Tentative Rulings for October 8, 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.

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(20)

Tentative Ruling

Re: ***Moore v. HSRE Pacifica Fresno OPCO LP, et al.***
Superior Court Case No. 23CECG04737

Hearing Date: October 8, 2025 (Dept. 501)

Motions: (1) by Defendant Harrison Street Real Estate Capital, LLC for Judgment on the Pleadings
(2) by Defendant Harrison Street Real Estate Capital, LLC for Protective Order

Tentative Rulings:

(1) To deny. (Code Civ. Proc., § 438.)

(2) To deny. (Code Civ. Proc., §§ 2017.020, subd. (a), 2030.090, subd. (b).)

Explanation:

Motion for Judgment on the Pleadings ("MJOP")

This is an elder abuse action brought by family of decedent Janet Moore, a resident of a residential care facility allegedly owned and operated by various defendants. As to the "the corporate overseer defendants" the Complaint alleges five different theories of liability - (1) directly liable for the neglect and harm of decedent (Complaint ¶¶ 10-14, ¶¶ 33-77), and are liable as (2) alter egos (id. ¶¶ 15-17), (3) joint-venturers (id. ¶ 18), (4) aiders and abettors (id. ¶ 19), and (5) co-conspirators (id. ¶ 20). The Complaint's causes of action are: (1) Elder Neglect, (2) Elder Neglect (Enhanced Remedies Sought), (3) Premises Liability, (4) Negligence (Custodial), (5) Fraud (Constructive), (6) Negligent Infliction of Emotional Distress, and (7) Wrongful Death. Defendant Harrison Street Real Estate Capital, LLC ("HSRE Capital"), one of several corporate defendants, moves for judgment on the pleadings.

The motion is, in large part, based on evidence extrinsic to the Complaint. The grounds for judgment on the pleadings must appear on the face of the challenged pleading or be based on facts the court may judicially notice. (Code Civ. Proc., § 438, subd. (d); *Tung v. Chicago Title Co.* (2021) 63 Cal.App.5th 734, 758-759.) The court sustains plaintiffs' objection numbers 1-7, and will not consider factual information supplied in defense counsel's declaration. The court will grant judicial notice of corporate records filed with the Secretary of State, but not of the Purchase Agreement. The Purchase Agreement is a private contract. *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, relied upon by HSRE Capital, "does not provide authority allowing a court to take judicial notice of a contract between *private parties.*" (*The Travelers Indemnity Co. of Connecticut v. Navigators Specialty Ins. Co.* (2021) 70 Cal.App.5th 341, 354.) "[T]he existence of a contract between private parties cannot be established by judicial notice under Evidence Code section 452, subdivision (h)." (*Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1145.)

The motion is denied first because HSRE Capital does not address the direct liability allegations of the Complaint. Instead, it assumes that the only bases for liability pled in the Complaint are the secondary theories of alter ego, joint venture, aiding and abetting, and conspiracy. Not so. Paragraph 11 of the Complaint defines "Defendants" to include all defendants, and then the rest of the Complaint alleges that all wrongdoing, including running and operating the residential care facility, was done by "Defendants." (See Complaint ¶¶ 10-14 and 32-77.) Plaintiffs allege that Defendants, including HSRE Capital, owned, managed, and controlled the facility. (Complaint ¶ 10.) Failing to address the direct liability allegations, HSRE Capital does not show that judgment on the pleadings should be granted.

The court finds that the indirect theories of liability are adequately pled. (See Complaint ¶¶ 16, 18-20.) HSRE Capital does not contend that the essential elements for these theories are not pled, but takes issue with the lack of factual detail. Plaintiffs are only required to plead the ultimate facts upon which liability depends. (See *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550.) Supporting evidence for these theories necessarily is in the possession of defendants, and evidentiary facts need not be alleged (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) At the pleading stage no more detail is required. Plaintiffs need to pursue discovery to obtain the evidentiary support for their theories of liability against HSRE Capital.

Motion for Protective Order

HSRE Capital moves for a protective order precluding plaintiffs from pursuing discovery against it, contending that it has no liability as argued in the MJOP. Plaintiffs have propounded on HSRE Capital one set of Form Interrogatories, 81 Special Interrogatories, and two notices of depositions of its Person Most Qualified ("PMQ") along with production of documents. HSRE Capital wants plaintiffs limited to just 35 special interrogatories focusing on HSRE Capital's relationship with the other named defendants in this case in order to establish the theories of alter ego, joint venture, aiding and abetting, and conspiracy.

