

Tentative Rulings for July 6, 2022
Department 501

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).)

18CECG01427 *Flores v. Singh (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.

21CECG03397 *Irerit Fresno El Paseo v. Naify* is continued to Tuesday, September 27, 2022 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

(34)

Tentative Ruling

Re:

In re: Tiana Millro

Superior Court Case No. 22CECG01796

Hearing Date:

July 6, 2022 (Dept. 501)

Motion:

Petition to Compromise Minor's Claim

Tentative Ruling:

To deny the Petition without prejudice, unless counsel appears at the hearing with new papers addressing the issues described below, which would then be considered during the hearing. Counsel will need to timely call and request oral argument if they intend to appear with new papers at the hearing. Otherwise, counsel shall comply with Local Rule 2.8.4, and request a new hearing and file a new Petition.

Explanation:

The Petition at Item 7 indicates the minor was transported by ambulance and examined at Kaiser Permanente hospital. These medical bills were paid by Medi-Cal per Item 12(a) of the Petition. In a 12/13/2021 letter from Medi-Cal it indicates it paid no bills associated with the date of injury. Neither the medical records nor bills referenced are attached to the Petition to allow the court to confirm the bills were paid.

Item 10(c) indicates \$2,358.82 will be deposited into a blocked account for the minor and the balance of \$3,804.38 will pay outstanding liens, attorney fees and costs. These figures are not consistent with the remainder of the Petition and summary in Item 16, indicating a balance of \$3,804.38 to the minor and \$1,750.62 in attorney fees and costs to be paid from the settlement.

The Petition indicates that petitioner is the minor's guardian ad litem. No application has been submitted to appoint a guardian ad litem. Where there is no lawsuit filed and the petitioner is the custodial parent of the minor claimant the appointment of a guardian ad litem is not necessary. (Prob. Code § 3500.)

There are also errors on the Order to Deposit filed with the Petition. The minor's date of birth in Item 5(b) needs to be corrected and Item 1 should specify that the petitioner is acting in her representative capacity as the custodial parent for the minor rather than guardian ad litem. If the petitioner intends to be appointed guardian ad litem an application for such appointment should be filed.

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** 6/28/2022.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re:

Edwards v. K&K Home, LLC

Superior Court Case No. 18CECG04628

Hearing Date:

July 6, 2022 (Dept. 501)

Motion:

by Defendant K&K Home, LLC, for Order Compelling Discovery Responses and for Monetary Sanctions

Tentative Ruling:

To grant. (Code Civ. Proc., §§ 2030.290, 2031.300.) Within 10 days of service of the order by the clerk, plaintiffs Linda Edwards, Ty Williams and Leslie Ray Medley ("plaintiffs") shall serve objection-free responses to Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One, and produce all responsive documents.

To impose \$560 in monetary sanctions against Plaintiffs, jointly and severally, to be paid to counsel for K&K Home, LLC, within 30 days of service of the order by the clerk. (Code Civ. Proc., §§ 2030.290, subd. (c); 2031.300, subd. (c).)

Explanation:

Each set of discovery referenced above was served on each plaintiff on September 17, 2021. (Benkoski Decl., ¶¶ 2-4, Exs. A-C.) After defendant granted an extension of time to respond, responses were due on November 15, 2021. (*Id.*, ¶ 6.) As of the filing of the motion to compel, and after multiple follow-up inquiries, no responses have been served. (*Id.*, ¶¶ 7-10.) Accordingly, an order compelling plaintiffs to provide initial responses without objections is warranted. (Code Civ. Proc., § 2030.290, subd. (a), 2031.300, subd. (a).) Further, reasonable monetary sanctions must be imposed. (*Id.*, §§ 2030.290, subd. (c); 2031.300, subd. (c); *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404.) The court has reduced the sanction amount to account for the fact that no opposition was filed, nor is a hearing 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 **on** 6/30/2022.
(Judge's initials) (Date)

Tentative Ruling

Re:

Zahir v. Jilani

Superior Court Case No. 19CECG00180

Hearing Date:

July 6, 2022 (Dept. 501)

Motion:

by Plaintiff for Reconsideration

Tentative Ruling:

To deny. (Code Civ. Proc., § 1008, subd. (a).) However, a hearing on the court's own motion for reconsideration is set for Thursday, August 18, 2022, at 3:30 p.m. in Department 501, since defendant Ejaz Jilani, erroneously sued as Ajaz Jilani, has not paid his first appearance fee of \$435. (Gov. Code, §§ 70612, 70602.5 and 70602.6.) Any briefing to be submitted by defendant addressing the issues herein must be filed and served no later than Wednesday, July 27, 2022. All papers in response to defendant's briefings must be filed and served no later than Friday, August 5, 2022. Alternatively, the court will take the motion off calendar if defendant pays the initial filing fee of \$435 prior to Wednesday, July 27, 2022.

