

**Tentative Rulings – October 23, 2003**

To request a hearing on any matter on this calendar, you must call the Court at (209) 223-6360 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

**Neco v. Dept. of Transportation – 02CV2354 – Plaintiffs' Motions to Compel Further Responses to Discovery Requests**

**Motion to Compel Further Response to Requests for Admission (RFA) – Palmero**

The court denies the motion as to RFA Nos. 1- 2. At the time the response was made to these requests, the discovery was ongoing. It was necessary for the defendant to raise these affirmative defenses or risk waiving them.

The court grants the motion as to RFA Nos. 3 – 9. The requests asked the Caltrans to admit or deny specific factual and legal contentions. Instead of providing a direct response to the requests, Caltrans responded by stating the accident was caused by the negligence of the plaintiffs and a third party. The answers are not responsive to the requests.. Caltrans is ordered to provide further response to these requests and admit or deny each RFA without qualification.

The court grants the motion as to RFA No. 11.

The court denies the motion as to RFA Nos. 12 – 17. Caltrans' response is adequate based on the requests as framed. Without more information regarding the specific design defect alleged, it was not unreasonable for Caltrans to respond by stating it was unable to admit or deny the request.

The court denies the motion as to RFA Nos. 18 – 20. The court construes Caltrans' responses as objections based on vagueness and ambiguity. As such the objections are sustained.

**Motion to Compel Further Response to Form Interrogatories – Palmero**

The court denies the motion as to Interrogatory 12.7. The response substantially complied the provisions of Code of Civil Procedure Section 2030(f).

The court grants the motion as to Interrogatory 14.1. Further response is required.

The court denies the motion as to Interrogatory 15.1. The response provided was sufficient.

The court grants the motion as to Interrogatories 16.3 through 16.7. These interrogatories can be answered based on available information. To the extent Caltrans may not have completed its investigation and discovery as to a particular issue, its response may be qualified accordingly.

The court grants the motion as to Interrogatory 17.1 to the extent the Court required additional response to Requests for Admissions. If no further response to a request for admission was ordered, it is not necessary to provide further response to Interrogatory 17.1.

**Motion to Compel Further Response to Form Interrogatories – Neco**

The court grants the motion as to Interrogatories 16.3 through 16. and 16.10. These interrogatories can be answered based on available information. To the extent Caltrans may not have completed its investigation and discovery as to a particular issue, its response may be qualified.

**Sanctions**

Based on the court's mixed ruling as to Palmero's motions to compel further discovery response, neither party is awarded sanctions. Both the motion and the opposition were substantially justified.

The court awards plaintiff Neco sanctions in the amount of \$500.00 for attorney fees and costs associated with the filing of this motion.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.