# Tentative Rulings for April 23, 2024 Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) The above rule also applies to cases listed in this "must appear" section.

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 503**

Begin at the next page

(20)	Tentative Ruling
Re:	<b>Romero v. Montogmery et al.</b> Superior Court Case No. 19CECG02939
Hearing Date:	April 23, 2024 (Dept. 503)
Motion:	By Plaintiffs for Distribution of Interpleaded Funds

# Tentative Ruling:

To grant, and direct the Clerk of the Court to release and distribute the \$12,000 of interpleaded funds to Serafina and Pedro Romero, payable to the "Kerley Schaffer LLP Client Trust Account" at 1939 Harrison Street, Suite 900, Oakland, CA 94612.

# **Explanation**:

Plaintiffs in this action asserted one cause of action against American Contractors Indemnity Company ("ACIC"), bondholder for LAM Global Solutions, Inc. dba Servpro of Visalia ("Servpro"), seeking the \$15,000 Contractor's License Bond for Servpro. On 2/28/2023, ACIC filed a verified cross-complaint for interpleader and injunctive relief, naming plaintiffs and Servpro as cross-defendants. On 6/22/2023 the court granted ACIC's motion to deposit the \$15,000 bond (less \$3,000 in attorneys' fees) and be discharged under Code of Civil Procedure section 386.5. The interpleaded funds were deposited with the court on 7/11/2023.

After funds have been interpleaded, the trial court has "the power under [Code of Civil Procedure] section 386 to adjudicate the issues raised by the interpleader action including: the alleged existence of conflicting claims regarding the interpleaded funds; plaintiffs' alleged position as a disinterested mere stakeholder; and ultimately the disposition of the interpleaded funds after deducting plaintiffs' attorney fees." (Shopoff & Cavallo LLP v. Hyon (2008) 167 Cal.App.4th 1489, 1513–14, quoting Dial 800 v. Fesbinder (2004) 118 Cal.App.4th 32, 43.)

At this stage, all defendants named in plaintiffs' complaint have either been dismissed or settled with plaintiffs. Plaintiffs are the only parties to have made any claim to the interpleaded funds. Servpro, the last remaining defendant has recently been dismissed with prejudice, and pursuant to the settlement with plaintiffs, expressly disclaimed any right or interest to the interpleaded funds. As the sole remaining claimant to the funds, plaintiffs' motion to release and disburse the funds to them should be granted.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling				
Issued By:	jyh	on	4/15/24	
-	(Judge's initials)		(Date)	

(20)	Tentative Ruling
Re:	<b>Corral v. Coin Base Legal Coin Inc.</b> Superior Court Case No. 24CECG00520
Hearing Date:	April 23, 2024 (Dept. 503)
Motion:	By Plaintiff to Compel Compliance with Subpoena
Tentative Ruling:	

To deny.

# **Explanation**:

Plaintiff apparently moves to compel Pleasant Valley State Prison ("PVSP") to produce documents pursuant to a subpoena duces tecum. However, plaintiff has not filed a motion that can be granted at this time. The motion must be made pursuant to Code of Civil Procedure section 2025.480 and/or 1987.1.

Plaintiff must submit a copy of the subpoena with the motion and show that it was properly served on the party to whom it was directed. Plaintiff must show "good cause" to compel production of documents. (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 223-224.) Plaintiff makes no such showing.

The "written notice and all moving papers supporting a motion to ... to compel production of a document or tangible thing from a nonparty deponent must be personally served on the nonparty deponent unless the nonparty deponent agrees to accept service by mail or electronic service at an address or electronic service address specified on the deposition record." (Cal. Rules of Court, rule 3.1346.) Here, there is no indication that the motion has been served on PVSP. Further, plaintiff must comply with the separate statement requirement of Rule of Court rule 3.1345.

Finally, there is no indication of any meet and confer. The motion to compel must be accompanied by a declaration stating facts showing "a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." (Code Civ. Proc., § 2016.040 (emphasis added), 2025.480, subd. (b).)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

<b>Tentative Ruling</b>				
Issued By:	jyh	on	4/17/24	•
	(Judge's initials)		(Date)	

(36)

# **Tentative Ruling**

Re:	Wright v. Emerian, et al. Superior Court Case No. 22CECG01729
Hearing Date:	April 23, 2024 (Dept. 503)
Motion:	Plaintiff's Motion for Leave to File First Amended Complaint

# **Tentative Ruling:**

To grant. (Code Civ. Proc., § 473.)

Plaintiff is required to file the First Amended Complaint within 10 days from the service of the clerk of the minute order. New allegations/language must be set in **boldface** type.

# **Explanation**:

Plaintiff has met the formalities required of a motion to amend the complaint, and has given due notice to all appearing defendants. Motions for leave to amend the pleadings are directed to the sound discretion of the judge. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading . . ." (Code Civ. Proc., § 473, subd. (a)(1); see also Code Civ. Proc., § 576.) Judicial policy favors resolution of cases on the merits, and thus the court's discretion as to allowing amendments will usually be exercised in favor of permitting amendments. This policy is so strong, that denial of a request to amend is rarely justified, particularly where "the motion to amend is timely made and the granting of the motion will not prejudice the opposing party." (Morgan v. Superior Court (1959) 172 Cal.App.2d 527, 530.)

