

Tentative Rulings for November 17, 2016
Departments 402, 403, 501, 502, 503

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).)

- 16CECG03101 *Silvas Oil Company, Inc. v. Orange Grove Industrial Park, LLC* (Dept. 403)
- 16CECG00890 *McClendon v. Delacruz* (Dept. 503)
- 15CECG01327 *Marcum v. St. Agnes* (Dept. 403) [no tentative rulings on the two motions to strike; see below for tentative rulings on motions for summary judgment / adjudication]
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The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

- 13CECG02711 *Harpains Meadow, L.P. v. Stockbridge* is continued to Wednesday, November 23, 2016, at 3:30 p.m. in Dept. 501.
- 14CECG00823 *Sanchez v. Tang, M.D., et al.* is continued to Wednesday, November 23, 2016, at 3:30 p.m. in Dept. 501.
- 14CECG01317 *Moffett v. Calif. Cancer Associates for Research and Excellence, Inc.* is continued to Thursday, December 1, 2016, at 3:30 p.m. in Dept. 503.
- 14CECG03039 *Manmohan v. Anheuser-Busch* (Dept. 503) [Hearing on motion to certify class is continued to December 1, 2016, at 3:30 p.m. in Dept. 503]
- 15CECG00405 *Rivas v. Rivas et al.* (Dept. 402) [Hearing on motion to withdraw is continued to Tuesday, November 22, 2016 at 3:30 p.m. in Dept. 402]
- 16CECG01716 *Robinson-Diaz v. Fresno Unified School District* (Dept. 402) [Hearing on motion to withdraw is continued to Tuesday, November 22, 2016 at 3:30 p.m. in Dept. 402]
- 16CECG01849 *Castro v. Sunset Waste Systems, Inc.* is continued to Tuesday, November 29, 2016 at 3:30 p.m. in Dept. 503.

16CECG02608

Patrick Linehan v. Wells Fargo Bank, N.A., et al. is continued to
Tuesday, November 29, 2016, at 3:30 p.m. in Dept. 502.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

(29)

Tentative Ruling

Re: **Laurie Davis v. Oana Mischiu, et al.**
Superior Court Case No. 15CECG03226

Hearing Date: Should either side call in for oral argument, it will be held on
Tuesday November 22, 2016 at 3:30 p.m. (Dept. 402)

Motion: Defendants Schilling, Thistle, and CEPMG's motion to compel responses to discovery; sanctions

Tentative Ruling:

To grant Defendants Schilling, Thistle, and CEPMG's motion to compel Plaintiff to provide initial verified responses to Defendants' special interrogatories, set one; request for production of documents, set one; and request for nature and amount of damages, set one. (Code Civ. Proc. §§ 2023.010(d); 2030.290(b); 2031.300(b); 425.11(b).) Plaintiff is ordered to serve complete verified responses to all discovery set forth above, without objection, within 10 days of the clerk's service of the minute order.

To impose monetary sanctions in favor of Defendants, against Plaintiff. (Code Civ. Proc. §§ 2023.010(d), (i); 2023.030(a); 2030.290(c); 2031.300(c).) Plaintiff is ordered to pay \$555 in sanctions to the Weiss-Salinas Law Group within 30 days of service of this order.

Explanation:

The discovery at issue was served on Plaintiff August 16, 2016. Despite Defendants' efforts to handle the lack of response informally, including extending the response deadline, Plaintiff has failed to provide the requested discovery, other than to Defendants' form interrogatories, set one. Accordingly, Defendants' motion to compel is granted. Sanctions in the amount of \$555 are imposed against Plaintiff.

Pursuant to California Rules of Court, rule 3.1312, 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: JYH on 11/15/16
(Judge's initials) (Date)

Tentative Rulings for Department 403

(20)

Tentative Ruling

Re: ***Marcum v. St. Agnes Medical Center et al.***, Superior Court
Case No. 15CECG01327

Hearing Date: **November 17, 2016 (Dept. 403)**

Motion: Motions for Summary Judgment / Adjudication

Tentative Ruling:

To grant St. Agnes' Motion for summary judgment. (Code Civ. Proc. § 437c(c).) St. Agnes is 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.

To grant Leisure Care's motion for summary judgment. (Code Civ. Proc. § 437c(c), (f).)

St. Agnes and Leisure Care 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.

To grant Chinnapa Nareddy, M.D.'s motion for summary adjudication of the second cause of action. (Code Civ. Proc. § 437c(f).)

Explanation:

St. Agnes' Motion

The court's discussion is limited to the second cause of action for elder abuse and the fourth cause of action for professional negligence, as those are the only cause of action remaining at this stage.

The Elder and Dependent Adult Civil Protection Act (Welfare & Institutions Code § 15600 et. seq.) was enacted by the California Legislature to protect elderly citizens from egregious acts of abuse and custodial neglect. (*Covenant Care v. Superior Court* (2004) 32 Cal.4th 771, 787; *Delaney v. Baker* (1999) 20 Cal.4th 23, 32-33.)

The Elder Abuse Act defines abuse as “[p]hysical abuse, *neglect*, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering” (Welf. & Inst.Code, § 15610.07, subd. (a), italics added); or “[t]he deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering” (*id.*, § 15610.07, subd. (b)). The Act defines neglect as

“[t]he negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.” (*Id.*, § 15610.57, subd. (a)(1).) “Neglect includes, but is not limited to, all of the following: [¶] (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter. [¶] (2) Failure to provide medical care for physical and mental health needs.... [¶] (3) Failure to protect from health and safety hazards. [¶] (4) Failure to prevent malnutrition or dehydration.” (*Id.*, § 15610.57, subd. (b).) In short, neglect as a form of abuse under the Elder Abuse Act refers “to the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations.” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 34, 82 Cal.Rptr.2d 610, 971 P.2d 986 (*Delaney*).) (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 404, emphasis added.)

