

Tentative Rulings for April 29, 2025
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.*

23CECG04554 *Malik v. Salinas*

23CECG04683 *Roybal v. Audeamus* *** Please refer to the tentative ruling posted below. ***

24CECG01784 *Avadis, et al. v. General Motors LLC* *** Please refer to the tentative ruling posted below. ***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

25CECG01613 *In RE: Jayden King* is continued to Wednesday, April 30, 2025 at 3:30 p.m. in Department 503

23CECG04948 *Rodney DeLara v. Cesar Martinez Garcia* is continued to Thursday, June 5, 2025 at 3:30 p.m. in Department 503

19CECG03758 *Christina Casarez v. Andre Hill* is continued to Wednesday, May 28, 2025 at 3:30 p.m. in Department 503

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

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(20)

Tentative Ruling

Re: ***Fournet v. County of Fresno***
Superior Court Case No. 24CECG05414

Hearing Date: April 29, 2025 (Dept. 503)

Motion: Petition for Leave to File Action Against A Government Entity

Tentative Ruling:

To deny. (Gov. Code, § 946.6.)

Explanation:

The Government Claims Act provides that a timely written claim must first be presented to a public entity prior to any lawsuit for money damages against it. (Gov. Code, § 810 et seq.; *N.G. v. County of San Diego* (2020) 59 Cal.App.5th 63, 72.) Government Code section 911.2, subdivision (a) provides that such a claim is to be presented no later than six months after the accrual of the cause of action. (Gov. Code, § 911.2; *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776.) The policy behind the requirement to file a timely claim is threefold, as it 1) gives the entity an opportunity to promptly remedy the condition, 2) allows the entity to investigate while evidence is still available and witnesses' memories are fresh, and 3) gives the entity time to plan its budget accordingly. (*Munoz, supra.*)

Where a claim is not timely presented, a written application can be made to the public entity for leave to present the claim. (Gov. Code, § 911.4, subd. (a); *Munoz, supra*, 33 Cal.App.4th at p. 1777.) The application to present a late claim must be made to the public entity within one year of the accrual of the cause of action and state what caused the delay in presenting the claim. (Gov. Code, § 911.4, subd. (b); *Munoz, supra.*) Where the public entity denies the application to present a late claim, the claimant must petition the trial court for relief from the claim filing requirements. (Gov. Code, § 946.6; *Munoz, supra.*)

Here, the cause of action accrued on 1/10/2024, when plaintiff tripped on an alleged cracked/uneven sidewalk adjacent to N. Shaw Avenue and 5005 N. Roosevelt Avenue in Fresno. Apparently believing that the City of Fresno owned or maintained the sidewalk, on 7/3/2024 petitioner, in pro per, submitted a written claim to the City of Fresno. The City mailed a Notice of Insufficiency of Claim on 7/8/2024, and plaintiff submitted an amended claim with the City on 7/22/2024. On 8/2/2024 the City requested a recorded statement from petitioner. On 8/21/2024 the City's counsel informed petitioner's counsel (apparently retained around that time) that the subject claim occurred within County of Fresno boundaries, not within City of Fresno boundaries. On 9/10/2024 petitioner's counsel filed an application for leave to present late claim to the County of Fresno, but the application was denied on 11/15/2024.

The decision to grant or deny such a petition is within the discretion of the trial court and will only be disturbed where there is an abuse of discretion. (*DeVore v.*

Department of California Highway Patrol (2013) 221 Cal.App.4th 454, 459.) As a remedial statute, it is to be construed in favor of the applicant requesting the relief. (*Munoz v. State of California*, *supra*, 33 Cal.App.4th 1767, 1778.) Trial courts shall relieve the late petitioner where two requirements have been met: (1) the application to the public entity was made within a reasonable time, not to exceed one year, after the accrual of the cause of action and (2) one of the four circumstances set forth in Government Code section 946.6, subdivision (c) must be shown by a preponderance of the evidence. (*N.G. v. County of San Diego*, *supra*, 59 Cal.App.5th at p. 72.)

The application to file a late claim was submitted to the County of Fresno within one year of the accrual date of the cause of action. The petition to the court for relief is timely.

Government Code section 946.6, subdivision (c)(1), provides relief where the failure to present the claim timely was due to mistake, inadvertence, surprise, or excusable neglect, unless the public entity can establish that it would be prejudiced in the defense of its claim if the trial court grants relief. (*Munoz v. State of California*, *supra*, 33 Cal.App.4th 1767, 1782.) The trial court considers the petition, affidavits, and other evidence presented when determining whether relief should be granted. (*Id.* at p. 1778.) Numerous courts have considered what constitutes mistake, inadvertence, surprise, or excusable neglect. Excusable neglect is that which might be made by a reasonably prudent person in the same circumstances. (*Ebersol v. Cowan* (1983) 35 Cal.3d 427, 435.) Courts consider the nature of the mistake and whether counsel was diligent in pursuing the claim. (*Department of Water & Power v. Superior Court* (2000) 82 Cal.App.4th 1288, 1294.)

