**Tentative Rulings for February 2, 2023**
**Department 502**

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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).)**

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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 502

Begin at the next page

(24)

**Tentative Ruling**

Re: ***In re Kalie Moua***
Superior Court Case No. 22CECG3825

Hearing Date: February 2, 2023 (Dept. 502)

Motion: Petition for Approval of Compromise of Minor's Claim

**Tentative Ruling:**

To grant. Orders signed. No appearances necessary.

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: KCK on 02/01/23.**
(Judge's initials) (Date)

(27)

**Tentative Ruling**

Re: ***FCERA Realty Group, LLC v. Boardwalk at Palm Bluffs, LP***
Superior Court Case No. 19CECG01169

Hearing Date: February 2, 2023 (Dept. 502)

Motion: By Defendant Target Constructors, Inc. for Summary Adjudication

**Tentative Ruling:**

To deny. All objections are overruled. (Code Civ. Proc. § 437c, subd. (q).)

**Explanation:**

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.) Consequently, "[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 of Civ. Proc., § 437c subd. (f)(1); see also *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 97 [piecemeal adjudication prohibited.].)

In addition, "[s]ummary adjudication is a severe remedy and should be used with caution ...." (*Everett v. Superior Court* (2002) 104 Cal.App.4th 388, 392.) 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."].) Accordingly, in determining a motion for summary judgment or adjudication, "'we view the evidence in the light most favorable to plaintiffs'" and "'liberally construe plaintiffs' evidentiary submissions and strictly scrutinize defendant['s] own evidence ….'" (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 96-97, citations omitted.)

*Fourth and Fifth Causes of Action (Intentional and Negligent Misrepresentation) and Request for Punitive Damages*

Moving defendant Target Constructors, Inc. ("Target") basis its motion for summary adjudication on the contention that plaintiff FCERA Realty Group, LLC's ("FCERA") "causes of action for fraud fail because Target made no misrepresentations." (Points & Auth. p. 6:14-15.) Target contends that FCERA cannot establish a misrepresentation because Target furnished the lowest bid, did not ask the subcontractors to inflate their bids, and because discrepancies in the Department of Industrial Relations ("DIR") reporting are not dispositive. (*Id*. at p. 7:16-28.)

Target acknowledges that its president, David Archer ("Archer") testified that there generally is a 25%-35% increase from private to prevailing wage projects. (Target's Separate Statement of Undisputed Material Facts ("SUF") no. 6.) The subject project, however, resulted in an increase of 49.6%, which included a 71.9% increase by one subcontractor. (SUF nos. 7, 15, and 16.) Archer characterizes these peculiar increases as reasonable considering the project's novelty and the type of labor performed by the subcontractor. (SUF nos. 7 – 14.) Although Archer also testified that increases such as those presented here raise "bells and whistles," Target dismisses the comment as incomplete and only an answer to hypothetical question. (Reply, at p. 3:16-24.)

FCERA has presented the expert testimony of Michael Villalba ("Villalba"), who opines that an overall increase of 49.6%, as well as an increase of 71.6% for framing, are unreasonable. (Villalba, Decl. ¶¶ 7-8.) Villalba also opines that the increase in costs to a prevailing wage construction project is the difference between the original labor rate and the prevailing wage rate – neither material cost nor previously completed work is used in the calculation. (Villalba, Decl. ¶ 5.)

The value of Villalba's opinion evidence "rests not in the conclusion reached but in the factors considered and the reasoning employed." (*Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1135.) Villalba's declaration describes his qualifications as an "expert construction consultant and cost estimator with experience in virtually every role in the contracting and building industry including … project manager, estimator … operations manager …." (*Id*. at ¶ 2.) He is familiar with the subject project and has reviewed the work performed. (*Id*. at ¶7.) Accordingly, Villalba's conclusion is supported by the record and is neither speculative, remote, nor conjectural. (*Pacific Gas & Electric Co. v. Zuckerman, supra,* 189 Cal.App.3d at p. 1135; *Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 338–339.)