Elder abuse claims must be based on “conduct far more egregious than professional negligence.” (*Little Co. of Mary Hospital v. Superior Court* (2008) 162 Cal.App.4th 261, 265; emphasis added.)

Section 15610.57(a)(1) provides that the definition of “neglect” means “[t]he **negligent failure** of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.” If St. Agnes establishes that it met the standard of care for a professional negligence cause of action, it would also prevail on the elder abuse claim. (See *Welf. & Instit. Code* § 15610.57(a)(1); *Intrieri v. Superior Court* (2004) 117 Cal.App.4th 72, 83.)

“[W]rongdoing or culpability in the context of medical treatment is measured by the standard of care within the medical community.” (*Wilson v. Ritto* (2003) 105 Cal.App.4th 361,369.) Expert opinion testimony is required to prove or disprove that a defendant performed in accordance with the prevailing standard of care. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001.)

Plaintiff alleges that on April 29, 2013, Dorothy Thomas (hereinafter “Dorothy”) was admitted to St. Agnes and had a valid Physician’s Order for Life Saving Treatment (“POLST”) that required Saint Agnes to provide full resuscitation for Dorothy, as well as an Advanced Healthcare Directive. (TAC ¶¶ 16, 37.) Plaintiff alleges that codefendant. Dr. Nareddy subsequently changed Dorothy’s resuscitation status from full code to DNR after a discussion he had with codefendant Sharon Wimberley, Dorothy’s daughter. (TAC ¶ 12.) Plaintiff alleges that while Dr. Nareddy was caring for Dorothy, he an employee of Saint Agnes. (TAC ¶ 16.) Plaintiff alleges that, once Dr. Nareddy ordered the “all therapies were specifically removed and no further efforts were made to help her stay alive.” (TAC ¶ 13.) The TAC alleges that Dorothy expired on April 30, 2013 at 17:45, but also that she “lay alive and suffering for several hours after hospital employees represented in written documentation she was deceased.” (TAC ¶ 14.)

St. Agnes submits evidence that refutes these allegations. First, St. Agnes has shown that Dr. Nareddy was not an employee or agent of St. Agnes. (UMF 5, 10, 23; Egerton Dec. ¶¶ 5-10.)

Plaintiff disputes this, relying on the expert declaration of Dr. Luxenberg, which was submitted by St. Agnes in support of its motion. However, Dr. Luxenberg never opined, as plaintiff claims, that Dr. Nareddy a St. Agnes employee. Plaintiff submits no evidence to refute the Egerton Declaration. Accordingly, St. Agnes cannot be held liable for any negligent acts of Dr. Nareddy.

St. Agnes contends that Dorothy did not have a valid POLST (it was not signed by a physician), AHCD or any other document that could serve as a basis for determining Dorothy's resuscitation status, other than the orders made by Dr. Nareddy, including the DNR he ordered. (UMF Nos. 15-17.) From a nursing perspective, Dr. Nareddy's DNR order made at 16:46 on April 30, 2013 would be expected for a person of Dorothy's age (88 years), mental condition (noted in the medical records to be confused and altered) and serious medical conditions (possible pneumonia and UTI). (UMF No. 18.) Contrary to plaintiff's allegations, after Dr. Nareddy ordered that Dorothy be made a DNR, Dorothy continued to receive all of her previously ordered medications, therapies and treatments, including antibiotics, IV fluids, food and regular monitoring and assessment. (UMF 19.)

On April 30, 2013 at 17:45 Rochelle Letoumeau, RN (the Saint Agnes nurse caring for Dorothy) charted that while making rounds, she found Dorothy not breathing, and after unsuccessfully attempting to get Dorothy's vital signs, determined that she had passed away sometime earlier. (UMF 20.)

Based on these facts, St. Agnes submits the declaration of Jay Luxenberg, M.D., a physician specializing in geriatric medicine. He opines that St. Agnes' employees met the standard of care at all times while providing care and treatment to Dorothy, and that no action or inaction on their part caused any of her injuries, including her death. (UMF 8, 9.)

St. Agnes has met its burden of showing that its employees met the standard of care, and did not cause any harm to Dorothy. If there was no negligence, then the court agrees agree with St. Agnes that there was no elder abuse. Even if Dr. Nareddy wrongfully changed the orders to DNR, St. Agnes staff was merely following the doctor's orders. Dr. Luxemburg also opined that the result would have been the same even if Dorothy was not made a DNR. Even after the change to DNR, Dorothy continued to receive the previously ordered medications and treatments. (Luxemburg Dec. ¶ 8(r).)

Arguing that St. Agnes breached the standard of care, plaintiff relies on the declarations of Dr. Luxenberg and Dr. Raffle. However, Dr. Luxenberg did not express any opinions as to whether St. Agnes met the standard of care. He expressed opinions only regarding Dr. Nareddy's conduct.

Plaintiff raises a couple issues in the opposition that appear damning. One is that St. Agnes has falsified records, which evidences its fraudulent conduct. Having

reviewed the records referenced by plaintiff, the only documents that appear different are bates numbers 004047 and SAMC001759. However, upon review of the documents. Plaintiff appears to contend that SAMC001759 is a fraudulent alteration. However, it is apparent that SAMC001759 was the original document, and 0004047 was created subsequent to SAMC001759, and includes a digital image of the entirety of SAMC001759.

Even if the document was altered, the court fails to see how it evidences any nefarious intent. The content of the document is the same either way – it quotes Dorothy as saying “I want to do everything you can.” Dr. Luxenberg addressed this document in his declaration. (Luxenberg Dec. ¶ 8(m).) At 16:47, about 12 hours after this document was prepared at 4:10, Dr. Nareddy ordered Dorothy be made DNR. (Luxenberg Dec. ¶ 8(r).)

In any case, the fact remains that Dr. Nareddy, who was Dorothy’s doctor and *not* an employee of St. Agnes, changed Dorothy to DNR before she passed away, and St. Agnes staff followed that directive. Plaintiff produces no authority indicating that the hospital staff had any authority or right to disregard that order.

