Tentative Rulings for December 3, 2025
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.

23CECG03466 ***Giumarra Brothers Fruit Co. v. Cesar Mora*** **is continued to Thursday, December 18, 2025 at 3:30 pm in Department 503**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

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(36)

Tentative Ruling

Re: ***Foronda v. Fresno Community Hospital and Medical Center, et al.***
Superior Court Case No. 24CECG01863

Hearing Date: December 3, 2025 (Dept. 503)

Motion: by Plaintiff to Approve PAGA Settlement

Tentative Ruling:

To grant plaintiff's motion to approve the PAGA settlement.

Explanation:

1. Introduction

Under Labor Code section 2699, "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to [PAGA]. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." (Lab. Code, § 2699, subd. (i)(2).)

The statute does not explain what exactly the trial court should consider when reviewing a proposed PAGA settlement. However, recently the Court of Appeal in *Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56 did provide some guidance. The court explained that "many federal district courts have applied the 'fair, reasonable, and adequate' standard from class action cases to evaluate PAGA settlements." (*Id.* at pp. 75–76, disapproved on other grounds by *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664.)

"Despite the fact that '"'a representative action under PAGA is not a class action'"', and is instead a 'type of qui tam action', a standard requiring the trial court to determine independently whether a PAGA settlement is fair and reasonable is appropriate. Class actions and PAGA representative actions have many differences, with one salient difference being that certain due process protections afforded to unnamed class members are not part of PAGA litigation because aggrieved employees do not own personal claims for PAGA civil penalties. Nonetheless, the trial court must 'review and approve' a PAGA settlement, and the Supreme Court has in dictum referred to this review as a 'safeguard[ ].' The Supreme Court has also observed that trial court approval 'ensur[es] that any negotiated resolution is fair to those affected.' When trial court approval is required for certain settlements in other qui tam actions in this state, the statutory standard is whether the settlement is 'fair, adequate, and reasonable under all the circumstances.' Thus, while PAGA does not require the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for settlements that prevents 'fraud, collusion or unfairness', and protects the interests of the public and the LWDA in

the enforcement of state labor laws is warranted. Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement." (*Id*. at pp. 76–77, internal citations omitted.)

"Given PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA's purposes and policies. We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id.* at p. 77, internal citations and footnote omitted.)

On the other hand, "PAGA does not provide that aggrieved employees must be heard on the approval of PAGA settlements… PAGA provides no mechanism for aggrieved employees, including those pursuing PAGA lawsuits, to be heard in objection to another PAGA settlement. This concession is dispositive, and we will not read a requirement into a statute that does not appear therein." (*Id.* at p. 79, internal citation omitted.)

2. Notice to LWDA

Labor Code section 2699, subdivision (l)(2), states: "The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court."

Here, plaintiff's counsel states that notice of the settlement was given to the LWDA on July 25,2025. (Koulloukian Decl., ¶ 21 and Ex. 2 thereto.) The LWDA has not objected to the settlement. Therefore, plaintiff has complied with the requirement to give notice of the settlement to the LWDA.

3. Is the Settlement Fair, Adequate, and Reasonable?

As mentioned above, the Court of Appeal in *Moniz v. Adecco USA, Inc., supra*, 72 Cal.App.5th 56 stated that the trial court should review PAGA settlements to determine whether they are fair, adequate and reasonable. (*Moniz, supra*, at pp. 75-77.) "Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement." (*Id.* at p. 77.)

"Given PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA

settlement to ascertain whether a settlement is fair in view of PAGA's purposes and policies. We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Ibid*, internal citations and footnote omitted.)

Here it does appear that the proposed gross settlement of $2,875,000 is fair, adequate and reasonable under the circumstances.

A. Strength of Case: Plaintiff calculated the potential exposure at the initial violation rate of $100.00 per pay period by stacking the different types of penalties in each pay period. Plaintiff calculated the stacked exposure to be a total of $209,585,850 ($53,503,000 for unpaid wages + $45,173,100 for rest breaks + $43,926,200 for meal breaks + $550,300 for waiting time + $53,505,000 for wage statement + $13,326,250 for unreimbursed business expenses).

However, plaintiff concedes that defendant had raised a number of defenses and had cited to evidence that might have made it difficult for plaintiff to prevail. Also, there was the risk that the court might exercise its discretion to reduce the penalties to avoid an unjust, oppressive or confiscatory result.

