

Tentative Rulings for November 29, 2023
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.*

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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Tentative Ruling

Re: ***Skyrunner Drone Light Shows, LLC v. McMillin***
Superior Court Case No. 23CECG01321

Hearing Date: November 29, 2023 (Dept. 503)

Motion: By Plaintiff Skyrunner Drone Light Shows, LLC on Application
for Writ of Possession

Tentative Ruling:

To deny.

**If timely requested, oral argument will be heard on Thursday,
December 7, 2023, at 3:30 p.m. in Department 503.**

Explanation:

Plaintiff Skyrunner Drone Light Shows, LLC ("Plaintiff") applies for a writ of possession regarding certain property it alleges is in the possession of defendant Colby McMillin ("Defendant").

On filing the complaint, a plaintiff may apply for a writ of possession under the claim and delivery statutes. (Code Civ. Proc. § 511.010 et seq.) The plaintiff must file a written application, executed under oath and must include: (1) a showing of the basis of the plaintiff's claim, that plaintiff is entitled to possession of the claimed property, and where the claim is based on a written instrument, a copy of that instrument must be attached; (2) a showing that the property is wrongfully detained, how defendant came into possession of the property, and the reason for the detention to the best of plaintiff's knowledge; (3) a detailed description of the property and statement of its value; (4) a statement of the property's location, with supporting facts; (5) where the property is in a private place that must be entered, plaintiff must also make a showing of probable cause to believe that the property is located here; and (6) the property was not taken for a tax, assessment, or fine under a statute, or seized under an execution against the plaintiff's property. (Code Civ. Proc. § 512.010, subd. (b).) This showing may be by affidavit and must be set forth with particularity. (*Id.*, § 512.010, subd. (c).) If the plaintiff has established the probable validity of its claim to possession of the property, and provides an undertaking, the writ may issue. (Code Civ. Proc. § 512.060, subd. (a).)

Here, Plaintiff seeks to possess 120 Verge X1 drones and related items. Plaintiff submits that it is the owner of the property in question. (Furhman Decl., ¶ 3.) Further, it appears that Defendant acknowledges that he does not own the property in question, and that Plaintiff is the owner. (*Id.*, ¶¶ 16-18, and Exs. D-F [showing a charge by Defendant for a commission on brokering a purchase, storage fees for "your fleet", and a statement by Defendant to "come get your shit"].)¹ Plaintiff further submits that the property is

¹ Defendant's Evidentiary Objections are overruled.

Defendant opposes. Defendant argues that Plaintiff fails to demonstrate ownership because the property was purchased by Advanced Drone Services and Consulting, LLC, not Plaintiff.² However, as Plaintiff correctly notes, ownership is not required; only entitlement to possession. While ownership certainly demonstrates an entitlement to possession, it is not the sole basis. In any event, the evidence shows that Defendant does not truly contest that Plaintiff is the owner of the property by his conduct, and language in correspondence.

Based on the above, Plaintiff fails to establish a probability of prevailing. It is disputed whether Defendant holds a stake in Plaintiff and whether that stake affords Defendant the right of possession of property owned by, or is otherwise entitled to be possessed by, Plaintiff.

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2 Plaintiff declared that Advanced Drone Services and Consulting, LLC is its member. (Furhman
Decl., ¶ 3.)

4 Plaintiff argues that the Cross-Complaint is subject to a demurrer and motion to strike, and
therefore is unreliable. Whether the pleading sufficiently states a cause of action does not affect
that the pleading is verified under oath. The court notes a filing of a First Amended Verified Cross-
Complaint on November 20, 2023. The same verified allegation under penalty of perjury persists.
(First Amended Verified Cross-Complaint, ¶ 25.)

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Tentative Ruling

Re: **Singh v. Singh**
Superior Court Case No. 23CECG01720

Hearing Date: November 29, 2023 (Dept. 503)

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| Motion: | Default Prove-Up |
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If timely requested, oral argument will be heard on Thursday, December 7, 2023, at 3:30 p.m. in Department 503.

Tentative Ruling:

To deny without prejudice. (Cal. Rules of Court, rule 3.1800, subd. (a).)

Explanation:

Pursuant to Fresno County Superior Court Local Rule 2.1.14, all paperwork in conjunction with the default prove-up hearing must be filed at least ten court days prior to the scheduled hearing date. The court expects plaintiff to abide by this rule in any future applications.

Plaintiff has not filed the required "Request for Court Judgment" form (Judicial Council Form CIV-100). This is a *dual-purpose* form, used for requesting both entry of default and court judgment. Plaintiff used the form, on July 19, 2023, when requesting for entry of default; however, he has not submitted the form to support his request for court judgment. Use of Judicial Council form CIV-100 is mandatory. (Cal. Rules of Court, rule 3.1800, subd. (a).)

Additionally, plaintiff must dismiss the Doe defendants prior to seeking default judgment. (Cal. Rules of Court, rule 3.1800, subd. (a)(7).)

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: jyh **on** 11/28/23
(Judge's initials) (Date)