Plaintiff also raises issues with the timing of Dorothy’s death. Again, Dr. Luxenberg addressed these allegations. Plaintiff submits no expert declaration disagreeing with Dr. Luxenberg’s conclusion that Dorothy passed away prior to 17:45. Even if St. Agnes was wrong on the time of death, plaintiff submits no evidence to support of the TAC’s allegation that Dorothy “lay alive and suffering on her deathbed for several hours.” There is no evidence that she was suffering at any point.

Leisure Care’s Motion

The causes of action remaining against Leisure Care are the second for elder abuse and fourth for professional negligence.

Initially, the court notes that the objections submitted by Leisure Care in its reply separate statement will not be considered. Objections are to be made to the evidence, not the separate statement. Objections must be made in a separate document, not in the separate statement, and in the format specified in Cal. Rules of Court, Rule 3.1354(b). Accordingly, unless proper evidentiary objections are made at the hearing, any objections are waived.

Leisure Care submits the expert declaration of Gary Steinke, M.D., who opines that the care, treatment, and services Leisure Care provided to Dorothy at all times met the standard of care in the community and did not violate the EADACPA. (Decl. of Dr. Steinke ¶¶ 6, 10, 48.) Specifically, Dr. Steinke opines that Fairwinds (run by Leisure Care) was an appropriate placement for Dorothy and Leisure Care provided her with a sufficient level of care based on her individual physical, mental, and medical needs throughout her residency. (Steinke Dec. ¶ 9.) Dorothy did not have any restricted or prohibited health conditions that would have prevented her admission to Fairwinds. (Steinke Dec. ¶¶ 18-22.) Plaintiff’s claims that Fairwinds was not licensed to provide assisted living care to Dorothy is incorrect and not supported by any evidence. At all

times during her admission, Dorothy was assigned to an assisted living apartment on the second floor. (Davidoff Dec. ¶ 6.) At all times during Dorothy's admission to Fairwinds, the second floor was licensed by the California Department of Social Services. (See Request for Judicial Notice.)

Dr. Steinke's also opines that Leisure Care's conduct was not a substantial factor or the legal cause of Dorothy's injuries. (CACI 3103; Welf. & Inst. Code, § 15610.57; Steinke Dec. ¶¶ 7, 8.) This is sufficient to meet Leisure Care's burden as the party moving for summary judgment.

Plaintiff must establish the following elements: (1) duty; (2) breach of that duty; (3) a causal connection between the breach of duty and the resulting injuries; and (4) actual injury or damage. (*Leslie G. v. Perry & Assoc.* (1996) 43 Cal.App.4th 482; see also CACI 400 and 500.)

As Leisure Care has met its burden by means of producing expert witness declaration, plaintiff can only raise a triable issue of fact if he produces a conflicting expert witness declaration. Once a defendant has established through expert statements that the standard of care in the medical community has been met, the burden of proof shifts to the plaintiff to produce expert statements to the contrary. (*Munro v. Regents of the University of California* (1989) 215 Cal.App.3d 977,984-985.)

Plaintiff has failed to do so. Plaintiff relies on his counsel's interpretation of the medical and Fairwinds records to support arguments that Leisure Care committed neglect or failed to meet the standard of care. However, as counsel is not an expert, this is insufficient to create a triable issue of material fact. Plaintiff relies in part on the declaration of Dr. Raffle, who expressed no opinions regarding the care provided by Leisure Care. Plaintiff relies on declarations by Christine Murphy and Christina Selder. Neither is a medical expert. Rather, they are consumer policy advocates. Their declarations fail to demonstrate that they have any relevant expertise on the issues of the standard of care or causation, the main elements attacked in the moving papers. Even if they were qualified to render opinions, they fail to clearly address either the standard of care or causation. The Steinke declaration addresses all allegations against Leisure Care, and plaintiff fails to provide competent expert opinion to dispute Steinke's qualified expert opinions.

Accordingly, Leisure Care's motion must be granted.

Dr. Nareddy's Motion

Dr. Nareddy moves for summary adjudication of the first cause of action for wrongful death (which was stricken as to him) and the second cause of action for elder abuse. Accordingly, the court will only address the second cause of action.

Dr. Nareddy first contends that he did not have the care and custody of Ms. Thomas as required under the Elder Abuse Act.

The Elder Abuse Act ... defines neglect as "[t]he negligent failure of any person having the **care or custody** of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise." (*Id.*, § 15610.57, subd. (a)(1).) "Neglect includes, but is not limited to, all of the following: [¶] (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter. [¶] (2) Failure to provide medical care for physical and mental health needs.... [¶] (3) Failure to protect from health and safety hazards. [¶] (4) Failure to prevent malnutrition or dehydration." (*Id.*, § 15610.57, subd. (b).)" (*Delaney v. Baker* (1999) 20 Cal.4th 23, 34, 82 Cal.Rptr.2d 610, 971 P.2d 986 (*Delaney*).) (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 404.)

The necessary custodial relationship exists when a "certain party has assumed a significant measure of responsibility for attending to one or more of an elder's basic needs that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance." (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 158.)

To plead a cause of action for elder abuse under the Act based on neglect, a plaintiff must allege facts establishing that the defendant: "(1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care [custodial relationship] [citations]; (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs [citations]; and (3) denied or withheld goods or services necessary to meet the elder or dependent adult's basic needs, either with knowledge that injury was substantially certain to befall the elder or dependent adult (if the plaintiff alleges oppression, fraud or malice) or with conscious disregard of the high probability of such injury (if the plaintiff alleges recklessness) [citations]." (*Carter, supra*, 198 Cal.App.4th at 406-407, internal citations omitted.)

