

Tentative Rulings for September 22, 2026
Department 503

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.*

24CECG01544 *Hernandez v. Poindexter Nut Company, Inc.*

26CECG00203 *Chavez v. General Motors, LLC*

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

22CECG03304 *Morales v. General Motors LLC is continued to Tuesday, October 27, 2026, at 3:30 p.m. in Department 503.*

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

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Tentative Ruling

Re: ***Panzak v. City of Fowler et al.***
Case No. 17CECG02635

Hearing Date: September 22, 2026 (Dept. 503)

Motion: Default Hearing

Tentative Ruling:

To continue to October 21, 2026 at 3:30 p.m. in Department 503 and set an order to show cause re dismissal (at the same date and time) for failure to bring the action to trial within five years as to defendant David Elias. (Code Civ. Proc., §§ 583.310, 583.360, subd. (a).) Plaintiff shall file any responsive briefing by October 8, 2026. (Code Civ. Proc., § 1005, subd. (b).)

Explanation:

The operative pleading, the Third Amended Complaint filed on March 17, 2020, alleges 11 different causes of action against various government officials, all of whom have been dismissed but City Manager for the City of Fowler, David Elias.

"An action shall be brought to trial within five years after the action is commenced against the defendant." (Code Civ. Proc., § 583.310.)

(a) An action shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties, if the action is not brought to trial within the time prescribed in this article.

(b) The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute.

(Code Civ. Proc., § 583.360.)

The court explained in a prior motion to dismiss the action for failure to prosecute,

Finally, the court considers how this issue applies to defendant David Elias, who has never appeared in this action. The court finds that he is not entitled to dismissal because the five year plus six month period has not yet elapsed as to him. When the action was dismissed by the court on March 14, 2019, this applied to all defendants, including Mr. Elias. Shortly after this, plaintiff moved to vacate the dismissal, and the court did so due to the fact that all the defendants except David Elias stipulated to it. The order vacating the dismissal entered on April 3, 2019, expressly states that the dismissal was not vacated as to David Elias. Therefore, he remained dismissed until plaintiff filed the [Third] Amended Complaint on March 17, 2020, in which plaintiff once again named "City Manager David Elias" as a defendant. Since the dismissal was without prejudice, there was nothing improper with plaintiff doing this. The 5-year statute begins to run when the action is "commenced against the defendant" (Code Civ. Proc., § 583.310) and here that must be

considered to be March 17, 2020. Therefore, the five year plus six-month period has not yet elapsed.
(July 27, 2023 Minute Order.)

Thus, plaintiff has been on notice for over three years that the five-year clock was ticking as to Elias. The five-year statute expired on September 17, 2025 (five years and six months after March 17, 2020).

Where the defendant is in default but default judgment has not yet been entered, the clock keeps ticking until entry of judgment. In *Hughes v. Kimble* (1992) 5 Cal.App.4th 59, the court held that a plaintiff has duty to exercise reasonable diligence to ensure that a case is brought to trial or other conclusion within statutory time constraints, and that duty includes duty to exercise reasonable diligence in obtaining a judgment after clerk's entry of default; thus, time between entry of default and entry of default judgment should be excluded from five-year period in which case must be brought to trial if and *only if court finds that plaintiff used due diligence to obtain entry of judgment*, and that in spite of such due diligence, it was impossible, impracticable, or futile to obtain a judgment. (*Hughes v. Kimble* (1992) 5 Cal.App.4th 59, 70-71.)

Over the past few years plaintiff has calendared multiple default prove-up hearings to obtain judgment against Elias. They were denied on July 27, 2023 and March 19, 2024 because Elias' default had not yet been entered. Plaintiff repeatedly filed requests for entry of default, but the requests were denied for various reasons. On April 24, 2025 plaintiff filed default prove-up papers, along with request for entry of default and default judgment, setting a hearing for May 6, 2025. Default was finally entered on April 24, 2025. Default judgment was denied for failure to submit evidence of the claimed damages. (See May 6, 2025 Minute Order.) Plaintiff waited over 15 months to submit the next request for default judgment on August 28, 2026.

The court is not aware of any time periods in which it was impossible, impracticable or futile to obtain a judgment against Elias. Accordingly, the court is setting an order to show cause re dismissal for failure to bring the action to trial or judgment within five years as to Elias. (Code Civ. Proc., §§ 583.310, 583.360, subd. (a).) Plaintiff shall file a responsive brief within the traditional opposition (Code Civ. Proc., § 1005, subd. (b)), and may present *admissible* evidence of any time periods he believes should be excluded from the five-year period.

