

Tentative Rulings for January 28, 2026
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.***

24CECG01723 Vivint Solar Developer, LLC v. Saldivar (Dept. 503)

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)

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Tentative Ruling

Re:

Grewal v. Grewal et al.

Superior Court Case No. 21CECG01034

Hearing Date:

January 28, 2026 (Dept. 503)

Motion:

By Plaintiff for Interlocutory Judgment Establishing Manner of Partition

Tentative Ruling:

To grant and sign the proposed order.

Explanation:

The content of the interlocutory judgment in a partition action varies according to the issues being adjudicated. In general, the judgment must set forth the ownership interests in the property or estate affected by the partition to be made, and order the partition. (See Code Civ. Proc., § 872.720, subd. (a).) In an action for partition all parties' interest in the property may be put at issue regardless of the record title. (Code Civ. Proc., § 872.610.) The moving papers show that plaintiff and defendant own the property as tenants in common, each with a 50% interest in the property.

Though the Code states that the court "shall" appoint a referee to divide or sell the property as ordered by the court (Code. Civ. Proc., § 873.010, subd. (a)), in *Richmond v. Dofflemyer* (1980) 105 Cal.App.3d 745, 746, the court found that this statute requires the appointment of a referee only where it is determined that a referee is necessary or would be desirable or helpful and that it should not be so strictly construed as to require the expense and time consuming services of a referee where the court has adequate evidence before it to render its decision. Instead, plaintiff asks the court to appoint the court clerk as elisor to sign documents for defendant for the sale of the property.

The court will authorize the sale to take place, with plaintiff having the option, subject to a final accounting and adjustments, of buying out defendant Baljinder Grewal's interest based on the credits and offsets set forth in the proposed order.

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: JS **on** 1/22/2026.
(Judge's initials) (Date)

Tentative Ruling

Re:

Kimberly Ferrell v. Albert Sanchez, III

Superior Court Case No. 22CECG03143

Hearing Date:

January 28, 2026 (Dept. 503)

Motion:

Defendant's Motion to Augment Expert Designation

Tentative Ruling:

To grant.

Explanation:

A party who has engaged in a timely exchange of expert witness information may move the court to grant leave to: "(1) Augment that party's expert witness list and declaration by adding the name and address of any expert witness whom that party has subsequently retained. [¶] (2) Amend that party's expert witness declaration with respect to the general substance of the testimony that an expert previously designated is expected to give." (Code Civ. Proc. § 2034.610, subd. (a).) The motion must be made in sufficient time in advance of the completion of discovery. (Code Civ. Proc., § 2034.610, subd. (b).) A meet and confer declaration is required. (Code Civ. Proc., § 2034.610, subd. (c).)

The court shall grant leave to augment or amend an expert witness list or declaration only if all of the following conditions are satisfied:

- (a) The court has taken into account the extent to which the opposing party has relied on the list of expert witnesses.
- (b) The court has determined that any party opposing the motion will not be prejudiced in maintaining that party's action or defense on the merits.
- (c) The court has determined either of the following: [¶] (1) The moving party would not in the exercise of reasonable diligence have determined to call that expert witness or have decided to offer the different or additional testimony of that expert witness. [¶] (2) The moving party failed to determine to call that expert witness, or to offer the different or additional testimony of that expert witness as a result of mistake, inadvertence, surprise, or excusable neglect, and the moving party has done both of the following: [¶] (A) Sought leave to augment or amend promptly after deciding to call the expert witness or to offer the different or additional testimony. [¶] (B) Promptly thereafter served a copy of the proposed expert witness information concerning the expert or

the testimony described in Section 2034.260 on all other parties who have appeared in the action.

(d) Leave to augment or amend is conditioned on the moving party making the expert available immediately for a deposition under Article 3 (commencing with Section 2034.410), and on any other terms as may be just, including, but not limited to, leave to any party opposing the motion to designate additional expert witnesses or to elicit additional opinions from those previously designated, a continuance of the trial for a reasonable period of time, and the awarding of costs and litigation expenses to any party opposing the motion.

(Code Civ. Proc., § 2034.620.)

This action arises out of a wrongful death incident from a vehicle versus pedestrian collision that occurred on November 7, 2020. It is alleged that the Decedent Sandra Denise Ferrell ("Decedent"), age 52, ran across lanes in front of defendant's, Albert Sanchez III ("Defendant"), oncoming vehicle while dressed in dark clothing and with a measurable amount of methamphetamine and/or other substances in her system.

