Tentative Rulings for January 27, 2026
Department 501

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.***

21CECG02805 ***Tutelian & Company, Inc. v. Arias et al.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

_____

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(46)

Tentative Ruling

Re: ***Mayra Manning v. Kia America, Inc.***
Superior Court Case No. 25CECG01489

Hearing Date: January 27, 2026 (Dept. 501)

Motion: by Plaintiff to Compel Deposition of Defendant's PMK

Tentative Ruling:

To order the motion off calendar owing to plaintiff's failure to comply with Fresno Superior Court Local Rules, rule 2.1.17.

Explanation:

Fresno County Superior Court Local Rules, rule 2.1.17, requires that before filing, *inter alia,* a motion under Code of Civil Procedure sections 2016.010 through 2036.050, inclusive, the party desiring to file such a motion must first request an informal Pretrial Discovery Conference with the court, and wait until either the court denies that request and gives permission to file the motion, or the conference is held and the dispute is not resolved at the conference. Exception is made for motions to compel initial responses to written discovery requests and motions to compel a party or subpoenaed person who has not timely served an objection pursuant to Code of Civil Procedure section 2025.410. The parties are referred to rule 2.1.17 for further particulars.

Here, plaintiff Mayra Manning's evidence in support of the motion indicated an objection to the notice of deposition was served by defendant Kia America, Inc., on September 4, 2025. (Rasa Decl., ¶ 11, Exh. G.) As the deposition had been noticed for September 9, 2025, the objection was timely. (*Id.*, ¶ 3, Exh. A; see Code Civ. Proc., § 2025.410 subd. (a).) Thus, plaintiff was required to request a pretrial discovery conference with the court and obtain permission to file the instant motion. Plaintiff failed to do so. Accordingly, the motion will not be heard, and is ordered off calendar.

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: DTT on 1/22/2026.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***McGranahan v. General Motors, LLC***
Superior Court Case No. 24CECG02809

Hearing Date: January 27, 2026 (Dept. 501)

Motion: by Defendant General Motors, LLC for Summary Judgment or, in the Alternative, Summary Adjudication

Tentative Ruling:

To grant the motion for summary judgment. (Code Civ. Proc., § 437c.) Defendant General Motors, LLC (defendant) shall submit a proposed judgment consistent with the terms of this ruling within 10 days of service of the order.

Explanation:

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., §437c, subd. (c); *Schacter v. Citigroup* (2009) 47 Cal.4th 610, 618.) In determining a motion for summary judgment, "'we view the evidence in the light most favorable to plaintiffs'" and "'liberally construe plaintiffs' evidentiary submissions and strictly scrutinize defendant['s] own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiffs' favor.'" (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 96-97, citations omitted.) The court does not weigh evidence or inferences (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 856), nevertheless, "'[w]hen opposition to a motion for summary judgment is based on inferences, those inferences must be reasonably deducible from the evidence, and not such as are derived from speculation, conjecture, imagination, or guesswork.'" (*Waschek v. Department of Motor Vehicles* (1997) 59 Cal.App.4th 640, 647, citation omitted; Code Civ. Proc., § 437c, subd. (c).)

On July 1, 2024, plaintiff Nathaniel McGranahan (plaintiff) filed his Complaint alleging causes of action for violations of the Song-Beverly Act. The first cause of action alleges violations of the replacement or restitution remedies of Civil Code section 1793.2 where a manufacturer fails to conform the vehicle to the applicable express warranty. The second cause of action alleges defendant is in breach of the implied warranty of merchantability accompanying the vehicle. Plaintiff's third cause of action alleges defendant's failure to timely bring the vehicle into conformity with the applicable express warranty is in violation of Civil Code section 1973.2, subdivision (b).

Defendant moves for summary judgment on the basis that all of plaintiff's claims are barred under the Song-Beverly Act based on *Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189 and *Nunez v. FCA US LLC* (2021) 61 Cal.App.5th 385. *Rodriguez* addresses the issue of whether a used vehicle is subject to express warranties against a manufacturer. (*Rodriguez v. FCA US, LLC, supra*, 17 Cal.5th 189, 206.) *Nunez* addresses the issue of

whether a used vehicle is subject to implied warranties against a manufacturer. (*Nunez v. FCA US LLC, supra*, 61 Cal.App.5th 385, 398-399.)