The moving papers establish that Dr. Nareddy had precisely one interaction with Dorothy as the treating physician, which occurred at approximately 16:46 on April 30, 2013. (UMF 5.) At that time Dr. Nareddy discussed Dorothy's condition with Ms. Wimberley and performed a medical assessment, including ordering IV fluids and antibiotics. (See Exhibit 3 at SAMC001653.) This single interaction is insufficient to satisfy the custodial requirement of the Elder Abuse Act, as "[t]he Act entails more than casual or limited interactions." (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 158.)

This is sufficient for Dr. Nareddy to meet his burden of showing that he did not have custodial care of Dorothy. Plaintiff relies on the declaration of Dr. Raffle in support of his contention that Dr. Nareddy had custodial care of Dorothy. To the contrary, Dr. Raffle specifically opined that St. Agnes, not Dr. Nareddy, had custodial care of Dorothy. (Raffle Dec. ¶ 7.) Plaintiff's own expert refutes plaintiff's contention, and settles the matter for Dr. Nareddy as to the elder abuse cause of action. Neglect under Welf. & Instit. Code § 15610.57(a)(1) requires a caretaking or custodial relationship, and plaintiff himself submitted a declaration from an expert saying Dr. Nareddy did not have such a relationship with Dorothy. Accordingly, summary adjudication of the second cause of action should be granted in favor of Dr. Nareddy.

The motion is not granted based on the contention that Dr. Nareddy satisfied the standard of care, as Dr. Raffle's declaration raises triable issues of fact on that issue. (Raffle Dec. ¶ 8.) But the lack of custodial care relationship is dispositive of the cause of action.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(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 11/15/16**
 (Judge's initials) (Date)

(6)

Tentative Ruling

Re: ***Perkins v. Clovis Unified School District***
Superior Court Case No.: 15CECG00941

Hearing Date: November 17, 2016 (**Dept. 403**)

Motion: Demurrer to first amended complaint by Defendant Clovis Unified School District

Tentative Ruling:

To sustain, without leave to amend. The prevailing party is directed to submit directly to this Court, within 7 days of service of the minute order, a proposed judgment dismissing the action as to the demurring defendant.

All future hearing dates are vacated.

The Court intends to deny all requests for judicial notice. (Evid. Code, § 456.)

Explanation:

The first cause of action for wrongful termination fails to state sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

Common law *Tameny* actions are barred against public entities pursuant to Government Code section 815, as well as for the actions of their employees under the doctrine of respondeat superior, because only an employer can commit the tort of wrongful termination. (*Lloyd v. County of Los Angeles* (2009) 172 Cal.App.4th 320, 329, 330.)

The second cause of action for breach of contract fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

Plaintiff Spencer Perkins ("Plaintiff") specifically alleges in his complaint that his employment was at will. (First amended complaint, ¶ 45.) Normally public employment is not held by contract, unless the parties are legally authorized to enter and in fact have entered into a bilateral contract to govern the employment relationship. (*Retired Employees Assn. of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171, 1181-1182.) There are no allegations in the first amended complaint alleging any negotiated written contract between Plaintiff and Defendant.

The third cause of action for fraud in the inducement fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

Defendant is immune under Penal Code sections 11166, 11165.7, and 11172, subdivision (b) which require it to report suspected child abuse and makes it immune from civil liability for doing so. The immunity applies even when the initial and any subsequent reports are based on a negligent diagnosis or when the report is made recklessly and with malice. (*Thomas v. Chadwick* (1990) 224 Cal.App.3d 813, 819.) The absolute immunity also applies to post-report statements that republish the initial mandated report. (*Id.* at pp. 820-821.)

The fourth cause of action for respondeat superior fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

“Respondeat superior” is not a cause of action, but a legal doctrine which holds an employer vicariously liable for the torts of its employees committed within the scope of the employment. (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 296-297.)

The fifth cause of action for ratification fails to state sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

“Ratification” is also not a cause of action, but “is the voluntary election by a person to adopt in some manner as his own an act which was purportedly done on his behalf by another person, the effect of which, as to some of all persons, is to treat the act as if originally authorized by him. A purported agent's act may be adopted expressly or it may be adopted by implication based on conduct of the purported principal from which an intention to consent to or adopt the act may be fairly inferred, including conduct which is ‘inconsistent with any reasonable intention on his part, other than that he intended approving and adopting it.’” (*Rakestraw v. Rodrigues* (1972) 8 Cal.3d 67, 73.)

The sixth cause of action for retaliation fails to state sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

No cognizable claim under Government Code section 12940, subdivision (h) is stated. The cause of action does not allege that Plaintiff did anything protected under the Fair Employment and Housing Act. (Judicial Council of Cal. Civ. Jury Instns. (June 2016 rev.) CACI No. 2505.)

The seventh cause of action for negligence fails to state sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

Government Code section 815.2 provides that a public entity “is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.” (Gov. Code, § 815.2, subd. (a).) The public entity is not liable if the employee is immune. (Gov. Code, § 815.2, subd. (b).) Absent their employment with Defendant Clovis Unified School District (“Defendant”), Defendant's employees would not be liable to Plaintiff for failure to properly train him. The necessity to train him stems only from their employment

Tentative Rulings for Department 501

(5)

Tentative Ruling

Re: ***Watanabe et al. v. Castech Pest Services et al.***
Superior Court Case No. 15 CECG 01374

Hearing Date: November 17, 2016 **(Dept. 501)**

Motions: (1) Summary Adjudication of the first through the fifth causes of action by Defendant WA Funding, Inc. dba Regency Property Management; and

(2) Summary Adjudication of the eighth causes of action by David Casner dba Castech Pest Services and Mike Conroy

Tentative Ruling:

To deny both motions. WA Funding, Inc. has not met its burden of proof pursuant to CCP § 437c(p)(2) regarding the assertion that the Release constitutes an affirmative defense to the first through fifth causes of action. David Casner dba Castech Pest Services and Mitch Conroy have not met their burden of proof pursuant to CCP § 437c(p)(2) as to their contention that the activity at issue is not ultrahazardous.