HSRE Capital cannot opt out of discovery because it denies liability. "[T]o require a party to supply proof of any claims or defenses as a condition of discovery in support of those claims or defenses is to place the cart before the horse." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 551.) As noted above, with the MJOP being denied, the case moves forward to the discovery stage.

Any person affected by the burden, expense, or intrusiveness of discovery may move for a protective order. (Code Civ. Proc., § 2017.020, subd. (a).) "The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense" including:

- *Excusing* answers to any or all interrogatories;
- Finding the number of specially prepared interrogatories "unwarranted" despite the representations made in the "declaration of necessity" (thus excusing the duty to answer the excess number);
- Setting *terms and conditions* upon which answers will be required;

- *Extending time* within which to respond;
- Requiring oral depositions (or other discovery methods) in lieu of interrogatories;
- Protecting certain information (e.g., trade secrets or other confidential research) from disclosure or ordering it disclosed only in a certain way;
- Requiring that some or all of the answers be sealed and thereafter opened only on order of court.

(Code Civ. Proc., § 2030.090, subd. (b).)

The motion is procedurally deficient because there is no separate statement of items in dispute. A separate statement is *required* for "any motion involving the content of a discovery request or the responses to such a request …" (Cal. Rules of Court, rule 3.1345(a).) "A separate statement is not required … [w]hen no response has been provided to the request for discovery." (Cal. Rules of Court, rule 3.1345(b)(1).) Here, HSRE Capital served responses to the special interrogatories on 3/21/2024. (See Johnson Decl., ¶ 2, Exh. A.) HSRE Capital served amended responses to the interrogatories on 2/28/2025. (Johnson Decl., ¶ 4.) HSRE Capital's motion makes no mention of having served any responses to any of the discovery propounded by plaintiffs. This is a significant omission. Further, neither party has supplied the court with the amended responses served by HSRE Capital. The motion can be denied solely due to the lack of separate statement. Substantively the motion must be denied as well.

If a protective order is to be obtained, relief must be sought "promptly" (Code Civ. Proc., § 2030.090, subd. (a)); and *before* expiration of the 30-day period within which to respond to the interrogatories (Code Civ. Proc., § 2030.260, subd. (a)), because otherwise the grounds for objection may be waived. (Code Civ. Proc., § 2030.290, subd. (a).) The motion is procedurally defective in that a protective order is sought *after* having served responses to the special interrogatories.

While the motion references form interrogatories propounded by plaintiffs, they are not discussed at all. HSRE Capital does not attempt to make a showing that the form interrogatories are in any way improper or oppressive.

The motion also references two PMQ deposition notices, but there is no discussion at all of the categories of examination, and almost no discussion of the categories of documents to be produced at the depositions. HSRE Capital merely mentions that there are 21 categories of examination in the first notice, and 11 categories in the second notice. HSRE Capital mentions that the first deposition notice specifies 14 categories of documents to be produced, and the second includes 90 document requests. There is no discussion at all of the document requests in the second notice. HSRE Capital mentions five of the document requests in the first notice, but only complains that the requests "substantially overlap with Plaintiffs' 81 special interrogatories." (MPA 5:19-20.) That is quite normal. Parties request information in interrogatories, and follow up with requests for documents pertaining to the same topics, and for deposition testimony on those topics. There is nothing improper about that. The lack of discussion and analysis relating to the deposition notices renders the motion entirely insufficient to show that a protective order should be imposed relating to the two PMQ depositions.

HSRE Capital's analysis of the motion is in large part a repeat of the MJOP, arguing that plaintiffs do not adequately plead secondary theories of liability, such as alter ego.

As noted above, the MJOP should be denied. Plaintiffs are entitled to pursue the subject discovery.

HSRE Capital does not seek to be relieved of the obligation to respond substantively to any particular special interrogatories. It simply wants plaintiffs limited to 35 special interrogatories in number, without specifying which 35.[1]

HSRE Capital contends that "a proper showing of good cause for purposes of a protective order includes, but not limited to, the following elements: (1) either the discovery sought is unreasonably cumulative or duplicative or obtainable from some other source that is more convenient, less burdensome, or less expensive; see *California Civil Discovery Practice* (CEB 4th Ed. 2011) §15.72; (2) the selected method of discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake. Id., or (3) that the set of interrogatories or depositions, need not be answered at all. Code Civ. Proc. § 2030.090(b); 225.420 (b)(1)." (MPA 6:19-26.)

