

Tentative Rulings for July 8, 2021
Department 501

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 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 501

Begin at the next page

(34)

Tentative Ruling

Re: **Glen Embrey v. Valley Petroleum & Liff, Inc., et al.**
Superior Court Case No. 20CECG00357

Hearing Date: July 8, 2021 (Dept. 501)

Motion: by Defendants Contesting Pending Application for Good Faith Settlement Determination

Tentative Ruling:

To deny defendants Jorawar Singh Nagra and Amandeep Singh dba Handi Stop Mini Mart's motion contesting defendant Daniel Oswaldo Vasquez's application for determination of good faith settlement. To find that the settlement between plaintiff and defendant Daniel Oswaldo Vasquez is in good faith.

Explanation:

Pursuant to the court's order on June 17, 2021, defendant Daniel Oswaldo Vasquez submitted a declaration regarding his financial condition and insurance assets. Taken with the previously filed application and reply, the court finds that the settling defendant has sufficiently addressed the *Tech-Bilt* factors and it would be unnecessary to force him to remain in the case. (*Schmid v. Superior Court* (1988) 205 Cal.App.3d 1244, 1248-1249.) Accordingly, defendants Jorawar Singh Nagra and Amandeep Singh dba Handi Stop Mini Mart's motion contesting the good faith of the settlement is denied. The court determines defendant Vasquez's policy limit settlement with plaintiff is in good faith and grants defendant Vasquez's application therefor.

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 7/1/2021.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: **City of Fresno v. Tower Theater Properties, Inc.**
Superior Court Case No. 21CECG01407

Hearing Date: July 8, 2021 (Dept. 501)

Motion: by City of Fresno for Order Permitting Entry of Property for Appraisal Inspection

Tentative Ruling:

To deny without prejudice.

Explanation:

Pursuant to Code of Civil Procedure section 1245.010, a person authorized to acquire property by eminent domain, such as the City of Fresno (Gov. Code, § 37361, subd. (a)), "may enter upon property to make ... appraisals or to engage in similar activities reasonably related to acquisition or use of the property for that use." To enter the property to make an appraisal, the City must either obtain the owner's consent (which in this case was not given) or obtain a court order for entry. (Code Civ. Proc., § 1245.020, subds. (a) and (b).) Code of Civil Procedure section 1245.030, subdivision (a), provides that the petitioner "shall give such prior notice to the owner of the property as the court determines is appropriate under the circumstances of the particular case." (Emphasis added.)

The only party named in the original Petition and served with the summons and Petition is Tower Theater Properties, Inc., which does not appear to be the record owner of the property. Respondent contends that the property is owned by Tower Theatre Productions, based on Request for Judicial Notice Exhibit 1. This is not a record subject to judicial notice. The City requests judicial notice of recorded documents indicating that the property is owned by "Tower Properties, Inc." The City's requests for judicial notice are granted. And along with the reply, the City filed (but apparently has not yet served) an Amended Petition naming other related entities, but not Tower Properties, Inc. The correct owner of record should be named in the petition and served with process, and this has not yet been done.

Additionally, buildings on the two parcels identified in the Petition are occupied by Mash & Barrel, LLC, dba Sequoia Brewing Company, and Me-N-Ed's. Neither of those entities has been served with the Petition. Section 1245.030, subdivision (a), does not require service on interested parties or tenants prior to entry of an order, but they should at least be given notice of the inspection and appraisal if it would interfere with their right to possession of the subject property.

Before the entry order can be granted, the Petition will have to be further amended and at least the record property owner should be named and served.

Code of Civil Procedure section 1245.030, subdivision (b), provides that “the court shall determine the purpose for the entry, the nature and scope of the activities reasonably necessary to accomplish such purpose, and the probable amount of compensation to be paid to the owner of the property for the actual damage to the property and interference with its possession and use.” The City has not presented sufficient evidence for the court to make these determinations.

The City should provide a declaration from the appraiser that has been retained and clarify the “other related activities” that would be included. (See Esquivel Decl., ¶ 7.) Respondent points out that assuming there is no damage to the property, and the inspection is not done during a performance so as to interfere with use of the property, it would still have to pay an employee to open up the property and escort the appraiser through the facility or facilities. While any such cost should be borne by the City, respondent has submitted no admissible evidence that such cost would be incurred.

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** 7/6/2021 .
 (Judge's initials) (Date)

(29)

Tentative Ruling

Re: **Millan v. Jacobsen**
Superior Court Case No. 20CECG00168

Hearing Date: July 8, 2021 (Dept. 501)

Motion: Minor's compromise

Tentative Ruling:

To deny without prejudice. The court will review the Amended Petition in accordance with the applicable procedure.

Explanation:

On May 20, 2021, this court issued a minute order regarding the original Petition, filed March 11, 2021. The minute order attachment explained that the court's intended ruling was to deny the Petition without prejudice, and ordered Petitioner to file a supplement to the Petition, addressing the court's concerns regarding the medical liens, by June 24, 2021. Petitioner chose, instead, to file an Amended Petition, on June 30, 2021. Accordingly, the court denies the original Petition, without prejudice. The court will review the Amended Petition pursuant to the procedure for expedited petitions.

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 7/6/2021.
(Judge's initials) (Date)