

**Tentative Rulings for July 10, 2024**  
**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)**

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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*

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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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| 23CECG04470 | <i>California Franchise Tax Board v. Veronica Patlan</i> is continued to Thursday, July 11, 2024, at 3:30 p.m. in Department 501 |
| 22CECG00417 | <i>Lee Pointer v. Resmae Mortgage Corporation</i> is continued to Tuesday, July 30, 2024, at 3:30 p.m. in Department 501         |
| 22CECG03098 | <i>Diamond PEO, LLC v. Sandra Romero</i> is continued to Tuesday, August 20, 2024, at 3:30 p.m. in Department 501                |

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(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 501**

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**Tentative Ruling**

Re: **City of Fresno v. Smith, et al.**  
Superior Court Case No. 24CECG01557

Hearing Date: July 10, 2024 (Dept. 501)

Motion: Petition for Order to Abate Substandard Building,  
Appointment of Receiver and Orders Pursuant to California  
Health & Safety Code

**Tentative Ruling:**

To grant the Petition and appoint a receiver. (Health & Saf. Code, § 17980.6, 17980.7.)

**Explanation:**

The State Housing Law includes a comprehensive enforcement procedure for abatement by demolition or correction of any violation of the building standards published in the California Building Standards Code, the State Housing Law, and other rules and regulations adopted pursuant to the State Housing Law. (Health & Saf. Code, § 17980-17982.) When the violations or conditions of the property involve noncompliance with the requirements of the State Housing Law, or with the requirements of the published State Building Standards Code that implement the State Housing Law, or with local ordinances and rules and regulations enacted pursuant to either of them, and the violations are "so extensive that the health and safety of residents or the public is substantially endangered," the law includes more detailed provisions for a receiver to be appointed to take over the collection of rents and management and operation of the property, including the abatement or corrective efforts, in the event the owner fails to do so after a reasonable period of time where the property is identified as one that substantially endangers residents. (Health & Saf. Code, § 17980.6, 17980.7.)

There is ample evidence that the property in question is maintained in a manner that violates the State Housing Law and applicable building standards, rules, regulations, as well as local ordinances, and that the violations are so extensive and are of such a nature that the health and safety of residents or the public is substantially endangered. (Health & Saf. Code, § 17860.6.) There is also admissible evidence showing that the property owner has received notice of all violations and it appears he has never taken steps to remedy any violation. Instead, the condition of the property has gotten steadily worse. There is competent evidence establishing that the Notice to Repair or Abate was mailed to the owner and all parties with a recorded interest in the property, and was posted at the property. The City gave the owner ample opportunity and a reasonable period of time to correct the violations, and he failed to do so.

Respondent Lakeview Loan Servicing, LLC, opposes the Petition on the basis that it intends to correct the violations and bring the property into compliance with the Fresno Municipal Code once it receives funds from pending property insurance claims. There is



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**Tentative Ruling**

Re: **J&V Fresno, LLC v. Blunt**  
Superior Court Case No. 22CECG02270

Hearing Date: July 10, 2024 (Dept. 501)

Motion: by Plaintiff J&V Fresno, LLC, to Enforce Settlement

**Tentative Ruling:**

To grant the motion to enforce settlement. To grant attorney fees and costs to enforce the settlement agreement in the total amount of \$5,785.00. Plaintiff J&V Fresno, LLC is directed to submit to this court, within 10 days of service of the minute order adopting this tentative ruling, a proposed judgment.

**Explanation:**

Code of Civil Procedure section 664.6 provides as follows: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court . . . for settlement of the case . . . the court, upon motion, may enter judgment pursuant to the terms of the settlement." It also provides that the parties may request that the court "retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." (Code Civ. Proc. § 664.6.) Due to the summary nature of the statute authorizing judgment to enforce a settlement agreement, strict compliance with its requirements is prerequisite to invoking the power of the court to impose a settlement agreement. (*J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 984.)

Here, plaintiff submits a writing, signed by the parties, made outside the presence of the court, and the court has agreed to retain jurisdiction pursuant to the parties' stipulation. (Sarabian Decl., ¶ 3, Exh. 1 and 3.) The agreement contemplated the repayment of certain unpaid balances. (*Ibid.*) The pertinent terms of the settlement were as such:

1. The parties were to enter into a New Lease of the premises, naming J&V Fresno, LLC as the landlord and Blunt Man, Inc. as tenant. A copy of the lease was attached and "all of the terms of which are expressly incorporated herein by reference."
2. Defendant Michael Blunt was to execute a personal guaranty guaranteeing the performance of the corporation on the New Lease. A copy of the guaranty was attached and the terms expressly incorporated into the settlement agreement by reference.
3. The Past Due Rent on the original lease in the amount of \$200,000 in rent and CAM charges was to be paid at 8% interest and amortized over a ten-year term with the first payment due on October 15, 2023.

(Sarabian Decl., Exh. 1, "Settlement Agreement," ¶¶ 1-3.)