HSRE Capital makes no showing or argument as to element (1). The primary thrust of HSRE Capital's argument seems to be that the discovery sought is overbroad or burdensome – element (2). Its first response to the special interrogatories stated, "HSRE CAPITAL has filed a Motion for Protective Order seeking the Court's permission not to respond to discovery until its Motion for Judgment on the Pleadings is heard." So really the only basis for not providing substantive responses was HSRE Capital's assumption that it would be out of the case once the MJOP is decided. That is not happening.

As far as the burdensome objection, the ground for objection is actually "oppression." It is not enough that the questions will require a lot of work to answer. It must be shown that the burden of answering is so *unjust* that it amounts to oppression. (*West Pico Furniture Co. v. Superior Court* (1961) 6 Cal.2d 407, 417-41.) As the objecting party, HSRE Capital has the burden to sustain the objection with detailed evidence showing precisely *how much* work is required to answer; conclusory statements are not sufficient. (*Id.* at p. 417 [declaration by manager that search of 78 branch offices would be required was insufficient; should show hours required]; *Williams Superior Court* (2017) 3 Cal.5th 531, 549–550 [party asserting undue burden and expense objection has "the burden of supplying supporting evidence"].) Though defense counsel provided a declaration in support of the motion for protective order, there is no information about the quantum of work to respond to the discovery. The objection is entirely unsupported by the moving papers.

[1] The reply seems to change the requested protective order, requesting that the court find that the discovery need not be answered at all. See Reply Conclusion.

For the above reasons the motion for protective order is denied.

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 10/2/2025 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Mirza v. Elghani***
Superior Court Case No. 24CECG04878

Hearing Date: October 8, 2025 (Dept. 501)

Motion: by Plaintiff for Interlocutory Judgment

Tentative Ruling:

To deny without prejudice. On its own motion, the court directs plaintiff to record a notice of the pendency of the action (a lis pendens) in the office of the Fresno County Recorder, and orders the action stayed until proof of such recording is filed in this action. Evidence of the recordation shall be filed with the court, after which plaintiff may file an ex parte application for the stay to be lifted (submitted on papers only, with no need to reserve an ex parte hearing date).

Explanation:

A complaint for partition of real property must set forth: 1) a description of the subject property, including both its legal description and its street address; 2) all interests the plaintiff has or claims in the property; 3) all interests of record or actually known to the plaintiff, and all persons plaintiff "reasonably believes will be materially affected by the action, whether the names of such persons are known or unknown to the plaintiff" (i.e., this includes "persons unknown" to be served by publication); 4) the estate as to which partition is sought and a prayer for partition of the interests therein; and 5) where the plaintiff seeks sale of the property, an allegation of the facts justifying such relief in ordinary and concise language. (Code Civ. Proc., § 872.230.) The Complaint here includes all the necessary allegations.

The Complaint alleges that Summer Mirza AKA Summer Abdelghani and John Elghani each hold an undivided one-half interest in the subject property as joint tenants. (Complaint, ¶¶ 8-9.) This is reflected in the grant deed attached to the Complaint. (Complaint, ¶ 8, Exh. A.) With respect to other interests recorded on the property, the Complaint alleges the property is encumbered by a deed of trust securing the purchase money loan for the property. (Complaint, ¶17.)

No title report is attached to the Complaint or included as evidence in support of the default prove up, so there is no documentary evidence presented showing there are no other interested persons (i.e., "interests of record") who should have been named as defendants.

The Complaint does not name the mortgageor in the action. Where the mortgagor has a recorded interest it is required to be named as a party. (Code Civ. Proc., § 872.230, subd. (c).)

Plaintiff is given leave to amend the Complaint for the purpose of adding the mortgagor as a defendant as well as any other parties who may have a lien interest in the property.

Additionally, there is no allegation, or anything else in the court record or presented in the default packet, showing that plaintiff recorded a lis pendens immediately after filing the Complaint, as *required* by Code of Civil Procedure section 872.250:

> (a) Immediately upon filing the complaint, the plaintiff shall record a notice of the pendency of the action in the office of the county recorder of each county in which any real property described in the complaint is located.
>
> […]
>
> (c) If the notice is not recorded, the court, upon its own motion or upon the motion of any party at any time, shall order the plaintiff or person seeking partition of the property, or another party on behalf of the plaintiff or other person, to record the notice and shall stay the action until the notice is recorded. The expense of recordation shall be allowed to the party incurring it.

