

Tentative Rulings for July 24, 2024
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.

19CECG02841 *David Allen v. State of California* is continued to Thursday,
September 26, 2024 at 3:30 p.m. in Department 503

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Tentative Rulings for Department 503

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(24)

Tentative Ruling

Re: **Burton v. Mendoza**
Superior Court Case No. 24CECG01031

Hearing Date: ~~July 24, 2024~~ (Dept. 503)

Motion: Demurrer and Motion to Strike by Defendants Roofline, Inc. and Holly Morgani

Tentative Ruling:

To take off calendar as moot, due to plaintiff's filing of a First Amended Complaint on June 11, 2024. (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1054.) Any challenges to the amended pleading must be raised by new motion(s).

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 7/22/24 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: **Wells Fargo Bank, N.A., v. Jones**
 Superior Court Case No. 21CECG02532

Hearing Date: July 25, 2024 (Dept. 503)

Motion: by Plaintiff to Vacate Judgment

Tentative Ruling:

To grant. The judgment entered against Ken L. Jones on December 04, 2023 is vacated and the complaint is dismissed without prejudice.

Explanation:

"The law is well settled that '(i)f the plaintiff or defendant was dead before the action was begun, the judgment is void and subject to collateral attack, because he Never was a party, i.e., the court never acquired jurisdiction of the person.'" (*Walter v. National Indem. Co.* (1970) 3 Cal.App.3d 630, 634, citations omitted.) "The cases enunciating this rule were concerned with judgments, in which there was a living party of whom the court could have acquired jurisdiction, but of whom it only acquired apparent but not actual jurisdiction because of lack of service of process or unauthorized appearance of an attorney. Because of the death ... there was no defendant over whom the court could acquire or exercise jurisdiction.'" (*Garrison v. Blanchard* (1932) 127 Cal.App. 616, 621.)

Since defendant passed away on October 23, 2020, which was before this action's commencement, there was no defendant over whom the court could acquire or exercise jurisdiction. Accordingly, the plaintiff's motion to vacate the judgment entered against defendant on December 4, 2023, 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: jyh **on** 7/23/24 .

(Judge's initials)

(Date)