

Tentative Rulings for May 28, 2025
Department 501

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.

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Tentative Rulings for Department 501

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(20)

Tentative Ruling

Re: **Moore v. HSRE Pacifica Fresno OPCO LP, et al.**
Superior Court Case No. 23CECG04737

Hearing Date: May 28, 2025 (Dept. 501)

Motions: (1) by Defendant Harrison Street Real Estate Capital, LLC for Judgment on the Pleadings
(2) by Defendant Harrison Street Real Estate Capital, LLC for Protective Order
(3) by Defendants to Admit Lori Proctor Pro Hac Vice

Tentative Ruling:

(1) To take the motion for judgment on the pleadings off calendar for failure to meet and confer. (Code Civ. Proc., § 439.)

(2) To take the motion for protective order off calendar for failure to comply with Local Rule 2.1.17.

(3) To grant the application of Lori Proctor to appear pro hac vice. (Cal. Rules of Court, Rule 9.40(a).)

Explanation:

Motion for Judgment on the Pleadings

The moving party must meet in confer, *in person or by telephone*, prior to filing a motion for judgment on the pleadings, and file and serve with the motion a declaration detailing the meet and confer efforts. (Code Civ. Proc., § 439, subd. (a), (b).) Counsel's declaration shows that there was no in-person or telephonic meet and confer, or serious effort to do so. An exchange of letters or emails over a year ago does not suffice. (See Song Decl., ¶ 16, Exh. C.) The court requires strict compliance with the statute.

Motion for Protective Order

Defendant Harrison Street Real Estate Capital, LLC, moves for a protective order precluding plaintiffs from pursuing discovery against it, contending that it has no liability.

Local Rule 2.1.17(A) provides,

No motion under sections 2017.010 through 2036.050, inclusive, of the California Code of Civil Procedure shall be heard in a civil unlimited case unless the moving party has first requested an informal Pretrial Discovery Conference with the Court and such request has either been denied and permission to file the motion is granted via court order or the discovery

dispute has not been resolved as a result of the Conference and permission to file the motion is expressly granted.

The motion for protective order brought pursuant to subdivision (a) of Code of Civil Procedure section 2017.020 clearly falls within the scope of the rule, and does not fall under any of the specified exceptions. Moving party has made no effort to comply with this rule, never having requested a pretrial discovery conference. Accordingly, the motion is off calendar.

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: DTT **on** 5/21/2025 .
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Knight v. Kelley et al.***
Superior Court Case No. 23CECG04258

Hearing Date: May 28, 2025 (Dept. 501)

Motion: by Plaintiff Amy L. Knight for Writ of Possession

Tentative Ruling:

To deny as no moving papers have been filed.

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: DTT on 5/22/2025.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***The City of Kingsburg, a Municipal Corporation v. Shea Owens***
Superior Court Case No. 25CECG00678

Hearing Date: May 28, 2025 (Dept. 501)

Motion: Petition for Order to Abate Substandard Building,
Appointment of Receiver, and Orders Pursuant to California
Health & Safety Code

Tentative Ruling:

To deny, without prejudice. (Health & Saf. Code, § 17980.7, subd. (c).)

Explanation:

The City of Kingsburg ("petitioner" or "the City") seeks appointment of a receiver to abate the nuisances and substandard conditions that it alleges exist at the subject real property. The court intends to deny the motion.

First, petitioner did not file and serve a notice of the hearing.

Second, petitioner did not file a notice of pendency of the action in order to provide constructive notice of its intent to seek a receivership on any other persons with an interest in the property. "Any enforcement agency which institutes an action or proceeding pursuant to this article shall record a notice of the pendency of the action or proceeding in the county recorder's office of the county where the property affected by the action or proceeding is situated. [...] The notice shall be recorded at the time of the commencement of the action or proceeding. It has the same effect as the notice of pendency of action provided for in the Code of Civil Procedure." (Health & Saf. Code, § 17985, subd. (a).)

