Tentative Rulings for July 1, 2025
Department 501

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.***

24CECG04998 ***Long v. Esquivel***

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

20CECG00607 ***Pete Hall v Fresno Unified School District Employee Health Care Plan*** **is continued to Thursday, July 31, 2025 at 3:30 p.m. in Department 501**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(47)

Tentative Ruling

Re: ***Mark Ruiz v Ramiro Romero***
Superior Court Case No. 23CECG04198

Hearing Date: July 1, 2025 (Dept. 501)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To grant the Petition. The proposed Order will be signed. No appearance necessary. The court sets a status conference for Wednesday, October 8, 2025, at 3:30 p.m., in Department 501, for confirmation of deposit of the minors' funds into the blocked account(s). 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: DTT on 6/26/2025.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***Shawn Shiralian v. Alexander Renteria***
Superior Court Case No. 24CECG04937

Hearing Date: July 1, 2025 (Dept. 501)

Motion: Default Prove-Up (as to Defendant Alexander Renteria)

Tentative Ruling:

To deny, without prejudice.

Explanation

Procedurally, due to facial defects, the subject defendant's default has not been entered, and thus the court is unable to consider the merits of plaintiff's default judgment prove-up application. In addition, on its merits, the requested damages were not specified in the Complaint. (Code Civ. Proc., § 585; *Janssen v. Luu* (1997) 57 Cal.App.4th 272, 279.) Although plaintiff attempted to cure this issue by filing a statement of damages, such device is only applicable to actions for personal injury or wrongful death. (See § 425.11, subd. (b).) Finally, Request of Dismissal of Parties was not entered and needs to be resubmitted on the updated CIV-110 forms.

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: DTT on 6/26/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***In re Petition of: J.G. Wentworth Originations, LLC***
Superior Court Case No. 24CECG05348

Hearing Date: July 1, 2025 (Dept. 501)

Motion: by Petitioner to Vacate Order

Tentative Ruling:

To grant and set aside the April 7, 2025, order approving the transfer of payment rights between Linda Dougherty and J. G. Wentworth Originations, LLC.

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: DTT on 6/26/2025.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Irma Alvarez Najar v. General Motors LLC***
Case No. 23CECG04677

Hearing Date: July 1, 2025 (Dept. 501)

Motion: by Defendant General Motors LLC for Summary Judgment or, in the Alternative, Summary Adjudication

Tentative Ruling:

To grant plaintiff's request for a continuance of the summary judgment hearing to allow plaintiff an opportunity to conduct discovery into the issue of whether defendant was acting as a distributor or dealer at the time plaintiff bought the subject vehicle; and to continue the hearing to September 24, 2025, at 3:30 p.m. in Department 501. Plaintiff shall file and serve supplemental opposition by the close of business on September 10, 2025, with any reply due by the close of business on September 17, 2025.

The trial date is vacated. A trial setting conference to set a new trial date shall be scheduled for September 24, when the instant alternative motion is taken up.

Explanation:

Defendant General Motors LLC (GM) moves for summary judgment as to plaintiff's entire Complaint. Alternatively, GM moves for summary adjudication of plaintiff's three causes of action under the Song-Beverly Act (SBA). GM contends that, under the recent California Supreme Court decision of *Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189 (*Rodriguez*), a purchaser of a used motor vehicle with some portion of the manufacturer's warranty still in effect cannot sue the manufacturer for violation of the express warranties under the SBA. (*Id*. at pp. 201-206.) Nor can plaintiff sue the manufacturer for violation of an implied warranty, since only distributors and retail sellers are liable for breach of an implied warranty. (*Nunez v. FCA US, LLC* (2021) 61 Cal.App.5th 385, 399 (*Nunez*).) Here, GM points out that plaintiff has admitted she bought her vehicle used from Fresno Buick GMC with 25,810 miles on the odometer, so GM concludes that it cannot be held liable for breach of express or implied warranties under the SBA. Therefore, GM requests that the court grant summary judgment or adjudication in its favor.

In her opposition, plaintiff concedes she purchased the vehicle used from Fresno Buick GMC with 25,810 miles on the odometer. However, she contends GM can still be held liable if it was involved in the sale of the vehicle to her and it was acting as a distributor of used vehicles at the time of the sale. (*Rodriguez, supra*, 17 Cal.5th at p. 202; *Nunez, supra*, 61 Cal.App.5th at p. 399.) Plaintiff claims GM does, in fact, sell used vehicles and that it derives some of its profits from such used car sales. Therefore, plaintiff concludes GM has failed to show that it cannot be held liable here, and summary judgment or adjudication should be denied. In the alternative, plaintiff requests a continuance to allow plaintiff to conduct more discovery into whether GM was acting as

a distributor when the vehicle was sold to plaintiff, including the deposition of GM's person most knowledgeable (PMK).