Therefore, plaintiff has shown that the case was relatively strong, but entailed considerable risks as well, including the risk that he might not obtain anything at trial, or that, even if he did prevail, the award might be substantially reduced by the court. As a result, this factor weighs in favor of approving the settlement.

B. Stage of the Proceeding: A presumption of fairness exists where the settlement is reached through arm's length mediation between adversarial parties, where there has been investigation and discovery sufficient to allow counsel and the court to act intelligently, and where counsel is experienced in similar litigation. (*Dunk v. Ford Motor Company* (1996) 48 Cal. App 4th 1794, 1802.) Here, the case settled after the parties exchanged informal discovery and attended mediation. It appears that counsel obtained sufficient information to make an informed decision about settling the case, especially since plaintiff's counsel hired an expert to evaluate the risks and potential exposure involved with each of the claims based on the evidence and records provided by defendant. Plaintiff's counsel's firm is also highly experienced in representative litigation. Therefore, this factor weighs in favor of approving the settlement.

C. Risks of Litigating Case through Trial: Plaintiff contends that, while the potential maximum recovery here was substantial, the defendant raised strong defenses and litigating the case through trial would have involved considerable risks for plaintiff. There would also have been substantial costs to both parties in trying the case. There was also the risk that the court would have reduced the amount of penalties substantially even if plaintiff prevailed at trial. Therefore, this factor weighs in favor of approving the settlement.

D. Amount of Settlement: As discussed above, the $2,875,000 gross settlement amount appears to be reasonable given defendant's strong defenses and the likelihood that plaintiff would not be able to recover the full amount of penalties he sought. There

is also a risk that the trial court would exercise its discretion to reduce the amount of penalties even if plaintiff prevailed at trial. Therefore, plaintiff's decision to settle for a gross amount of $2,875,000 was reasonable under the circumstances.

E. Experience and Views of Counsel: Plaintiff's counsel are highly experienced in class and representative litigation. They have stated that the settlement is fair, adequate and reasonable under the circumstances. Therefore, this factor weighs in favor of approval.

F. Government Participation: No government entity participated in the case, so this factor does not favor either approval or disapproval of the settlement.

G. Attorney's Fees and Costs: Plaintiff's counsel seeks $958,237.50 in attorney's fees, plus $22,452.27 in court costs. The fees are the equivalent of 1/3 of the total gross recovery, which does not appear unreasonable. Plaintiff's counsel indicates that his firm has expended substantial time and resources to this matter. Courts have approved awards of fees in class actions that are based on a percentage of the total common fund recovery. (*Laffitte v. Robert Half Internat.* (2016) 1 Cal.5th 480, 503.) It appears that the same reasoning would apply to PAGA settlements, which bear similarities to class actions.

Likewise, the request for $22,452.27 in costs is reasonable, as counsel states these were costs actually incurred over the course of the litigation. (Koulloukian Decl., ¶ 39 and Ex. 3 thereto.)

Therefore, the court intends to find that the requested fees are reasonable under the circumstances and to approve the request for $22,452.27 in costs.

H. Administration Costs: The settlement administrator, ILYM Group, Inc. will receive $29,000 to cover administration costs. ILYM has provided a declaration from one of its representatives stating that it will charge fees of $29,000 for administration costs. (See decl. of Lisa Mullins.) These costs for administering the settlement appear to be reasonable. Therefore, plaintiff has shown that the requested amount of administration costs is reasonable here.

I. Incentive Award to Named Plaintiff: The settlement also provides that the named plaintiff will receive an incentive award of $5,000. This amount will compensate plaintiff for her work on the case, as well as for the release of her individual claims. Plaintiff has provided her own declaration, in which she discusses the amount of work she has done on the case and the risks that she took in agreeing to be the named plaintiff. (Chavez Foronda decl., ¶¶ 6-11.) Her declaration does support the requested incentive payment. Therefore, the court intends to find that the incentive payment is fair and reasonable.

4. Conclusion: The court intends to grant the motion to approve the PAGA settlement.

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 12/1/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Vartanian v. Boyd***
Superior Court Case No. 25CECG02564

Hearing Date: December 3, 2025 (Dept. 503)

Motion: By Defendants to Strike (Anti-SLAPP) Plaintiff's Complaint

Tentative Ruling:

To grant as to the first and second causes of action, without leave to amend.