In deciding whether counsel's error is excusable, courts look to: (1) the nature of the mistake or neglect, and (2) whether counsel was otherwise diligent in investigating and pursuing the claim. (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276, citing *Ebersol v. Cowan* (1983) 35 Cal.3d 427, 427.) "In examining the mistake or neglect, the court inquires whether "a reasonably prudent person under the same or similar circumstances" might have made the same error." (*Bettencourt*, *supra*, at p. 276 [internal citations omitted].)

To obtain relief based on excusable neglect under section 946.6, a claimant "must at a minimum make a diligent effort to obtain legal counsel within the governmental claim-filing period." (*Ebersol v. Cowan*, *supra*, 35 Cal.3d at p. 439.)

Here, petitioner does not make any showing of excusable neglect during the six-month statutory period. The Petition alleges that petitioner retained counsel *after* the six-month period, but does not state what efforts were made to retain counsel prior to expiration of the claim presentation deadline. "[A] petitioner may not successfully argue excusable neglect when he or she fails to take any action in pursuit of the claim within the six-month period. The claimant must, at a minimum, make a diligent effort to obtain legal counsel within six months after the accrual of the cause of action." (*People ex rel. Department of Transportation v. Superior Court* (2003) 105 Cal.App.4th 39, 44-45.)

Petitioner has not presented evidence of any effort to retain counsel, or to investigate which public entity is the appropriate one, at any point in the process.

Petitioner merely asserts that she was aided by a City of Fresno police officer after the accident, and that "courts have routinely held that similar errors by a Petitioner are subject to relief." (Petition ¶ 13.) Yet there is no evidence of this, and though petitioner's counsel finally submitted some very brief points and authorities with the reply, they cite to no legal authority holding that this fact (if supported by evidence) makes reasonable petitioner's apparent assumption that this was evidence that the sidewalk where she tripped and fell was on City as opposed to County property. In law and motion practice, factual evidence is supplied to the court by way of declarations. (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 224.) The court must disregard facts stated in unverified memo of points and authorities, unless supported by reference to evidence presented in declarations or otherwise. (*Smith, Smith & Kring v. Superior Court* (1997) 60 Cal.App.4th 573, 578.)

On this record the court cannot grant relief from the requirement of presenting a claim within six months. Accordingly, the County does not have the burden of showing prejudice by failure to present a timely claim within six months.

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** 4/24/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: **Andre Howell v. Select Portfolio Servicing, Inc.**
Superior Court Case No. 24CECG03894

Hearing Date: April 29, 2025 (Dept. 503)

Motion: Defendants' Demurrer to the Complaint

Tentative Ruling:

To continue to Wednesday, May 21, 2025 at 3:30 p.m. in Department 503, in order to allow Defendants to file a declaration regarding meet and confer efforts. Defendants shall file the declaration on or before May 7, 2025, stating, with detail, the efforts made.

Explanation:

Code of Civil Procedure section 430.41 makes it clear that meet and confer must be conducted "in person or by telephone." (*Id.*, subd. (a).) The moving party is not excused from this requirement unless they show that the plaintiff failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. (*Id.*, subd. (a)(3)(B).) Here, the Notice indicates that meet and confer efforts did occur and that a Declaration of Paula Hernandez was to be filed with the demurrer. However, no such declaration was filed. In the event counsel's previous efforts did not involve either in person or telephonic meet and confer efforts, counsel is to make such efforts. The parties must engage in good faith meet and confer, in person or by telephone, as set forth in the statute.

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 4/25/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: **Roybal v. Audeamus**
Superior Court Case No. 23CECG04683

Hearing Date: April 29, 2025 (Dept. 503)

Motion: Plaintiff Counsel's Motion to be Relieved as Counsel

Tentative Ruling:

The court intends to deny counsel for plaintiff Regina Roybal's motion to be relieved as counsel, without prejudice, for failure to submit a proof of service showing service of the motion on all parties who have appeared in the action. (Cal. Rules of Court, rule 3.1362(d).)

The hearing on this motion will go forward on Tuesday, April 29, 2025, at 3:30 p.m. in Department 503. The parties do not need to call to request oral argument.

Explanation:

Under Rule of Court 3.1362(d), "The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case. The notice may be by personal service, electronic service, or mail." (Cal. Rules of Court, rule 3.1362(d).)

Here, there is no proof of service of the moving papers on the client, Regina Roybal, and as such the court intends to deny the motion.

Additionally, the declaration submitted in support of the motion is incomplete, as it fails to provide a reason for counsel's motion.

