

**Tentative Rulings for August 21, 2025**  
**Department 403**

**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)**

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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.*

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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 begin at the next page)

## **Tentative Rulings for Department 403**

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(34)

**Tentative Ruling**

Re: ***Walker v. Hunter, et al.***  
Superior Court Case No. 22CECG00710

Hearing Date: August 21, 2025 (Dept. 403)

Motion: by Defendants for Summary Judgment, or Alternatively,  
Summary Adjudication

**Tentative Ruling:**

To deny defendants Kevin Schwin and Schwin Law, PC's motion for summary judgment and the alternative motion for summary adjudication

**Explanation:**

"Summary judgment is granted when there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law.'" (*Lopez v. Superior Court* (1996) 45 Cal.App.4th 705, 713, quoting Code Civ. Proc. § 437c(c).) Summary judgment is properly directed toward the entire complaint and not portions thereof. (see *Barnick v. Longs Drug Stores, Inc.* (1988) 203 Cal.App.3d 377, 384; *Khan v. Shiley, Inc.* (1990) 217 Cal.App.3d 848, 858-859.)

Summary adjudication is the proper mechanism for challenging a particular, "cause of action, an affirmative defense, a claim for punitive damages, or an issue of duty." (*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 242.) However, "[a] motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc. § 437c(f)(1); see also *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 97 [piecemeal adjudication prohibited].)

The ultimate burden of persuasion rests on defendant, as the moving party. The initial burden of production is on defendant to show by a preponderance of the evidence, that it is more likely than not that a given element cannot be established or that a given defense can be established. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

If defendant carries this initial burden of production, the burden of production shifts to plaintiff to show that a triable issue of material fact exists. Plaintiff does this if she can show, by a preponderance of the evidence, that it is more likely than not that a given element can be established or that a given defense cannot be established. (*Aguilar, supra*, 25 Cal.4th at 850, 852.)

In determining whether plaintiff has met her burden of production, the court must evaluate the plaintiff's evidence independently. That is, the court may not weigh the plaintiff's evidence or inferences against the defendant's, as if the court were sitting as a

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exist are to be resolved in favor of the party opposing summary judgment/adjudication. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562; see also *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 900 ["Summary adjudication is a drastic remedy and any doubts about the propriety of summary adjudication must be resolved in favor of the party opposing the motion."].)

As the local attorney for the pro hac vice application of an out-of-state attorney, defendant Schwin was also serving as attorney of record for plaintiff. Although the moving papers acknowledge the role, there is no evidence to support finding the representation was limited by agreement or otherwise. As such, the court finds defendants have not met their burden on summary judgment to demonstrate there was no duty to plaintiff in light of the designation as an attorney of record in the plaintiff's federal action alongside her out-of-state counsel.

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.

Issued By: Img on 8-20-25  
(Judge's initials) (Date)

(20)

**Tentative Ruling**

Re: ***Martinez v. Arredondo et al.***  
Superior Court Case No. 25CECG01772

Hearing Date: August 21, 2025 (Dept. 503)

Motion: By Defendants to Compel Arbitration

**Tentative Ruling:**

To continue the hearing October 1, 2025 at 3:30 p.m. in Department 403. The court requests further briefing on the issue specified below, with briefs of up to seven pages to be filed by September 14, 2025. No responses to the supplemental briefs will be permitted.


**Explanation:**

Plaintiff Abel Martinez explicitly brings this action for penalties under the Private Attorney General Act ("PAGA"), as a representative action only, with no individual PAGA claims. There is conflicting case law on the issue of whether this is possible. The most recent decision touching on the issue, *CRST Expedited, Inc. v. Superior Court of Fresno County* (2025) 112 Cal.App.5th 872, 334 Cal.Rptr.3d 647, 663, held that this may be done under the version of Labor Code section 2699 in effect at the time that lawsuit was filed, but suggested that the result may be different following the 2024 amendments, which are applicable to this case.

Neither side addresses these amendments. The court requests further briefing on the effect of the 2024 amendments, and how they impact the holdings of the primary cases relied upon by the parties – *Leeper v. Shipt, Inc.* (2024) 107 Cal.App.5th 1001, *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533, *Rodriguez v. Packers Sanitation Services LTD., LLC* (2025) 109 Cal.App.5th 6, as well as *CRST Expedited*.

