

Tentative Rulings for June 3, 2026
Department 403

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.*

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

25CECG01871 *Perla Lopez v. Selma Auto Mall, Inc.* is continued to Wednesday,
July 15, 2026 at 3:30 p.m. in **Department 502**

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Tentative Ruling

Re: **Denham v. Powell**
Superior Court Case No. 21CECG00731

Hearing Date: June 3, 2026 (Dept. 403)

Motion: Demurrer to Amended Complaint

Tentative Ruling:

To deny.

Explanation:

Defendants demur to the Amended Complaint on the ground that plaintiff has failed to bring the action to trial within five years. While a demurrer is not the proper procedural vehicle for raising this issue, the court will treat the demurrer as a motion to dismiss pursuant to Code of Civil Procedure section 583.360, as it is brought pursuant to the relevant statutory scheme.

"An action shall be brought to trial within five years after the action is commenced against the defendant." (Code Civ. Proc., § 583.310.) The five-year period prescribed by this section commences to run from the filing of the original complaint. (*Kowalski v. Cohen* (1967) 252 Cal.App.2d 977; *De Roode v. Placer County* (1952) 112 Cal.App.2d 859.) If the five-year deadline is not met, the action "shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties." (Code Civ. Proc., § 583.360, subd. (a).)

The five-year dismissal statute is mandatory unless the plaintiff can bring the action within one of the statutory exceptions (*Gaines v. Fidelity Nat. Title Ins. Co.* (2016) 62 Cal.4th 1081, 1100), such as where (a) the trial court's jurisdiction was suspended, (b) prosecution of the action was stayed or enjoined, or (c) bringing the action to trial was impossible, impracticable or futile. (Code Civ. Proc., § 583.340, subd. (a)-(c).)

The Complaint in this matter was filed on August 14, 2020. According to defendants, depending on how tolling periods are counted, the five year statute expired on either March 18, 2026 or November 19, 2025. Plaintiff, an incarcerated individual, contends that the five year statute should be tolled an additional 18 months because prison officials delayed proceedings by denying plaintiff access to his legal files, rendering plaintiff unable to oppose defendants' demurrer to the complaint, and to obtain rulings on his discovery motions. As shown in plaintiff's requests for judicial notice, which defendants do not oppose, plaintiff many times in filings with the court and letters to defense counsel raised the issue of his inability to proceed without his files. Defendants in their reply do not dispute plaintiff's characterization of plaintiff's lost access to his files, the time duration thereof (June 7, 2021 to December 2022), or the delays caused thereby.

The delays have indeed been substantial. Defendants' demurrer to plaintiff's original complaint was filed on March 19, 2021, and was not finally ruled upon until

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Tentative Ruling

Re: ***Aguilar v. Shin, et al.***
Superior Court Case No. 25CECG04672

Quintero v. Shin, et al.
Superior Court Case No. 25CECG04880

Hearing Date: June 3, 2026 (Dept. 403)

Motion: by Defendants to Consolidate Actions

Tentative Ruling:

To grant. (Code Civ. Proc., § 1048, subd. (a).) Superior Court Case No. 25CECG04672 is consolidated with Superior Court Case No. 25CECG04880 for all purposes, with Superior Court Case No. 25CECG04672 being designated as LEAD. Defendants Chul Kyu Shin and Linda Shin Jeehyun are ordered to file and serve a notice of entry of this order in all actions, properly captioned with all case names and numbers. All further documents shall be filed only in the lead case.

Explanation:

Under Code of Civil Procedure section 1048, subdivision (a):

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The procedural requirements under California Rules of Court, rule 3.350, require a separate copy of the notice of motion for consolidation must be filed by the moving party in each case that the party seeks to consolidate. (Cal. Rules of Court, rule 3.350(a)(1)(C).) However, the supporting memorandum, declarations, and other papers only need to be filed in the lowest numbered case. (*Id.*, rule 3.350(a)(2)(A).)

Here, the actions stem from the same motor vehicle incident and involve common questions of law and fact such that consolidation for all purposes would promote judicial economy and convenience.

