

Tentative Rulings for April 23, 2024
Department 403

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.

22CECG02113 *Garcia v. General Motors, LLC* is continued to Wednesday, June 12, 2024, at 3:30 p.m. in Department 403

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Tentative Ruling

Re: **Sergio Alvarez v. Iron Workers Local 155**
Superior Court Case No. 24CECG00543

Hearing Date: April 23, 2024 (Dept. 403)

Motion: Demurrer by Defendant Iron Workers Local 155 to Complaint

Tentative Ruling:

To sustain the demurrer to the complaint without leave to amend and to grant the request for judicial notice. The prevailing party is directed to submit to this court, within seven days of service of the minute order, a proposed judgment dismissing the complaint as to the demurring defendant.

Explanation:

The plaintiff, Sergio Alvarez, filed a three-page form complaint against the defendant, Iron Workers Local 155. The defendant demurs to the complaint on the grounds that the statute of limitations has expired and the complaint lacks the necessary allegations to state a cause of action.

Meet and Confer

The parties have complied with the obligation to meet and confer.

Request for Judicial Notice

Code of Civil Procedure section 430.70 provides that a demurrer may be "based on a matter of which the court may take judicial notice pursuant to section 452 or 453 of the Evidence Code[.]" In ruling on a demurrer, the court may take judicial notice of orders, regulations, decisions, and records of administrative agencies. (*El Rancho Unified School Dist. v. National Educational Assn.* (1983) 33 Cal.3d 946, 950, fn. 6.) Pursuant to these authorities, the court grants the defendant's request for judicial notice (RJN) of the following state and federal agency official acts, copies of which are attached to the RJN:

Exhibit A: The Charge of Discrimination filed by the defendant on February 21, 2022, with the United States Equal Opportunity Commission (EEOC) and cross-filed with the state agency;

Exhibit B: The Determination and Notice of Rights issued by the EEOC on May 19, 2023; and

Exhibit C: The Notice to Complainant of Right to Sue issued on February 22, 2022, by the California Department of Fair Employment and Housing (DFEH [now known as the California Civil Rights Department]).

Statute of Limitations

Discrimination Claims

The defendant contends the statute of limitations has expired on all claims because the plaintiff has exhausted his administrative remedies and his right to sue has expired. Exhibit A of the RJN shows the plaintiff filed a charge of discrimination "both with the EEOC and the State or local Agency, if any," on February 21, 2022, in which he asserted a claim of discrimination that occurred in 2021. (RJN, ex. A.) After filing the charge, the plaintiff received a right-to-sue notice from the EEOC issued on May 19, 2023. (RJN, ex. B.) The face of the notice advised the plaintiff that if he chose to sue the defendant "under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.**" (RJN, ex. B, bold and capitalization original.) The 90-day period is a statute of limitations. (*Nelmida v. Shelly Eurocars, Inc.* (9th Cir. 1997) 112 F.3d 380, 383.)

The plaintiff filed his complaint in this action on February 9, 2024, almost six months after the EEOC deadline to bring the action expired. Because the plaintiff failed to file suit within 90 days, the plaintiff's claims based on the underlying EEOC charge are time barred. (*Nelmida v. Shelly Eurocars, Inc., supra*, 112 F.3d at p. 383.)

The plaintiff also received an earlier Notice to Complainant of Right to Sue dated February 22, 2022, from the DFEH, which notified him that he had the right to file a private lawsuit in state court, and that "such a civil action must be brought within one year from the date of this notice." (RJN, ex. C.) The plaintiff failed to file suit within the year, therefore his state court action likewise is time barred unless a tolling period applies.

Assuming the cross-filing with the EEOC tolled the DFEH statute of limitations, California Government Code section 12965, subdivision (e)(2), provides "the time for commencing an action for which the statute of limitations is tolled . . . expires when the federal right-to-sue period to commence a civil action expires, or one year from the date of the right-to-sue notice by the department, whichever is later." Applying this California statute of limitations, the federal right-to-sue notice has the later date, and the action is still time barred.

Fair Representation Claims

A union has a duty of fair representation that requires it to avoid acting in a manner that is arbitrary, discriminatory, or in bad faith. (*Vaca v. Sipes* (1967) 386 U.S. 171, 189-190.) Assuming the plaintiff is asserting a claim for breach of the duty of fair representation, such a claim has a six-month statute of limitations. (*Del Costello v. International Brotherhood of Teamsters* (1981) 462 U.S. 151, 170-171; 29 U.S.C. § 160(b).) If the allegations arise from events occurring in November 2021, the statute of limitations has long passed. Therefore, the court sustains the demurrer on the ground that the statute of limitations bars all alleged claims.

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Tentative Ruling

Re: **G.A.V. v. Keith Robinson, et al.**
Superior Court Case No. 24CECG00133

Hearing Date: April 23, 2024 (Dept. 403)

Motion: Plaintiff G.A.V.'s Motion for Leave to File Second Amended Complaint

Tentative Ruling:

To grant. Plaintiff is granted 10 days' leave to file the Second Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

Explanation:

Motions for leave to amend the pleadings are directed to the sound discretion of the judge. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading..." (Code Civ. Proc. § 473, subd. (a)(1); see also Code Civ. Proc. § 576.) Judicial policy favors resolution of cases on the merits, and thus the court's discretion as to allowing amendments will usually be exercised in favor of permitting amendments. This policy is so strong, that denial of a request to amend is rarely justified, particularly where, as here, "the motion to amend is timely made and the granting of the motion will not prejudice the opposing party." (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.) The validity of the proposed amended pleading is not considered in deciding whether to grant leave to amend. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.) Absent prejudice, it is an abuse of discretion to deny leave to amend. (*Higgins v. DeFaro* (1981) 123 Cal.App.3d 558, 564-65.)

Here, the parties have stipulated that plaintiff may amend the complaint, so there is no question that the motion should be 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: JS on 4/18/2024 .
(Judge's initials) (Date)

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Tentative Ruling

Re: ***In Re: Keylin Nohemi Guardado Hernandez***
Superior Court Case No. 23CECG05034

Hearing Date: April 23, 2024 (Dept. 403)

Motion: Petition to Compromise Minor’s Claim

Tentative Ruling:

To deny without prejudice. In the event that oral argument is requested the minor is excused from appearing.

Explanation:

Petitioner has explained the lien for ambulance service sufficiently, and the court accepts that this provider should be paid \$2,800 out of the settlement funds. However, the petition makes no provision for payment of the Medi-Cal lien of \$297.37, and there is no showing that this lien has been otherwise satisfied. The payment is not provided for in the Petition’s summary at Item 16 (Petn., p. 6). While the Order Approving Compromise appears to provide for payment of the lien on Attachment 8a(3), the lien amount was not deducted from the gross award, so the balance shown as going to the minor is incorrect on the Petition (at Item 16), the Order Approving Compromise (at Items 8 and 9), and on the Order for Deposit (at Item 4).

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 **4/22/2024** .
(Judge's initials) (Date)