To grant as to the third cause of action, with leave to amend. 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:

These motions arise out of a complaint filed May 30, 2025 alleging defamation, intentional infliction of emotional distress, and breach of fiduciary duty. Defendant Pamela Reich is involved in a dissolution of marriage proceeding against Jeffrey Reich. Defendant Boyd represents Pamela in the dissolution matter. Defendant Shane Reich is an attorney and the son of Jeffrey and Pamela, but is not an attorney of record in that matter. On January 9, 2025, Boyd filed a status statement in the dissolution matter. Plaintiff Sona Vartanian asserts that the status statement made false and defamatory statements regarding Plaintiff. She also asserts that Shane Reich assisted with preparation of the status statement. As Plaintiff alleges that each defendant played a role in preparing the status statement, the Court finds that addressing them together is appropriate here.

Evidentiary Objections

The Court sustains Plaintiff's objection to paragraph 4 of the Declaration of Boyd.

The Court sustains Defendant Boyd's objections to paragraphs 3-5, 7, 15, 17-18, 21-23, and 25 of Plaintiff's Declaration. The Court overrules Boyd's objections to paragraphs 6, 8-14, 16, 19-24, and 26-29 of Plaintiff's Declaration.

The Court sustains Defendant Boyd's objections to paragraphs 13-14, and 19 of the Declaration of Jeff Reich. The Court overrules Boyd's objections to paragraphs 3-12, and 16-18 of the Declaration of Jeff Reich.

The Court sustains Defendant Boyd's objection to paragraph 5 of the Margosian Declaration. The Court overrules Boyd's objections to paragraph 3 and 6 of the Margosian Declaration.

The Court sustains Defendant Boyd's objection to paragraph 3 of the Vartanian Declaration filed in opposition to Pamela Reich's motion. The Court overrules Boyd's objections to paragraphs 4, and 12-16 of the Vartanian Declaration filed in opposition to Pamela Reich's motion.

The Court sustains Defendant Shane Reich's objections to paragraphs 3, 7, 13 lines 10-11, 14(A)(iii) lines 25-26, and paragraphs 17-18 of the Vartanian Declaration. The Court overrules Shane Reich's objections to paragraph 14, lines 17-21, and paragraphs 19-23 of the Vartanian Declaration.

The Court sustains Defendant Shane Reich's objections to paragraphs 17 and 19 of the Jeff Reich Declaration. The Court overrules Shane Reich's objections to paragraphs 8-12 and 16 of the Jeff Reich Declaration.

The Court sustains Defendant Shane Reich's objection to paragraph 5 of the Margosian Declaration. The Court overrules Shane Reich's objections to paragraphs 3 and 6 of the Margosian Declaration.

Judicial Notice

Evidence Code section 452 provides the court may take judicial notice of (d) court records. (Evid. Code, § 452, subd. (d).) The existence of a document may be judicially noticeable, although the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable. (*Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-114; *Apple Inc. v. Superior Court* (2017) 18 Cal.App.5th 222, 241.) Factual findings in a prior judicial opinion are not a proper subject of judicial notice. (*Kilroy v. State of California* (2004, Cal App 3d Dist) 119 Cal App 4th 140, 145-146.) The Court takes judicial notice of the Declaration of Shane Reich filed in opposition to the motion to disqualify Shane Reich from representation of Pamela Reich in the bankruptcy matter, the docket for Fresno Superior Court Case Number 15CEFL06206, the Status Statement filed January 9, 2025 in Fresno County Superior Court Case Number 15CEFL06206, and of the pleadings filed in the instant matter, but not for the truth of their contents.

Merits

The anti-SLAPP statute may be invoked to challenge suits based on four different categories of speech:

> (1) statements made before a legislative, executive, judicial, or other official proceeding;
> (2) statements made in connection with an issue being considered by a legislative, executive, or judicial body;
> (3) statements made in a public forum or in connection with an issue of public interest; OR
> (4) any other conduct in furtherance of the exercise of the constitutional right of petition or free speech, in connection with an issue of public interest.

(Code Civ. Proc., § 425.16, subd. (e).)