"The [Song-Beverly Consumer Warranty Act "Act" (Civ. Code, § 1790 et seq.) is a remedial statute designed to protect consumers who have purchased products covered by an express warranty." (*Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 798.) "[T]the purpose of the Act was to address difficulties faced by some consumers in enforcing express warranties, by the creation of additional remedies, the ' " 'refund-or-replace' "' provisions and implied warranties, for cases in which a purchaser's goods cannot be repaired to meet express warranty standards after a ' " 'reasonable number of attempts.' "'" (*Dagher v. Ford Motor Co.* (2015) 238 Cal.App.4th 905, 916, (*Dagher*) internal citations omitted.)

In essence, the Act "supplements, rather than supersedes, the provisions of the California Uniform Commercial Code." (*Krieger v. Nick Alexander Imports, Inc.* (1991) 234 Cal.App.3d 205, 213.) Accordingly, "[s]ince the Act creates more and different statutory rights (e.g., implied warranties) than the express warranty contractual transfer could have conferred on [the plaintiff], he would have to individually qualify under the Act's definitions of buyer and seller and consumer goods, to assert those additional enforcement remedies." (*Dagher, supra,* 238 Cal.App.4th at p. 926.)

In *Rodriguez, supra,* 17 Cal.5th 189, the California Supreme Court addressed whether "a two-year-old car with over 55,000 miles on it" with an unexpired manufacturer's new car warranty qualifies as "a 'new motor vehicle' because it was a 'motor vehicle sold with a manufacturer's new car warranty' in the application of the refund-or-replace remedy in Civil Code section 1793.2, subd. (d)(2). (*Id*., at pp. 195-196.) There, the California Supreme Court held "that the phrase 'other motor vehicle sold with a manufacturer's new car warranty' . . . means a vehicle for which a manufacturer's new car warranty is *issued with the sale*." (*Id*., at p. 206, emphasis added.)

Here, defendant asserts as undisputed that plaintiff purchased his vehicle used from Western Motors, which is *not* a GM-authorized dealership. (UMF Nos. 1-3.) Plaintiff was not the vehicle's original owner. (UMF No. 4.) GM did not issue or provide any new or additional warranty coverage to plaintiff or the vehicle when plaintiff purchased the vehicle used. (UMF No. 8.) Plaintiff received only the balance of coverage remaining under the warranty that GM had issued when the vehicle was originally delivered. (UMF No. 8.) As such, defendant asserts the undisputed facts that plaintiff purchased a used vehicle precludes his causes of action for violations of Civil Code section 1793.2 and breach of the implied warranty of merchantability. The court finds defendant has met its burden in moving for summary judgment and the burden is shifted to plaintiff to demonstrate there is a triable issue of material fact.

In opposition, plaintiff does not dispute the facts set forth in the separate statement. Instead, plaintiff argues that he is entitled to the replacement or reimbursement remedies of Civil Code section 1793.2, subdivision (d)(1), applicable to all consumer goods. Defendant cites no legal authority for this position. Additionally, the allegations of the Complaint would indicate plaintiff alleges violations based upon defendant's failure "to either promptly replace the *new motor vehicle* or to promptly make restitution in accordance with the Song-Beverly Act." (Complaint, ¶ 28, emphasis

added.) Although plaintiff argues he is seeking remedies under subdivision (d)(1), the Complaint itself alleges entitlement to the remedies of subdivision (d)(2) with respect to new motor vehicles.

Plaintiff additionally argues defendant can be liable for violations of Civil Code section 1793.2, subdivision (a)(3), which requires manufacturers of consumer goods to make available to authorized service and repair facilities sufficient literature and parts to effect repairs during the express warranty period, and subdivision (b), requiring the service and repair of nonconforming goods within 30 days. Plaintiff cites no legal authority for this interpretation.