Defendant substituted new counsel on June 4, 2025 following the sudden retirement of defendant's former counsel. (Jayd Banuelos Decl., ¶3.) Initially, defendant sought to rely on the expert testimony of Fresno County Forensic Pathologist, V. Gopel. Shortly after serving expert designations on July 14, 2025, defendant's new counsel discovered that V. Gopel passed away in 2022.

Defendant now seeks to augment his retained expert witness disclosure to include Vina R. Spiehler, Ph.D., who specializes in Forensic Toxicology, to testify as to the Decedent's intoxication and level of impairment at the time of the accident.

Defendant has demonstrated that it meets the requirements of Code of Civil Procedure section 2034.620, where it acted diligently to locate alternative persons to provide trial testimony (Banuelos Decl., ¶9), and the addition of Vina R. Spiehler, Ph.D. as an expert is necessary to fairly address Plaintiffs' anticipated claims. (Banuelos Decl., ¶10.)

For the foregoing reasons, the Court grants defendant's unopposed motion. Defendant shall also make their expert witnesses immediately available for deposition, consistent with Code of Civil Procedure section 2034.620, subdivision (d).

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: JS **on** 1/23/2026.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re:

Emerzian Woodworking, Inc. v. Brown, et al.

Superior Court Case No. 25CECG01893

Hearing Date:

January 28, 2026 (Dept. 503)

Motion:

- (1) by Defendant Westamerica Bank to Compel Arbitration
- (2) by Defendant Westamerica Bank for Judgment on the Pleadings
- (3) Defendant Citizens Business Bank's Demurrer to the First Amended Complaint
- (4) Defendant American Express National Bank's Demurrer to the First Amended Complaint

Tentative Ruling:

To deny Defendant Westamerica Bank's motion to compel arbitration without prejudice.

To continue the motion for judgment on the pleadings and demurrs to the First Amended Complaint to March 25, 2026. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

Explanation:

Defendant Westamerica Bank moves to compel arbitration pursuant to the "Dispute Resolution" provisions within the 2015, 2021, and 2023 revisions of the Westamerica Bank Deposit Agreement and Disclosure referenced in Business Signature Card Agreements for plaintiffs' Westamerica Bank accounts.

In moving to compel arbitration, defendant must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. The party opposing the motion must then prove by a preponderance of evidence that a ground for denial of the motion exists (e.g., fraud, unconscionability, etc.) (*Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413-414; *Hotels Nevada v. L.A. Pacific Ctr., Inc.* (2006) 144 Cal.App.4th 754, 758; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.)

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc. § 1281.2) However, there is "no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate." (*Garlach v. Sports Club Co.* (2012) 209 Cal.App.4th 1497, 1505) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.)

Here, defendant has not met its burden of showing that there is an agreement to arbitrate the claims that plaintiffs have raised in the complaint. Defendant has presented copies of the "Business Signature Card and Agreement" and "Personal Signature Card and Agreement" signed by plaintiffs Thomas Emerzian individually and on behalf of Emerzian Woodworking, Inc. upon opening accounts with County Bank and making changes to signatories to the accounts until the accounts were closed in 2024, and those associated with new accounts opened in 2024. (Ochoa Decl., ¶¶ 5, 7a-k, Exh. A.) The agreements state the party agrees and acknowledges receipt of a copy of the Bank's Deposit Agreement and Disclosure and Schedule of Fees and Charges. (*Id.*, ¶ 8, Ex. A.) Defendant additionally presents copies of the Westamerica Deposit Agreement and Disclosure dated May 2015, December 2021, and May 2023. (*Id.*, ¶¶ 9-11.) Defendant's Vice President and Manager of Branch and Corporate Services attests to the custom and practice of defendant Westamerica Bank "to provide its customers, including Plaintiffs herein, with copies of all Customer Records upon opening a new account with Westamerica, including the Deposit Agreements attached hereto as Exhibits 'B,' 'C,' and 'D.'" (*Id.*, ¶ 13.) Among the terms and conditions of the Deposit Agreement and Disclosure is a section regarding "Dispute Resolution" which indicates that in the event of a dispute the parties agree to resolve the matter through arbitration. (See, Ex. B, pp. 47-48, Ex. C, pp. 1, 66-68, Ex. D. pp. 1, 66-68.) There is no reference to an arbitration agreement within the Signature Card argued to expressly incorporate the Deposit Agreement and Disclosures. There is nothing on the face of the Deposit Agreement and Disclosures to indicate the document was tied to or received by plaintiff(s).