As a result of the rulings on the motions, the Court need not rule on the evidentiary objections submitted by the Plaintiffs in opposition. See CCP § 437c(q). As for Defendants' objections submitted in the Reply, the Court will only rule on those objections made to evidence that the Court deems material to the disposition of the motion. Id. The rulings on the objections are integrated in the explanation. See infra.

Explanation:

CCP § 437c(t)

Plaintiffs assert that Defendants did not comply with CCP § 437c(t)(1)(A): "Before filing a motion pursuant to this subdivision, the parties whose claims or defenses are put at issue by the motion shall submit to the court both of the following:(i) A joint stipulation stating the issue or issues to be adjudicated.(ii) A declaration from each stipulating party that the motion will further the interest of judicial economy by decreasing trial time or significantly increasing the likelihood of settlement.(B) The joint stipulation shall be served on any party to the civil action who is not also a party to the motion."

However, the first part of the statute reads: "Notwithstanding subdivision (f), a party may move for summary adjudication of a legal issue or a claim for damages other than punitive damages that **does not completely dispose of a cause of action**, affirmative defense, or issue of duty pursuant to this subdivision." Here, Defendants assert that the Release will completely dispose of all causes of action alleged against WA Funding, Inc. and will completely dispose of the eighth cause of action alleging strict liability based upon ultrahazardous activity. Therefore, CCP § 437c(t) does not apply.

Summary Adjudication by WA Funding, Inc.

The Release

The Declaration of Gina Dobson is submitted in support of the circumstances surrounding the signing of the Release as well as its terms. She states that on July 2, 2012, Mr. and Mrs. Watanabe signed a lease for one of the apartments. The lease expired on July 3, 2013 and as a result, the couple rented the apartment on a "month to month" basis. After the incident on November 4, 2013, the couple contacted Dobson and requested a refund of their rent for that month. Dobson met with the couple on November 18, 2013. See Declaration at ¶¶ 1-2 and 4-7.

Generally, a refund of a deposit is made within 21 days after the tenant moves out, providing there is no damage to the unit. In this instance, Dobson offered the couple \$1163 "up front" in exchange for a release. Id. at ¶¶ 8-9. Dobson states that she explained the terms and told the couple that they could review with an attorney if they wished. She further states that she gave them a copy and left them alone to review it. In the end, they agreed to sign. Id. at ¶¶ 10-12.

According to Dobson, the relevant terms are:

"Tenant does **forever release and discharge** Regency Properties and the owner of the Leased Premises, and any and all of their respective agents, servants, employees, predecessors, successors, assigns and assignors, officers, heirs, legatees, devisees, executors, administrators, attorneys and estates, jointly and severally from any and **all claims, demands, controversies, actions, causes of action, obligations, liabilities**, costs, expenses, attorneys' fees and **damages of whatsoever character**, nature or kind, in law or in equity, **past, present or future, known and unknown, suspected or unsuspected**, from the beginning of time to the date hereof, including, but not limited to those which were stated, claimed or alleged by Tenant in respect to the Lease and/or Leased Premises, or which could have been raised in any Complaint had one been filed, or which may be based upon or connected with any of the matters relating thereto, Save and accept only the obligations and liabilities created and preserved by this Agreement." Id. at ¶ 14.

She also points out that the Release included the following:

Upon the payment to Tenant as provided in Section 1.2 above, **Tenant forever waives and releases all claims they may have with any health injuries sustained on the Leased Premises** as provided in Section 2 below as to Regency Properties and the owner of the Leased Premises.

Id. at ¶ 16. Finally, she states that the Release contained a waiver of Civil Code § 1542. The Release is attached as Exhibit 1 to the Declaration of Dobson.

However, Plaintiffs point out that the language of this Release had apparently been used to settle an unlawful detainer action. It states at page 1 "Recitals":

WHEREAS, there is pending an action for Unlawful Detainer to recover possession of the Leased Premises..."

See Exhibit 1 attached to the Declaration of Dobson.

In fact, Dobson admitted in her deposition that she made a mistake when she failed to omit this statement. See Deposition of Dobson at 102:4-25 attached as Exhibit 1 to the Declaration of Abuyounis. She also stated that this mistake was important. Id. at 103:15-23. Finally, she also admitted that she never told the Watanabes that she would have returned their rent *immediately*, even if they *didn't* sign the Release. Id. at 54:1-25. The objections to the submission of the deposition of Dobson will be **overruled**. The testimony is relevant and material and does not consist of inadmissible expert opinion.

First, as a matter of law, no matter how explicit the language used, contracts purporting to exempt parties from liability for fraudulent or intentional acts or willful or negligent *violations of statutory law* are against public policy and therefore void. [Civil Code § 1668; *Frittelli, Inc. v. 350 North Canon Drive, LP* (2011) 202 Cal.App.4th 35 at 43; *Capri v. L.A. Fitness Int'l, LLC* (2006) 136 Cal.App.4th 1078, 1085; *Baker Pacific Corp. v. Suttles* (1990) 220 Cal.App.3d 1148 at 1153-1154] Here, all Defendants are being sued for violations of the Food & Agriculture Code §12973 and Bus. & Prof. Code § 8538(a). Food & Ag. Code § 12973 states:

"The use of any pesticide shall not conflict with labeling registered pursuant to this chapter which is delivered with the pesticide or with any additional limitations applicable to the conditions of any permit issued by the director or commissioner."

As for Bus. & Prof. Code § 8538(a), it states:

(a) A registered structural pest control company shall provide the owner, or owner's agent, and tenant of the premises for which the work is to be done with clear written notice which contains the following statements and information using words with common and everyday meaning:

(1) The pest to be controlled.

(2) The pesticide or pesticides proposed to be used and the active ingredient or ingredients.

(3) "State law requires that you be given the following information: CAUTION-PESTICIDES ARE TOXIC CHEMICALS. Structural Pest Control Companies are registered and regulated by the Structural Pest Control Board, and apply pesticides which are registered and approved for use by the Department of Pesticide Regulation and the United States Environmental Protection Agency. Registration is granted when the state finds that, based on existing scientific evidence, there are no appreciable risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree of exposure, so exposure should be minimized.