Target contends that Villalba did not address the standard of care. Nevertheless, Villalba's opinion can be interpreted as Target's prevailing wage bid lacked reasonableness to such a degree that the falsity element was plain. (See *Fernandez v. Alexander* (2019) 31 CA5th 770, 782 ["any inferences must 'reasonably be derived from' the declaration."]; see also See *Lim v. The.TV Corp. Internat*. (2002) 99 Cal.App.4th 684, 694 [elements of fraud]; *National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 50 [elements of negligent misrepresentation].) Furthermore, in determining motions summary judgment or summary adjudication, the opposing experts are to be liberally construed, while the moving party's evidence is strictly scrutinized. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768; *D'Amico v. Board of Med. Examiners* (1974) 11 Cal.3d 1, 21; *Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 839; *Johnson v. American Standard, Inc*. (2008) 43 Cal.4th 56, 64.) In addition, an opposing expert's declaration "need not be as detailed or extensive as that required in expert testimony presented in support of a summary judgment motion or at trial." [*Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 187-189; *Hanson v. Grode* (1999) 76 Cal.App.4th 601, fn. 6—factual bases for expert's opinion need not be set forth in "excruciating detail"]

Target also contends FCERA recognized in the spreadsheet incorporated into the original agreement that converting the project from private wage to prevailing wage increased costs besides labor, such as more administration and overhead costs,

increased insurance, and increased profit. (See Reply to Plaintiff's Separate Statement, no. 6.) Nevertheless, the spreadsheet incorporated into the original agreement does not plainly explain the $117,732 between the amount charged ($807,732) and the amount reported ($690,000) to the Department of Industrial Relations. (See last page of Exhibit E (FCERA014409) to Balch Declaration.)

Furthermore, Target's evidence can be reasonably interpreted to show that although additional administrative costs are required in the reporting process, the bulk of the additional costs are essentially premised on labor rates, consistent with Villalba's opinion. For example, Ed Lefranco testified that payroll taxes, workers' compensation raises, vacation, health, and holiday pay are used in the prevailing wage increase, i.e. not materials. (Ex. A to the Declaration of Scott Cote, Deposition of Ed Lanfranco, page 27, line 20 to page 29, line 6 [discussing a 35% rough increase); Exhibit B to the Declaration of Scott D. Cote, Deposition of Helder Domingos, page 47, line 24 to page 48 [referring to payroll tax, liability, workers' compensation, and profit].) Jason Meyers' testimony is similar, referring to "workers' comp, plus general liability, your entire insurance package" (Exhibit C to the Declaration of Scott D. Cote, Deposition of Jason Meyers, p. 33:9 – 12.) Consequently, simply attributing the increased costs to additional administration and overhead does not contradict Villalba's opinion that the price increase was unreasonable.

Consequently, whether Target submitted its prevailing wage bid knowing it was premised on false information, or whether Target lacked reasonable ground for believing the truth of the information, are triable questions of material fact, because, in light of Villalba's expert opinion, Target's prevailing wage bid was arguably false and misleading. (*Intieri v. Superior Court* (2004) 117 Cal.App.4th 72, 87.) In addition, given liberal construction, Archer's testimony that price increases such as those asserted here cause "bells and whistles" to go off implies in the very least that he was, or should have been, looking for unreasonable price increases.

Finally, for purposes of determining the materiality of alleged misrepresentations, materiality is generally considered "a mixed question of law and fact that can be decided as a matter of law if reasonable minds could not disagree on the materiality of the misrepresentations." (*Cummings v. Fire Ins. Exchange* (1988) 202 Cal.App.3d 1407, 1417.) In essence, unless the reliance is "'manifestly unreasonable'" a plaintiff's justifiable reliance on an alleged misstatement is generally a question reserved for the trier of fact. (See *Blankenheim v. E.F. Hutton & Co*. (1990) 217 Cal.App.3d 1463, 1474, internal citations omitted.)

Therefore, Target's motion for summary adjudication is denied.

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: KCK on 02/01/23.**
(Judge's initials) (Date)

(37)

**Tentative Ruling**

Re: ***Amie Vang v. Jim Anderson***
Superior Court Case No. 21CECG03365

Hearing Date: February 2, 2023 (Dept. 502)

Motion: By Plaintiff 1) To Have Requests for Admissions (Set Two) Deemed Admitted; 2) To Compel Attendance; and 3) For Terminating and Monetary Sanctions

**Tentative Ruling:**

To grant the request for terminating sanctions in favor of plaintiff Amie Vang and against defendant Jim Anderson. The court strikes defendant's answer filed May 23, 2022. Plaintiff may proceed to submit requests for entry of default and for default judgment.