Even so, the court has discretion to deny leave to amend where the proposed amendment fails to state a valid cause of action (Foxborough v. Van Atta (1994) 26 Cal.App.4th 217, 230), or the party seeking the amendment has been dilatory and the delay has prejudiced the opposing party. (Hirsa v. Superior Court (1981) 118 Cal.App.3d 486, 490.) No opposition was filed, so no facts were presented to warrant denial of plaintiff's motion for leave to amend.

Accordingly, the motion is granted.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ru	ling			
Issued By:	jyh	on	4/22/24	<u> </u>
	(Judge's initials)		(Date)	

(36)

### Tentative Ruling

Re:	<b>Chhina v. Reschman</b> Superior Court Case No. 23CECG00682
Hearing Date:	April 23, 2024 (Dept. 503)
Motion:	by Defendant to Set Aside the Default

#### **Tentative Ruling:**

To continue the motion to Wednesday, May 29, 2024, at 3:30 p.m., in Department 503, to allow defendant an opportunity to file and serve the proposed responsive pleading. (Code Civ. Proc. §473, subd. (b).) Defendant must serve and submit the proposed responsive pleading no later than on Thursday, May 23, 2024.

#### **Explanation**:

#### Attorney Affidavit of Fault:

The court is empowered to relieve a party "upon any terms as may be just ... from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Code Civ. Proc. § 473, subd. (b).) "[W]henever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise or neglect, [the court shall] vacate any (1) resulting default entered by the clerk ... or (2) resulting default judgment or dismissal entered against his or her client." (*Ibid.*) Where a motion seeking this relief is based on an "attorney affidavit of fault," the relief is mandatory. Otherwise, relief is discretionary. The only limitation on the mandatory relief is that the court may deny relief if it finds the default "was not in fact caused by the attorney's mistake, inadvertence, surprise or neglect" (e.g. where the attorney is attempting to "cover up" for the client). (*Id.*) A motion seeking mandatory relief must state clearly that this is the relief sought under Code of Civil Procedure Section 473. (*Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1125.)

Here, the motion is timely and provides that defendant is seeking relief on the grounds of counsel's mistake and an attorney affidavit of fault is filed in support of the motion. It is clear that defendant's default was caused by defense counsel, Gregory Roberts' mistake. According to Mr. Roberts, he was originally retained to handle the probate matter for the Estate of Mikiko Nakahira. After the complaint was filed, Mr. Roberts indicated that a litigator would be required to handle the civil matter, but he agreed to accept service of the summons and complaint. (Roberts Decl., ¶ 3.) Despite this fact, from April – May 2023, Mr. Roberts and plaintiff's counsel were engaged in settlement discussions. Mr. Roberts indicates that during these discussions, plaintiff's counsel agreed to extend the time to file an answer; however, an exact deadline was never agreed upon. (Id., at ¶ 5.) In June 2023, Mr. Roberts became aware of a health

issue that required him to undergo surgery and neglected to follow up on the case. (*Id.*, at  $\P\P$  7-9.) On September 21, 2024, plaintiff obtained default against defendant. Mr. Roberts indicates that he was not informed of plaintiff's intent to enter default against his client and did not know that the default had been entered until December 2023. (*Id.*, at  $\P\P$  9-10.)

Had Mr. Roberts followed up with the case at a sooner date, in all likelihood, defendant would not have been cut off from appearing as a result of plaintiff's default. As such, Mr. Roberts mistake, at least proximately, caused defendant's default.

# Proposed Pleading Requirements:

The application "shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted." (Code Civ. Proc. §473, subd. (b).) But this requirement is not jurisdictional, and substantial compliance may suffice. (*Carmel, Ltd. V. Tavoussi* (2009) 175 CA4th 393, 403 [substantial compliance found where counsel offered proposed answer at motion hearing rather than serving it with moving papers.]; *Austin v. Los Angeles Unified School Dist.* (2016) 244 CA4th 918, 933 [plaintiff substantially complied with the "attached-pleading requirement" by offering facts and legal arguments in her motion].)

Defendant has not attached a copy of the proposed responsive pleading to the instant motion. However, the court continues the motion to allow defendant the opportunity to substantially comply with the requirement.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

# Tentative Ruling

Issued By:	jyh	on	4/22/24	
-	(Judge's initials)		(Date)	

(29)	Tentative Ruling
Re:	In the Matter of Mikaella Albizu Superior Court Case No. 24CECG01302
Hearing Date:	April 23, 2024 (Dept. 503)
Motion:	Petition to Approve Compromise of Disputed Claim of Minor
Tentative Ruling:	

To grant. Order signed. No appearances necessary.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative RulingIssued By:jyhon4/22/24(Judge's initials)(Date)