

Tentative Rulings for April 25, 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.

23CECG00056 *Jalil Mahdavi v. Charlene Hester* is continued to Wednesday, June 12, 2024, at 3:30 p.m. in Department 502

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

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Tentative Ruling

Re: **Madrigal v. Pano**
Superior Court Case No. 21CECG03315

Hearing Date: April 25, 2024 (Dept. 502)

Motion: By Defendant Emeline Pano for Terminating Sanctions against Plaintiff Jose Madrigal

Tentative Ruling:

To grant and impose terminating sanctions against plaintiff Jose Madrigal Code of Civil Procedure section 2023.010, subdivisions (d) and (g), for failure to respond or to submit to an authorized method of discovery and disobeying court orders to provide discovery. Defendant Emeline Pano will be dismissed as a defendant in plaintiff's Complaint. (Code Civ. Proc., § 2023.030, subd. (d)(3).)

Explanation:

Plaintiff has a history of failing to comply with discovery obligations in this action, and appears to have abandoned this action. On August 10, 2023, and October 10, 2023, defendant Emeline Pano served plaintiff with deposition notices. Plaintiff never objected, but failed to appear on both occasions.

On August 30, 2023, Pano served plaintiff with Form Interrogatories – General, Set One, Special Interrogatories, Set One, Requests for Admissions, Set One and Requests for Production of Documents, Set One. Responses were due by October 4, 2023. No response was ever served.

On January 11, 2024, the court granted a motion to compel the deposition, and to compel responses to the interrogatories and production demands, and ordered admitted all matters specified in the requests for admission. The court also imposed sanctions in the amount of \$2,118.10.

On February 23, 2024 plaintiff was again served with a deposition notice, but failed to appear for the March 15 deposition, despite serving no objection. Plaintiff never paid the sanctions.

Once a motion to compel discovery is granted, continued failure to comply may support a request for more severe sanctions. "Disobeying a court order to provide discovery" is "misuse of the discovery process." (Code Civ. Proc., § 2023.010, subd. (g).) For failure to obey the court's discovery orders, the court may:

"[M]ake those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010)...."

(Code Civ. Proc., § 2025.450, subd. (d).)

“A decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction. [Citation.]” (*Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279-280.)

Here, plaintiff has repeatedly and consistently failed to comply with discovery obligations, and has ignored the court's order to sit for deposition. This is basic discovery that plaintiff must provide. The importance of the desired discovery is high. Plaintiff's attorney has withdrawn because plaintiff could not be contacted. Since plaintiff continually fails to provide the discovery or obey court orders to do so, has apparently abandoned this action, and is not even opposing this motion for terminating sanctions, there appears to be no likelihood that any compliance with the discovery rules or the court's order will be forthcoming. The court therefore intends to grant the motion. (See *Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1244.)

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** 04/22/24 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Ismael Ramirez v. Laura Santos, et al.***
Superior Court Case No. 23CECG04611

Hearing Date: April 25, 2024 (Dept. 502)

Motion: Defendants Laura Santos, Carrie Simmons, Juan Alvarez, and Envision Realty, Inc.'s Demurrer to Complaint

Tentative Ruling:

To grant all parties' requests for judicial notice.

To sustain the general demurrer to the complaint with leave to amend. (Code Civ. Proc. § 430.10, subd. (e).) Plaintiffs are granted 10 days' leave to file the First Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

To overrule the special demurrer for uncertainty. (Code Civ. Proc. § 430.10, subd. (f).)

Explanation:

A party may file a general demurrer on claims that “[t]he pleading does not state facts sufficient to constitute a cause of action.” (Code Civ. Proc., § 430.10, subd. (e); *Estate of Moss* (2012) 204 Cal.App.4th 521, 535 [“‘A demurrer can be utilized where the complaint itself is incomplete ...’ [Citations.]”].) In essence, “to withstand a demurrer, a complaint must allege ultimate facts, not evidentiary facts or conclusions of law.” (*Logan v. Southern Cal. Rapid Transit Dist.* (1982) 136 Cal.App.3d 116, 126; *Zumbrun v. University of Southern California* (1972) 25 Cal.App.3d 1, 8 [“Facts, not conclusions, must be pleaded.”].)

Here, defendants Laura Santos, Carrie Simmons, Juan Alvarez and Envision Realty, Inc. have demurred generally to the entire complaint on the basis that it does not state facts sufficient to constitute a cause of action where the plaintiffs do not plead facts to establish any written, recorded legal interest in the property that is the subject of the complaint. From this failure, defendants argue plaintiff's lack standing to bring their first cause of action for quiet title and lack any valid interest in the property to have been “taken” in their second cause of action for financial elder abuse.

