Tentative Rulings for February 26, 2026
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.

_____

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

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(41)

Tentative Ruling

Re: ***Sheryl Smith v. Fresno Community Hospital and Medical Center***
Superior Court Case No. 23CECG01114

Hearing Date: February 26, 2026 (Dept. 503)

Motion: By Defendant Fresno Community Hospital and Medical Center dba Clovis Community Medical Center for Summary Judgment or Summary Adjudication

Tentative Ruling:

To grant defendant CCMC's motion for summary judgment. CCMC is directed to submit to this court, within five days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

This litigation addresses the wrongful death of Bryson Ferguson (decedent), brought by decedent's mother, Sheryl Smith, individually and as successor in interest to the Estate of Bryson Ferguson (Plaintiff). Plaintiff alleges decedent's passing on November 21, 2019, was the result of negligent medical care provided by defendants, particularly Scott Ford, M.D. (Dr. Ford), on October 26, 2019, after a motor vehicle accident in which decedent was injured. Defendant Fresno Community Hospital and Medical Center dba Clovis Community Medical Center (CCMC) now moves for summary judgment or summary adjudication, contending: (1) the treatment rendered by its nurses and non-physician staff met the applicable standard of care; (2) no act or omission caused or contributed to decedent's death; and (3) CCMC has no vicarious liability because Dr. Ford was not CCMC's employee or agent.

Allegations of the Complaint

Plaintiff alleges decedent was a seat-belted passenger in a vehicle that was struck by a drunk driver. Decedent suffered substantial injuries after the force of the collision caused the airbag to deploy. Decedent "injured his left shoulder, arm, side and ankle, and he also injured his face and the right side of his head as a result of a seeming whiplash or contrecoup trauma." (Comp., 4:15-17.) Plaintiff generally alleges Dr. Ford failed to meet the post-collision standard of care for a person with a history of seizures who experienced loss of consciousness, which included his failure to perform a thorough neurological exam, his failure to order a CT scan to determine the extent of decedent's head trauma, and the failure to provide appropriate discharge instructions.

Specifically, Plaintiff alleges decedent had a loss of consciousness (LOC) for an unknown period of time, followed by an altered mental state. In paragraph 15 of the complaint, Plaintiff alleges:

> It is well established in emergency medicine that a blow to the head that causes an individual to lose consciousness is a traumatic brain injury that requires prompt assessment, because it can mark the beginning of a life-threatening brain bleed that could result in death in and of itself, or as a result of a combination of other conditions or future trauma. It is also well accepted in the medical field that time is of the essence in identifying and treating brain injuries.

(Comp., ¶ 15, p. 4:19-23.)

Plaintiff further alleges decedent faced a higher risk of developing seizure-inducing brain injuries in the weeks after the collision due to his history of seizures:

> It is documented in medical literature that epileptics are more susceptible to developing seizure-inducing brain injuries for the following several weeks, even from much less severe head trauma; yet Dr. Ford and the CCMC staff providers failed to examine, diagnose, and treat Mr. Ferguson's head and brain trauma post-collision.

(Comp., ¶ 19, p. 5:17-20.)

Against defendant CCMC, Plaintiff alleges CCMC granted medical privileges to certain physicians:

> [W]ho qualify as "health care providers" as defined used [sic] in the medical malpractice statutes. [Citations.] Further, at all relevant times, those employees acted as apparent agents of CCMC with respect to patients who came there seeking care and treatment on an emergency basis. [CCMC] is thus vicariously responsible for the acts and omissions described below.

(Comp., ¶ 7, pp. 2:26-3:4.) Plaintiff alleges each defendant was the agent of the other defendants and was acting within the scope of such agency. (Comp., ¶ 12.)

Plaintiff also alleges decedent did not receive the benefit of the protocol for patients who present with loss of consciousness after a motor vehicle accident:

> At the time of Mr. Ferguson's emergency visit to CCMC, the hospital had an emergency protocol for patients who presented with a history of a motor vehicle accident that resulted in a loss of consciousness. That protocol provided that all such patients would receive a thorough neurological assessment including brain imaging (CT scan with or without contrast), and a neurologist consult depending on the findings of the imaging studies. Inexplicably, Mr. Ferguson did not receive these services.