(Code Civ. Proc., § 872.250, subds. (a) and (c).)

Therefore, the court on its own motion must require a lis pendens to be recorded, and will stay the action until this is done. If a lis pendens has already been recorded, plaintiff may call for a hearing to so inform the court, and no stay will be ordered.

Interlocutory Judgment

In this case, plaintiff is seeking partition by sale. The partition statutes (Code Civ. Proc., §§ 872.010 - 874.240) have no special provisions for obtaining default judgment, so plaintiffs must follow the procedures to obtain default in a civil action (Code Civ. Proc., §§ 585-587.5). In particular, with any partition action (whether by default or by contest), the judgment proceeds in two stages, interlocutory and final.

The content of the interlocutory judgment in a partition action varies according to the issues being adjudicated. In general, the judgment must set forth the ownership interests in the property or estate affected by the partition to be made, and order the partition. (See Code Civ. Proc., § 872.720, subd. (a).)

The proposed interlocutory judgment issued is consistent with the allegations of the complaint in specifying that both plaintiff and defendant have a one-half interest in the property and orders the partition by sale. The proposed judgment additionally requests the court appoint Brian Cuttone as referee and has provided evidence to support his qualification to act in this capacity. The referee will undertake all duties to place the property on the market and execute all documents necessary for the partition. The referee will also seek court confirmation of the sale by motion or by stipulation of the parties. The proposed judgment allows the referee to pay expenses to the care,

preservation and maintenance of the property and will submit to the court a request for disbursement of the proceeds of the property. The referee will hold all proceeds from the sale to be disbursed in accordance with the final disbursement ordered by the court. The fees of the referee are to be set by fee schedule and the proposed judgment indicates the court acknowledges and approves the fee schedule. There is no schedule included with the proposed judgment or declaration of Brian Cuttone.

Although the proposed interlocutory judgment sets forth the necessary provisions for the administration of the sale of the property, the filing of the lis pendens and amendment of the Complaint to name the mortgageor and any other necessary parties as defendant(s) must be accomplished before default judgment can be entered.

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 10/3/2025.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Rigoberto Leon v. Jessica Uriarte***
Superior Court Case No. 23CECG04267

Hearing Date: October 8, 2025 (Dept. 501)

Motion: for Interlocutory Judgment of Partition by Sale

Tentative Ruling:

To order the matter off calendar for lack of jurisdiction due to the court's dismissal of the entire action on September 4, 2025.

Explanation:

The parties failed to appear at the Order to Show Cause hearing on September 4, 2025. As a result, the court dismissed the entire action without prejudice. (See Minute Order dated September 4, 2025.) Dismissal of an entire action terminates the action. (*Hagan Engineering, Inc. v. Mills* (2003) 115 Cal.App.4th 1004, 1007.)

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 10/3/2025 (Date).

(34)

Tentative Ruling

Re: ***Westside Production Solutions, Inc. v. Kilsdonk***
Superior Court Case No. 23CECG04687

Hearing Date: October 8, 2025 (Dept. 501)

Motion: by Defendant for Judgment on the Pleadings

Tentative Ruling:

To continue to Thursday, November 13, 2025, at 3:30 p.m. in Department 501, to allow Westside Production Solutions, Inc., one last chance to retain new counsel, and to file written notice of new counsel's contact information on or before November 3, 2025. If new counsel is not retained, the court intends to *sua sponte* strike the Complaint without leave to amend.

Explanation:

A corporation is not a natural person, and therefore cannot appear in an action *in propria persona,* but instead must appear only through counsel. (*Merco Construction Engineers, Inc. v. Mun.Ct.* (1978) 21 Cal.3d 724, 731.) This rule prevents the corporate representative from engaging in the unauthorized practice of law. (See, *e.g., Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284, fn. 5.)

Here, plaintiff Westside Production Solutions, Inc., ("Westside") was represented by counsel when it filed its Complaint. However, its attorney was allowed to withdraw at a hearing on June 26, 2025. A Judicial Council form order (MC-053) was signed that same day, which indicated withdrawal would be effective upon the filing of the proof of service of the orders on Westside. A proof of service was filed on July 23, 2025, so this was the effective date on which Westside was left without counsel.