The court engages in a two-step process in determining whether an action is subject to the anti-SLAPP statute: first, the court decides whether a defendant has made a threshold showing that the challenged cause of action is one arising from protected activity, by demonstrating that the facts underlying the plaintiff's complaint fit one of the categories set forth in section 425.16, subdivision (e); if the court finds that such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. (Code Civ. Proc., §425.16; *Cross v. Facebook, Inc*. (2017) 14 Cal.App.5th 190, 198.)

As for the second prong, a plaintiff's complaint need only be shown to have "minimal merit". (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 279; *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89, 95.) The plaintiff must show that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. (*Navellier*, *supra*, 29 Cal.4th at 88-89.) In considering this issue, the court looks at the " 'pleadings, and supporting and opposing affidavits … upon which the liability or defense is based.' " (*Soukup*, *supra*, at 269.)

The plaintiff has the burden of showing: (1) a legally sufficient claim (i.e., a claim which, if supported by facts, is sustainable as a matter of law); and (2) that the claim is supported by competent, admissible evidence within the declarant's personal knowledge. (See *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 654-655 and *DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 568.) It has been stated that this test is similar to the standard applied in summary judgment motions pursuant to Code of Civil Procedure section 437c; to wit, the plaintiff's burden is to demonstrate a prima facie case. (*Church of Scientology*, *supra* at p. 654, fn. 10.) The court does not weigh credibility or evaluate the weight of the evidence, accepting as true all evidence favorable to the plaintiff. (*Barker v. Fox & Associates* (2015) 240 Cal.App.4th 333, 348.)

Defamation and Intentional Infliction of Emotional Distress

With regard to the first and second causes of action, this first showing is easily satisfied, and does not appear to be seriously disputed by Plaintiff. As to all three defendants, the first two causes of action are based on their filing (or assistance in preparing) the Status Statement in the dissolution action. In addressing this issue Plaintiff argues the applicability of Civil Code section 47, subdivision (b)(1). Plaintiff seems to dispute that the anti-SLAPP statute applies, but offers no coherent argument why that would be the case. She simply moves on to discussing probability of success. Accordingly, all three defendants satisfy the first prong of the anti-SLAPP analysis.

"[D]efamation 'involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage.' " (*Taus v. Loftus* (2007) 40 Cal.4th 683, 720.) The elements of a prima facie case of intentional infliction of emotional distress are: (1) outrageous conduct by the defendant; (2) intent to cause or reckless disregard of the probability of causing emotional distress; (3) severe emotional suffering; and (4) actual and proximate causation of emotional distress. (*Bartling v. Glendale Adventist Medical Center* (1986) 184

Cal.App.3d 961, 969.) Here, the intentional infliction of emotional distress claim is based on the defamation claim.

In a defamation action in which there are a number of allegedly defamatory statements, such as here, the quantum of work can be quite extensive, because each allegedly defamatory statement must be assessed separately.

> "Analysis of an anti-SLAPP motion is not confined to evaluating whether an entire cause of action, as pleaded by the [nonmoving party], arises from protected activity or has merit. Instead, courts should analyze each claim for relief—each act or set of acts supplying a basis for relief, of which there may be several in a single pleaded cause of action—to determine whether the acts are protected and, if so, whether the claim they give rise to has the requisite degree of merit to survive the motion."

(*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1010.)

Before reaching the question of whether the various statements identified in the Complaint are defamatory, the court first must determine the applicability of Civil Code section 47, subdivision (b)(1), which provides absolute immunity for statements made in a judicial forum, except

> "An allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment and unless the allegation or averment is material and relevant to the issues in the action."

Defendants concede that at the time the Status Statement was filed, Plaintiff was not a party to the dissolution action, or a person from whom affirmative relief was prayed. Seeking to invoke the protections of subdivision (b)(1), Defendants contend that even though Plaintiff was not a party to the dissolution action at the time the Status Statement was filed, Defendant Pamela Reich was already in the process of adding Plaintiff to the dissolution action by way of a motion to join prior to the time the instant action was filed. In fact, the joinder was delayed due to Jeff Reich's bankruptcy filing. Thus, it is conceded that at the time the Status Statement was filed, Plaintiff was a person "against whom no affirmative relief was prayed in the action …"

They argue the litigation privilege still applies. First, the litigation privilege found in Civil Code section 47, subdivision (b) is broad. (*L.G. v. M.B.* (2018) 25 Cal.App.5th 211, 220.) The exception found in Civil Code section 47, subdivision (b)(1) is decidedly less so. The court in *L.G. v. M.B., supra*, 25 Cal.App.5th at pp. 224-228, argued for a plain

language reading of the exception which does not lead to absurd results, noting that the statute is clear and unambiguous.