(Comp., ¶ 22, p. 6:9-14.)

Law Governing Summary Judgment

CCMC now moves for summary judgment. A trial court shall grant summary judgment if there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., §437c, subd. (c).) In determining a motion for summary judgment, the court views the evidence in the light most favorable to the opposing party, liberally construing the opposing party's evidence and strictly scrutinizing the moving party's evidence. The court does not weigh evidence or inferences. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 856.) The court shall consider all inferences reasonably deducible from the evidence unless it is controverted by other inferences or evidence. (Code Civ. Proc., § 437c, subd. (c).)

A defendant moving for summary judgment must show either that the plaintiff cannot establish one or more elements of a cause of action or that it has a complete defense. (*Aguilar v. Atlantic Richfield Co*., *supra*, 25 Cal.4th at p. 856; Code Civ. Proc., § 437c, subd. (p)(2).) If the defendant makes such a showing, the burden shifts to the plaintiff to present evidence to show there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2).) There is a triable issue if the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the plaintiff. (*Aguilar v. Atlantic Richfield Co*., *supra*, 25 Cal.4th at p. 850.) Doubts as to whether there is a triable issue of fact are resolved in favor of the opposing party. (*Ingham v. Luxor Cab Co.* (2001) 93 Cal.App.4th 1045, 1049.)

CCMC Meets Its Initial Burden of Proof

The corporate practice of medicine doctrine prohibits California hospitals from employing physicians and surgeons to practice medicine.[1] (See, *Wicks v. Antelope Valley Healthcare Dist.* (2020) 49 Cal.App.5th 866, 872 (*Wicks*).) To hold a hospital liable for a physician's malpractice, the plaintiff must show either the physician is actually employed by the hospital or the physician is the hospital's ostensible agent. (*Magallanes v. Doctors Medical Center of Modesto* (2022) 80 Cal.App.5th 914, 922.) "Although the existence of an agency relationship is usually a question of fact, it becomes a question of law when the facts can be viewed in only one way." (*Id.* at p. 923, citation and internal quotation marks omitted.)

In a medical malpractice case, expert testimony is required unless the challenged conduct is within the common knowledge of laymen. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001.)

> 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

[1] Business and Professions Code section 2264 provides that "the aiding, or the abetting of any unlicensed person ... to engage in the practice of medicine ... constitutes unprofessional conduct."

> community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence. [Citations.]

(*Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 984-985, internal quotation marks omitted.)

With the expert testimony of Barry Simon, M.D., CRMC makes a prima facie showing that the care and treatment rendered to decedent by the CRMC's nurses and non-physician staff at all times fell within the applicable standard of care, and that the staff met the applicable standard of care while rendering care and treatment to decedent, such that neither their actions nor inactions caused or contributed to his injuries. Dr. Simon opines that as part of the practice of medicine, it is the physician's responsibility, not the nurses and non-physician staff, to make treatment decisions, including discharge instructions:

> It is a physician's responsibility to diagnose a patient's condition and determine a course of treatment, including ordering imaging studies and obtaining a consultation with a specialist. A physician is also responsible for authorizing a patient's discharge and determining the appropriate discharge/aftercare instructions. *These treatment decisions constitute the practice of medicine and are physician responsibilities*. It is then the nurses' and non-physician staff responsibility to comply with and carry out the physician's orders, which was done in this case. Nurses and non-physician staff are not permitted to order imaging studies, obtain a consultation from a specialist or give specific discharge/aftercare instructions to a patient unless there is an order. Any alleged failure of not ordering brain imaging, obtaining a neurologist consult, or providing concussion discharge/aftercare instructions in this case are physician centered allegations and do not fall within the purview of the nurses and non-physician staff. As such, the nursing staff would have played no role in any determination of ordering imaging studies, obtaining a neurologist consultation or selecting discharge/aftercare instructions for this patient.

(CCMC SOE, ex. G, Dr. Simon decl., ¶ 11, pp. 6:18-7:2, italics added; fact nos. 4, 5, 6.)