Defendant argues in reply that plaintiff's interpretation is not supported by the statute. "Consumer goods" for purposes of the Song-Beverly Act are defined as "*any new product* or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes … ." (Civ. Code, §1791, subd. (a), emphasis added.) Thus, the replacement or reimbursement remedies described in Civil Code section 1793.2, subdivision (d)(1) applicable to consumer goods would not be available for plaintiff's purchase of a used vehicle. (See, UMF No. 2.)

The California Supreme Court in interpreting Civil Code section 1793.2 found the provisions are intended to apply to the same "universe of goods," that is "consumer goods sold in this state and for which the manufacturer has made an express warranty." (See, *Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 487-488.) Thus, the "goods" referenced in Civil Code section 1793.2, subdivisions (a)(3) and (b) are also "consumer goods" and not used goods. (*Ibid*.)

The court finds the Civil Code section 1793.2, subdivisions (a)(3), (b) and (d)(1), regarding express warranties for consumer goods do not extend to plaintiff's purchase of a used vehicle, as such a vehicle is not a "consumer good" as defined by the Song-Beverly Act. (*Rodriguez v. FCA US, LLC, supra*, 17 Cal.5th 189, 206; see, *Cummins, Inc. v. Superior Court*, *supra*, 36 Cal.4th at pp. 487-488.)

There is no dispute that plaintiff purchased a used vehicle and defendant did not issue or provide any new or additional warranty coverage for the vehicle to plaintiff with his purchase. Accordingly, the first and third causes of action alleging violations of Civil Code section 1793.2 regarding the purchase of new goods fail.

For the second cause of action, only distributors and retail sellers may be liable under the Song-Beverly Act for breaches of implied warranties for used vehicles. (*Nunez v. FCA US LLC*, *supra*, 61 Cal.App.5th at p. 389.) Defendant has presented evidence that it is not a distributor or seller regarding this transaction. (UMF Nos. 2, 3.) Plaintiff's opposition makes no argument with respect to the merits of the second cause of action for breach of implied warranty in violation of the Song-Beverly Act.

As there is no dispute that defendant is neither the distributor nor retail seller of the used vehicle purchased by plaintiff, the second cause of action alleging breach of implied warranty in violation of the Song-Beverly Act fails.

Plaintiff has not met his burden of demonstrating there is a genuine dispute of material fact that preclude summary judgment of his Complaint. Accordingly, the court intends to grant summary judgment of the entire Complaint in favor of defendant.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 1/23/2026.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***Mario Quintanilla v Becky Modesto***
Superior Court Case No. 23CECG03747

Hearing Date: January 27, 2026 (Dept. 501)

Motion: Petition to Compromise the Claims of Ariana Hernandez Carrillo and Dominick Leonardo Carrillo

Tentative Ruling:

To grant the Petitions. The proposed amended orders filed 1/6/2026 have been or will be signed. No appearances are necessary.

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: DTT (Judge's initials) on 1/23/2026 (Date).

(46)

Tentative Ruling

Re: ***Michael Reinke, individually and successor-in-interest to Rose Marie Reinke v. Leticia Rodriguez***
Superior Court Case No. 25CECG01207

Hearing Date: January 27, 2026 (Dept. 501)

Motion: Demurrer and Motion to Strike

Tentative Ruling:

To take judicial notice as to the first, second and fourth requested items. To deny taking judicial notice of the third requested item.

To sustain the demurrers to the first and fourth causes of action in the Complaint for failure to state facts sufficient to constitute a cause of action, with leave to amend. (Code Civ. Proc. § 430.10, subd. (e).) To overrule the special demurrer for uncertainty. (Code Civ. Proc. § 430.10, subd. (f).)

To grant the motion to strike the prayers for damages associated with the first cause of action, as requested in the Notice of Motion to Strike. (Code Civ. Proc. §§ 435, 436.)

Explanation:

JUDICIAL NOTICE

Defendant Saint Agnes Medical Center ("Saint Agnes" or "defendant") requests judicial notice of (1) the First Amended Complaint ("FAC"), (2) the Court's Minute Order and Tentative Ruling dated August 27, 2025, (3) portions of the decedent Rose Marie Reinke's ("decedent") medical records from her admission at Saint Agnes, and (4) a printout of Nina's Home License Verification through the California Department of Social Services.

