

Tentative Rulings for June 1, 2023
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.*

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 for Department 502

Begin at the next page

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Tentative Ruling

Re: ***Pentameros, LLC v. Tonie Priest, SR***
Superior Court Case No. 21CECG02205

Hearing Date: June 1, 2023 (Dept. 502)

Motion: Plaintiff's Motion for Sanctions Against Defendant
Virginia Shubin Barnett

Tentative Ruling:

To grant plaintiff's motion for terminating sanctions against defendant Virginia Shubin Barnett, individually and as Trustee of the Virginia Shubin Barnett Living Trust and the Shubin Family Trust of 1989.

Explanation:

Code of Civil Procedure section 2023.010(g) makes "[d]isobeying a court order to provide discovery" a "misuse of the discovery process," but sanctions are only authorized to the extent permitted by each discovery procedure. Once a motion to compel answers is granted, continued failure to respond or inadequate answers may result in more severe sanctions, including evidence, issue or terminating sanctions, or further monetary sanctions. (Code Civ. Proc. §§ 2030.290, subd. (c); 2031.300, subd. (c).)

Sanctions for failure to comply with a court order are allowed only where the failure was willful. (*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 495; *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545; *Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1327.) If there has been a willful failure to comply with a discovery order, the court may strike out the offending party's pleadings or parts thereof, stay further proceedings by that party until the order is obeyed, dismiss that party's action, or render default judgment against that party. (Code Civ. Proc. § 2023.030(d).)

In the present case, the court finds that terminating sanctions are warranted against defendant Virginia Shubin Barnett. Ms. Barnett has failed to respond to any of plaintiff's written discovery requests, despite multiple extensions of time. She has failed to appear for her deposition. Even after the court ordered her to appear for her deposition and respond to discovery, she has not done so. Nor has she paid any of the monetary sanctions imposed against her for her prior failure to respond to discovery. She has also stopped communicating with her own attorney, and she has not responded to any attempts by plaintiff to contact her. It appears that she has moved without providing a forwarding address to the court or the plaintiff. The plaintiff has been unable to locate her or contact her, even after employing a private investigator to attempt to find her. She has now been out of communication with anyone in the case for nearly a year and a half. Therefore, it appears that Barnett has abandoned her defense of the case and willfully failed to respond to discovery, as well as willfully disobeying the court's orders.

Also, it does not appear that lesser sanctions would be effective to obtain her cooperation with the discovery process, as defendant has already been order to pay

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Tentative Ruling

Re: **Michelle Ritchie v. Yrulegui & Roberts**
Superior Court Case No. 22CECG02057

Hearing Date: June 1, 2023 (Dept. 502)

Motion: Demurrer to Complaint

Tentative Ruling:

To continue the motion to Tuesday, July 25, 2023, at 3:30 p.m. in Department 502, in order to allow the parties to meet and confer in person or by telephone, as required. If this resolves the issues, moving party shall call the calendar clerk to take the motion off calendar. If it does not resolve the issues, defense counsel shall file a declaration, on or before July 10, 2023, stating the efforts made. If no declaration is filed, the motion will be taken off calendar.

Explanation:

The demurring party must meet in confer, in person or by telephone, prior to filing a demurrer, and file and serve with the demurrer a declaration detailing the meet and confer efforts. (Code Civ. Proc., § 430.41, subd. (a), (b).) There is no indication in the moving papers that there was any in-person or telephonic meet and confer as required by statute. Written correspondence alone does not satisfy the clear and explicit requirements of section 430.41.

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 05/25/23.
(Judge's initials) (Date)

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Tentative Ruling

Re: **Baldeep Dhindsa v. Suretec Insurance Company**
Superior Court Case No. 21CECG02866

Hearing Date: June 1, 2023 (Dept. 502)

Motion: Default Prove-Up

Tentative Ruling:

To deny without prejudice.

Explanation:

Plaintiff Baldeep Dhindsa has not filed a Judicial Council Form Civ-100 Request for Entry of Court Judgment, and the Court may not proceed without it. Should Plaintiff calendar another hearing, the Court prefers a default packet that complies with California Rules of Court, rule 3.1800, and the Superior Court of Fresno County, Local Rules, rule 2.1.14, be submitted at least ten court days prior to the hearing in order to avoid unnecessary consumption of time at the hearing.

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 05/31/23
(Judge's initials) (Date)

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Tentative Ruling

Re: **Armando Reyna v. John Fowler**
Superior Court Case No. 21CECG00596

Hearing Date: June 1, 2023 (Dept. 502)

Motion: by Plaintiff for Leave to File First Amended Complaint

Tentative Ruling:

To deny without prejudice.

Explanation:

On April 27, 2023 the court adopted its tentative ruling continuing the hearing on plaintiff's motion for leave to file his first amended complaint to June 1, 2023 to allow time for plaintiff to supplement the moving papers to address deficiencies noted therein. No supplemental papers have been filed and the moving papers remain deficient.