Nothing indicates that the courts or the Legislature would not also apply traditional understandings of the litigation privilege when applied to anticipated parties. Here, no one reasonably disputes that there was a genuine plan to join Plaintiff to the divorce proceedings. In fact, it appears this was only delayed by bankruptcy filings. Courts have consistently applied the litigation privilege where communications are made in the furtherance of objects in the litigation and are "contemplated in good faith and under serious consideration." (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1251.) Here, the Status Statement at issue was made in furtherance of the litigation and was intended to communicate to the newly assigned family law judge the relevant posture of the proceedings. This included communicating to the newly assigned judge the plan to join Plaintiff to the proceedings and the reasons for this plan. As it is apparent that, but for the bankruptcy filing, Plaintiff would have been a party against whom affirmative relief was sought, the Court finds that the exception does not apply here. Thus, the communications attributed by Plaintiff to all three defendants contained within the Status Statement would be subject to the litigation privilege.

Also, Civil Code section 47, subdivision (c) articulates a qualified privilege for communications made, without malice, to persons interested, at the request of another person interested. The privilege is recognized where the communicator and the recipient have a common interest and the communication is of a kind reasonably calculated to protect or further that interest. (*Hui v. Sturbaum* (2014) 222 Cal.App.4th 1109, 1118.) The "interest" must be something other than mere general or idle curiosity, such as where the parties to the communication share a contractual, business or similar relationship or the defendant is protecting his own pecuniary interest. (*Rancho La Costa, Inc. v. Superior Court* (1980) 106 Cal.App.3d 646, 664–665.) Rather, it is restricted to "proprietary or narrow private interests." (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 737.)Here, the newly assigned family law judge requested a status report regarding the family law proceedings. This prompted the filing of the Status Statement at issue. Thus, the communications made in the Status Statement would also be privileged pursuant to Civil Code section 47, subdivision (c).

The Court finds the communications privileged and grants Defendants' motions as to the first and second causes of action.

Breach of Fiduciary Duty

Plaintiff also asserts a cause of action for breach of fiduciary duty against Defendant Shane Reich. Plaintiff alleges that Defendant Shane Reich represented her in several matters. (Complaint, ¶¶ 29.) Plaintiff also alleges Defendant Shane Reich had knowledge regarding Plaintiff *based on both of them working for Jeffrey Reich*. (Complaint, ¶¶ 30-32.) Plaintiff argues Defendant Shane Reich owed her a fiduciary duty and duty of loyalty, but breached these when providing information to Defendant Boyd. (Complaint, ¶¶ 33-34.)

A claim is only subject to the anti-SLAPP statute if the protected activity forms the basis for the claim. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th

1057, 1062.) The act underlying the cause of action must have been in furtherance of the free speech or right of petition. (*Id*. at 1063.) A client asserting a cause of action against a former attorney based on breach of fiduciary duty "is not subject to the anti-SLAPP statute 'merely because some of the allegations refer to the attorney's actions in court.'" (*Wittenberg v. Bornstein* (2020) 50 Cal.App.5th 303, 312, quoting *Hylton v. Frank E. Rogozienski, Inc*. (2009) 177 Cal.App.4th 1264, 1275.) Where "the allegations referring to litigation activity "'"are only incidental to a cause of action based essentially on nonprotected activity, collateral allusions to protected activity should not subject the cause of action to the anti-SLAPP statute."'" (*Id*. at pp. 312-313.)

Here, the cause of action for breach of fiduciary duty is founded on the Status Statement which the Court has already noted meets the first prong as a protected activity. The allegations referring to litigation activity are not incidental or collateral, but form the crux of the cause of action. Indeed, as pled, the gravamen of the cause of action here is as to protected speech which does not appear to be inherently related to any prior representation, but rather appears focused on knowledge obtained while the parties were both employed by Jeffrey Reich. That said, Plaintiff may be able to amend this cause of action to focus only on prior representation. Therefore, the Court grants Plaintiff leave to amend as to her claim for breach of fiduciary duty based on prior representation.