CCMC submits fact number 7 to address Plaintiff's allegation that decedent did not receive the benefit of the hospital's "emergency protocol" for similarly-situated patients. This fact states that on October 26, 2019, CCMC did not have an "emergency protocol" for patients who presented with decedent's symptoms; "but rather the treating emergency department physicians and/or mid-level providers determine the course of treatment based on their education, training and experience and the patient's presentation." (Fact no. 7; Curry decl., SOE, ex. H.) The lack of such a protocol is consistent with the corporate practice of medicine doctrine, which prohibits the hospital, as an unlicensed person, from practicing medicine.

On the issue of actual or ostensible agency, CCMC presents the declaration of Tom Utecht, M.D., Senior Vice President and Chief Medical Officer at CCMC, to establish that none of decedent's treating physicians, including Dr. Ford, were ever employed by CCMC, or acting as its agent in performing services for their patients at the hospital, but

instead they were acting solely in their capacities as independent contractors. Dr. Utecht states CCMC never employed any of decedent's treating physicians, and that CCMC neither possessed nor exercised control over the physicians performing services at the hospital. Furthermore, between April 2017 and October 2019 CCMC asked all patients to sign a consent form, which stated at paragraph 5 that all physicians are not agents or employees of the hospital, and it is the physician's responsibility to obtain informed consent, when required:

> **Legal Relationship Between Hospital and Physician.** All physicians and surgeons furnishing services to me, including but not limited to the radiologists, pathologists, anesthesiologists and the like, are not employees or agents of the hospital. They have been granted the privilege of using the hospital for the care and treatment of their patients, but are not employees or agents of the hospital. I will be under the care and supervision of my attending physician and it is the responsibility of the hospital and its nursing staff to carry out the instructions of such physician. It is the responsibility of my physician or surgeon to obtain my informed consent, when required, for medical or surgical treatment, special diagnostic or therapeutic procedures, or hospital services rendered to me under the general and special instructions of the physician.

(Utecht decl., ¶ 9; fact nos. 28-33.)

In its moving papers, CCMC submits consent forms signed by decedent, to which he did not object, which expressly state physicians are not employees or agents of the hospital. (Fact no. 33, and supporting evid.) CCMC's evidence is sufficient to negate all of Plaintiff's claims against CCMC. (See *Munro, supra*, 215 Cal.App.3d at pp. 984-985.) The burden then shifts to the plaintiffs to show the existence of a triable issue of material fact.

Plaintiff Fails to Meet Her Burden to Raise a Triable Issue of Material Fact

As CCMC points out in its reply, Plaintiff fails to produce any evidence to raise a triable issue of fact on her claims of medical negligence based on the care rendered by CCMC's nurses and non-physician staff. Plaintiff offers no expert testimony to rebut Dr. Simon's expert testimony that the care and treatment rendered to decedent by CCMC's nurses and non-physician staff at all times fell within the applicable standard of care, and no act or omission by the nurses or non-physician staff caused or contributed to decedent's death. Plaintiff's expert, Dr. Zheng, fails to address the care provided by the nurses and non-physician staff.

Plaintiff also fails to raise a triable issue of material fact on her agency claim. To prevail, Plaintiff must submit admissible evidence to dispute CCMC's evidence that it has no vicarious liability because Dr. Ford was not CCMC's employee or its actual or ostensible agent. Plaintiff offers no contrary evidence. For example, Plaintiff purports to dispute fact number 28, which states Dr. Ford was acting as an independent contractor when he provided "clinical services" to decedent, by narrowly interpreting the term "clinical services" to exclude services rendered by a physician to a patient in the emergency department, rather than a "clinical setting, such as a primary care office."

(Opp. to fact no. 28.) Plaintiff offers no authority for this narrow interpretation, which raises no factual issue and presents only unsupported legal argument.

To dispute fact number 29 (CCMC never employed any of decedent's physicians, including Dr. Ford), Plaintiff again offers only legal argument, which is insufficient to raise a triable issue of material fact. Plaintiff argues:

> As previously stated, the circumstances and factual allegations of this action clearly indicate that an ostensible agency relationship exists between defendants CCMC and Dr. Ford . . . as plainly established in *Mejia.* (See *Mejia v. Community Hospital of San Bernardino* (2002) 99 Cal.App.4th 1448, 1453.)