As to items (1) and (2), judicial notice is granted pursuant to Evidence Code section 452, subdivision (d), as these are records of the court. As to item (4), judicial notice is granted pursuant to Evidence Code section 452, subdivision (h), as the judicially noticeable fact is capable of immediate and accurate determination by accessing the public California Department of Social Services website.

As to item (3), the court denies taking judicial notice as personal medical records are not generally judicially noticeable, especially at the demurrer stage.

DEMURRER

Defendant generally demurs to plaintiff Michael Reinke's ("plaintiff") first and fourth causes of action for elder abuse and resulting wrongful death, on the grounds that

the FAC fails to state facts sufficient to constitute causes of action and that the Complaint is uncertain. (Code. Civ. Proc. § 430.10, subds. (e) and (f).)

Legal Standard for Demurrer

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

Legal Standard for Elder Abuse

In order to state a claim for elder abuse, plaintiff must allege that defendant is guilty of more than negligence. She must allege that defendants acted recklessly, oppressively, fraudulently or maliciously. (Welf. & Inst. Code, § 15657; *Delaney v. Baker* (1999) 20 Cal.4th 23, 31.) "'Recklessness' refers to a subjective state of culpability greater than simple negligence, which has been described as a 'deliberate disregard' of the 'high degree of probability' that an injury will occur. [Citations omitted.] Recklessness, unlike negligence, involves **more than 'inadvertence, incompetence, unskillfulness, or a failure to take precautions'** but rather rises to the level of a 'conscious choice of a course of action . . . with knowledge of the serious danger to others involved in it.' [Citation.]" (*Id*. at pp. 31-32, emphasis added.) "Section 15657.2 can therefore be read as making clear that the acts proscribed by section 15657 do not include acts of simple professional negligence, but refer to forms of abuse or neglect performed with some state of culpability greater than mere negligence." (*Id*. at p. 32.)

"As used in the Act, neglect refers not to the substandard performance of medical services but, rather, 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.' [Citation omitted.] Thus, the statutory definition of 'neglect' speaks not of the undertaking of medical services, but of the failure to provide medical care. [Citation.]" (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 783.)

"The plaintiff must prove 'by clear and convincing evidence' that 'the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of' the neglect. Oppression, fraud and malice 'involve "intentional," "willful," or "conscious" wrongdoing of a "despicable" or "injurious" nature." ' Recklessness involves ' "deliberate disregard" of the "high degree of probability" that an injury will occur' and 'rises to the level of a 'conscious choice of a course of action ... with knowledge of the serious danger to others involved in it.' '**Thus, the enhanced remedies are available only for "acts of**

egregious abuse" against elder and dependent adults.' In short, '[i]n order to obtain the Act's heightened remedies, a plaintiff must allege conduct essentially equivalent to conduct that would support recovery of punitive damages.'" (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 405, internal citations omitted, emphasis added.)

"The plaintiff must allege (and ultimately prove by clear and convincing evidence) 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; (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs; 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). The plaintiff must also allege (and ultimately prove by clear and convincing evidence) that the neglect caused the elder or dependent adult to suffer physical harm, pain or mental suffering. Finally, the facts constituting the neglect and establishing the causal link between the neglect and the injury 'must be pleaded with particularity,' in accordance with the pleading rules governing statutory claims." (*Id.* at pp. 406–407, internal citations omitted, emphasis added.)

Analysis

(1) Defendant's Responsibility Towards the Decedent & (2) Knowledge of Conditions Affecting Basic Needs

The parties continue to disagree as to defendant's responsibility towards the decedent and whether Saint Agnes had a "custodial or caretaking relationship" with the decedent which would allow these Elder Abuse claims to be brought against it.

