## <u>Tentative Rulings for December 5, 2024</u> <u>Department 502</u>

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.

(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 502**

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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:

(41)

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 supplemental opposition papers, if any, shall be filed by December 20, 2024, and Defendants' reply papers shall be filed by December 30, 2024.

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.

Issued By:	KCK	on 12/03/24 .
-	(Judge's initials)	(Date)

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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).)

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Here, Bonner combined his motion to intervene with his motion to expunge lis pendens. His motion for leave to intervene is brief. He did not initially attach a proposed Answer to the motion, and this was later attached to his reply. The sole argument presented in favor of intervention is that "moving party, as administrator of said estate, is the owner of the property and therefore has 'an interest in the real property affected [by the NPA]." (Motion, 3:24-26.)

Bonner as administrator to the Estate claims an interest relating to the property or transaction that is the subject of the action. Bonner did not elaborate on how the Estate's interest is not adequately represented by one or more of the existing parties. (Code Civ. Proc. § 387, subd. (d)(1)(A), (B).) Bonner is individually a named defendant to the action, and the other defendants are the children of the decedent. In its opposition, plaintiff's issues with the motion to intervene were that Bonner had not submitted a proposed answer and that plaintiff was not sufficiently appraised of the grounds upon which intervention rests. The proposed answer was later attached to Bonner's reply.

Although Bonner provided little information in his motion to intervene, the information provided does appear to indicate that the Estate may be an adequately interested party for intervention. The moving party is therefore asked to provide a supplemental briefing on the motion to intervene, whereby he explains further the grounds upon which intervention rests so that the plaintiff may be allowed an opportunity to respond to those grounds and the proposed Answer.

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: KCK on 12/03/24 . (Judge's initials) (Date) Tentative Ruling

Re:	Maria Castro v. Orangewood Plaza, LLC Superior Court Case No. 23CECG00945		
Hearing Date:	December 5, 2024 (Dept. 502)		
Motion:	Demurrer by Defendants Boom Boom Properties LLC, B1-66ER LLC, and Orangewood Plaza LLC, to Plaintiffs' Second Amended Complaint		

# Tentative Ruling:

To order the motion off calendar, for defendants' failure to meet and confer. (Code Civ. Proc., § 430.41 subd. (a).)

# Explanation:

Before filing a demurrer, the demurring party must meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. (Code Civ. Proc., § 430.41.) This requirement is applicable <u>each</u> time a demurrer is intended to be filed to any amendments to the complaint. (Code Civ. Proc., § 430.41 subd. (a).) The demurring party must file a declaration stating either that a meet and confer was held without a resolution, <u>or</u> that the party subject to demurrer failed to respond or otherwise meet and confer in good faith. (*Id.*, subd. (a)(3).)

The hearing on this motion was continued to allow defendants an opportunity to sufficiently meet and confer in compliance with Code. Pursuant to the court's tentative ruling on November 14, 2024, defendants were ordered to file a supplemental declaration detailing their efforts if the dispute was not resolved following a meet and confer. No supplemental declaration was filed by defendants.

The motion is therefore ordered off calendar for defendants' failure to comply with the meet and confer requirement set forth in Code of Civil Procedure section 430.41 subd. (a).

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 Rul	ing			
Issued By:	KCK	on	12/03/24	<u>.</u>
	(Judge's initials)		(Date)	

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