Plaintiff J&V Fresno, LLC, moves to enforce the settlement agreement and the incorporated New Lease and personal guaranty thereof by defendant Michael Blunt after defendant Blunt Man, Inc. terminated its tenancy under the New Lease in March 2024 and Mr. Blunt failed to make payments toward the Past Due Rent after January 2024. Where, as it appears here, the terms of another document are intended to be incorporated by reference and the reference is clear and unequivocal, the contract may validly include those provisions. (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 814.)

Defendant Blunt argues the judgment cannot be sought against him personally for the breach of the lease because Blunt Man, Inc., was party to the lease agreement not him personally. This argument would have the court disregard the personal guaranty of the new lease signed by Mr. Blunt explicitly stating he is personally liable for payments by the corporation and similar language of the settlement agreement (Sarabian Decl., Exh. 3, "Guaranty of Lease," p. 2, ¶ 1; Settlement Agreement, ¶ 2.) The language of the contracts sought to be enforced is clear that the parties intended Mr. Blunt to be personally liable for the failure to pay the obligations of Blunt Man, Inc.

In a motion to enforce the settlement agreement, and those documents incorporated therein, the court may enter judgment pursuant to the terms of the settlement. The judgment sought by plaintiff is supported with evidence and conforms to the remedies specified within the settlement agreement.

There is no clear language within the settlement agreement or lease as to the remedy for default on the payments of the Past Due Rent. Plaintiff clarifies that the judgment of the entire balance of the Past Rent Due is not based on terms within the settlement agreement or lease but is a remedy available under legal principals applicable to contracts. (*Bowers v. Raymond J. Lucia Companies, Inc.* (2012) 206 Cal.App.4th 724, 732.)

Section 19.2 of the New Lease provides specific calculations of damages available to the landlord in the event of tenant's breach of the agreement. Plaintiff has submitted evidence in support of the estimated vacancy of the property and new lease rate to support the damages requested. (Frechou Decl., ¶¶ 5-9.) Defendant criticizes the evidence as insufficient due to the unique dual character of the property as both a salon and restaurant making it difficult to find comparable properties. However, the declaration of commercial realtor Nick Frechou in support of his professional opinions includes adequate foundation and explanation for the estimated vacancy and new lease rates. Defendant's criticisms of the damage calculations from Certified Public Accountant Nicholas Georgouses as premised on the unsupported opinions of Mr. Frechou are unwarranted.

The judgment sought reflects damages calculated consistent with the terms of the settlement agreement and both incorporated contracts. As such, the court intends to grant the motion and enter judgment in favor of plaintiff J&V Fresno, LLC, and against Michael Blunt in the amount of \$491,932.00.

Attorney's Fees

Plaintiff requests an award of attorney's fees in connection with this motion as the prevailing party. Counsel attests to having spent twelve hours related to the previous motion, which was denied without prejudice by the court, an additional seven hours preparing this second submission and an anticipated five hours preparing a reply and attending the hearing on this motion. Mr. Sarabian bills at a rate of \$350 per hour. The court finds it reasonable to award fees for the twelve hours attributed to the current motion only, for an award of attorney's fees in the amount of \$4,200. Additionally, plaintiff seeks costs in the amount of \$1,585.00 in expert fees incurred related to this motion. These costs are contemplated within the terms of the settlement agreement and are also awarded. (Settlement Agreement, ¶ 19.b.)

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 7/9/2024.  
(Judge's initials) (Date)

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**Tentative Ruling**

Re: **Folland v. Rogers**  
Superior Court Case No. 21CECG01468

Hearing Date: July 10, 2024 (Dept. 501)

Motion: Plaintiff/Petitioner's Petition to Confirm Arbitration Award

**Tentative Ruling:**

To grant, confirming the arbitration award in favor of plaintiff/petitioner in the amount of \$76,265 plus \$435 in costs, and \$14,709.74 in prejudgment interest, for a total of \$91,409.74. Plaintiff/petitioner is directed to submit a proposed judgment consistent with the court's ruling within 7 days of the service of the minute order.

**Explanation:**

Any party to an arbitration in which an award has been made may petition the court to confirm the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other person bound by the arbitration award. (Code Civ. Proc., §1285.)

A petition shall: (a) set forth the substance or have attached a copy of the agreement to arbitrate unless the petitioner denies the existence of such an agreement; (b) set forth the names of the arbitrators; and (c) set forth or have attached a copy of the award and the written opinion of the arbitrators, if any. (Code Civ. Proc., §1285.4.)

If a petition is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state, unless it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding. (Code Civ. Proc., §1286.)

Here, the moving papers conform to the requirements set forth in the Code of Civil Procedure sections 1285 and 1285.4. In accordance with Code of Civil Procedure, section 1285, petitioner names Denna Rogers as the party to be bound by the arbitration award.