To grant monetary sanctions in the amount of $510 as plaintiff's reasonable expenses pursuant to Code of Civil Procedure section 2023.030, subdivision (a), but to deny plaintiff's request for sanctions against defendant's counsel pursuant to Code of Civil Procedure section 128.5.

To find the Request to have Requests Admitted and the Motion to Compel Attendance moot.

**Explanation:**

There is evidence that defendant has engaged in misuse of the discovery process. Lesser sanctions have proven ineffective in compelling defendant to comply with the discovery requests. There is no indication that any more time or any lesser sanction will result in defendant responding to the outstanding discovery or complying with the prior court order. Therefore, the court strikes defendant's answer pursuant to Code of Civil Procedure section 2023.030, subdivision (d)(1).

The plaintiff requests monetary sanctions in the amount of $510, which includes the reasonable expenses of pursuing this motion. Plaintiff also asks the court to hold defendant in contempt under Code of Civil Procedure section 177.5 and to sanction defense counsel under Code of Civil Procedure section 128.5.

Regarding the monetary sanctions for pursuit of this motion, in addition to or in lieu of any other sanction, the court may order monetary sanctions of reasonable expenses. (Code Civ. Proc., § 2023.030, subd. (a).) Code of Civil Procedure section 177.5 provides the court has the power to impose reasonable monetary sanctions, not to exceed $1,500 for violation of its lawful orders. Such sanction would be payable to the court. Here, the court is only ordering sanctions for the reasonable expenses plaintiff incurred in pursuit of this motion. Here the reasonable expenses include the $450 for 1.5 hours to prepare the motion and $60 for filing fees, totaling $510.

Regarding sanctions against the defendant's attorney, Code of Civil Procedure section 128.5, subdivision (a) provides that the court may order a party, the attorney, or both to pay reasonable expenses incurred as a result of "actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay." Actions and tactics are defined as including making or opposing a motion. (Code Civil Proc., § 128.5, subd. (b)(1).) This type of motion is to be made separately from other motions. (Code Civil Proc., § 128.5, subd. (f)(1)(A).) Here, this motion was not made separately. The court denies the request.

In light of the court's decision regarding striking the defendant's answer, the court finds that the remaining motions are deemed moot.

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: KCK on 02/01/23.**
(Judge's initials) (Date)

(20)

**Tentative Ruling**

Re: ***Souza v. Calcote***
Superior Court Case No. 22CECG01565

Hearing Date: February 2, 2023 (Dept. 502)

Motion: Petitions for Approval of Compromise of Disputed Claim of Minors

**Tentative Ruling:**

To grant. Orders signed. No appearances necessary.

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: KCK on 02/01/23.**
(Judge's initials) (Date)

(40)

**Tentative Ruling**

Re: ***Johnson v. Saint Agnes Medical Center***
Superior Court Case No. 21CECG02609

Hearing Date: February 2, 2023 (Dept. 502)

Motion: By Defendant Saint Agnes Medical Center, for Summary Judgment

**Tentative Ruling:**

To grant. Defendant Saint Agnes Medical Center is directed to submit to this court, within 5 days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

**Explanation:**

As the moving party, defendant bears the initial burden of proof to show that plaintiffs cannot establish one or more elements of the at-issue cause of action or to show that there is a complete defense. (Code Civ. Proc. CCP § 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. (*Id.*)

> "California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence."

(*Munro v. Regents of Univ. of Calif*. (1989) 215 Cal.App.3d 977, 984-85.)

With the expert testimony of Vincent Gaudiani, MD, as well as that of W. Eugene Egerton, MD, moving defendant has made a prima facie showing that: (1) Neither Defendant Saint Agnes Medical Center nor its employees, including nursing staff and technicians, breached the standard of care; (2) that neither Defendant Saint Agnes Medical Center nor its employees, including nursing staff and personnel caused Janis Johnson any injury; and, (3) that physicians who rendered care to Plaintiff at Saint Agnes Medical Center are independent contractors for whose actions Saint Agnes Medical Center is not liable.