Third, petitioner has not satisfied the notice requirement of Health and Safety Code section 17980.7, subdivision (c). "In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of the petition was **posted in a prominent place** on the substandard building **and** mailed first-class mail to all persons with a recorded interest in the real property upon which the substandard building exists not less than three days prior to filing the petition." (Health & Saf. Code, § 17980.7, subd. (c), emphases added.) Petitioner indicates in the Petition that a "Pre-Petition Notice" was mailed to the interested parties, but (1) does not evidence this (i.e. not supported by declaration or exhibit; no proof of service) and (2) does not demonstrate that the notice was posted.

Fourth, petitioner lists nine persons or entities as having a "recorded interest of some nature" in the subject property. (Petr. ¶ 6, Exh. B.) Petitioner has not demonstrated notice was given to all persons with a recorded interest, as is required by Code. "In its petition to the court, the enforcement agency, tenant, or tenant association or

organization shall include proof that notice of the petition was posted in a prominent place on the substandard building and mailed first-class mail **to all persons with a recorded interest in the real property** upon which the substandard building exists not less than three days prior to filing the petition." (Health & Saf. Code, § 17980.7, subd. (c), emphasis added.)

Fifth, petitioner has not sufficiently argued for the appointment of Kevin Singer as receiver. "The court shall not appoint any person as a receiver unless the person has demonstrated to the court their capacity and expertise to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the building." (Health & Saf. Code, § 17980.7, subd. (c)(2).) Petitioner merely states that the City contacted Mr. Singer and requested that he serve as the court-appointed receiver in this matter. Petitioner's description of Mr. Singer in the Petition is brief and does not otherwise identify his qualifications. There is only a curriculum vitae attached to the Petition, which is not verified or otherwise authenticated. There is no declaration from the receiver himself regarding his qualifications or his lack of a personal interest in the properties. The curriculum vitae alone is insufficient to demonstrate Mr. Singer's capacity and expertise.

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: DTT **on** 5/23/2025.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: **Chennault v. County of Fresno**
Case No. 24CECG01407

Hearing Date: May 28, 2025 (Dept. 501)

Motion: by Petitioner for Injunction of Default

Tentative Ruling:

To deny petitioner's motion, for lack of any evidence showing respondents have been properly served with the Petition or the present motion.

Explanation:

Petitioner has not properly served respondents with his Petition or a copy of the present motion, so the court does not have jurisdiction over respondents and it cannot grant any relief. Petitioner filed a proof of service on April 9, 2024, at the same time he filed his Petition, which stated that he had served the Petition by regular United States Mail. However, the proof of service is defective in several ways.

First, initial service of a petition or complaint must be by one of the authorized modes of service, usually either by personal delivery, substituted service, or service by registered mail, return receipt requested. (Code Civ. Proc., §§ 415.10; 415.20; 415.30.) Here, the proof of service only shows service by regular United States Mail, and no notice and acknowledgement of receipt from the respondents has been attached. Also, the proof of service is signed by petitioner himself, not a non-party to the action who is at least 18 years old as required by Code of Civil Procedure section 414.10. Finally, the proof of service only lists the Fresno County Superior Court as the party served. However, the Superior Court is not a party to the action. Service has to be made on the respondents to be effective, not the Superior Court.

Petitioner has also submitted copies of several proofs of service to his motion, which indicate that he served the respondents by mail. Again, however, the proofs of service are not sufficient to show that respondents were properly served with the Petition or the present motion. The proofs of service still only show service by regular United States Mail, so they are not adequate to establish jurisdiction over respondents. Also, the proofs of service are signed by petitioner himself, not a non-party to the action. There is also no proof of service showing that the present motion for a default or injunction was served on respondents at least 16 court days before the hearing, as required by Code of Civil Procedure section 1005.

Finally, to the extent that petitioner is seeking to enter a default against respondents, he must file any request to enter default on the mandatory Judicial Council form CIV-100. Since he has not done so, the court cannot enter default against any of

the respondents here. Therefore, the court intends to deny the motion for an “injunction of default.”

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: DTT **on** 5/27/2025.
(Judge's initials) (Date)