The order allowing its attorney to withdraw was made after due notice was given to Westside. The motion and the order were drawn on the mandated Judicial Council forms, which are designed to be easily understood by non-attorney litigants. The order thus gave Kota the following "NOTICE TO CLIENT" (set off from the rest of the form in a text box):

> "**Your present attorney will no longer be representing you. You may not in most cases represent yourself if you are one of the parties on the following list:** …A Corporation…. **If you are one of these parties, YOU SHOULD IMMEDIATELY SEEK LEGAL ADVICE REGARDING LEGAL REPRESENTATION. Failure to retain an attorney may lead to an order striking the pleadings or to the entry of a default judgment.**"

(Order filed June 26, 2025, at Page 2, Item 10 (bolded and upper case text in the original).)

Thus, Westside was notified: 1) of its attorney's withdrawal; 2) that as an entity it could not represent itself, and thus it needed to immediately seek other counsel; and 3)

that the consequences of not doing so might be "an order striking the pleadings or…the entry of a default judgment." Westside has had several months to retain other counsel, and apparently it has not done so. It has not filed any response to this motion, even to inform the court that it was attempting to retain new counsel.

When a corporation attempts to appear without an attorney, the opposing party should file a motion to strike the corporation's complaint, answer, or other pleading. (*Himmel v. City Council* (1959) 169 Cal.App.2d 97, 100.)

In the case at bench, defendant Susan Kilsdonk is not moving to strike the Complaint now improperly maintained by a self-represented corporation but rather is moving for judgment on the pleadings. The only basis for judgment on the pleadings argues is that the corporate plaintiff cannot proceed in the action without an attorney. This is not a clear basis for finding no cause of action is stated in the Complaint. Even so, this does affect the court's power to strike a pleading *sua sponte*, at any time in the court's discretion, under Code of Civil Procedure section 436. As noted above, the Judicial Council form anticipates such a ruling might be made in a situation such as this. The court is inclined to utilize this power here, but only after giving Westside clear notice of its intent to do so, and giving it an opportunity to cure the defect by retaining new counsel. (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1149-1150 (legal actions taken by unrepresented corporation a curable defect if it retains new counsel, and there is no prejudice to the other parties).) If, after notice, the unrepresented entity refuses or is unable to obtain representation, the court can note the corporation's nonappearance and strike the pleadings it has filed in the case. (*Van Gundy v. Camelot Resorts, Inc.* (1983) 152 Cal.App.3d Supp. 29, 31.)

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 10//7/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Hedrington v. Woolman***
Superior Court Case No. 25CECG01717

Hearing Date: October 8, 2025 (Dept. 501)

Motion: by Defendant to Strike (Anti-SLAPP) Plaintiff's Complaint and Demurrer to the Complaint

Tentative Ruling:

To continue both motions to Wednesday, November 5, 2025, at 3:30 p.m. in Department 501. Plaintiff is to serve and file a proof of service of his opposition papers on defendant no later than October 15, 2025. Following service of the opposition papers, Defendant may file his reply papers no later than October 27, 2025.

Explanation:

These matters are being continued in order for plaintiff to serve defendant with the opposition papers which were filed on August 26, 2025, September 23, 2025, and September 30, 2025. A proof of service was filed September 11, 2025, which includes the August 26, 2025, filing, but not the September 23 and 30, 2025, filings. On October 1, 2025, defendant filed two replies indicating he had not been served with the opposition to either motion. Plaintiff is to serve all of the opposition papers no later than October 14, 2025, and file a proof of service of the papers by October 15, 2025. Following such service, defendant may file and serve any reply papers by October 27, 2025.

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 10/7/2025 (Date).

(37)

Tentative Ruling

Re: ***Jimenez-Montes v. Chavez Gonzalez***
Superior Court Case No. 25CECG03188

Hearing Date: October 8, 2025 (Dept. 501)

Motion: Defendant KBN Transport, LLC's Demurrer to the First Amended Complaint

Tentative Ruling:

To continue to Thursday, November 6, 2025, at 3:30 p.m. in Department 501, in order to allow defendant to meet and confer in person or by telephone, as required. If this resolves the issues, defendant shall call the court to take the demurrer off calendar. If it does not resolve the issues, counsel for defendant shall file a declaration on or before October 23, 2025, stating, with detail, the efforts made.