The burden therefore shifts to Plaintiff to show the existence of a triable issue of material fact. Plaintiff has filed a Notice of Non-Opposition to Defendant's motion and has introduced no conflicting expert evidence to controvert the expert evidence introduced by defendant. Accordingly, Plaintiff has not met her burden.

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: KCK on 02/01/23.**
(Judge's initials) (Date)

(35)

**Tentative Ruling**

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| Re: | ***Guadalupe A. Villagomez v. Leonel Villagomez et al.***<br>Superior Court Case No. 22CECG00485 |
| Hearing Date: | February 2, 2023 (Dept. 502) |
| Motion: | By Defendants Leonel Villagomez, Stella Villagomez, and 2 Boyz, Inc., to Expunge Lis Pendens |

**Tentative Ruling:**

To grant and expunge the lis pendens. To grant defendants' request for an award of reasonable attorney's fees and costs against plaintiff in the amount of $2,484.90. Plaintiff shall pay attorney's fees and costs to defense counsel within 30 days of the date of service of this order.

**Explanation:**

Under Code of Civil Procedure section 405.30, any party, or any nonparty with an interest in real property affected by a lis pendens, can move to expunge the lis pendens at any time after the notice of pendency of action has been recorded. (Code Civ. Proc. § 405.30.) There are four bases upon which a party may seek to expunge: (1) the lis pendens is void and invalid (*id.*, § 405.23), (2) the action as pleaded does not contain a real property claim (*id.*, § 405.31); (3) the claimant fails to establish the probable validity of the claim (*id.*, § 405.32); and (4) monetary relief provides an adequate remedy (*id.*, § 405.33.) Defendants Leonel Villagomez, Stella Villagomez and 2 Boyz, Inc. ("defendants") seek expungement on two grounds that the action does not contain a real property claim, and that plaintiff cannot establish the probable validity of the claim.

*Real Property Claim*

The lis pendens prevents the defendant property owner from frustrating any judgment that might eventually be entered by transferring his or her interest in the property while the action is pending. (*Lewis v. Superior Court* (1994) 30 Cal.App.4th 1850, 1860.) Consistent with that limited purpose, a lis pendens recorded in an action that does not involve title has no effect. (*Bernhard v. Wall* (1920) 184 Cal. 612, 630.) The complaint must set forth some cause of action affecting the title or right of possession of the specific real property described in the lis pendens, and the failure to do so results in the nullity of the lis pendens. (*Id.* at p. 817.)

In considering a motion to expunge lis pendens, the court engages in a demurrer-like analysis, evaluating whether the pleading states a real property claim. (*Kirkeby v. Superior Court* (2004) 33 Cal.4th 642, 647-648.) Review involves only a review of the adequacy of the pleading and normally should not involve evidence from either side,

other than what may be judicially noticed as on demurrer. (*Id* at p. 648.)[1] The history of the lis pendens legislation indicates a legislative intent to restrict rather than broaden the application of the remedy. (*Urez v. Superior Court* (1987) 190 Cal.App.3d 1141, 1145.)

Here the claim is for monetary relief. Plaintiff alleged that defendants, and each of them defrauded plaintiff to incorporate Villagomez Farms, Inc. (Complaint, ¶¶ 11-16.) Thereafter, defendants transferred or caused to be transferred real property that are the objects of the instant lis pendens. (*Id.*, ¶ 22.) Plaintiff estimated that the value of the obtained real property to be worth $5 million, and profits from the corporation to be worth another $5 million. (*Id.*, ¶¶ 23-24.) Based on those actions, plaintiff seeks relief in the form of a constructive trust in the sum of $10 million. (*Id.*, ¶ 26.) Consistent with the allegations, the relief sought in the complaint is not for title to any property, but the estimated equivalent worth of damage therefrom, $10 million in constructive trust.