First Cause of Action: Quiet Title

Following the dismissal of defendants Simmons, Alvarez and Envision Realty, Inc. from the first cause of action, the only demurring party to the first cause of action is defendant Santos, who is alleged to have been transferred title to the Corona Property by defendant Ramirez. Defendant argues the cause of action is subject to demurrer because plaintiffs have not alleged facts to support that they are legal title holders to

the Corona Property. "It has been held consistently that the owner of an equitable interest cannot maintain an action to quiet title against the owner of the legal title." (*Stafford v. Ballinger* (1962) 199 Cal.App.2d 289, 295.)

In opposition plaintiffs concede that their interest is equitable but argue they can maintain an action against the holder of legal title where the legal title has been acquired by fraud. (*Liberty Nat'l Enterprises, L.P. v. Chicago Title Ins. Co.* (2013) 217 Cal.App.4th 62, 81.)

The complaint describes both the initial acquisition of title by defendant Jesus Ramirez and the subsequent transfer of title from defendant Ramirez to defendant Santos. Defendant Ramirez is alleged to have convinced his parents to purchase the home through him in 2003 which caused them to provide a total of \$56,000 toward the down payment on the property. (Complaint, ¶¶ 24-26.) Plaintiffs allege defendant Ramirez fraudulently transferred title to defendant Santos by a grant deed for no consideration or inadequate consideration. (Complaint, ¶ 19.) Neither acquisition of title adequately pleads that title was obtained by fraud.

The essential elements of a claim of fraud are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damage. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) To properly plead "any action sounding in fraud," a plaintiff must plead "facts which 'show how, when, where, to whom, and by what means the representations were tendered.'" (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73.) There are no allegations to indicate that in 2003 defendant Ramirez made any misrepresentation to his parents to "convince" his parents to purchase the property through him.

As for the transfer from defendant Ramirez to defendant Santos, the allegations that the transfer was fraudulent are conclusory. The fraud appears to be based solely on defendant Ramirez transferring the title to defendant Santos for no consideration or inadequate consideration. (Complaint, ¶¶ 19, 31.) However, there is no consideration necessary for a voluntary transfer. (Civ. Code §1040.) The presence or absence of consideration does not support the conclusion the acquisition of title by defendant Santos was by fraud.

As plead, the plaintiffs have not established acquisition of title by fraud to except them from the requirement of holding legal title in order to pursue their claim for quiet title. The general demurrer to the first cause of action is sustained with leave to amend.

Second Cause of Action: Financial Elder Abuse

Subdivision (a) of Welfare and Institutions Code section 15610.3 states that "Financial abuse' of an elder or dependent adult occurs when a person or entity does any of the following: [¶] (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. [¶] (2) Assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both." (Emphasis added.) Subdivision (b) provides that "[a] person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property

for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult."

Plaintiffs allege defendants conspired to take all the purchase money payments, equity and the Corona Avenue property of plaintiffs through a fraudulent transfer of the property to Santos and their subsequent eviction from the home. (Complaint, ¶¶ 48, 50.)

To the extent the claim for financial elder abuse also appears to rely upon the alleged fraudulent transfer to the property and a "plan" to steal plaintiffs' home, money invested and any equitable interest they may be entitled to, the general demurrer is sustained with leave to amend.

Defendants additionally demur to the complaint on the basis that the allegations are "vague, ambiguous and conclusory," arguing the allegations are contradictory and false as a matter of law because no legal interest in the property is pled.

Section 430.10, subdivision (f) authorizes a party against whom a complaint has been filed to object by special demurrer to the pleading on the ground that "[t]he pleading is uncertain. As used in this subdivision, 'uncertain' includes ambiguous and unintelligible." Demurrers for uncertainty are disfavored. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.) A demurrer for uncertainty may be sustained when the complaint is drafted in a manner that is so vague or uncertain that the defendant cannot reasonably respond, e.g., the defendant cannot determine what issues must be admitted or denied, or what causes of action are directed against the defendant. (*Ibid.*) Demurrers for uncertainty are appropriately overruled where "ambiguities can reasonably be clarified under modern rules of discovery." (*Ibid.*)

The complaint is pled in ordinary language. The facts upon which the claims are premised are clear, although lacking in requisite specificity. Defendants' challenges to the truth of the allegations does not render them uncertain. Defendant should be able to determine what issues must be admitted or denied. Accordingly, the complaint is not uncertain and the special demurrer is overruled.

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 **04/24/24** .
 (Judge's initials) (Date)

(24)

Tentative Ruling

Re: **Hernandez v. Rodriguez**
Superior Court Case No. 22CECG00857

Hearing Date: April 25, 2024 (Dept. 502)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

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

Explanation:

The petition does not provide evidence that the two medical providers agreed to reduce their liens, which is necessary before the court can approve this settlement. If petitioner would prefer a continuance in order to file a supplement to the petition to address this issue, he may call for a hearing and request it. The court cannot continue the hearing on its own motion, as it otherwise might, due to the deadline for ruling on the petition imposed by Probate Code section 3505.