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 12/1/2025.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re:	***Leon v. Leon*** Case No. 25CECG00104
Hearing Date:	December 3, 2025 (Dept. 503)
Motion:	Plaintiff's Motion for Interlocutory Judgment of Partition by Sale

Tentative Ruling:

To grant plaintiff's motion for an interlocutory judgment of partition by sale.

Explanation:

"A partition action may be commenced and maintained by any of the following persons: [¶] (1) A coowner of personal property." (Code Civ. Proc., § 872.210, subd. (a)(1).) "At the trial, the court shall determine whether the plaintiff has the right to partition." (Code Civ. Proc., § 872.710, subd. (a).) "Except as provided in Section 872.730, partition as to concurrent interests in the property shall be as of right unless barred by a valid waiver." (Code Civ. Proc., § 872.710, subd. (b).) "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." (Code Civ. Proc., § 872.720, subd. (a).)

"Notwithstanding Section 872.810, the court shall order that the property be sold and the proceeds be divided among the parties in accordance with their interests in the property as determined in the interlocutory judgment in the following situations: … (b) The court determines that, under the circumstances, sale and division of the proceeds would be more equitable than division of the property. For the purpose of making the determination, the court may appoint a referee and take into account his report." (Code Civ. Proc., § 872.820, subd. (b).)

"'The primary purpose of a partition suit is, as the terminology implies, to partition the property, that is, to sever the unity of possession.' 'Partition is a remedy much favored by the law. The original purpose of partition was to permit cotenants to avoid the inconvenience and dissension arising from sharing joint possession of land. An additional reason to favor partition is the policy of facilitating transmission of title, thereby avoiding unreasonable restraints on the use and enjoyment of property.'" (*LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484, 493, citations omitted.)

"In lieu of dividing the property among the parties, the court shall order the property be sold and the proceeds divided among the parties in accordance with their interests in the property if the parties agree to such relief or the court determines sale and division of the proceeds would be more equitable than a division of the property. (Code Civ. Proc., § 872.820.)" (*Ibid*.) "A co-owner of property has an absolute right to partition unless barred by a valid waiver." (*Ibid.*)

"Partition in kind is favored 'since this does not disturb the existing form of inheritance or compel a person to sell his property against his will. Forced sales are strongly disfavored.' The burden of proof remains upon the party endeavoring to force a sale. Thus, while the new standard may be said to expand the availability of partition sales, it does not permit a partition sale in the absence of sufficient proof of the equities of such a method of partition." (*Butte Creek Island Ranch v. Crim* (1982) 136 Cal.App.3d 360, 366, citations omitted.)

"There are two types of evidence which have been held sufficient to justify a partition sale of property rather than physical division. The first is evidence that the property is so situated that a division into subparcels of equal value cannot be made. This test is not met by evidence that a portion of the property is not equal to the whole, for that is always the case in a partition action. Nor is this test met by evidence that the land is not 'fungible' or uniform in character. In order to meet this test the party desiring a partition sale must show that the land cannot be divided equally." (*Ibid*, citations omitted.)

"The second type of evidence which supports a partition sale rather than physical division is economic evidence to the effect that, due to the particular situation of the land, the division of the land would substantially diminish the value of each party's interest. The generally accepted test in this regard is whether a partition in kind would result in a cotenant receiving a portion of the land which would be worth materially less than the share of the money which could be obtained through sale of the land as a whole. This is a purely economic test. If plaintiff, who demands that the land be sold, can receive a portion of the land through physical division and that portion could be sold for a sum equal to the amount it could realize through sale of the entire parcel then as a matter of law no economic prejudice can be shown. The manifest inequity of ousting an unwilling cotenant from the land where no economic detriment is suffered cannot be permitted." (*Id.* at p. 367, citations omitted.) " '[I]n many modern transactions, [however,] sale of the property is preferable to physical division since the value of the divided parcels frequently will not equal the value of the whole parcel before division. Moreover, physical division may be impossible due to zoning restrictions or may be highly impractical....' " (*Id*. at p. 365.)

The partition statutes also permit the court to order partition of the property by appraisal. (Code Civ. Proc., §§ 873.910; 873.920.) However, a court may not order partition of the property by appraisal unless there is an agreement between the parties for such a partition. (*Cummings v. Dessel* (2017) 13 Cal.App.5th 589, 599.)