Additionally, the Notice contains errors, as discussed below. Defendant shall file an amended notice correcting these issues no later than October 23, 2025.

Explanation:

Code of Civil Procedure section 430.41 makes it clear that meet and confer must be conducted "in person or by telephone." (*Id.*, subd. (a).) The moving party is not excused from this requirement unless they show that the plaintiff failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. (*Id.*, subd. (a)(3)(B).) While counsel indicates a meet and confer letter was sent to plaintiff's counsel, this does not comply with the requirement that meet and confer occur either in person or by telephone. The parties must engage in good faith meet and confer, in person or by telephone, as set forth in the statute. Additionally, an invitation in such a letter to schedule a telephone conference is insufficient to demonstrate that the plaintiff failed to respond. The court's normal practice in such instances is to take the motion off calendar, subject to being re-calendared once the parties have met and conferred. However, given the congestion in the court's calendar currently, the court will instead continue the hearing to allow the parties to meet and confer, and only if efforts are unsuccessful will it rule on the merits.

The Notice makes reference to this matter being heard "in Department 501 of the Los Angeles County Superior Court, located at 1130 O Street, Fresno, California 93721…" This matter is being heard in Fresno County Superior Court, not Los Angeles. Furthermore, the caption indicates that counsel is representing "Cross-Defendant, KBN TRANSPORT, LLC." There has been no cross-complaint filed in this matter. Defendant shall file an amended notice correcting these issues.

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 10/7/2025.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Knight v. Kelley et al.***
Superior Court Case No. 23CECG04258

Hearing Date: October 8, 2025 (Dept. 501)

Motion: by Plaintiff Amy L. Knight for Distribution

Tentative Ruling:

To grant and order distribution in the amounts of $31,761.73 to plaintiff Amy L. Knight, and $24,939.61 to defendant Christopher S. Kelley.

Explanation:

On June 12, 2025, plaintiff Amy L. Knight ("plaintiff") moved for distribution of funds under Code of Civil Procedure sections 872.630, 873.520, 873.610, 873.640, 873.650, 873.680, 873.720, 873.730, 873.950 and 873.960. None of these statutes are for distribution. The statutes between, and including, 872.630 and 873.730 outline procedure before the entering of interlocutory judgment and to confirm the sale, both of which have already occurred in this action. The remaining statutes of section 873.950 and 873.960 refer to a partition by appraisal, which did not occur in this action due to the parties' stipulation for an order for sale. Though the notice is defective, both parties appear to address the actual statute for which relief is sought, distribution in accordance with Code of Civil Procedure section 873.820. Plaintiff's motion primarily seeks a fee award, constituting a cost of partition where the fees incurred were for the common benefit. (Code Civ. Proc., § 874.010, subd. (a).) Comparatively, defendant Christopher S. Kelley ("defendant") not only opposed the motion insofar as it seeks a fee award, but seeks to establish the disbursement of the residue among the parties in proportion to their equitable shares.

Neither party sufficiently established that their fees incurred in this action were for the common benefit. The court, who was well appraised of the history of this action, found that the only action in this matter that was truly for the common benefit was to get approval of the sale. The ex parte application was submitted as a jointly stipulated application. Upon review of the billing records from counsel for each party, it appeared that counsel for plaintiff, solely, originated the application. The court therefore awarded 2 hours of billed time, reflecting fees expended for the common benefit. However, the time entries reflect a billing rate of $500, whereas the declaration states a rate of $325. The court found $325 as the reasonable rate, and awarded $650 as costs in favor of plaintiff. That concluded the matter of fees assessed again the common fund.

As to actual disbursement of the residue in proportion to equitable shares, neither party sufficiently addressed the issues on equity. No satisfactory evidence was submitted to attribute the several satisfied liens on the real property to one party or the other. No admissible evidence was submitted to support the imposition of credits and debits for or against a party.

For the above reasons, the court continued the hearing and issued an order to show cause as to why the distribution should not be made in equal shares. The parties were directed to submit admissible evidence, with proper foundation, to address the distribution of the residue.

Both sides have since filled supplemental briefs. Though the parties were directed to submit timely briefs by close of business October 1, 2025, defendant filed his supplemental brief on October 2, 2025. The court exercises discretion and considers the late filing, and plaintiff's request to strike the filing is denied. (Cal. Rules of Ct., rule 3.1300(d).)

