

**Tentative Rulings for May 26, 2022**  
**Department 501**

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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).)

21CECG00658      Francisco Samaniego v. Country Club Mortgage, Inc (Dept. 501)

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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 501**

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**Tentative Ruling**

Re: ***Lowe et al. v. Happy Yu LLC***  
Superior Court Case No. 16CECG03557

Hearing Date: May 26, 2022 (Dept. 501)

Motion: by Plaintiffs for Default Judgment

**Tentative Ruling:**

To deny, without prejudice.

**Explanation:**

This matter comes after a continuance was granted at hearing on April 13, 2022. The court noted certain items that required clarification, and granted leave for supplemental filings, as well as the mandatory Form Civ-100. On May 5, 2022, plaintiffs filed the mandatory Form CIV-100, as well as a supplemental points and authorities.

Previously, the court noted, among other issues, that no evidence or argument was given to establish the values sought in general damages; and the calculation for attorney's fees, while supported by factors required by local rules, exceed the allowable amount on a default judgment based on an action on contract's Civil Code section 1717 fees provision (Fresno Super. Ct. Local Rules, Appendix A).

General Damages

Plaintiffs now propose to find that the general damages sought, in the amount of \$90,000 as to plaintiff Michelle Lowe, be based on approximately 400 days of emotional distress due to the substandard living conditions of the apartment she rented from defendants. Though Lowe already seeks the return of her entire rent, at \$650 per month, a total of \$8,450, Lowe seeks \$225 per day in emotional damages, amounting to an average of \$6,750 per month, or approximately 10.4 times her rent. While the court does not diminish the anguish Lowe incurred as a result of the substandard living conditions, the court finds nothing in the supplemental filings to support an award of general damages at over 10 times the special damages, particularly in the absence of evidence of any lasting or recurring damage. Moreover, the trial court has a duty to reduce an excessive "per diem" calculation. (See *Beagle v. Vasold* (1966) 65 Cal.2d 166, 179-180; *Seffert v. Los Angeles Transit Lines* (1961) 56 Cal.2d 498, 507.)

Attorney's Fees

At the April 13 hearing, plaintiffs confirmed the withdrawal of the request for attorney's fees of plaintiff Joann Jackson. The court proceeds as to Lowe. Though counsel for plaintiffs argues that this case is not a normal breach of contract or collection matter, instead involving multiple theories of liability based on both lay and expert evidence, the court does not question the complexity of the matter. Rather, the issue is the reasonably

expected time to litigate the matter. (*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 990-991.) In a matter where every defendant fails to answer the allegations set forth by plaintiffs, early disposition controls. (See *id.*) Moreover, many of the entries are unrecoverable clerical tasks such as calendaring and updating practice management software. Other entries regarding telephone calls to the client, without more, are indistinguishable from clerical tasks. For the above reasons, the court cannot find the request for attorney's fees in the amount of \$34,929.38 for 95.1 hours of billed time to be reasonable.

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 5/23/2022.  
(Judge's initials) (Date)