A copy of the arbitration agreement is attached to the Complaint which commenced this action. (Compl., Exh. A.) Also, a copy of the arbitrators' award is attached to the Petition. (Petn., Attachment 6C.) The Petition and Notice of Hearing were properly served on June 6, 2024 by mail. The Petition also provides that the arbitration award was served to respondent on July 7, 2022. (Petn., Item 7.) The Petition provides that the arbitration award is binding because more than 30 days have passed since notice of the award was mailed, and no party filed a rejection of the award or requested for trial. (Petn., Item 8(b).) Further, the Petition is unopposed and no evidence indicating any application has been made to correct or vacate the award, and the statutory period for making such application has now passed. (Code Civ. Proc., § 1288. ["A petition to



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**Tentative Ruling**

Re: **Ruben Perez v. Adrian Perez**  
Superior Court Case No. 23CECG01147

Hearing Date: July 10, 2024 (Dept. 501)

Motion: by Defendant to Dismiss and Expunge Lis Pendens

**Tentative Ruling:**

To continue the matter to Tuesday, August 6, 2024, at 3:30 p.m. in Department 501 in order for defendant to perfect proof of service. Defendant is to file an amended proof of service no later than July 15, 2024, demonstrating that plaintiff has been properly served.

The court intends to order plaintiff, plaintiff's counsel, and defendant to appear at the continued hearing date.

**Explanation:**

The Proof of Service of the motion is defective. A proof of service shall include the name and address of the person making the service. (Cal. Code Regs. Tit. 1, § 1008, subd. (a).) It shall also identify the name and address where service was accomplished and the method of service. (Ibid.) The proof of service does not state the method of service or where service was made. It may be that the motion was properly served, but that cannot be determined on the face of the proof of service. The court is therefore continuing the matter so that defendant can address the proof of service issue. (Code Civ. Proc., § 1005, subd. (b).)

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 7/9/2024.  
(Judge's initials) (Date)

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**Tentative Ruling**

Re: ***Tpine Leasing Capital L.P. v. Jarnail Multani***  
Superior Court Case No. 23CECG03197

Hearing Date: July 10, 2024 (Dept. 501)

Motion: by Defendant to Set Aside Default and Default Judgment

**Tentative Ruling:**

To deny the motion to set aside default and default judgment without prejudice. (Code Civ. Proc., § 473, subd. (b).)

**Explanation:**

*No Copy of Proposed Pleading*

Application for relief from a judgment or court order must be filed timely (within six months of the judgment or order) and must be accompanied by a copy of the answer or other proposed pleading to be filed. (Code Civ. Proc., § 473 subd. (b).)

Here, defendant's default was taken October 19, 2023, and judgment was entered against him on March 21, 2024. Defendant filed this motion on April 22, 2024. Defendant's application was timely. However, defendant did not provide a proposed responsive pleading pursuant to code.

*No Mistake, Inadvertence, Surprise or Excusable Neglect*

A judgment may be vacated and so may the entry of default that preceded it. (Code Civ. Proc., § 473 subd. (b).) The court is empowered to relieve a party "upon any terms as may be just ... from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (*Id.*) This decision lies in the discretion of the court, and can only be exercised if the moving party establishes a proper ground for relief, by the proper procedure, and within the time limits. (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495.)

Here, defendant did not demonstrate that his failure to respond was due to mistake, inadvertence, surprise or excusable neglect. He stated that he learned of the default entered against him but "was not aware of the nature of any pending litigation." (Multani Decl., ¶ 4.) Defendant incorrectly stated that the default should be "set aside due to his mistake...in not responding to the lawsuit." (*Id.*) He described no specific mistake, inadvertence, surprise or excusable neglect that led to him not responding.

Defendant briefly stated that he was improperly served, however did not establish it as a valid reason for not responding to the Complaint.

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 7/9/2024.  
(Judge's initials) (Date)

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**Tentative Ruling**

Re: **Sandeep Sekhon as Trustee of the 3S Trust Dated February 14, 2014 v. Darlene Perez**  
Superior Court Case No. 22CECG02770

Hearing Date: July 10, 2024 (Dept. 501)

Motion: by Plaintiff to Deem Requests for Admissions to be Admitted, and for Monetary Sanctions

**Tentative Ruling:**

To deny the motions by plaintiff trustees Sandeep Sekhon and Ramanpreet Sekhon to deem requests for admissions admitted.

To grant monetary sanctions against defendants Juan Jose Perez and Darlene Antoinette Perez, jointly and severally, in the amount of \$570.00, to be paid within 20 calendar days from the date of service of the minute order by the clerk.

**Explanation:**

*Untimely Service of Motion Waived*

Noticed motions must be served and filed 16 court days before the hearing date. (Code Civ. Proc., § 1005, subd. (b).) This time may be extended to accommodate time for mailing or other methods of delayed delivery. (See Code Civ. Proc., § 1013.) There is not an extension for personally served documents. However, 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.)

Here, plaintiffs filed and served these motions on defendants personally on June 17, 2024. The hearing date is set for July 10, 2024. Service of the motion was not timely pursuant to code. However, the oppositions were filed timely and address the merits of the motion, thus waiving the defective notice.

*Motion to Deem Matters Admitted*

A propounding party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests for admissions be deemed admitted. (Code Civ. Proc., § 2033.280, subd. (b).) Failure to timely respond to requests for admissions results in a waiver of all objections to the requests. (*Id.*, subd. (a).) However, the court may relieve the responding party of this waiver if (1) substantially compliant responses have been served, and (2) the failure to serve timely responses was the result of a mistake, inadvertence, or excusable neglect. (*Id.*) the time to respond is