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 **04/24/24** .
(Judge's initials) (Date)

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Tentative Ruling

Re: **Johnny Gonzales v. Maria Garcia**
Superior Court Case No. 22CECG00466

Hearing Date: April 25, 2024 (Dept. 502)

Motion: Defendant Maria Rosario Garcia and D'OROS, Inc.'s
Demurrer to the First Amended Complaint

Tentative Ruling:

To grant defendants' request for judicial notice and to sustain the demurrer, without leave to amend. (Code Civ. Proc., § 430.10, subds. (e) and (f).) Defendants shall submit a judgment of dismissal within five days of the clerk's service of this minute order.

Explanation:

A general demurrer is sustained where the pleading is insufficient to state a cause of action or is incomplete. (Code Civ. Proc., § 430.10, subd. (e); *Estate of Moss* (2012) 204 Cal.App.4th 521, 535.) A special demurrer, though disfavored, is nevertheless sustained where a pleading is so uncertain that the defendant cannot reasonably respond to the subject pleading. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 694.)

Plaintiff's First Amended Complaint ("FAC") does not allege that plaintiff owned, leased, possessed or otherwise controlled the subject property at the time of the alleged wrongdoing. Instead, the FAC admits that defendants purchased the subject property from a nonparty on October 15, 2020 and then committed the alleged wrongful acts, i.e., began efforts to remove plaintiff from the subject property by replacing the locks. (FAC, ¶ 2-4.) The conveyances establishing defendants' ownership are included in their request for judicial notice, and the parties affected thereby are plainly visible from the face of the documents. In other words, the facts plainly visible from the conveyance documents show that plaintiff had been dispossessed of the subject property. Also apparent from the judicially noticed documents is that plaintiff's name appears on recorded documents for another property (Request for Judicial Notice, Ex. F), which tends to lessen plaintiff's actual and exclusive possession of the subject property. (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238 [the plaintiff is only entitled to favorable inferences where different interpretations are reasonable].)

Consequently, none of plaintiff's asserted causes of action include the necessary element that he rightfully possessed the subject property at the time of the alleged wrongdoing and/or that defendants owed plaintiff a particular duty of care. (See *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 397 [existence of duty essential to plead negligence]; *Lighter Mining Co. v. Lane* (1911) 161 Cal. 689, 694 [actual possession required to plead trespass].) Similarly, there is no basis to show the existence of a controversy sufficient to state a declaratory relief cause of action. (*Jolley v. Chase Home*

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Tentative Ruling

Re: **White v. Nasr**
Superior Court Case No. 20CECG02815

Hearing Date: April 25, 2024(Dept. 502)

Motion: Motion by Defendants Femi Obanor, Hector Sanchez, and Lags Medical Centers for Summary Judgment

Tentative Ruling:

To grant. Defendants are directed to submit to this court, within 5 days of service of the minute order, a proposed judgment consistent with the court's summary judgment order. In light of the Declaration of Ryan D. Marshall filed on April 16, 2024, he and plaintiff Kimberly White are ordered to appear at the hearing on this motion.

Explanation:

Healthcare providers must possess and exercise "that reasonable degree of skill, knowledge, and care ordinarily possessed and exercised by members of the medical profession under similar circumstances." (*Mann v. Cracchiolo* (1985) 38 Cal.3d 18, 36.) Thus, in any medical malpractice action, the plaintiff must establish: "(1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence." (*Hanson v. Grode* (1999) 76 Cal.App.4th 601, 606, internal quotes and citations omitted.)

"Whenever the plaintiff claims negligence in the medical context, the plaintiff must present evidence from an expert that the defendant breached his or her duty to the plaintiff and that the breach caused the injury to the plaintiff." (*Powell v. Kleinman* (2007) 151 Cal.App.4th 112, 123.)

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

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

Defendants have met their initial burden of production. They offer the expert opinion of Mario De Pinto, M.D., who has extensive education, training, and professional experience in pain medicine and pain management. Based on his training and experience, he is familiar with the degree of skill ordinarily possessed by pain

management nurse practitioners such as defendants Obanor and Sanchez in the treatment of patients such as plaintiff. He is very familiar with pain management practices and procedures due to his many years of practical experience in this area.