Defendant's evidence that it is the custom and practice to provide its customers copies of documents including the Deposit Agreements upon opening an account is not sufficient evidence of who was provided the Deposit Agreement or by what means the Deposit Agreement was provided to plaintiff(s) to find that the dispute resolution provision of the Deposit Agreement was received and agreed upon by plaintiff(s). It is additionally unclear how plaintiff's accounts opened in 2003 and 2005 that predate the 2015 version of the Deposit Agreement received the Deposit Agreement "upon opening" as represented. It is also unclear whether all of the accounts identified in the moving papers are the subject of plaintiffs claims.

Accordingly, the court finds defendant Westamerica Bank has not met its burden in demonstrating the existence of an agreement to arbitrate plaintiffs' claims. The motion to compel arbitration is denied without prejudice.

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: JS **on** 1/23/2026.
(Judge's initials) (Date)

Tentative Ruling

Re:

Deeasha Eddings v. Saint Agnes Medical Center

Superior Court Case No. 22CECG03112

Hearing Date:

January 28, 2026 (Dept. 503)

Motion:

by Defendant Saint Agnes Medical Center for Summary Judgment

Tentative Ruling:

To grant defendant Saint Agnes Medical Center's Motion for Summary Judgment. (Code Civ. Proc., § 437c, subd. (c).)

Explanation:

As the moving party, defendant bears the initial burden of proof to show that plaintiffs cannot establish one or more elements of their cause of action or to show that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Only after the moving party has carried this burden of proof does the burden of proof shift to the other party to show that a triable issue of one or more material facts exists – and this must be shown via specific facts and not mere allegations. (*Ibid.*)

Where the moving party produces competent expert opinion declarations showing that there is no triable issue of fact on an essential element of the opposing party's claim (e.g. that a medical defendant's treatment fell within the applicable standard of care), the opposing party's burden is to produce competent expert opinion declarations to the contrary. (*Ochoa v. Pacific Gas & Elec. Co.* (1998) 61 Cal.App.4th 1480, 1487.)

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. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.) Any doubts as to whether a triable issue of material fact exist are to be resolved in favor of the party opposing summary judgment. (*Ibid.*)

"Failure to file opposition including a separate statement of disputed material facts [...] 'may constitute a sufficient ground, in the court's discretion, for granting the motion.'" (*Cravens v. State Bd. of Education* (1997) 52 Cal.App.4th 253, 257, quoting Code Civ. Proc. § 437c, subd. (c).)

First, decedent signed a "Conditions of Admission for Services," which sets forth that "All physicians and surgeons furnishing services to me [...] are independent contractors and are not employees or agents of the hospital." (See Stmt. of Evidence, Exh. 3, Conditions of Admission.) Defendant also provides a declaration by Saint Agnes' Chief Medical Officer, Bessant Parker, M.D., who attests that all physicians are independent contractors and not agents or employees of Saint Agnes, acting

individually in the provision of their services. (Undisputed Material Fact ["UMF"] No. 8, see generally Stmt. of Evidence, Exh. 6, Parker Decl.) As such, in question is the conduct of the hospital and its nursing staff.

In support of its motion for summary judgment, defendant Saint Agnes submits the declarations of Phil Bickler, M.D. ("Dr. Bickler") and Laura Gaminde, MBA, BSN, RN, CNOR, ("Nurse Gaminde") in which they opine that there was no breach by Saint Agnes or its nurses, personnel, or staff. (See UMF Nos. 4, 7.) Separately, Dr. Bickler opines that there is no causal connection, to a reasonable medical probability, between any acts or omissions on the part of Saint Agnes, or its nurses, personnel, or staff, and any injuries suffered by decedent, including his death. (See UMF Nos. 2, 5.)

Both Dr. Bickler and Nurse Gaminde are qualified to render their opinions. Their curriculum vitae are attached to their declarations. They reviewed the decedent's medical records from Saint Agnes when formulating their opinions. (See Bickler Decl., ¶ 10, Gaminde Decl., ¶ 8.) The medical records were certified under oath by the authorized custodian of records for Saint Agnes, Veronica O'Hair. (Stmt. of Evidence, Exh. 5.)

Dr. Bickler's and Nurse Gaminde's expert opinions are sufficient to shift the burden to the plaintiffs as to the existence of a triable issue of fact. Plaintiffs, however, filed a statement of non-opposition whereby they do not oppose the motion for summary judgment. They did not file an opposing statement of material fact. Thus, plaintiffs seemingly affirm the merits of defendant Saint Agnes' motion. (*Cravens v. State Bd. of Education*, *supra*, 52 Cal.App.4th at p. 257.)

For the foregoing reasons, the motion for summary judgment 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 Ruling

Issued By: JS **on** 1/26/2026.
(Judge's initials) (Date)