"If within 24 hours following application you experience symptoms similar to common seasonal illness comparable to the flu, contact your physician or poison control center (telephone number) and your pest control company immediately." (This statement shall be modified to include any other symptoms of overexposure which are not typical of influenza.)

"For further information, contact any of the following: Your Pest Control Company (telephone number); for Health Questions-the County Health Department (telephone number); for Application Information-the County Agricultural Commissioner (telephone number), and for Regulatory Information-the Structural Pest Control Board (telephone number and address)."

(4) If a contract for periodic pest control has been executed, the frequency with which the treatment is to be done.

Accordingly, the Release appears to be void as a matter of law. See Civil Code § 1668. Although this issue was not raised by the Plaintiffs in opposition, public policy against enforcement of illegal contracts is so strong that illegality can be raised even if not pleaded in the answer. Indeed, the court can raise the matter on *its own motion*, even if neither party raises it. [*Kallen v. Delug* (1984) 157 Cal.App.3d 940, 948, fn. 2; *Santoro v. Carbone* (1972) 22 Cal.App.3d 721, 732 (disapproved on other grounds in *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 30)]

Second, even if the Court confines its ruling to the interpretation of the Release, it is ambiguous. There was no pending unlawful detainer action. Also, if Dobson would have returned their rent immediately even without the Release, where is the consideration? Finally, as a matter of law, where the agreement sued upon is *ambiguous*, parol evidence is not only admissible, but is *required* to aid in interpretation. Unless the moving papers provide *undisputed* evidence that *both* parties had the same intent, *summary judgment is improper*. [*Walter E. Heller Western, Inc. v. Tecrim Corp.* (1987) 196 Cal.App.3d 149, 158]

Here, the moving parties have not shown that shown that the parties had the same intent. Contrast the Deposition of Dobson at page 54:1-25 with the Declaration of Bryan Watanabe at ¶¶ 14-19 and the Declaration of Melissa Watanabe at ¶¶ 14-15. The objections to these Declarations will be **overruled**. The statements are relevant and material and are not offered in support of inadmissible expert opinion. Therefore, the

motion will be denied. The Defendants have not met their burden of proof pursuant to CCP § 437c(p)(2).

Summary Adjudication by the Pest Company Defendants

Ultrahazardous Activity

As a matter of public policy, strict liability may be imposed upon defendants who cause harm as a result of “*ultrahazardous activities*”—i.e., activities that are so *inherently dangerous* that even the utmost care cannot eliminate the risk. [*Lipson v. Sup.Ct. (Berger)* (1982) 31 Cal.3d 362, 374, fn. 7; Rest.2d Torts § 519; 6 Witkin, Summary of California Law, Torts § 1414; Rest.3d Torts: Liability for Physical and Emotional Harm § 20] However, if the defendant's activity is *not* inherently dangerous but a risk of harm to others arises when it is done without due care, liability is based on *negligence*. [*Edwards v. Post Transp. Co.* (1991) 228 Cal.App.3d 980, 986; Rest.2d Torts § 520, comm. b]

An activity is considered “ultrahazardous” (or “abnormally dangerous” under the Restatement of Torts terminology) if it (a) necessarily involves a *risk of serious harm* to others that *cannot be eliminated by the exercise of due care*; and (b) is *not a matter of common usage*. [*Luthringer v. Moore* (1948) 31 Cal.2d 489, 498, 190 P2d 1, 6-7; *Edwards v. Post Transp. Co.*, supra, 228 Cal.App.3d at 986-987] Whether a given activity is “ultrahazardous” is a question of law determined by the court, and is not to be submitted to the jury. [*Edwards v. Post Transp. Co.*, supra, 228 Cal.App.3d at 983]

Six factors are considered in determining whether an activity is ultrahazardous:

- existence of a *high degree of risk* of harm to others;
- likelihood that the *harm will be great*;
- *inability to eliminate* the risk by exercise of due care;
- extent to which the activity is *not a matter of common usage*;
- *inappropriateness* of the activity to its location; and extent to which the activity's *value is outweighed by its dangerousness*.

[Rest.2d Torts § 520; *Edwards v. Post Transp. Co.*, supra, 228 Cal.App.3d at 985—California uses Rest.2d factors; see also *Ahrens v. Sup.Ct. (Pacific Gas & Elec. Co.)* (1988) 197 Cal.App.3d 1134, 1142, fn. 6 (collecting cases) (discussing use of Restatement factors); 6 Witkin, Summary of California Law, Torts § 1416; Rest.3d Torts: Liability for Physical and Emotional Harm § 20]

In *Luthringer v. Moore* (1948) 31 Cal.2d 489, 497-500, 190 P2d 1, 7-8, the Supreme Court of California held that fumigation with hydrocyanic acid gas was an ultrahazardous activity. The High Court noted that a statute classified the gas as “dangerous or lethal chemical,” and, although used by licensed pest control fumigators, there were only three such operators in Sacramento] An extensive search reveals that this is the only published California case that addresses fumigation.

(5)

Tentative Ruling

Re: **Wally Ali v. Old Navy, Inc.**
Superior Court Case No. 16 CECG 01573

Hearing Date: November 17, 2016 (**Dept. 501**)

Motions:

- (1) By Defendant to compel initial responses to Form Interrogatories;
- (2) By Defendant to compel initial responses to Special Interrogatories;
- (3) By Defendant to compel initial responses to Requests for Production of documents aka Inspection Demands; and
- (4) By Defendant seeking an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted

Tentative Ruling:

To grant the motions to compel responses to Form Interrogatories Set One, Special Interrogatories Set One and "Requests for Production of Documents" aka Inspection Demands Set One pursuant to CCP §§ 2030.290(b) and 2031.300(b). Verified responses are ordered to be served within **ten days of notice** of the ruling. All objections are deemed waived. Sanctions in the amount of **\$1185** will be imposed in favor of the moving party against the Plaintiff. Sanctions are due and payable within 30 days of notice of the ruling.

