

Tentative Rulings for May 28, 2026
Department 502

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.*

24CECG01648 *Licea v. Western Dental Services, Inc.* (matter originally set in Dept. 501)

20CECG01307 *Zart Transmission, Inc. v. Loveman* (matter originally set in Dept. 501)

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 Ruling

Re: ***Alyssa Herrera v. ASFC LLC***
Superior Court Case No. 25CECG02335

Hearing Date: May 28, 2026 (Dept. 502)

Motion: By Defendants to Compel Arbitration

Tentative Ruling:

To continue the motion to July 8, 2026 at 3:30 pm in Department 501 to allow further briefing as set forth below.

Defendants, ASFC, LLC and Aspen Skilled Healthcare, Inc., are granted leave to file and serve briefing and admissible evidence which address each issue identified by the court below. The briefs shall not exceed 15 total pages (exclusive of tables of contents and authorities) and shall be due on or before the close of business June 12, 2026. Plaintiff, Alyssa Herrera, is permitted to file and serve a responsive brief of no more than 15 pages, no later than the close of business on June 26, 2026.

Explanation:

Plaintiff Alyssa Herrera ("Herrera" or "plaintiff") brings an action for ten causes of action for various violations of the Labor Code, and one cause of action for unfair competition, on behalf of herself and all aggrieved employees.

Defendants ASFC, LLC and Aspen Skilled Healthcare, Inc. (together "defendants") filed their initial Petition to Compel Arbitration on August 6, 2025. On November 26, 2025, this Court denied Defendants' original Petition to Enforce Class action Waiver and Compel Arbitration, without prejudice. (Holmes Decl., ¶ 3, Ex. A.) On December 19, 2025, Defendants' filed the instant renewed motion styled as an Amended Petition to Enforce Class Waiver, Compel Arbitration and Dismiss Claims, pursuant to the Federal Arbitration Act (9 U.S.C. section 1, et seq.).

The Court requires further briefing on the existence of an Arbitration Agreement, as the evidence currently before the court requires further explanation. "The general rule of motion practice ... is that new evidence is not permitted with reply papers ... [and] should only be allowed in the exceptional case" (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538.) If the court exercises its discretion to allow new evidence in reply papers, the opposing party must be given an opportunity to respond. (*Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1307-1308.)

Defendants argue that Herrera signed an Arbitration Agreement on July 19, 2023, and provide an Arbitration Agreement purportedly signed by Herrera on July 20, 2023. (Kwan Decl., Ex. A.) Defendants argue in their moving papers that the Arbitration Agreement signed by Herrera was signed on July 19, 2026, but was dated on July 20, 2026 based on the computer software defendants utilized:

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Tentative Ruling

Re: **City of Fresno v. Biggie Burrito Taqueria et al.**
Superior Court Case No. 26CECG00915

Hearing Date: May 28, 2026 (Dept. 502)

Motion: By Defendant Joseph Daniel Briseno to Quash Service of Summons and Complaint

Tentative Ruling:

To grant. (Code Civ. Proc., § 418.10.) The clerk of the court is directed to strike the April 2, 2026, proof of service of summons as to defendant Joseph Daniel Briseno. Plaintiff City of Fresno is directed to effect proper service of summons and the Complaint within 30 days of service of the order by the clerk.

Explanation:

Defendant Joseph Daniel Briseno ("Defendant") seeks to quash service of summons pursuant to Code of Civil Procedure section 418.10, subdivision (a), which provides that a party may file a motion to quash service of summons on the grounds that a court lacks personal jurisdiction where service on that party was defective. (Code Civ. Proc., § 418, subd. (a)(1).)

Here, Plaintiff contends that the proof of service of summons filed by plaintiff City of Fresno ("Plaintiff") is defective. The proof of service of summons, filed April 2, 2026 attests that service was effected by substitute service on March 25, 2026.

Substituted service of the summons and complaint on an individual is proper under Code of Civil Procedure section 415.20, subdivision (b), which states in relevant part:

If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served... a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of their office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left.

Item 5(b)(5) of the proof of service form was not marked, which indicates that there was not an attempt to personally serve Defendant. Plaintiff fails to make a sufficient

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Tentative Ruling

Re: **Borton Petrini, LLP v. Arshad**
Superior Court Case No. 25CECG04350

Hearing Date: May 28, 2026 (Dept. 502)

Motion: By Defendant Muhammad Arshad to Set Aside Default Judgment

Tentative Ruling:

To deny defendant Muhammad Arshad's motion to set aside the default judgment, without prejudice. (Code Civ. Proc., § 473, subd. (d).)

Explanation:

Defendant Muhammad Arshad ("Defendant") moves to set aside the default judgment that was entered against him by plaintiff Borton Petrini, LLP ("Plaintiff"). The basis for the motion to set aside in the moving papers is Code of Civil Procedure section 473, subdivision (d).

Code of Civil Procedure section 473, subdivision (d), states:

The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order.

Defendant submits that the entry of clerk's judgment was void because the clerk's judgment did not comply with Code of Civil Procedure section 585, subdivision (a). Code of Civil Procedure section 585, subdivision (a), states in pertinent part:

In an action arising upon contract or judgment for the recovery of money or damages only, if the defendant has...been served, other than by publication, and no [responsive pleading] has been filed with the clerk of the court within the time specified in the summons, or within further time as may be allowed, the clerk, upon written application of the plaintiff, and proof of the service of summons, shall enter the default of the defendant...so served, and immediately thereafter enter judgment for the principal amount demanded in the complaint.

This provision has been interpreted in *Holloway v. Quetel*, (2015) 242 Cal.App.4th 1425, to mean that:

[W]hen the complaint seeks compensatory damages only, in a sum certain that is readily ascertainable from the allegations of the complaint or statement of damages, the clerk may enter the default judgment for that