In *Rodriguez*, the California Supreme Court held that the SBA's provisions regarding the sale of "new motor vehicles" do not impose liability on manufacturers for breach of an express warranty where a buyer purchases a used vehicle with only a portion of the manufacturer's warranty intact, unless the manufacturer has issued a new warranty with the sale or played a substantial role in the sale of the used vehicle:

> For new products, liability extends to the manufacturer; for used products, liability extends to the distributor or retail seller and not to the manufacturer, *at least where the manufacturer has not issued a new warranty or played a substantial role in the sale of a used good*.

(*Rodriguez*, *supra,* 17 Cal.5th at p. 202, citations omitted, italics added.)

Also, in *Nunez,* the Court of Appeal held that the plaintiff could not state a claim for breach of implied warranty against the manufacturer of the defective vehicle, "because in the sale of used consumer goods, liability for breach of implied warranty lies with distributors and retailers, not the manufacturer, *where there is no evidence the manufacturer played any role in the sale of the used car to plaintiff*." (*Nunez, supra,* 61 Cal.App.5th at p. 398, italics added.)

> It is evident from these provisions that only distributors or sellers of *used* goods—not manufacturers of *new* goods—have implied warranty obligations in the sale of *used goods*. (See [Civ. Code,] § 1795.5.) As one court has put it, the Song-Beverly Act provides similar remedies (to those available when a manufacturer sells new consumer goods) "in the context of the sale of used goods, except that the manufacturer is generally off the hook."

(*Id.* at p. 399, quoting *Kiluk* v. *Mercedes-Benz USA, LLC* (2019) 43 Cal.App.5th 334, 339 (*Kiluk*), italics in original.)

> Of course, as *Kiluk* explains, "the assumption baked into [Civil Code] section 1795.5 is that the manufacturer and the distributor/retailer are distinct entities. Where the manufacturer sells directly to the public, however, it takes on the role of a retailer." (*Kiluk, supra,* 43 Cal.App.5th at p. 340.) *Kiluk* involved a defendant manufacturer that "issu[ed] an express warranty on the sale of a used vehicle" that "would last for one year from the end of the new car warranty." (*Id.* at p. 337.) In *Kiluk*, the manufacturer "partnered with a dealership to sell used vehicles directly to the public by offering an express warranty as part of the sales package," and by doing so, "stepped into the role of a retailer and was subject to the obligations of a retailer under section 1795.5." (*Id.* at p. 340.) [¶] This is not such a case. Here, plaintiff presented no evidence that defendant was "a distributor or retail seller of used consumer goods" (§ 1795.5), or in any way acted as such.

(*Nunez, supra,* 61 Cal.App.5th at p. 399.)

In the present case, GM claims that it was not involved in the sale of the subject vehicle to plaintiff, and that plaintiff purchased the vehicle used from Fresno Buick GMC with 25,810 miles on the odometer, so GM cannot be held liable under the SBA for breach of express or implied warranty. Plaintiff, on the other hand, contends that GM sells used vehicles and that GM has not shown that it was not acting as a distributor when the vehicle was sold to plaintiff. However, GM's representative, Bryan Jensen, has stated in his declaration that GM was not a party to the sale of vehicle to plaintiff. (Jensen decl., ¶ 5; see also Fact No. 3.) Thus, GM has submitted enough evidence to meet its burden to show it was not acting as a dealer or distributor when the vehicle was sold to plaintiff, and thus it cannot be liable under the SBA for breach of express or implied warranties.

Plaintiff has not submitted any evidence showing that GM was involved in the sale of the subject vehicle to plaintiff. Plaintiff does cite to GM's annual report to the SEC from 2020, which plaintiff contends shows that GM sells used cars and profits from those sales. (Cao decl., ex. 2.) However, the annual report shows only that GM sells some used vehicles, apparently primarily used rental fleet vehicles or vehicles that were used by GM employees. (Ex. 2 to Cao decl., GM's SEC 2020 Annual Report, Form 10-K, p. 56.) The report says nothing about whether GM was acting as a dealer or distributor at the time the subject vehicle was sold to plaintiff, or whether Fresno Buick GMC is an authorized GM dealer and that GM was effectively acting as a distributor when Fresno Buick GMC sold plaintiff the vehicle. Therefore, plaintiff's evidence does not raise a triable issue of material fact with regard to whether GM can be held liable under the SBA for breach of express or implied warranties related to the subject vehicle.