On the issue of the existing liens extinguished by the sale, plaintiff submits only conclusory statements that every single lien was recorded solely against defendant. (*See generally* Knight Suppl. Decl.) Moreover, the declaration refers to 12 liens, whereas the declaration of the referee identified only 9 liens as having been paid from the proceeds of the sale.

Defendant's evidence is not better. Defendant summarily concludes that all of the debt is marital debt. Defendant excepts the years of 2020 and 2021 as to liens asserted by the Franchise Tax Board, which defendant appears to acknowledge as solely belonging to him. (Kelley Suppl. Decl., ¶ 27.) Confusingly, defendant submits a "Final Seller's Statement issued from Chicago Title Company, which contradicts the entirety of the declaration of the referee as to the costs and miscellaneous charges of the sale. (Kelley Decl., Ex. 5; *compare* Kuddes Decl., ¶¶ 6-19, and Ex. A thereto.) It appears that Kuddes relied on an estimated statement, and inaccurately reports what was actually paid, as opposed to estimates.

Based on the above, as to the issue of liens, the court finds the evidence wholly insufficient by either side, except as to the tax liens on tax years 2020 and 2021, which defendant acknowledges are his. Defendant's portion is debited $2,761.06.

The court turns to the remaining issue of equity. Plaintiff fails to address the issue of equity, through either argument or evidence. Defendant's evidence is equally unavailing, stating a request based on a conclusory statement that he has kept up the property, maintenance, taxes and principal reduction. (Kelley Suppl. Decl., ¶ 28.) Defendant references his original declaration filed in relation to the original hearing date on this matter of August 19, 2025. The court's record reflects no declaration by defendant submitted for consideration for the August 19 hearing. Rather, defendant submitted only counsel's declaration. Counsel's declaration attached what appeared to be a self-prepared spreadsheet of what might be an amortization schedule. Nothing about the schedule itself identifies payment intervals, originating balance, start and end dates, nor, importantly, its relevance to what was actually paid on the subject property. This is not competent evidence, nor would counsel be a competent source of such evidence.

Based on the above, as to the issue of equity, the court again finds the evidence wholly insufficient by either side. In spite of the court's directive to show why the remaining equity should not be evenly distributed, with competent admissible evidence, neither party came close to doing so. The court finds that payments of the: expenses of the sale is not contested as having been satisfied through the sales process; costs of partition were

were also satisfied through the sales process; and liens in the order of priority were also satisfied through the sales process. (Code Civ. Proc., § 873.820, subd. (a)-(c).) The court finds that equitable distribution of the remainder of the sales proceeds shall be in 50 percent shares, with credits in favor of plaintiff in the total amount of $3,411.06, reflecting an acknowledged lien, and fees assessed against the common fund. (Code Civ. Proc., § 873.820, subd. (d).) Of the $56,701.34 deposited with the court, plaintiff Amy L. Knight is entitled to a disposition of $31,761.73, and defendant Christopher S. Kelley is entitled to a disposition of $24,939.61.[1]

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 10/7/2025.
(Judge's initials) (Date)

[1] Ordinarily, the court would direct plaintiff to submit a proposed judgment of partition consistent with this order. However, the court notes that an unrelated defendant, Deutsche Bank National Trust Company, remains outstanding.

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Tentative Ruling

Re: ***Sharon Medigovich-Johnson v. Chloe Casella***
Superior Court Case No. 24CECG01427

Hearing Date: October 8, 2025 (Dept. 501)

Motion: by Plaintiff for Relief from Dismissal

Tentative Ruling:

To deny, without prejudice.

Explanation:

Although "[t]he law favors judgments based on the merits, not procedural missteps" (*Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 134), the moving party bears the burden to show relief is justified (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410).

Plaintiff supports the motion with a declaration from plaintiff's attorney (Paul Smith II) who candidly admits a critical calendaring error. However, the court cannot gauge the veracity of Mr. Smith's declaration because it - *like the other motion papers* - is unsigned. Consequently, plaintiff's motion is insufficient to satisfy the burden of asserting circumstances "'which may properly be considered excusable ….'" (*Hopkins, supra,* 200 Cal.App.4th at p. 1410.)

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 10/7/2025.
(Judge's initials) (Date)