Tentative Rulings for October 28, 2026
Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, the remote appearance will be conducted through Zoom. 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.

26CU00162 ***CalPortland Company v. Axiom Masonry, Inc*. is continued to Wednesday, December 16, 2026, at 3:30 p.m. in Department 503.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(20) **Tentative Ruling**

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

Hearing Date: October 28, 2026 (Dept. 503)

Motion: Order to Show Cause re Dismissal; Default Hearing

Tentative Ruling:

To deny plaintiff's request for court judgment against David Elias. To dismiss the action 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).)

Explanation:

This matter came on for hearing on September 22, 2026, on plaintiff's request for default judgment against defendant David Elias. It appearing to the court that plaintiff has failed to bring the case against him to trial within five years, the court continued the matter to October 28, 2026, for an order to show cause re dismissal. Pursuant to Code of Civil Procedure section 1005, subdivision (b), plaintiff's response/opposition deadline was October 8, 2026. Plaintiff filed nothing.

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 tact 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. Having filed no response to the order to show cause, plaintiff has claimed none. Accordingly, as Elias is the sole remaining defendant, the action shall be dismissed for failure to bring the action to trial or judgment within five years. (Code Civ. Proc., §§ 583.310, 583.360, subd. (a).)

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 10/26/2026 .
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Peterson v. BMW of North America, LLC***
Superior Court Case No. 26CECG00074

Hearing Date: October 28, 2026 (Dept. 503)

Motion: By Plaintiff for Leave to File an Amended Complaint

Tentative Ruling:

To continue the matter to Thursday, December 10, 2026 at 3:30 p.m. in Department 503. Defendant may file a response to the amended motion no later than November 20, 2026.

Explanation:

On October 20, 2026, plaintiff filed an amended notice of motion and motion. The court is inclined to consider the amended pleadings. Plaintiff acknowledges there are substantive changes and that defendant should be permitted an opportunity to respond. Defendant may file a response no later than November 20, 2026.

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 (Judge's initials) on 10/26/2026 (Date).

(49)

Tentative Ruling

Re:	***LS Power Grid California LLC v. Luna Valley Land Holdings, LLC et al.*** Superior Court Case No. 26CU01158
Hearing Date:	October 28, 2026 (Dept. 503)
Motion:	By plaintiff LS Power Grid California, LLC for Order of Prejudgment Possession

Tentative Ruling:

To deny, without prejudice. (Code Civ. Proc., § 1255.410 (d)(1)(B).).)

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. Plaintiff has demonstrated they have met all the statutory requirements except one.

Plaintiff is required to make a deposit that is compliant with the requisite statutes. (Code Civ. Proc., § 1255.410, subd. (d)(1)(B).) The deposit requires a written report from the appraiser. (Code Civ. Proc., § 1255.010, subd. (b).) Christine Santolucito's, the appraiser, Declaration purports to attach her written appraisal of the property as Exhibit 1 (Santolucito Decl., ¶ 6.) However, Exhibit 1 is not Ms. Santolucito's appraisal report. (*Id*., Exh. 1.) Exhibit 1 is instead a copy of the easement sought by Plaintiff. (*Ibid*.) Accordingly, the motion for prejudgment possession is denied 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: JS on 10/26/2026.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Deeasha Eddings v. Saint Agnes Medical Center***
Superior Court Case No. 22CECG03112

Hearing Date: October 28, 2026 (Dept. 503)

Motion: by Defendant Ik Hyun Sung, M.D. for Summary Judgment

Tentative Ruling:

To deny Dr. Sung's motion for summary judgment, and the alternative motion for summary adjudication.

Explanation:

Legal Standards

" 'The standard of care against which the acts of a physician are to be measured is a matter peculiarly within the knowledge of experts; it presents the basic issue in a malpractice action and can only be proved by their testimony, unless the conduct required by the particular circumstances is within the common knowledge of the layman.' " (*Landeros v. Flood* (1976) 17 Cal.3d 399, 410, citations omitted.)

" 'California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence.' " (*Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 984–985, citations omitted.)

"[W]hen considering the declarations of the parties' experts, we liberally construe the declarations for the plaintiff's experts and resolve any doubts as to the propriety of granting the motion in favor of the plaintiff." (*Powell v. Kleinman* (2007) 151 Cal.App.4th 112, 125–126, citation omitted.) Thus, a plaintiff's expert declaration in opposition to defendant's summary judgment motion "did not have to be detailed, was entitled to all favorable inferences and was deemed sufficient to defeat the summary judgment motion." (*Id.* at p. 125, citing *Hanson v. Grode* (1999) 76 Cal.App.4th 601, 607-608.)

Furthermore, the plaintiff does not have to prove that the defendant's acts or omissions were the sole cause of the plaintiff's injuries. Plaintiff only has to present admissible expert testimony that the defendant was a substantial cause of the injuries. (CACI No. 430; *Mitchell v. Gonzales* (1991) 54 Cal.3d 1041, 1052.)