To grant the motion seeking an order deeming the truth of matters specified in the Requests for Admission Set One established pursuant to CCP § 2033.280(b) against Defendants **unless** responses in substantial conformity with CCP § 2033.220 are served **prior** to the hearing. Sanctions in the amount of **\$395.00** will be imposed in favor of the moving party and against the Plaintiff. Sanctions are due and payable within 30 days of notice of the ruling.

Explanation:

The underlying facts are not well pleaded. Plaintiff is self-represented. He alleges that he attempted to garnish the wages of one of the Defendant's employees in New Mexico but was "given the run around." As a result, he filed a complaint on May 17, 2016 alleging negligence, breach of the covenant of good faith and fair dealing, and a violation of Bus. & Prof. Code § 17200 et seq. Defendant filed an Answer.

On or about July 13, 2016, Defendant by and through its counsel propounded and served by mail Form Interrogatories Set One, Special Interrogatories, Set One, and "Request for Production of Documents" aka Inspection Demands Set One upon the

Tentative Rulings for Department 502

Tentative Rulings for Department 503

03

Tentative Ruling

Re: **Gerawan Farming, Inc. v. Keystone Strategy, LLC**
Case No. 16 CE CG 03030

Hearing Date: November 17th, 2016 (Dept. 503)

Motion: Defendant Abramson's Motion to Change Venue

Tentative Ruling:

To deny defendant's motion to change venue, and his request for monetary sanctions. (Code Civ. Proc. §§ 395, subd. (a); 395.5; 397.) To grant sanctions against defendant and in favor of plaintiff Gerawan Farming, Inc. in the amount of \$1,500. (Code Civ. Proc. § 396b.) Defendant shall pay sanctions to plaintiff within 30 days of the date of service of this order.

Explanation:

Defendant Abramson moves for a transfer of venue, contending that Fresno is the wrong county to sue him because he does not reside in Fresno and there are no other provisions of the statute that would justify suing him here. (Code Civ. Proc. § 395, subd. (a).)

Under section 395, "Except as otherwise provided by law and subject to the power of the court to transfer actions or proceedings as provided in this title, the superior court in the county where the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action." (Code Civ. Proc., § 395, subd. (a).)

However, "Subject to subdivision (b), if a defendant has contracted to perform an obligation in a particular county, the superior court in the county where the obligation is to be performed, where the contract in fact was entered into, or where the defendant or any defendant resides at the commencement of the action is a proper court for the trial of an action founded on that obligation, and the county where the obligation is incurred is the county where it is to be performed, unless there is a special contract in writing to the contrary." (Code Civ. Proc., § 395, subd. (a).)

Also, in a "mixed action", where the plaintiff alleges two or more causes of action, each of which is governed by a different venue statute, and two or more defendants are named who are subject to different venue standards, "a motion for change of venue must be granted on the entire complaint if the defendant is entitled to a change of venue on any one cause of action." (*Id.* at p. 488, internal citations omitted.)

Here, Dr. Abramson alleges that he does not reside in Fresno, and that he did not do any work related to the underlying case in Fresno. He claims that all of the work on the case was performed in San Mateo County, San Francisco, or New York. All of the depositions were taken in San Francisco, including the deposition where Dr. Abramson had his alleged anxiety attack, which is the primary basis of the complaint. Therefore, defendant concludes that Fresno is the wrong county for the action, and the court must transfer the action to San Mateo, which is defendant Keystone's primary place of business.

However, while there does not appear to be any dispute that Dr. Abramson does not reside or work in Fresno, the contract under which he has been sued was "entered into" in Fresno for purposes of sections 395, subdivision (a). The county where the offer was accepted is the county where the contract was "entered into" under sections 395. (*Wilson v. Scannavino* (1958) 159 Cal.App.2d 369, 371.) Here, plaintiff's general counsel, Jeff Marowits, states that he accepted the offer by Keystone at Gerawan's offices in Fresno. (Marowits decl., ¶¶ 5, 6.) Defendant has not offered any evidence that contradicts plaintiff's claim that it accepted the contract in Fresno. Thus, venue is proper under section 395, subdivision (a), as to Keystone because the contract for services was entered into in Fresno.

Also, while defendant has argued that the contract was for consulting work related to the underlying case, and that all of the work was done in San Mateo, San Francisco, and New York, the contract was for provision of expert witness testimony and opinions in order to litigate and try the underlying case, which was in Fresno. (Branch decl., ¶ 4, 5, and Exhibit 1 thereto.) Although the pre-trial work, depositions, and reports under the contract may have been done in other counties or states, the ultimate purpose of the contract was to have expert witnesses testify at the trial of the underlying action in support of Gerawan's claims, if and when the case went to trial. The fact that the case settled before trial does not change the fact that the contract was to be performed, at least in part, in Fresno. Thus, venue is proper as to defendant under sections 395, subdivision (a).

While Dr. Abramson argues that he has not been sued for breach of contract and thus the provisions of section 395 regarding contract claims are irrelevant to venue here, he is being sued based on the fact that he was hired by Gerawan, through its contract with Keystone, to be an expert in the underlying action. As a result, he is subject to venue in Fresno under the provisions of section 395, subdivision (a) related to claims arising out of a contract. Even though plaintiff is not suing him for breach of contract and he was not a party to the contract between Keystone and Gerawan, he was a retained expert of Gerawan for the purpose of providing expert opinions and testimony in the *Townsend* case. Indeed, he is mentioned in the invoices submitted by Keystone to Gerawan for its services in the underlying case, so he was billing hours to Gerawan through Keystone. As such, even though he is not alleged to be an actual party to the contract, he was either a subcontractor or a third party beneficiary of the contract, and the claims in the present case arise out of his allegedly fraudulent representations and negligent performance under that contract.