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** 4/25/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: **Yniquez v. Yniquez**
Superior Court Case No. 21CECG03540

Hearing Date: April 29, 2025 (Dept. 503)

Motion: Summary Interlocutory Judgment

Tentative Ruling:

To deny.

Explanation:

Plaintiff moves pursuant to Code of Civil Procedure section 437c for "Summary Interlocutory Judgment" on the grounds that there is no triable issue of material fact and plaintiff is entitled to judgment as a matter of law on his complaint. The moving papers do not comply with the requirements for a motion for summary judgment as no separate statement of material facts have been filed and the moving papers have been served fewer than 81 days before the hearing. (Code Civ. Proc. § 437c, subd. (a)(2), (b)(1)).)

Disregarding the title and stated authority for the motion, plaintiff appears to be seeking interlocutory judgment in this partition action following defendant Rosemary Yniquez's default having been entered on April 22, 2024. However, the moving paper are also fall short of what is necessary to enter default interlocutory judgment. Defendant has not served or filed a Request for Default Judgment on the mandatory Judicial Council form or a proposed interlocutory judgment. Additionally, the plaintiff requests appointment of a referee for the sale but has failed to identify a proposed referee or provide their qualifications for the court to make such an appointment.

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).) Common additional provisions are:¹

- An order that the property be partitioned by division or by sale (unless the mode of partition has not then been decided). (§872.720, subd. (a).)
- Appointment of a referee or referees. (§§ 873.010 - 873.030.)
- Specification of the principal terms of sale. (§ 873.610.)
- Specification of the manner of sale (public or private). (§ 873.520.)
- Orders for payment of liens (if the property is not to be sold subject to liens). (§ 872.630.)

¹ All statutory references are to the Code of Civil Procedure.

- The court anticipates any proposed interlocutory judgment included with a subsequent submission requesting default interlocutory judgment will address both the mandatory and additional provisions relevant to this action.

Issued By: JS on 4/25/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***In re: Perla Velazquez***
Superior Court Case No. 25CECG01614

Hearing Date: April 29, 2025 (Dept. 503)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant the petition. The court intends to sign the proposed orders. No appearances are necessary.

The court sets a status conference for Tuesday, July 29, 2025, at 3:30 p.m., in Department 503, for confirmation of deposit of the minor's funds into a blocked account. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

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** 4/25/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Avadis, et al. v. General Motors LLC***
Superior Court Case No. 24CECG01784

Hearing Date: April 29, 2025 (Dept. 503)

Motion: Plaintiffs Counsel's Motion to be Relieved as Counsel

Tentative Ruling:

The court intends to deny counsel for plaintiffs Kevork Avadis and Shant Hovsep Avadis's motion to be relieved as counsel, without prejudice, for: (1) failure to timely serve the clients and all other parties that have appeared in this action (Cal. Rules of Court, rule 3.1362(d); Code Civ. Proc., § 1005, subd. (b).); and (2) failure to take reasonable steps to avoid reasonably foreseeable prejudice against the clients. (Cal. Rules of Prof. Conduct, rule 1.16(d).)

The hearing on this motion will go forward on Tuesday, April 29, 2025, at 3:30 p.m. in Department 503. The parties do not need to call to request oral argument.

Explanation:

Under Rule of Court 3.1362(d), "The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case. The notice may be by personal service, electronic service, or mail." (Cal. Rules of Court, rule 3.1362(d).) "Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing." (Code Civ. Proc., § 1005, subd. (b).) "However, if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days. . . ." (*Id.*)

Here, the last day to serve the moving papers was on April 7, 2025 if personally served, and on April 2, 2025 if served by mail. (Code Civ. Proc., § 1005, subd. (b).) However, plaintiffs' counsel did not file and serve the client by mail until April 10, 2025. There is also no indication that counsel even attempted to serve any other party with the moving papers.

Furthermore, "A lawyer shall not terminate a representation until the lawyer has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counsel. . ." (Cal. Rules of Prof. Conduct, rule 1.16(d), asterisks omitted.)

The court notes that trial readiness is set on May 2, 2025, and trial is set on May 5, 2025. Despite counsel's declaration indicating that they lost contact with the client as early as September 2024, no explanation is provided for why counsel waited until just three days prior to trial readiness and five days prior to trial to be relieved from this case.

Accordingly, the court intends to deny the motion.

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** 4/28/2025.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Julia Castro v. Amy Zwaan***
Superior Court Case No. 23CECG02824

Hearing Date: April 29, 2025 (Dept. 503)

Motion: to Set Aside Default of Cross-Defendant Humane Society of the United States

Tentative Ruling:

To grant the motion to set aside the default entered as to cross-defendant Humane Society of the United States. Cross-defendant is to file its answer within ten (10) days of the clerk's service of the minute order and to serve the same at the soonest available opportunity.