(Pltf.'s opp. to sep. stmt., p. 19:15-24.) Plaintiff fails to submit any evidence to dispute CCMC's factual showing that Dr. Ford was acting as an independent contractor when he treated decedent.

Plaintiff's reliance on case law, such as *Mejia* and *Whitlow v, Rideout Memorial Hospital* (2015) 237 Cal.App.4th (*Whitlow*), fails to raise a disputed fact. CCMC correctly replies that Plaintiff's reliance on these cases is misplaced. CCMC distinguishes the facts in those cases as follows:

> In *Mejia*, there was *no evidence* presented that the hospital provided the patient with any written notice of the legal relationship between the hospital and its physicians. [Citation.] In *Whitlow*, although the patient signed an admission form acknowledging the doctors were independent contractors, the court found when she signed the form, the patient was in no condition to understand it due to evidence presented that she was "crying in horrible pain[,]" nauseous and unable to read it. [Citation.] There was also expert testimony that the patient was suffering from a massive left temporal hemorrhage and was incapable of understanding what was contained in the form. <u>None of these facts are present in this case</u>.

(Rpy., p. 5:10-17, emphasis original.)

CCMC cites a more recent case, *Wicks*, where the court distinguished *Mejia* and *Whitlow*. The plaintiff in *Wicks* argued, as does Plaintiff here, that the defendant's evidence, which included a signed and initialed admission form, and evidence of the patient's physical and mental state, "did not establish, as a matter of law, that the doctors were not the hospital's ostensible agents." (*Wicks, supra*, 49 Cal.App.5th at p. 882.) The appellate court disagreed and rejected the contention that those "cases stand for the proposition, in effect, that no matter what circumstances bring a patient to an emergency room, an admission form notifying the patient that the ER doctor is not an employee or agent of the hospital cannot establish lack of agency as a matter of law." (*Id*. at p. 883.) The court then summarized the relevant principle of California law as follows:

> [A]lthough a hospital may not control, direct or supervise physicians on its staff, a hospital may be liable for their negligence on an ostensible agency

> theory, unless (1) the hospital gave the patient actual notice that the treating physicians are not hospital employees, and (2) there is no reason to believe the patient was unable to understand or act on the information, or (3) the patient was treated by his or her personal physician and knew or should have known the true relationship between the hospital and physician.

(*Id.* at p. 884.)

Fact numbers 30 through 36 establish decedent signed the admission form, which expressly states physicians are not employees or agents of the hospital, within a few hours of his arrival at the emergency department, when he was stable, alert, oriented, cooperative, communicating easily, and not in excruciating pain. Thus, there was no reason to believe decedent was unable to understand or act on the information; and CCMC's evidence conclusively establishes that no physician, including Dr. Ford, was an actual or ostensible agent of the hospital.

Finally, rather than submitting any additional evidence or facts, Plaintiff merely "objects," without authority, to CCMC's "targeted highlighting." (See, e.g., resp. to fact no. 34 [decedent's sister observed decedent to be oriented, awake, cooperative, and able to explain his symptoms].) The court finds CCMC properly follows the format required by California Rules of Court, rule 3.1116, to use deposition testimony as an exhibit. For example, as supporting evidence for fact number 34 [decedent's sister "observed her brother to be oriented, awake, and cooperative with the medical staff, and able to explain his symptoms,"] CCMC's evidence includes the following excerpt from the deposition of decedent's sister, with the italicized text highlighted:

> ***Q.*** *Okay. So when you were back there in the emergency department with Bryson, where you able to talk to him?*
> ***A.*** *Yes.*
> ***Q.*** *Were you able to communicate with him easily?*
> ***A.*** *Yes.*
> ***Q.*** *Okay. Did he have any difficulty understanding you that you could perceive?*
> ***A.*** *I had to repeat my words a couple of times.*
> ***Q.*** *Was he able to respond to you?*
> ***A.*** *Yes.*
> **Q.** Do you know why you had to repeat your words? Was it because he couldn't hear you?' Was he talking to somebody else? Anything like that?
> **A.** I don't know.
> ***Q.*** *Any difficulty with him responding to you that you could tell?*
> ***A.*** *No.*

(Rpy., p. 6:11-19, quoting Brooke Smith depo, p. 47:6-22, SOE, ex F.)