Here, plaintiff has met her burden of showing that she is entitled to an interlocutory judgment of partition by sale. She has provided evidence that she owns a 50% interest in the subject property, and that defendants Justin Leon and Sabrina Leon each own a 25% interest in the property. (See Lizette Leon decl., ¶¶ 3-6.) Thus, each of the parties now holds title to the property as tenants in common. (*Id*. at ¶ 6.) Firstkey Mortgage, LLC also holds a deed of trust on the property, which secures the mortgage in the property. (*Id*. at ¶¶ 7-9.) However, plaintiff is not contesting the deed of trust, and the outcome of the present case will not affect the validity of the Firstkey deed of trust. (*Id*. at ¶ 10.) Plaintiff also states that the property includes a single-family residence, that there is no agreement between the parties to waive their rights to partition the property, and that there is no agreement to partition the property by appraisal. (*Id*. at ¶¶ 11-13.)

Thus, partition by appraisal would not be proper, as the parties have not agreed to partition the property by appraisal. (*Cummings v. Dessel*, *supra*, 13 Cal.App.5th at p. 599.) Nor have the parties agreed to waive their right to partition the property. As a result, plaintiff has an absolute right to an interlocutory judgment partitioning the property. (*LEG Investments v. Boxler*, *supra*, 183 Cal.App.4th at p. 493.)

Also, while partition by sale is not a favored method of partitioning a property, the court may grant a judgment ordering partition by sale where it would be inequitable to partition the property by other means. (Code Civ. Proc., § 872.820.) Here, it appears that partition by sale would be more equitable than partitioning the property in kind, as the property contains a single-family residence that cannot be divided in kind. In addition, dividing the property between the parties would likely reduce the value of the property substantially, as the single-family residence cannot be subdivided and the portions of the property that do not include the residence would have much less value than the other portion with the home on it. Therefore, plaintiff has met her burden of showing that she is entitled to an interlocutory judgment partitioning the property by sale.

While defendant Sabrina Leon has opposed the motion for a judgment to partition the property as premature, contending that there needs to be an accounting of the money she and her late father spent on the property since 2019 and that plaintiff has engaged in fraud and breach of fiduciary duty, she provides no evidence or declarations to support her assertions. Without some admissible evidence of the amounts she and her father spent on the property, there is no basis for finding that she is entitled to an accounting. Even if she had submitted evidence to support her claimed contributions, she would only be entitled to an accounting of her contributions after the interlocutory judgment is granted. Her alleged right to an accounting would not entitle her to delay the plaintiff's right to have the property partitioned.

Under Code of Civil Procedure section 872.140, "The court may, in all cases, order allowance, accounting, contribution, or other compensatory adjustment among the parties according to the principles of equity." "Every partition action includes a final accounting according to the principles of equity for both charges and credits upon each cotenant's interest. Credits include expenditures in excess of the cotenant's fractional share for necessary repairs, improvements that enhance the value of the property, taxes, payments of principal and interest on mortgages, and other liens, insurance for the common benefit, and protection and preservation of title. [¶] California, through Code of Civil Procedure section 873.220 and former section 764, has long provided that as far as practical and where it can be done without material injury to other cotenants, the property in a partition action is to be divided so as to allot to a party any portion that embraces improvements made by that party, and the value of the improvements must be excluded from the valuation in making the allotment." (*Wallace v. Daley* (1990) 220 Cal.App.3d 1028, 1035–1036, citations omitted.)

Thus, defendant may seek an accounting of any amounts that she paid toward the mortgage, taxes, maintenance, and improvement of the property. However, she is not entitled to delay the entry of an interlocutory judgment of partition by sale simply because an accounting is necessary. The court-appointed referee can perform any necessary accounting after the interlocutory judgment has been granted.

Also, while defendant claims that plaintiff is not entitled to a judgment of partition because she is guilty of unclean hands, fraud, and breach of fiduciary duty, defendant

has not presented any admissible evidence that would tend to show that plaintiff has been guilty of any improper conduct that might constitute unclean hands. Therefore, she has not met her burden of showing that a judgment should not be granted here.

As a result, the court intends to grant plaintiff's motion for an interlocutory judgment of partition by sale, and grant the plaintiff's request to appoint Rick P. Smith to act as a referee to conduct the sale of the property. The referee should facilitate an accounting of any amounts that defendant contributed to the property and adjust the parties' shares of the proceeds after the sale.

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 12/1/2025.
(Judge's initials) (Date)