Explanation:

Plaintiff seeks reconsideration of an order entered on June 27, 2019, granting defendant's motion to transfer venue of this case to Los Angeles County and directing plaintiff to pay transfer fees in accordance with Code of Civil Procedure section 399.

Motions for reconsideration fall under the purview of Code of Civil Procedure section 1008 which states, in pertinent part:

When an application for an order has been made to a judge, or to a court, and ... granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based on new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order.

(Code Civ. Proc., § 1008, subd. (a) [emphasis added].)

Further, "[t]he 10 day period begins running when the moving party has been served with the order." (Novak v. Fay (2015) 236 Cal.App.4th 329, 335-336 [brackets added].) This time is jurisdictional with regard to applications for reconsiderations of the court's orders, and thus "[n]o application to reconsider any order ... may be considered by any judge or court unless made according to this section." (Code Civ. Proc., § 1008, subd. (e).)

Plaintiff contends that the motion is timely, because no notice of entry of the order was served to plaintiff or plaintiff's counsel. However, a review of the court's record indicates that the June 27, 2019, order was served to plaintiff's counsel on July 08, 2019, and that such "service by the clerk ... constitute[s] notice of the order." (June 27, 2019, Law and Motion Minute Order.)¹ Thus, the deadline for plaintiff's motion for reconsideration, with five days' extension from the time of mailing the order, was July 23, 2019. (Code Civ. Proc., § 1008, subd. (a); § 1013.) Since plaintiff's motion was not filed until December 27, 2021, the motion cannot be granted.

However, although defendant's motion for change of venue was granted, the court notes that defendant has not paid his initial filing fee of \$435 in compliance with Government Code sections 70612, 70602.5 and 70602.6.

The court has inherent power to correct its own errors when they are called to the court's attention by way of an improperly filed motion or by arguments on a related motion. (*Boschetti v. Pacific Bay Investments Inc.* (2019) 32 Cal.App.5th 1059, 1070 [the 10-day time frame in Code of Civil Procedure, section 1008 does not limit the court's ability to reconsider].) "When a motion for change of venue has been granted by the transferor court, but the transferee court has not yet assumed jurisdiction, the transferor court has limited powers. The court may, upon proper motion, vacate its previous order granting the change of venue." (*Moore v. Powell* (1977) 70 Cal.App.3d 583, 587.) "...[T]o grant reconsideration on its own motion, the trial court must conclude that its earlier ruling was wrong, and change that ruling based on the evidence originally submitted." (*Marriage of Ankola* (2020) 53 Cal.App.5th 369, 383 [brackets added, internal citations omitted].) Further, the court must notify the parties that it may do so, solicit briefing and conduct a hearing. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1108.)

In *Hu v. Silgan Containers Corp.* (1999) 70 Cal.App.4th 1261, the Third District Court of Appeal held that the payment of the initial filing fee is both mandatory and jurisdictional. (*Id.*, at pp. 1269.) There, the plaintiff filed an action for employment discrimination and paid her initial filing fee by check. Shortly thereafter, the superior court clerk notified plaintiff that the bank had returned her check for insufficient funds and informed plaintiff that she was required to pay the fee and late charges within 20 days of the receipt of the letter. Upon plaintiff's failure to timely pay, the court voided the plaintiff's complaint. (*Id.*, at pp. 1263; Code Civ. Proc., § 411.20, subds. (a) – (f).) Also, where a first paper is accompanied with a payment in an amount less than the required fee, the clerk must notify the filing party of the noncompliance. If full payment is not tendered within 20 days of the clerk's notice or prior to any hearing or trial, whichever is earlier, the court shall "void the filing and proceed as if it had not been filed." (Code Civ. Proc., § 411.21, subds. (a) – (f).)

Since defendant has not paid his first appearance fee, the court, on its own motion, intends to reverse its prior order entered on June 27, 2019. The hearing on the court's motion will be heard on Thursday, August 18, 2022. Any briefing to be submitted by defendant addressing the issues herein must be filed and served no later than

¹ The court notes that the order was served to Roger S. Bonakdar, Bonakdar Law Firm, 2344 Tulare Street, Suite 301, Fresno, CA 93721, which was plaintiff's counsel's address of record with the court at that time.

Wednesday, July 27, 2022. All papers in response to defendant's briefings must be filed and served no later than Friday, August 5, 2022. Alternatively, the court will take the motion off calendar if defendant pays the initial filing fee of \$435 prior to Wednesday, July 27, 2022.

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** 7/1/2022.
(Judge's initials) (Date)