Plaintiff contends CCMC omits contrary evidence with its highlighting. Of course, Plaintiff is free to cite to any "omitted" testimony. After reading the entire deposition excerpt, when viewed in the light most favorable to Plaintiff, the court finds Plaintiff fails to create a triable issue of material fact to dispute CCMC's showing that decedent could

understand the information presented to him during his visit to the emergency department. In sum, the court finds Plaintiff fails to meet her burden to raise a triable issue of material fact to counter CCMC's showing that no physician, including Dr. Ford, was not an employee or ostensible agent of the hospital.

Evidentiary Objections

Plaintiff objects to Dr. Simon's expert declaration on the grounds that Dr. Simon is unqualified and his declaration lacks foundation. The court overrules Plaintiff's objections. An expert's declaration is sufficient to survive summary judgment if it "establishes the matters relied upon in expressing the opinion, that the opinion rests on matters of a type reasonably relied upon, and the bases for the opinion." (*Sanchez v. Hillerich & Bradsby Co.* (2002) 104 Cal.App.4th 703, 718 [reversing summary judgment in favor of defendant].) It is an abuse of discretion to exclude a declaration that satisfies these requirements. (*Garrett v. Howmedica Osteonics Corp., supra,* 214 Cal.App.4th at p. 189 [trial court abused discretion when it sustained objections to opposing expert's declaration based on Evid Code, §§ 801, 802].)

The court overrules Plaintiff's evidentiary objections for the additional reason that she fails to comply with the format for objections set forth in California Rules of Court, rule 3.1354. The trial court has discretion to overrule objections that fail to meet the standards set forth in the California Rules of Court. (*Schmidt v. Citibank, N.A.* (2018) 28 Cal.App.5th 1109, 1118.) Thus, all of Defendants' proffered facts are undisputed and Plaintiff fails to meet her burden to raise a triable issue of material fact.

Although CCMC's objections are properly formatted, the court declines to rule on them. The objections go to either the weight of the evidence rather than the admissibility, or are not dispositive to the motion, therefore, the court need not rule on them. (Code Civ. Proc., § 437c, subd. (q) [court need rule only on objections court deems material to its disposition].)

Conclusion

CCMC meets its burden to show there is no evidence that its nursing staff or non-physician employees caused or contributed to decedent's death; and its burden to show no physician, including Dr. Ford, was CCMC's employee or ostensible agent on the day decedent visited the hospital emergency department. The burden then shifts to Plaintiff to raise a triable issue of material fact, which she failed to do. Therefore, the court grants CCMC's motion for summary judgment. In doing so, the court in no way intends to diminish the loss of Plaintiff's son.

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 2/24/2026.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Manter v. Palm***
Superior Court Case No. 24CECG00053

Hearing Date: February 26, 2026 (Dept. 503)

Motion: By Defendants for Summary Judgment or, in the Alternative, Summary Adjudication

Tentative Ruling:

To deny as to summary judgment. To find the motion moot as to summary adjudication.

Explanation:

On April 5, 2024, plaintiff filed her First Amended Complaint, utilizing the Judicial Council personal injury form complaint. In it she alleges two causes of action: 1) premises liability and 2) general negligence. On December 5, 2025, defendants filed a motion for summary judgment, or in the alternative, adjudication entirely focused on the first cause of action for premises liability. On February 11, 2026, plaintiff filed a request for dismissal as to the first cause of action. As such, adjudication as to the first cause of action has been made moot. As to the motion for summary judgment, defendants did not address the second cause of action in either the notice, memorandum of points and authorities, separate statement, or declarations filed with their motion. As such, summary judgment is denied.

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 2/24/2026.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Rigoberto Villa v. Progressive Casualty Insurance Company***
Superior Court Case No. 23CECG04403

Hearing Date: February 26, 2026 (Dept. 503)

Motion: Defendants' Demurrer to the Second Amended Complaint, and Motion to Strike Portions of the Second Amended Complaint

Tentative Ruling:

To sustain the demurrer to the Second Amended Complaint, with leave to amend. To grant the motion to strike, with leave to amend.