Although there is a technical defect in the motion, the court finds that defendants have substantially complied with the requirements for a motion to consolidate. The defect is non-prejudicial because all parties were noticed of the motion. Therefore, the court will grant the motion despite the procedural defect.

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

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Tentative Ruling

Re: **California Department of Public Health v. Prestige Biotech, Inc.**
Superior Court Case No. 24CECG02431

Hearing Date: June 3, 2026 (Dept. 403)

Motion: By Petitioner California Department of Public Health for
Judgment of Condemnation

Tentative Ruling:


To grant. The court shall retain jurisdiction as to the costs of suit and costs of destruction of the embargoed medical devices. Petitioner is to file an amended proposed judgment to address the court's continuing jurisdiction and to amend paragraph four, line 25 to change "111985" to 111895.

Explanation:

The California Department of Public Health seeks a judgment of condemnation and destruction as to embargoed articles pursuant to Health and Safety Code sections 111880, 111885, and 111895. Health and Safety Code¹ section 111880 provides authority for the Department of Public Health to commence proceedings for condemnation of food, drugs, devices, or cosmetics which are adulterated, misbranded, falsely advertised, or where the sale of which is in violation of the Sherman Food, Drug, and Cosmetic Laws. Section 111885 articulates that where the court finds an embargoed item is adulterated or misbranded, then it shall be destroyed at the expense of the claimant or owner. The costs and fees incurred by the department in investigating and prosecuting the action are to be taxed against the claimant or owner or the agent of said claimant or owner. Section 111895 provides for condemnation by the court for devices which fall under the above described provisions. The court finds that the devices at issue were adulterated and misbranded as they were manufactured without a license and not in compliance with good manufacturing practices, are of a lesser quality than represented, and were held under conditions of filth. As such, the court grants an order of condemnation and for destruction of the devices.

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:  on 6-2-26 .

(Judge's initials)

(Date)

¹ All references to code sections are to the Health and Safety Code section unless otherwise stated.

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Tentative Ruling

Re: **Penaloza v. Brand**
Superior Court Case No. 25CECG05491

Hearing Date: June 3, 2026 (Dept. 403)

Motion: By Defendant Elaine Brand to Quash Summons

Tentative Ruling:

To grant. Plaintiffs are to serve Defendant within 30 days. (Code Civ. Proc., § 415.20, subd. (b).)

Explanation:

Defendant Elaine Brand ("Defendant") moves to quash the summons by Maria Penaloza and Juan Jacobo ("Plaintiffs") due to ineffective service. On April 1, 2026, a proof of service of summons was filed indicating that on May 25, 2026, substitute service was effected on Defendant by a registered process server.

Under Evidence Code section 647, "The return of a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code upon process or notice establishes a presumption, affecting the burden of producing evidence, of the facts stated in the return." (Evid. Code, § 647.)

Thus, "'if the notice was served by a registered process server, plaintiff may take advantage of a statutory presumption: The registered process server's proof of service can be introduced as a business record, thereby creating a presumption affecting defendant's burden of producing evidence. [¶] If defendant does not introduce rebuttal evidence, the trier of fact must find for plaintiff in accordance with the presumption. Conversely, the presumption is dispelled by defendant's introduction of rebuttal evidence, and the burden shifts back to plaintiff to put the person who served the notice on the stand to testify to proper service.'" (*Palm Property Investments, LLC v. Yadegar* (2011) 194 Cal.App.4th 1419, 1427, internal citations omitted.)

Here, declaration of the process server in the proof of service is enough to establish a rebuttable presumption that service was completed as described in the declaration.

Defendant contends that substitute service was on a non-resident of the household and the process server failed to explain the documents. (Brand-Konkle Decl., ¶¶ 8-10.) Code of Civil Procedure section 415.20, subdivision (b), requires that the summons be left with "a competent member of the household...who shall be informed of the contents thereof." Defendant's evidence in support of the motion sufficiently challenges the presumption. Plaintiffs in opposition do not submit counter evidence. Accordingly, the motion to quash the summons filed April 1, 2026, is granted.

As Plaintiffs now have contact information for counsel for Defendant, Plaintiffs are to effect service on Defendant within 30 days.

