

Tentative Rulings for December 5, 2024
Department 502

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.

Pentamerous v. Priest, case no. 21CECG02205, is continued to December 19, 2024 at 3:30 p.m. in Department 502 to allow Dr. Barnett to review the late-filed opposition brief and prepare a reply. Dr. Barnett shall file and serve his reply brief by the close of business on December 12, 2024.

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Tentative Ruling

Re: **Abel Perez v. Watchtower Bible and Tract Society of New York, Inc.**
Superior Court Case No. 23CECG00025

Hearing Date: December 5, 2024 (Dept. 502)

Motion: By Defendants Roberto Perez and Nina Perez for Order to Declare Vexatious Litigant

Tentative Ruling:

To continue the hearing on the defendants' motion to Tuesday, January 7, 2025, at 3:30 p.m. in Department 502.

Explanation:

On October 25, 2024, self-represented defendants Roberto Perez and Nina Perez (Defendants) filed their notice of motion and supporting papers for an order to declare the plaintiff, Abel Perez (Plaintiff) a vexatious litigant. Each document filed by Defendants has an undated and unsigned proof of service attached as the last page.

In Plaintiff's opposition to the motion he states he received an unmarked package containing the moving papers on November 25, 2024. He filed his opposition one day later. Plaintiff objects to the lack of notice and also opposes the motion on the merits. The general rule is that by opposing a motion on the merits, a litigant waives the defective notice of the motion. (See *In re Marriage of Obrecht* (2016) 245 Cal.App.4th 1, 13 [objection to defective notice of motion waived if not raised at earliest opportunity and accompanied by indication of prejudice]; *Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 7-8 [party who appears and contests motion in trial court cannot object on appeal that notice was insufficient or defective].)

As explained in a leading practice guide, to avoid the risk of waiver, the opposing party should limit argument to objections based on the defective notice and refrain from arguing the merits of the motion. "[T]he opposing party should *expressly object* to the defective notice in its opposition papers, request a *continuance* and demonstrate *prejudice* from the defective notice." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2024) ¶ 9:88, italics original, citing *Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1288; see also *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 698 [when confronted with defective notice of motion, opposing part should request continuance, object to defect, and show prejudice].)

Although Plaintiff has not requested a continuance, the court recognizes the hardship to Plaintiff caused by the defective and inadequate notice. Accordingly, the court has continued the hearing to give Plaintiff the option to file supplemental opposition papers and to give Defendants an opportunity to reply. Plaintiff's

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Tentative Ruling

Re: **Home Helpers Group, LLC v. Kenneth Bonner**
Superior Court Case No. 24CECG00085

Hearing Date: December 5, 2024 (Dept. 502)

Motion: by Kenneth Bonner as Administrator of the Estate of Carrie Bonner for Leave to Intervene and to Expunge Notice of Pendency of Action

Tentative Ruling:

To continue to Thursday, January 9, 2025, at 3:30 p.m. in Department 502, to allow Kenneth Bonner, administrator of the Estate of Carrie Bonner, time to supply additional information regarding the motion to intervene, as explained below. Bonner's supplemental brief must be filed on or before Friday, December 20, 2024 at 5:00 p.m. Plaintiff Home Helpers Group, LLC may file a supplemental response by Friday, January 3, 2025 at 5:00 p.m.

Explanation:

Legal Standard

"At any time after notice of pendency of action has been recorded, any party, or any nonparty with an interest in the real property affected thereby, may apply to the court in which the action is pending to expunge the notice. However, a person who is not a party to the action shall obtain leave to intervene from the court at or before the time the party brings the motion to expunge the notice." (Code Civ. Proc., § 405.30, emphasis added.) "A nonparty shall petition the court for leave to intervene by noticed motion or ex parte application. The petition shall include a copy of the proposed complaint in intervention or answer in intervention and set forth the grounds upon which intervention rests." (Code Civ. Proc., § 387 subd. (c).)

"The court shall, upon timely application, permit a nonparty to intervene in the action or proceeding if either of the following conditions is satisfied: (A) A provision of law confers an unconditional right to intervene. (B) The person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties." (Code Civ. Proc. § 387, subd. (d)(1)(A), (B).)

Application

Here, Kenneth Bonner as administrator of the Estate of Carrie Bonner is a nonparty with potential interest in the real property who seeks leave to intervene and expungement of the notice. As a nonparty, he must petition the court for leave to intervene by noticed motion or ex parte application. (Code Civ. Proc., § 387 subd. (c).)