In fact, if not for the contract between Gerawan and Keystone, there would be no basis for Gerawan's suit against him, since there does not appear to be any other legal ground for imposing a duty of care or alleging a breach of duty by Dr. Abramson. Consequently, because plaintiff's claims against Dr. Abramson arise directly from the contract that provided for his services, and since the contract was entered into and was to be performed in Fresno, the court intends to deny the motion to change venue as to Dr. Abramson.

Finally, defendant and plaintiff have requested sanctions against each other under Code of Civil Procedure section 396b. Section 396b, subdivision (b) states, in pertinent part, "In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney's fees incurred in making or resisting the motion to transfer whether or not that party is otherwise entitled to recover his or her costs of action." (Code Civ. Proc. § 396b, subd. (b).) "In determining whether that order for expenses and fees shall be made, the court shall take into consideration (1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether the motion or selection of venue was made in good faith given the facts and law the party making the motion or selecting the venue knew or should have known." (Code Civ. Proc., § 396b, subd. (b).)

Here, the court intends to deny defendant's motion to change venue, so it will also deny his request for monetary sanctions against plaintiff for its refusal to stipulate to the change of venue. The court also intends to award sanctions to plaintiff for the cost of opposing the motion.

First of all, defendant Abramson did not make an offer to stipulate to a change of venue before bringing his motion. While he claims that he made a joint offer with Keystone before bringing the motion, the evidence shows that the offer was made by Keystone alone. It was only after Keystone made its offer that Abramson agreed and signed the stipulation, but there is no evidence that Abramson told Gerawan that it had joined in Keystone's offer. (See Dhillon decl., ¶¶ 2-5.) Also, while Abramson's counsel made a separate offer to stipulate to a change of venue on November 4th, 2016, this was long after he had filed the motion to change venue, so the offer does not meet the requirements of section 396b, subd. (b). (Supplemental Dhillon decl., ¶¶ 2-4.) Thus, Abramson's failure to meet and confer tends to support imposition of sanctions against him.

In addition, it does not appear that the motion was brought in good faith, given the clear law that holds that an action arising out of a contractual obligation may be brought in the county where the contract was entered into. (Code Civ. Proc. §§ 395, subd. (a); 395.5.) Here, there is no real dispute that the contract that gives rise to the defendant's duties was entered into in Fresno, since that was the place of acceptance. (*Wilson v. Scannavino*, *supra*, 159 Cal.App.2d at p. 371.) Thus, defendant had no good faith basis for bringing his motions to change venue, and they are subject to sanctions. However, the court intends to reduce the amount of sanctions to \$1,500, based on 5 hours per motion billed at \$300 per hour.

Pursuant to CRC 3.1312 and CCP §1019.5(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: A.M. Simpson **on** 11/15/16
(Judge's initials) (Date)

Tentative Ruling

Re: **Lee v. Fresno County Department of Behavioral Health**
Superior Court Case No. 13CECG03170

Hearing Date: November 17, 2016 (Dept. 503)

Motion: petition to compromise minor's claim

Tentative Ruling:

To deny, without prejudice. Petitioner and counsel are directed to file the petition for establishment of the trust along with a copy of the proposed special needs trust with the Probate Division of this court for approval. (Super. Ct. Fresno County, Local Rules, rule 7.19.)

Explanation:

The petitioner must file the petition with the Probate Division in order to establish a special needs trust. (Super. Ct. Fresno County, Local Rules, rule 7.19.) Once the trust is approved the petitioner may file a new petition for approval of compromise in the Civil Division.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(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: A.M. Simpson **on 11/16/16**
(Judge's initials) (Date)

(28)

Tentative Ruling

Re: ***Robert Herold and Kim Herold, as Trustees of the RT & KM Herold Living Trust v. James***

Case No. 14CECG03898

Hearing Date: November 17, 2016 (Dept. 503)

Motion: By Plaintiffs to Reset Trial Dates.

Tentative Ruling:

To set a post-settlement status conference and trial setting conference for Wednesday, December 7th, 2016 at 3:30 p.m in Department 503,. Parties and their counsel are ordered to attend.

Explanation:

[Note- as of November 15, 2016, no opposition to this motion appears in the Court's files.]

Plaintiffs Robert Herold and Kim Herold, as Trustees of the RT & KM Herold Living Trust ("Plaintiffs") move to reset trial dates in this matter.

This case involves the proper drawing of a lot line between two properties owned by the parties. This case has been to a jury trial, which resulted in a verdict in favor of Plaintiffs. Prior to a bench trial on the equitable issues, on November 20, 2015, the parties entered into a Settlement Agreement. Pursuant to that agreement, the parties agreed to a specific lot line. The Settlement Agreement is conditioned on "the issuance of an opinion letter by the City of Fresno that the new lot line as agreed to in this Agreement will not trigger any Code violations with respect to Releasee's residence." (Ex. A to Declaration of Cuttone, Settlement Agreement §3.1.2.)

No opinion letter from the City of Fresno appears in the evidence before the Court.

According to Plaintiffs, the City of Fresno rejected the proposed property line. (Cuttone Decl. ¶15.) The document provided by the Plaintiffs appears to be a lot line adjustment request, but does not appear to have any notation by the City of Fresno upon it. (Cuttone Decl. Ex. B.)

The Court therefore sets a post-settlement status conference and a trial status conference for Wednesday, December 7, 2016 at 3:30 p.m. in Department 503. The

parties and their counsel are ordered to attend the conference and be prepared to discuss whether the settlement agreement is still enforceable and, if the Court deems it appropriate, to set a trial date on the extant equitable claims.

The Court is expressing no opinion regarding the enforceability of the November 20, 2015 Settlement Agreement.

Pursuant to California Rules of Court, rule 3.1312, subdivision (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: A.M. Simpson **on 11/16/16**
 (Judge's initials) (Date)