Nevertheless, the court intends to grant a continuance of the instant motion to allow plaintiff more time to conduct discovery into the question of whether GM was acting as a dealer or distributor of used cars at the time the vehicle was sold to plaintiff. Under Code of Civil Procedure section 437c, subdivision (h):

> If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due.

Here, plaintiff's counsel has stated that plaintiff intends to take the deposition of GM's person most knowledgeable in order to discover whether GM was acting as a dealer or distributor when the vehicle was sold to plaintiff. (Cao decl., ¶ 11.) Counsel claims it is very likely that further controverting evidence concerning GM's role in distributing pre-owned vehicles like the subject vehicle will be discovered. (*Ibid*.)

However, counsel's declaration is vague about what steps plaintiff has taken to depose GM's PMK, or whether plaintiff has even served a deposition notice or subpoena. It is also unclear what topics the PMK will be asked about. Nor has plaintiff's counsel stated how much time will be needed to take the deposition or conduct other discovery related to the issues raised by the motion. Plaintiff's counsel also does not explain why

plaintiff delayed so long before trying to take the deposition, especially since *Rodriguez* was issued on October 31, 2024, almost eight months ago, and the instant motion was filed on April 7, 2025, over two months ago. *Arguably*, plaintiff's counsel should have immediately served deposition notices and other discovery to obtain any needed information to oppose the motion as soon as it became clear that GM was claiming it was not liable under the SBA because it was not involved in the used vehicle sale.

Still, given the harsh consequences to plaintiff if GM's motion is granted, the court intends to give plaintiff an opportunity to conduct discovery into whether GM was acting as a dealer or distributor when the vehicle was sold to plaintiff. As discussed above, if plaintiff can show that GM was directly involved in selling the vehicle to plaintiff, then she *might* be able to raise a triable issue of fact with regard to whether the SBA imposes liability on GM. (*Rodriguez, supra*, 17 Cal.5th at p. 202; *Nunez, supra*, 61 Cal.App.5th at p. 399.) As a result, the court will grant the requested continuance of the instant motion in order to give plaintiff an opportunity to discover whether GM was involved in the sale of the subject vehicle to plaintiff, and whether its involvement was substantial enough to warrant imposing liability on it despite the fact that plaintiff bought the vehicle used.

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: DTT on 6/27/2025.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Key Star Capital Fund IV, LP. v. Seyedabadi-Alonzo et al.***
Superior Court Case No. 24CECG05479

Hearing Date: July 1, 2025 (Dept. 501)

Motion: Application for Writ of Attachment

Tentative Ruling:

To deny.

Explanation:

There are two issues that prevent the court from granting the application at this time.

First, plaintiff has not shown that it has standing to pursue damages for this debt. Plaintiff claims that on or about November 20, 2024, U.S. Bank assigned to plaintiff all of its right, title and interest under the Agreement to plaintiff by way of assignment. Marino states at paragraph 12 of his declaration that said assignment is attached as Exhibit 2. However, Exhibit 2 is the continuing guarantee, not the assignment. Plaintiff has submitted to admissible evidence of the assignment.

Second, plaintiff does not present evidence showing that attachment against Nina Seyedabadi-Alonzo, an individual and guarantor of the obligation, is appropriate. Attachment lies only on claims against an *individual* that "arise out of the conduct by the individual of a trade, business or profession." (Code Civ. Proc., § 483.010, subd. (c).) Even allegations that the defendant "guaranteed" the debt of the business entity may not support attachment against an individual defendant. There would have to be additional proof that the defendant executed the guarantee in connection with his or her business, occupation or profession. (See *Advance Transformer Co. v. Superior Court* (1974) 44 Cal.App.3d 127, 143-44.) The moving papers merely conclude, without supporting evidence, that "[i]t is clearly a commercial obligation since it arises out of the running of Oznola, LLC.'s business." (MPA 3:26-27.) This unsupported conclusion is insufficient. The application must be supported by admissible evidence. (See *Generale Bank Nederland, N.V. v. Eyes of the Beholder Ltd.* (1998) 61 Cal.App.4th 1384, 1390.)

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: DTT on 6/27/2025 .
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Frank Cruz v. Mortgage Default Services, LLC, et al.***
Superior Court Case No. 24CECG03048

Hearing Date: July 1, 2025 (Dept. 501)

Motion: by Plaintiff to Stay Proceedings

Tentative Ruling:

To deny.

