819** **IN RE: KAO CHIN SAETERN**
Nature of Proceeding: Petition For Change Of Name
Filed By: Saetern, Kao Chin

The petition for name change is unopposed and is granted.