Cross-complainant Transamerica Life Insurance Company's request for fees is granted in the amount of \$1,437.97, payable by counsel for Humane Society of the United States to counsel for Transamerica Life Insurance Company within thirty (30) days from the day of this order.

Explanation:

Timeliness of Filings

"It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of motion. (*Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 7, quoting *Lacey v. Bertone* (1949) 33 Cal.2d 649, 651; *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697.) If the opposing party appears at all, they should limit their argument to objections based on the defective notice. Otherwise, the court will treat their opposition on the merits as a waiver of the defects. (*Ibid.*)

Cross-complainant Transamerica Life Insurance Company ("TLIC" or "cross-complainant") opposed the motion on its merits and did not limit its response to untimeliness of Estelle J. Munn's late filed declaration. Therefore, any untimeliness in the service of the notice of motion and its supporting documents is waived.

Legal Standard

The trial court has broad discretion to vacate a judgment and/or the clerk's entry of default that preceded it. However, that discretion can be exercised only if the moving party establishes a proper ground for relief, by the proper procedure, and within the statutory time limits. (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495.)

Pursuant to Code of Civil Procedure 473, subdivision (b), relief is either mandatory or discretionary. Relief is mandatory where it is based on an attorney's affidavit of fault. (Code Civ. Proc., § 473, subd. (b).) Relief is discretionary where it is based on mistake, inadvertence, surprise, or excusable neglect. (*Ibid.*)

"The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." (Code Civ. Proc., § 473, subd. (b).)

Discretionary Relief

The instant application for relief was made on the grounds of inadvertence, surprise, mistake, or excusable neglect. (Notice, 2:1.) Estelle J. Munn, General Counsel and authorized representative for cross-defendant Humane Society of the United States ("HSUS" or "cross-defendant"), provided a declaration attesting to her inadvertence, surprise, mistake, or excusable neglect which caused HSUS to be unaware of the cross-complaint until after default had been entered. (Munn Decl., ¶ 7.) Ms. Munn states that while cross-defendant's office received the cross-complaint on or about May 24, 2024 (*Id.*, ¶ 4), she was unaware of the cross-complaint until August 6, 2024 (*Id.*, ¶ 7) due to a delay caused by absent staff and lack of priority markers. (*Id.*, ¶ 5-6.)

There appears to have been a slight delay in pursuing the present application for relief, as counsel for cross-defendant, Noah B. Herbold, states that Ms. Munn directed him to communicate with cross-complainant's counsel "[b]eginning on or about October 1, 2024[.]" (Herbold Decl., ¶ 4.) This is two months later that Ms. Munn indicates she became aware of the cross-complaint. Subsequent discussions after September of 2024 (when cross-complainant filed its default judgment packet) to stipulate to set aside the default were unsuccessful, and this motion was filed on the last possible day. Regardless, it was timely.

The court in its discretion intends to grant the motion to set aside default, as the cross-defendant's oversights fall under inadvertence, mistake, and excusable neglect, and appear to have had an insignificant impact on the case as a whole. Critically, cross-complainant has presented no evidence of prejudice, and in fact it has been demonstrated that cross-complainant was willing to stipulate to set aside the default on the condition of payment of costs and attorney fees. (See Reply, 2:3, Exh. A.) The moving party filed a copy of its proposed answer to be filed. The notice and motion were filed exactly six months from the entry of default (subject to California Rule of Court, rule 1.10(b)). As such, the court finds the elements for discretionary relief to have been met.

Objections

Code of Civil Procedure section 2009 authorizes the use of declarations in motion proceedings. Declarations must be based on personal knowledge and not solely on information and belief. (*Kendall v. Barker* (1988) 197 Cal.App.3d 619, 624.) Objections 1

and 2 by cross-complainant are overruled, as Ms. Munn is making statements as to when and how she received the cross-complaint. Objection 3 is sustained, as Mr. Herbold is attempting to relay information on behalf of Ms. Munn that he does not rest in his personal knowledge.

Fees

As cross-defendant's relief is not based in an attorney affidavit of fault, compensatory legal fees and costs are not required. However, where the court grants relief from a default, it has discretion to "[g]rant other relief as is appropriate." (Code Civ. Proc., § 473, subd. (c)(1)(C).)

Here, it appears cross-defendant waited until the last possible minute to act and still remain "timely," during which delay cross-complainant was within its right to seek default and default judgment. However, the court in its discretion sees fit to reduce the amount of sanctions, as sanctions in the amount of \$6,709.97 (Horstmann Decl., ¶ 10) is excessive for a default and default judgment application. Counsel states costs of \$537.97, which the court will allow. Counsel reflects his hourly rate as \$300/hour, and the court will allow for recovery of 3 hours for work in relation to the default judgment sought. Cross-defendant is to pay cross-complainant in the total amount of \$1,437.97.

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** 4/28/2025.
(Judge's initials) (Date)