Pursuant to Cal. 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: JS on 9/16/2026.
(Judge's initials) (Date)

(49)

Tentative Ruling

Re: ***LS Power Grid California LLC v. Westlands Water District et al.***
Superior Court Case No. 26CU01426

Hearing Date: September 22, 2026 (Dept. 503)

Motion: By plaintiff LS Power Grid California, LLC for Order of
Prejudgment Possession

Tentative Ruling:

To grant. (Code Civ. Proc., § 1255.410.)

Explanation:

Plaintiff LS Power Grid California, LLC ("Plaintiff") moves for an order of prejudgment possession for an easement under Code of Civil Procedure section 1255.410. No opposition was filed to Plaintiff's motion.

Code of Civil Procedure section 1255.410 requires that Plaintiff describe the property they are seeking to take possession of, the date after which they are seeking possession, specific codified language, and proper notice of the motion must be given to defendants. Plaintiff has done so here.

Further, if the motion is unopposed, Plaintiff must show that they are entitled to take the property by eminent domain and that Plaintiff has deposited an amount that satisfies Code of Civil Procedure section 1255.010. (Code Civ. Proc., § 1255.410, subd. (d)(1).) Plaintiff has established they are entitled to take the property by eminent domain. (Bratcher Decl., ¶¶ 2-9.) Plaintiff has also demonstrated that they have deposited an amount consistent with Code of Civil Procedure section 1255.010. (Santolucito Decl., ¶ 1 & Exh. 1; Notice of Deposit, Exh. 1.) Accordingly, Plaintiff's motion for prejudgment possession is granted.

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: JS on 9/17/2026.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Durbrow v. Rodriguez***
Superior Court Case No. 21CECG00194

Hearing Date: September 22, 2026 (Dept. 503)

Motion: by Plaintiff to Set Aside Dismissal

Tentative Ruling:

To grant. (Code Civ. Proc., § 473, subd. (b).)

A hearing on the court's own motion for dismissal of the entire action pursuant to Code of Civil Procedure section 583.310 is set for Wednesday, October 28, 2026, at 3:30 p.m., in Department 503. (Code Civ. Proc., §§ 583.310, 583.360.) All papers are to be filed in compliance with Code of Civil Procedure, section 1005.

Explanation:

Attorney Affidavit of Fault:

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." (Code Civ. Proc. § 473, subd. (b).) Where a motion seeking this relief is based on an "attorney affidavit of fault," the relief is mandatory. Otherwise, relief is discretionary. A limitation on the mandatory relief is that the court may deny relief if it finds the default or dismissal "was *not* in fact caused by the attorney's mistake, inadvertence, surprise or neglect" (e.g. where the attorney is attempting to "cover up" for the client). (*Id.*)

Moreover, the law favors judgments on the merits. Where dismissals are the procedural equivalent on a default; i.e., those which deprive plaintiffs of their day in court, relief is favored. (*Leader v. Health Indus. Of America, Inc.* (2001) 89 Cal.App.4th 603, 618.)

Here, counsel submits that the dismissal of the action was caused by his inadvertence. The court dismissed the action because plaintiff (or plaintiff's counsel) failed to appear at the Order to Show Cause re Dismissal hearing ("OSC"). Mr. Belli indicates that he failed to appear at the OSC, because he failed to calendar the hearing date. (Belli Decl., ¶ 3.) Had Mr. Belli properly noted the date for the OSC hearing, Mr. Belli would have made an appearance to the OSC. As such, it is clear that Mr. Belli's mistake at least proximately caused the dismissal of the action.

Accordingly, the motion for relief from the dismissal is granted.

The court takes judicial notice of its own docket and notes that plaintiff commenced the instant action against defendant on January 22, 2021, which the court calculates to be approximately five years and eight months ago. "An action shall be brought to trial within five years after the action is commenced against the defendant." (Code Civ. Proc., § 583.310.) The court sets its own motion for dismissal pursuant to Code of Civil Procedure section 583.310. (Code Civ. Proc., § 583.360, subd. (a).)

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: JS **on** 9/18/2026.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***In re Cosmo Tolmasoff***
Superior Court Case No. 26CU02776

Hearing Date: September 22, 2026 (Dept. 503)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant the petition and sign the proposed order. No appearances necessary.

The court sets a status conference for Thursday, December 17, 2026, in Department 502, for confirmation that the minor's funds have been invested as set forth in the petition. If petitioner files a declaration or documentation, at least five court days before the status conference, showing that the funds have been invested as ordered, 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: JS **on** 9/21/2026.
(Judge's initials) (Date)