Plaintiffs shall serve and file their Third Amended Complaint within 10 days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

Demurrer

Defendants Progressive Casualty Insurance Company ("Progressive") and United Financial Casualty Company ("United Financial")(collectively "defendants") generally and specially demur to each cause of action in plaintiffs Tacos El Super, Inc., Rigoberto Villa, and Ramon Villa's ("plaintiffs") Second Amended Complaint ("SAC"), on the grounds that the SAC fails to state facts sufficient to constitute these causes of action and that the SAC is uncertain. (Code. Civ. Proc., § 430.10, subds. (e) and (f).)

Legal Standards for Demurrer

On a demurrer, a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-114.) In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883.) The demurrer does not admit mere contentions, deductions or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) On general demurrer, the court determines if the essential facts of any valid cause of action have been stated. (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572; Code Civ. Proc. § 430.10 subd. (e).) A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises defendant of the factual basis for plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) Leave to amend should be granted if there is a reasonable possibility that plaintiff could state a cause of action. (*Blank v. Kirwan*, supra, 39 Cal.3d at 318.)

Progressive was Effectively Replaced by United Financial as Defendant

Pursuant to the SAC, "United Financial Casualty Company was erroneously named Progressive Casualty Insurance Company when this action was filed, and although part of the Progressive Group of Companies it is now named in place and instead of Progressive Casualty Insurance Company." (SAC, ¶ 2.) Thus, per the face of the SAC, naming United Financial as a defendant was intended to replace Progressive as a defendant to this action.

The demurrer as to Progressive is sustained, with leave to amend.

The Alleged Contract or Policy is Inadequately Plead

A cause of action for damages for breach of contract is comprised of the following elements: (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff. (*Careau & Co. v. Security Pacific Business Center* (1990) 222 Cal.App.3d 1371, 1388.) "A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect. [Citation.] In order to plead a contract by its legal effect, plaintiff must 'allege the substance of its relevant terms. This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions.' [Citation.]" (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1489 [internal citations omitted].)

The court previously sustained a demurrer to the First Amended Complaint ("FAC") for plaintiffs' failure to sufficiently plead a breach of contract claim, in that the policy attached to the FAC failed to provide coverage for the date of the underlying incident. (See Minute Order from September 18, 2025.) Here, plaintiffs have not attached a copy of the policy that purportedly covers the date in question. Plaintiffs instead attempt to plead the relevant terms of the contract, but do so by referencing (1) the FAC and its exhibits, (2) defendants' demurrer to the FAC, and (3) defendants' declaration and exhibits in support of their demurrer to the FAC. (See SAC, ¶¶ 6, 13.) These references to other external filings are inappropriate and ineffective to plead the existence of a contract in the SAC.

Further, it does not appear that enough of the relevant terms of the purported contract have been alleged. For example, plaintiffs state in the SAC that "[t]he policy does contain a definition for the term 'You', but that is not exclusive as the policy does identify two Additional Insureds[.]" (SAC, ¶ 6.) Despite making this statement, plaintiffs fail to allege the portion of the agreement defining the term "You" or identifying the relevant parties to the agreement. These terms are clearly relevant and important to the litigation, as the parties are disputing who is covered by the insurance policy.

The SAC fails to sufficiently allege the existence of a contract, specifically an insurance policy that covers the date of the incident. Subsequently, without a governing contract, the remaining two causes of action based on the contract are also insufficiently alleged. The demurrer to the SAC is sustained in its entirety.

Motion to Strike

The court grants the defendants' motion to strike as requested, with leave to amend.

The court notes that for the first time on opposition, plaintiffs argue that one of the issues in this case is which company issued the policy and which company was responsible for adjusting losses, submitting that plaintiffs thought they were buying insurance from Progressive. The purported "bait and switch" argued by plaintiffs is not an allegation of the SAC, in which plaintiffs effectively "replace" Progressive as a defendant.

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 2/25/2026.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Alexis Garcia v. Fabiola Garcia***
Superior Court Case No. 20CECG02573

Hearing Date: February 26, 2026 (Dept. 503)

Motion: Default Prove-up

Tentative Ruling:

To deny without prejudice.