Defendant's Burden

Here, defendant Dr. Sung has submitted the declaration of his expert, Dr. Yost, an experienced physician and anesthesiologist, to meet his burden of showing that he is

entitled to summary judgment. (Yost Decl., ¶ 1, Yost Curriculum Vitae.) Dr. Yost opines that nothing Dr. Sung did or failed to do fell below the standard of care. (Yost Decl., ¶ 23.) Dr. Yost also discusses his reasons for concluding that Dr. Sung did not breach the standard of care. (Yost Decl., generally.) Thus, the burden shifts to plaintiffs to provide a declaration from a qualified expert stating that Dr. Sung's care and treatment of decedent fell below the standard of care and caused or substantially contributed to decedent's death.

Plaintiffs' Burden

In opposition, plaintiffs provide the declaration of Dr. Kevin P. Becker, a qualified physician and board certified anesthesiologist. He opines that Dr. Sung "departed from the applicable standard of care when Dr. Sung failed to timely recognize and treat Mr. Puryear's progressively inadequate ventilation." (Id., ¶ 29.) "[P]ermitting Mr. Puryear to continue inadequately ventilating spontaneously while his oxygen saturation and blood pressure progressively deteriorated was below the standard of care [and] waiting until the Code Blue event to provide affirmative ventilatory support was below the standard of care." (Id., ¶¶ 32, 39.) Dr. Becker proceeds to state that it was "Dr. Sung's failure to timely recognize and treat Mr. Puryear's inadequate ventilation [that] allowed progressive hypercapnia and respiratory acidosis to develop and substantially contributed to Mr. Puryear's respiratory arrest, subsequent cardiac arrest, hypoxic-anoxic brain injury and ultimate death." (Id., ¶ 55.) Had he timely intervened, the decedent's respiratory deterioration would not have progressed as it did. (Id., ¶ 56.)

Dr. Becker submits that the "fundamental issue is whether timely respiratory intervention should have prevented Mr. Puryear from progressing to the point at which a Code Blue became necessary." (Becker Decl., ¶ 63.) Ultimately, his review of the record supports his "opinion to a reasonable degree of medical probability that Dr. Sung departed from the applicable standard of care in his anesthetic management of Mr. Puryear and that those departures were a substantial factor in causing Mr. Puryear's cardiac arrest, hypoxic-anoxic brain injury, and subsequent death." (Becker Decl., ¶ 67.)

Plaintiffs have met their burden of showing the existence of triable issues of material fact with regard to whether Dr. Sung's care and treatment of decedent fell below the standard of care and caused or substantially contributed to his death. As a result, the court intends to deny Dr. Sung's motion for summary judgment, and the alternative motion for summary adjudication.

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 10/26/2026.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Henry Jones, JR v. Fresno Valley SNF, LLC***
Superior Court Case No. 25CECG05964

Hearing Date: October 28, 2026 (Dept. 503)

Motion: to Compel Arbitration

Tentative Ruling:

To deny defendants' motion to compel arbitration and to stay the civil action pending the outcome of the arbitration.

Plaintiffs' request for judicial notice is denied, and thus does not need to rule on defendants' objection to this request. Defendants' objections to the declaration of Plaintiff Henry Jones, Jr. (Objection Nos. 1-9) are overruled in their entirety. In regard to the objections to the declaration of Thomas Reyda, Objection Nos. 10-14 are sustained. Objection No. 15 is overruled. Objection No. 16 is sustained. Objection No. 17 is overruled. Objection No. 18 is sustained.

Explanation:

Defendants Fresno Valley SNF, LLC, dba Orchard Post Acute; PACS Group, Inc.; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; and Providence Group of California, LLC ("defendants") move to compel arbitration of all the claims brought against them in the complaint filed by Henry Jones, Jr., individually and on behalf of Henry Jones, Sr. ("plaintiffs").

In moving to compel arbitration, a defendant must prove by a preponderance of evidence the existence of the arbitration agreement and that the disputes are covered by the agreement. The party opposing the motion must then prove by a preponderance of evidence that a ground for denial of the motion exists. (*Hotels Nevada v. L.A. Pacific Center, Inc.* (2006) 144 Cal.App.4th 754, 758.) Unless there is a dispute over authenticity, the mere recitation of the terms is sufficient for a party to move to compel arbitration. (*Sprunk v. Prisma LLC* (2017) 14 Cal.App.5th 785, 793.) The moving party has the burden of proving the existence of a valid arbitration agreement. (*Pinnacle Museum Tower Assn v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) A party opposing arbitration has the burden of showing that the arbitration provision cannot be interpreted to cover the claims in the complaint. (*Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 890.)

Here, defendants have recited the pertinent terms of the arbitration agreement, and the entire agreement is attached as Exhibit B to the declaration of Alaina T. Dickens. The agreement is authenticated by Veronica Espinoza, the Admissions and Marketing Director for defendant Orchard Post Acute. (Espinoza Decl., ¶¶ 1, 2.)