Explanation:

Plaintiff moves to stay proceedings for 90 days due to injuries he sustained in a car accident on February 25, 2025. The motion is brought pursuant to Code of Civil Procedure section 128, subdivision (a)(3), and the court's inherent authority to manage its docket and ensure due process. He quotes from *People v. Engram* (2010) 50 Cal.4th 1131, 1146, as stating, "courts have inherent power to stay proceedings when required in the interest of justice." However, this quote is not found in *Engram*, and the opinion does not even include the word "stay." Plaintiff also cites to "*People v. Burnett*, (2005) 129 Cal.App.4th 382, 387 [recognizing due process implications where a party cannot participate effectively].)" This case does not appear to exist.

As the opposition points out, the motion is lacking in foundation, as plaintiff presents no declaration or letter from his physician supporting the request for stay. It is not apparent that plaintiff is unable to participate in litigation activities, as he has been rather active since the accident – plaintiff has drafted the instant motion (filed April 24, 2025), responded to defendant John Labbett's demurrer (opposition filed on March 25, 2025), personally appeared at the demurrer hearing (April 9, 2025), and filed an amended complaint (filed April 28, 2025). Plaintiff cites to no authority supporting his request to stay the action for a period of time due to injuries from which plaintiff apparently will recover soon. In any case, the next hearing in this matter is set for August 26, well after the 90-day stay requested by plaintiff. There does not appear to be a need to stay the proceedings, though the court expects counsel for defendants to be cooperative in continuing hearings or other deadlines *if necessary* for a short period of time while plaintiff recovers.

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: DTT on 6/27/2025.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***United Health Centers of the San Joaquin Valley v. Glover***
Case No. 24CECG04558

Hearing Date: July 1, 2025 (Dept. 501)

Motion: Plaintiff's Application for Default Judgment

Tentative Ruling:

To deny the application for default judgment without prejudice.

Explanation:

First, plaintiff has not dismissed the Doe defendants. Plaintiff needs to file a request to dismiss the Does before it can enter a default judgment.

More importantly, plaintiff has not submitted *any* admissible evidence proving up the requested damages. While plaintiff's counsel presents her own declaration regarding attorney's fees and costs, she has not presented any evidence regarding the underlying damages. She appears to be relying entirely on the allegations of the complaint. However, when seeking entry of default judgment, the plaintiff needs to submit admissible evidence from someone with personal knowledge of the facts proving up the damages sought, as well as any necessary supporting documents. Generally, the declaration of an attorney is insufficient to prove up damages, since the attorney usually does not have personal knowledge of the underlying facts. Therefore, since plaintiff has not submitted evidence of damages, the application fails to prove up the request for $12,000 in damages.

As a result, the court intends to deny the application without prejudice.

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: DTT on 6/27/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Doe, et al. v. Spatafore, et al.***
Superior Court Case No. 21CECG03118

Hearing Date: July 1, 2025 (Dept. 501)

Motion: Application of Jason K. Ward to Appear *Pro Hac Vice* on Behalf of Defendant Community Hospitals of Central California

Tentative Ruling:

To continue the matter to Tuesday, July 29, 2025, at 3:30 p.m., in Department 501, to allow the applicant to serve all parties to the action with the application and all supporting moving papers. All papers must be submitted no later than on Tuesday, July 22, 2025.

Explanation:

Service

"A person desiring to appear as counsel pro hac vice in a superior court must file with the court a verified application together with proof of service by mail in accordance with Code of Civil Procedure section 1013a of a copy of the application and of the notice of hearing of the application on all parties who have appeared in the cause and on the State Bar of California at its San Francisco office. The notice of hearing must be given at the time prescribed in Code of Civil Procedure section 1005 unless the court has prescribed a shorter period." (Cal. Rules of Court, rule 9.40(c)(1).)

The proof of service attached to the applicant and supporting papers only indicate that plaintiff's counsel was served by electronic service. There is no indication that any other appearing party was served with notice. Additionally, while the application indicates that a copy of the application was served to the State Bar of California by electronic means, this is not explicitly provided for in the proof of service.

Rather than deny the application for faulty service, it appears appropriate to continue the matter to allow for additional notice. Such notice must be made in accordance with Code of Civil Procedure section 1005 and account for any extension of time for the manner of service. Applicant is directed to file a new proof of service reflecting that all appearing parties, as well as the State Bar of California, were served with notice of this application and a copy of the application papers. If moving party has already served the State Bar with a copy of the application and all supporting papers, he merely needs to provide proof of this (via a proof of service), rather than serve the Bar again.

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: DTT on 6/27/2025.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***In re Ori Arodele***
Superior Court Case No. 25CECG02608

Hearing Date: July 1, 2025 (Dept. 501)

Motion: Petition to Compromise the Claim of Minor

Tentative Ruling:

To grant the Petition. Order to be 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: DTT (Judge's initials) on 6/30/2025 (Date).