Explanation:

Plaintiff Alexis Garcia (Plaintiff) is seeking a judgment of partition by sale against defaulted defendants Fabiola Garcia, Gerardo Garcia, and Freedom Mortgage. The partition statutes (Code Civ. Proc., §§ 872.010-874.240) have no special provisions for obtaining a judgment by default. Therefore, Plaintiff must follow the statutory procedures to obtain a default judgment in a civil action. (Code Civ. Proc., §§ 585-587.5).

> A party seeking a default judgment on declarations must use mandatory form CIV–100. (Cal. Rules of Court, rule 3.1800(a).) The documents filed with the clerk must include "[d]eclarations or other admissible evidence in support of the judgment requested" (Cal. Rules of Court, rule 3.1800(a)(2)) and a proposed form of judgment (Cal. Rules of Court, rule 3.1800(a)(6)).

(*Holloway v. Quetel* (2015) 242 Cal.App.4th 1425, 1432.) Plaintiff fails to file the mandatory CIV-100 form and submits no declarations with admissible evidence.

With any partition action (whether by default or by contest), the judgment proceeds in two stages, interlocutory and final. The content of the interlocutory judgment in a partition action varies according to the issues being adjudicated. In general, the judgment must set forth the ownership interests in the property or estate affected by the partition to be made, and order the partition. (See Code Civ. Proc., § 872.720, subd. (a).) In an action for partition all parties' interests in the property may be put at issue regardless of the record title. (Code Civ. Proc., § 872.610.)

Referee or Broker

With Plaintiff's subsequent submission for default interlocutory judgment, the prove-up brief, supporting declarations, or other admissible evidence should address whether or not a referee is needed in this case. If, instead, Plaintiff maintains that it is only necessary to appoint a real estate broker to establish the property's fair market value and facilitate the sale, he should provide a declaration with the details supporting this (also including the details about the nominated broker, or alternatively, two or three brokers from which plaintiff desires the court to choose). (Code Civ. Proc., § 873.610,

subd. (a); *Holt v. Brock* (2022) 85 Cal.App.5th 611, 622-623 [court-appointed broker entitled to quasi-judicial immunity].)

Revisions to Proposed Interlocutory Judgment

The proposed interlocutory judgment prematurely seeks to adjudicate the distribution of sale proceeds. Code of Civil Procedure section 872.720, subdivision (a) sets forth the required elements of the interlocutory judgment: "If the court finds that the plaintiff is entitled to partition, it shall make an interlocutory judgment that determines the interests of the parties in the property and orders the partition of the property and, unless it is to be later determined, the manner of partition." (See, *Harrington v. Goldsmith* (1902) 136 Cal. 168, 170 [costs cannot be included on the interlocutory judgment].) As the court explained in *Summers v. Superior Court* (2018) 24 Cal.App.5th 138:

> First, an interlocutory judgment in a partition action is to include two elements: a determination of the parties' interests in the property and an order granting the partition. ([Code Civ. Proc.,] § 872.720, subd. (a).) Second, the manner of partition—i.e., a physical division or sale of the property—is to be decided when or after the parties' ownership interests are determined, but not before. (*Ibid.*)

(*Summers, supra*, 24 Cal.App.5th at pp. 142-143.)

Although a referee may make a recommendation, plaintiff will need to present evidence to the court in a motion for accounting and final judgment to support any specific amounts to be paid from the sale proceeds. This includes costs and attorney fees, which will be paid from the sale proceeds where incurred or paid by a party for the common benefit. (Code Civ. Proc., § 874.010.) Here, the proposed judgment, at paragraph 3 states, "Defendants are each the owner of a one-third (1/3) interest in the property." The order fails to state the name of the defendants and the nature of their ownership interests (e.g., joint tenants or lienholder). For the lienholder, Plaintiff should specify that Freedom Mortgage has a valid lien on the real property and state the nature of lien (e.g., represented by a deed of trust recorded on [date] in the records of Fresno County, California as document number [ ] in the amount of [ ]).

Due to the failure to file the mandatory CIV-100 Request for Court Judgment, and for the above-stated reasons, plaintiff's motion for interlocutory judgment 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 2/25/2026.
(Judge's initials) (Date)