Although the party seeking arbitration bears the initial burden of proving the existence of a valid arbitration agreement, there also exists a "rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions." (Prob. Code, § 810, subd. (a); *Algo-Heyres v. Oxnard Manor LP* (2023) 88 Cal.App.5th 1064, 1070 (*Algo-Heyres*).) A finding of incapacity to contract must be "supported by evidence of a deficit in at least one of four areas: alertness and attention, information processing, thought processes, and ability to modulate mood and affect." (*Ibid*.) Furthermore, "[m]ore complicated decisions and transactions ... require greater mental function ... ." (*Id*. at p. 1071.)

In *Algo-Heyres*, the Second District noted that Civil Code section 39 provided more specific guidelines for determining capacity than the "baseline" provided under the Probate Code. (*Algo-Heyres, supra,* 88 Cal.App.5th at p. 1071.) "A rebuttable presumption affecting the burden of proof that a person is of unsound mind shall exist for purposes of this section if the person is substantially unable to manage his or her own financial resources or resist fraud or undue influence." (Civ. Code, § 39, subd. (b).) The Second District found, even apart from Civil Code section 39, that evidence including the "failure to respond to questions about [] care, inability to understand speech, and ability to respond to only simple questions or commands" showed a "'significant[] impair[ment]'" to the " 'ability to understand and appreciate the consequences' of waiving [the] right to trial." (*Algo-Heyres, supra*, 88 Cal.App.5th at p. 1072.)

" ' "It has been established that in order to have relief under [Civ. Code, § 39] ... it is not necessary that one be incompetent to enter into any kind of contract or to transact any business. Rather the test is whether or not the party was mentally competent to deal with the subject before him with a full understanding of his rights. Such a question is to be determined by the court or jury and if there is found in the evidence any rational ground supporting its determination its conclusion on this point will be upheld." [¶] "[T]he fact that the grantor is lacking in such mental vigor as to enable him to protect himself against imposition is a reason for the interposition of equity to protect him, although the mental weakness is not such as to justify him in being regarded as totally incapacitated." ' " (*Peterson v. Ellebrecht* (1962) 205 Cal.App.2d 718, 721–722, citations omitted.)

The court may consider evidence of the party's mental condition both before and after the date on which they executed the subject contract in order to determine whether they were mentally capable of entering into the agreement. (*Perkins v. Sunset Tel. & Tel. Co*. (1909) 155 Cal. 712, 717.) The court may also consider the testimony of experts and laypeople in making its determination. (*Id*. at p. 721.)

Here, plaintiffs have produced evidence of Henry Jones, Sr.'s serious cognitive decline in the time preceding his signing of the purported arbitration agreement. Plaintiff Henry Jones, Jr. attests that since 2016, nearly a decade prior to the challenged agreement, his father Mr. Jones, Sr. would get lost, forget to pay bills and rent, and required the assistance of in-home caregivers to perform basic tasks. (Jones Jr. Decl., ¶¶ 2-4.) Mr. Jones, Sr. was on a fixed income and, on multiple occasions, fell victim to various fraudulent schemes whereby he was scammed into sending money. (Id., ¶ 4.) His son intervened to put a stop to the financial scams, and he informally took over handling Mr. Jones, Sr.'s financial accounts for the past nine years to ensure that bills were paid. (Id., ¶¶ 4, 5.) This evidence tends to show that Mr. Jones, Sr. was unable to, in the very least,

resist fraud and undue influence, in addition to an inability to maintain financial resources. (Civ. Code, § 39.)

The nature of this dispute (i.e. capacity to understand consequences of an arbitration agreement) involves a complicated category of activity, one that involves comprehension of multifaceted legal concepts and principles. To the extent plaintiffs were required to show Mr. Jones, Sr.'s incapacity, the evidence supplied in their opposition papers is sufficient to satisfy that burden and rebut any relevant presumptions.

As a result, the court intends to find that the purported arbitration agreement with Henry Jones, Sr. is voidable as he lacked the mental capacity to execute it, and the court will declare the agreement to be void and unenforceable. Consequently, as there is no valid and enforceable agreement to arbitrate between the parties, the court intends to deny the motion to compel arbitration of plaintiffs' claims. In addition, the court intends to deny the defendants' motion to stay the court proceedings.[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: JS on 10/27/2026.
(Judge's initials) (Date)

[1] Since the court intends to deny the motion to compel arbitration on the ground that plaintiff lacked capacity to execute the agreement, there is no need for the court to reach the arguments regarding unconscionability and waiver.

(35)

Tentative Ruling

Re: ***Michael Martines Physical Therapist v. Momentum Billing, LLC***
Superior Court Case No. 26CECG00549

Hearing Date: October 28, 2026 (Dept. 503)

Motion: Motion to Withdraw

Tentative Ruling:

To take off calendar, as no moving papers have been 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: JS on 10/27/2026.
(Judge's initials) (Date)