Dr. De Pinto has reviewed plaintiff's medical records, the First Amended Complaint, plaintiff's prescription records, and plaintiff's responses to discovery. He is aware that defendant Obanor saw plaintiff twice in June 2018, and on the second visit prescribed Meloxicam in addition to reviewing her other prescriptions and advising her on best practices with her pain medication therapy. She also saw defendant Sanchez twice, in August and September 2018. He refilled her prescriptions, including the one for Meloxicam, ordered labs, reviewed her pain contract with her and gave her pain medication counseling. In October 2018, defendant Lags sent plaintiff a letter discharging her from their care due to a violation of her Pain Management Agreement. Thereafter, she saw other care providers, detail of which Dr. De Pinto also provides.

Dr. De Pinto opines that both defendants Obanor and Sanchez complied with the standard of care in all respects in their care and treatment of plaintiff, especially as it relates to prescribing Meloxicam. He further opines that no act or omission on their part caused or contributed to, or was a substantial factor in causing, the injuries claimed by plaintiff. His reasons for these conclusions are set forth in his declaration.

Where a defendant in a medical malpractice action presents expert testimony in support of a summary judgment motion showing that the defendant's care and treatment did not fall below the standard of care, the burden shifts to plaintiff to offer contrary expert testimony demonstrating that the defendant's care and treatment did not fall below the standard of care. (*Willard v. Hagemeister* (1981) 121 Cal.App.3d 406, 412; *Jambazian v. Borden* (1994) 25 Cal.App.4th 836, 844.) Plaintiff failed to file opposition, so she failed to meet her burden to raise a triable issue of material fact. Additionally, the court has been made aware, via the declaration of Ryan D. Marshall filed on April 16, 2024, that plaintiff wishes to dismiss the moving defendants.

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 **04/24/24** .
 (Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Lance Pitt v. Team Oak Trust***
Superior Court Case No. 23CECG02565

Hearing Date: April 25, 2024 (Dept.502)

Motion: By Plaintiff for Entry of Judgment After Default

Tentative Ruling:

To deny Plaintiff's request for entry of judgment quieting title, slander of title, and declaratory relief, without prejudice.

Explanation:

No Form CIV-100

The plaintiff has failed to submit the mandatory Judicial Council Form CIV-100 (Rev. January 1, 2023). (Cal. Rules of Court, rule 3.1800(a).)

No Proof of Posting Notice at the Property

In a quiet title action, whenever the court orders service by publication, the plaintiff must post a copy of the summons and complaint at a conspicuous place on the subject property. (Code Civ. Proc., § 763.020.) The court is unable to locate a proof of service to prove compliance with this requirement.

No Lis Pendens: Code of Civil Procedure section 761.010, subdivision (b) provides that immediately upon commencement of a quiet title action, the plaintiff "shall file" a notice of pendency of action. The court is unable to locate documentation to show compliance with this requirement.

Dismissed Defendants and Claims: On April 3, 2024, the plaintiff dismissed all Doe defendants and the fourth cause of action for injunctive relief. The plaintiff still seeks an in rem judgment against all persons unknown, for whom service has not been perfected.

Prove-up Brief Must Supply Basis for Judgment

The plaintiff has submitted a prove-up brief, but it lacks the analysis of the essential elements to prove the alleged causes of action. For example, the plaintiff cites the elements of a breach of contract claim, relying on the Judicial Council of California Civil Jury Instructions (CACI) No. 303, instead of the essential elements of a quiet title claim. The plaintiff's prove-up brief should analyze the quiet title claim with reference the elements set forth in Code of Civil Procedure section 761.020.

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Tentative Ruling

Re: **Avendano v. Graney et al.**
Superior Court Case No. 22CECG03985

Hearing Date: April 25, 2024 (Dept. 502)

Motion: Demurrer to SAC by City of Orange Cove Defendants
Plaintiff's Motion for Leave to Amend

Tentative Ruling:

To take both motions off calendar in light of the dismissal of the City of Orange Cove Defendants.

Explanation:

Defendants City of Orange Cove [erroneously sued as Orange Cove Police Department], Officer Rolando Urrea, Officer Jeremy Knoy, and Officer Jose Galeana (referred to herein as "City of Orange Cove Defendants") demur to the Second Amended Complaint. The demurrer is moot in light of the dismissal of these defendants on April 10, 2024.

At the same time plaintiff filed the Second Amended Complaint ("SAC"), plaintiff filed a motion for leave to include in the SAC a cause of action that plaintiff included in the pleading without leave of court. Initially the court notes that leave to amend is to be obtained *before* filing the amended pleading. In any case, because the cause of action plaintiff seeks leave to add only relates to the City of Orange Cove Defendants, the motion to amend is moot in light of the dismissal.

In the future the court requests that the parties call to take off calendar motions that are no longer necessary, so as not to cause court staff to waste time on moot motions.

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** **04/24/24** .

(Judge's initials) (Date)