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:          on     8-20-25    .  
(Judge's initials) (Date)

(34)

**Tentative Ruling**

Re: ***In re: 5227 East Florence Avenue, Fresno, CA 93727***  
Superior Court Case No. 25CECG02081

Hearing Date: August 21, 2025 (Dept. 403)

Motion: Petition to Deposit Surplus Funds

**Tentative Ruling:**

To find the petition moot in light of the June 17, 2025 order entered in *Eram Younis v. Majid Ali*, Fresno County Superior Court Case No. 17CEFL06238.

**Explanation:**

Petitioner National Default Servicing Corporation filed its Petition and Declaration Regarding Unresolved Claims and Deposit of Undistributed Surplus Proceeds of Trustee's Sale with the court on April 30, 2025. Petitioner sold the subject real property located at 5227 East Florence Avenue in Fresno, California in a nonjudicial trustee's sale on January 3, 2025 for \$403,000.00. A surplus of \$118,973.10 remains available for distribution. Prior to the court granting the petition to deposit the surplus funds and approving the attorney fees and costs to be paid therefrom, petitioner deposited with the court \$113,027.88.

Petitioner gave notice to all persons with an interest in the proceeds of the sale pursuant to Civil Code section 2924j, subdivision (a). Petitioner received claims for the proceeds from the California Franchise Tax Board, Akif Ali, Fresno Department of Child Support Services. Petitioner also received a response from Eram Younis indicating the subject property was community property and the subject of Fresno County Superior Court Case No. 17CEFL06238. Ms. Younis indicated the family law court has made findings regarding the deed of trust supporting the claim of Akif Ali.

The court in case no. 17CECG06238 has made findings regarding the real property that was sold and on June 17, 2025 ordered<sup>1</sup> the funds from the sale to be deposited with the court. As such, the instant petition to deposit the funds is moot, as such an order has been made in case no. 17CEFL06238. Family Code section 2010 provides the court in dissolution proceedings broad jurisdiction to inquire into and render judgment and make orders concerning the settlement of the property rights of the parties. (Fam. Code §2010, subd. (e).) Moreover, the court has continuing jurisdiction to award community estate assets or liabilities that have not been previously adjudicated. (Fam. Code §2556.)

The court finds the surplus funds at issue in the petition at bench, as well as the claims asserted for the disbursement of the funds, are appropriately adjudicated in the

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<sup>1</sup> The court will take judicial notice of the June 17, 2025 order in Fresno Superior Court case no. 17CEFL06238.

dissolution proceeding. Claimants can request to enter the dissolution proceeding as a claimant to assert their interest in the surplus funds.

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: Img on 8-20-25  
(Judge's initials) (Date)

(36)

**Tentative Ruling**

Re: **California Department of Public Health v. Prestige Biotech, Inc.**  
Superior Court Case No. 24CECG02431

Hearing Date: August 21, 2025 (Dept. 403)

Motion: by Petitioner for Judgment on Petition for Condemnation and  
Destruction of Embargoed Articles

**Tentative Ruling:**

To continue the matter to Wednesday, October 1, 2025, at 3:30 p.m., in Department 403, to allow time for additional notice and an opportunity for respondent to respond.

**Explanation:**

This is a continuation from the July 29, 2025 hearing on Petitioner California Department of Public Health's motion for judgment on its petition for condemnation and destruction of embargoed articles. In the court's previous adopted tentative ruling, the court listed procedural defects pertaining to service, and proof thereof, and continued the hearing to allow Petitioner an opportunity to present evidence to show that its service of the summons and petition in this proceeding was valid.

Petitioner acknowledges the service defects and indicates that the summons was inadvertently not served. In an effort to perfect service, petitioner has served all of the documents including the petition, summons, and moving papers for this motion by personal service on August 7, 2025. (See the Proof of Personal Service, Exh. 1.) Petitioner further requests a continuance of the matter to allow time for respondent to respond to these proceedings.

Accordingly, the matter is continued.

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:** Img **on** 8-20-25.  
(Judge's initials) (Date)



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### Tentative Ruling

Re: ***T.J. v. County of Fresno***  
Superior Court Case No. 22CECG04061

Hearing Date: August 21, 2025 (Dept. 403)

Motion: by Defendant for Judgment on the Pleadings

### Tentative Ruling:

The court, on its own motion, stays the matter pending the Supreme Court's review of *K.C. v. County of Merced* (2025) 109 Cal.App.5th 606.

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: img on 8-20-25  
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