In moving to amend a pleading, the moving party "must" file a declaration that specifies: (1) the effect of the amendment, (2) why the amendment is necessary and proper, (3) when the facts giving rise to the amended allegations were discovered, and (4) the reasons why the request for amendment was not made earlier. (Cal. Rules of Court, Rule 3.1324(b).)

The moving papers do not comply with Rule 3.1324. The "clean" and "strikethrough" copies of the proposed First Amended Complaint are not attached to either the original or amended Declaration of Yan. E. Shrayberman as represented in the memorandum. (Cal. Rules of Court, rule 3.1324, subd. (a).) Additionally, there is no representation as to when the facts giving rise to the amendment were discovered or why the request to amend was not made earlier. (Id. at rule 3.1324. subd. (b)(3) and (4).)

Broadly construed the declarations specify the remaining required information. The effect of the amendment is the add a new defendant and a cause of action against this party for unpaid rents owed to plaintiff as an owner of the home. (Amended Decl., ¶ 5.) The amendment is necessary in order to resolve the issue of rent together with the causes of action also determining the parties' rights to the real and personal property at issue. (Id. at ¶ 7.)

Although there is no opposition to the motion, neither is there a proof of service to demonstrate opposing counsel received timely notice of the motion. However, the recent stipulation to continue the trial was drafted by defense counsel and acknowledges that the motion at bench was filed on March 20, 2023 and indicates the anticipated addition of the new defendant is good cause to continue the trial date. (See, April 14, 2023, Stipulation and Order to Continue Trial and for Leave to File First Amended Complaint, ¶¶ 1, 2, 3A.) Paragraph 2 of the stipulation indicates that leave to file the first

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Tentative Ruling

Re: ***RMMC, LP v. Rafael Villanueva***
Superior Court Case No. 22CECG02806

Hearing Date: June 1, 2023 (Dept. 502)

Motion: Default Prove-Up (Quiet Title)

Tentative Ruling:

To continue to Thursday, June 22, 2023, at 3:30 p.m. in Department 502, to allow plaintiff time to correct the errors in its application for default judgment, and to file a prove-up brief. Plaintiff is to submit a prove-up brief and all corrections on or before Tuesday, June 13, 2023.

Explanation:

Following the progression of the asserted instruments, it appears that plaintiff has a basis for bringing this action. Assuming such evidence is admitted at the hearing, there appears a presumptive basis to grant the proposed judgment.

Nevertheless, reflecting the general uniqueness conferred to real property, quiet title proceedings do not follow the typical path toward obtaining judgment. (*Harbour Vista, LLC v. HSBC Mortgage Services Inc.* (2011) 201 Cal.App.4th 1496, 1505.) Consequently, "notwithstanding a defendant's default in a quiet title action, the plaintiff is not automatically entitled to judgment in its favor but must prove its case in an evidentiary hearing with live witnesses and any other admissible evidence" (*Nickell v. Matlock* (2012) 206 Cal.App.4th 934, 947; see also Code Civ. Proc., § 764.010 ["The court shall not enter judgment by default"].) Furthermore, defaulted defendants are entitled to participate in the quiet title proceedings and present competing evidence. (*Nickell v. Matlock, supra*, 206 Cal.App.4th at pp. 944, 947; *Harbour Vista, LLC v. HSBC Mortg. Services Inc., supra*, 201 Cal.App.4th at p. 1508 [trial court erred when it entered default quiet title judgment without allowing competing evidence from the defendant].)

Defaults have been entered as to the sole remaining defendants and, because this is a quiet title action, notice of the hearing has been provided to the defaulted defendants. However, the proposed Court Judgment After Default incorrectly states that "[i]t is appropriate for the Court to exercise its discretion to permit the use of affidavits in lieu of personal testimony as to all of the evidence or proof required or permitted to be offered, received or heard in connection with this Request for Court Judgment and the Court hereby exercises such discretion pursuant to Code of Civil Procedure §585(d)." A revised proposed Court Judgment After Default should be filed, with this language deleted, and plaintiff's counsel should be prepared to attend the hearing.

Incomplete Forms

Plaintiff has filed the required "Request for Court Judgment" form (Judicial Council Form CIV-100) for both of the remaining defendants in this action, Rafael Villanueva and Sofia Villanueva. However, both forms are incomplete in that plaintiff has not checked any box under item 8 on page 3 to substantiate the declaration of nonmilitary status for each defendant against whom judgment is sought.

Prove-Up Brief Required

No prove-up brief was filed in conjunction with this prove-up hearing. A prove-up brief summarizing the evidence to be submitted, the relief to be requested, and any legal analysis needed provides the critical focus for the court's attention in preparing for the hearing. On the continued date of June 22, a hearing is required as are appearances.

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 05/31/23
(Judge's initials) (Date)

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Tentative Ruling

Re: **Jameson Phoolka v. Catrina Owens**
Superior Court Case No. 20CECG002536

Hearing Date: June 1, 2023 (Dept. 502)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To grant. Order 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 05/31/23
(Judge's initials) (Date)