Where the claim is essentially a fraud action seeking money damages with additional allegations urged to support the equitable remedies of a constructive trust, the claim does not support a lis pendens. (*Lewis v. Superior Court*, *supra*, 30 Cal.App.4th at p. 1862.) Allegations of equitable remedies, even if colorable, will not support a lis pendens if those allegations act only as a collateral means to collect money damages. (*Ibid.*) Thus, a lis pendens is improper where a plaintiff claims an interest in the defendant's property only to the extent the monies it alleges were wrongfully obtained have been invested therein. (*Id.* at p. 1863.) To do so would otherwise transform a money-collection remedy into an attachment without any of the protections. (*Id.* at p. 1864.)

The complaint seeks only the monetary equivalent of the real property placed at issue as a means for compensation. The complaint does not suggest that at any point plaintiff held title to the real property in question, nor that she was otherwise defrauded into dispossession of the real property in question.[2] The two causes of action for fraud and financial elder abuse therefore do not state a real property claim, and only seeks compensation by and through the real property allegedly obtained with assets taken from plaintiff. The court finds that the complaint does not contain a real property claim.

*Probable Validity*

If the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim, the lis pendens must be expunged. (Code Civ. Proc. § 405.32.) Thus, a motion to expunge under section 405.32 requires an evidentiary hearing on the probability that the plaintiff will be able to establish a valid real property claim. (*BGJ Associates, LLC v. Superior Court* (1999) 75 Cal.App.4th 952, 957.) "'Probable validity,' with respect to a real property claim, means that it is more likely than not that the claimant will obtain a judgment against the defendant on the claim." (Code Civ. Proc., § 405.3.)

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[1] Defendants' Request for Judicial Notice as to Exhibits A through D are granted. Plaintiff's Request for Judicial Notice is granted. Defendants' Objections to the Declaration of Brian Cuttone are overruled. Defendants' Objections to the Declaration of Guadalupe A. Villagomez are overruled.

[2] Originally at issue were nine properties, three of which were alleged to have been previously owned by plaintiff. However, the three alleged to be owned by plaintiff are absent from the lis pendens at issue. Only the six properties owned by defendant 2 Boyz, Inc. remain.

"Unlike other motions, the burden is on the party opposing the motion to expunge—i.e., the claimant-plaintiff—to establish the probable validity of the underlying claim. The claimant-plaintiff must establish the probable validity of the claim by a preponderance of the evidence… That is, the plaintiff must 'at least establish a prima facie case. If the defendant makes an appearance, the court must then consider the relative merits of the positions of the respective parties and make a determination of the probable outcome of the litigation.'" (*Howard S. Wright Construction Co. v. Superior Court* (2003) 106 Cal.App.4th 314, 319, internal citations and footnotes omitted.) "Thus, a showing of good faith and a proper purpose are no longer sufficient to overcome a motion to expunge. The claimant must show a probably valid claim." (*Palmer v. Zaklama* (2003) 109 Cal.App.4th 1367, 1378, internal citation omitted.)

Here, as above, there is no real property claim. There are claims of monies owed that are presently in the form of real property. Plaintiff in opposition does not suggest otherwise. Plaintiff in opposition only demonstrated that defendant 2 Boyz, Inc. at some point held title to some of the six properties identified in the lis pendens. Plaintiff submitted no evidence, only supposition, that through fraud of an elder, the deeds submitted were the result of misappropriation of plaintiff's assets.

*Attorney's Fees and Costs*

Under Code of Civil Procedure section 405.38, "[t]he court *shall direct* that the party prevailing on any motion under this chapter be awarded the reasonable attorney's fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust." (Code Civ. Proc., § 405.38, italics added.) Thus, an award of fees is mandatory unless the court specifically finds that plaintiffs acted with substantial justification or there are other circumstances that would make the imposition of fees unjustified.

Here, the complaint and evidence indicate that plaintiff recorded the lis pendens without having or seeking a real property claim. Plaintiff attempted to justify her recording of the lis pendens only by demonstrating that some, but not all, of the properties in question were titled to defendant 2 Boyz, Inc. Plaintiff submits no evidence of other circumstances that would make the imposition of attorney's fees against her unjust.

The court finds counsel's rate of $300 per hour as reasonable and grants the request for fees and costs, but in the reduced amount of $2,484.90.

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: KCK on 02/01/23.**
(Judge's initials) (Date)