"The [Elder Abuse] Act does not apply unless the defendant health care provider had a substantial caretaking or custodial relationship, involving ongoing responsibility for one or more basic needs, with the elder patient. It is the nature of the elder or dependent adult's relationship with the defendant—not the defendant's professional standing—that makes the defendant potentially liable for neglect." (*Kruthanooch v. Glendale Adventist Medical Center* ("*Kruthanooch*") (2022) 83 Cal.App.5th 1109, 1124, citing *Winn v. Pioneer Medical Group, Inc.* ("*Winn*") (2016) 63 Cal.4th 148, 152.) "While it may be the case that many of the 'care custodian[s]' defined under section 15610.17 could have 'the care or custody of' an elder or a dependent adult as required under section 15610.57, plainly the statute requires a separate analysis to determine whether such a relationship exists." (*Winn, supra*, 63 Cal.4th at p. 164.)

Here, plaintiff alleges that the decedent was admitted to Saint Agnes on April 1, 2024. (FAC., ¶ 35.) At the time of admission, Saint Agnes identified decedent as having "[s]evere dementia with other behavioral disturbance, unspecified dementia type." (*Ibid*.) The FAC alleges that in cases of severe dementia, a patient "cannot understand nor communicate basic needs; forgets how to eat, drink, walk, and use the bathroom; is non-verbal or minimally verbal; and cannot recognize danger…; and is completely

dependent on staff for survival." (*Id*., ¶ 38.) Because Saint Agnes specified decedent's dementia was severe, it was or should have been known to them that she was unable to provide for her own basic needs. (*Ibid*.)

The FAC alleges that "[d]ecedent's severe dementia was well-documented in her medical records and plainly observable to anyone interacting with her. She was non-verbal or minimally verbal, disoriented, unable to follow instructions, unable to recognize danger, and completely dependent on others for activities of daily living ("ADLs"). As a result, she required total care and constant supervision to prevent life-threatening complications such as pressure ulcers, falls, malnutrition, aspiration, and sepsis." (FAC, ¶ 39.)

The court in *Winn* contemplated the existence of a robust caretaking or custodial relationship as "a relationship where 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*, *supra*, 63 Cal.4th at p. 158.) However, the *Winn* court cautioned against "blurring" the distinction between neglect under elder abuse and conduct actionable under ordinary tort remedies. (*Id*., at p. 160.)

The court in *Kruthanooch* discussed the case of *Oroville Hospital v. Superior Court* (2022) 74 Cal.App.5th 382, whereby services such as wound-care did not five rise to a substantial caretaking or custodial relationship. (*Kruthanooch, supra*, 83 Cal.App.5th at p. 1128.) Assumption of care, including attending to basic needs, for a limited duration does not necessarily amount to a robust caretaking or custodial relationship. (*Id*., at p. 1130, see also p. 1131.)

Plaintiff argues that because Saint Agnes was responsible for decedent's basic needs while she was in their care, there was a custodial relationship subject to the Elder Abuse Act. Defendant, on the other hand, argues that the nature of decedent's visit to Saint Agnes, which was an ER visit for a UTI, was with the specific intention that the patient would be discharged to a longer-term care facility after the UTI was addressed. Plaintiff refutes any contention that this was a quick visit – decedent was a patient of Saint Agnes for three days, and plaintiff argues that her admission to the hospital required total care responsibility. (FAC, ¶ 38.)

Under these circumstances, the court is inclined to find that the relationship between the decedent and Saint Agnes is insufficiently alleged to rise to the level of a custodial relationship. The allegations of the FAC centrally focus on decedent's severe dementia. The arguments of the opposition are that her severe dementia rendered her completely unable to make decisions or communicate, affecting the care for her basic needs. However, the FAC also acknowledges that her son was her appointed decision maker. (See FAC, ¶ 51.) Decedent, while allegedly unable to make her own decisions, had a legal representative to advocate for her care. As acknowledged by plaintiff, there are no allegations that Saint Agnes failed to adequately care for decedent's basic physical needs while in the care of Saint Agnes, and instead the allegations purport that because decedent had severe dementia, Saint Agnes made an improper decision to discharge her to Nina's Home, harming decedent through abandonment rather than negligent provision of medical services.

While Saint Agnes was aware of the decedent's diagnosis of severe dementia which prevented her from caring for her own basic needs, the court is not convinced that providing the necessary medical services to a patient with severe dementia who had a present and active legal representative rises to the level of a custodial relationship subject to the Elder Abuse Act. The treatment of a patient's UTI, similar to treatment of a wound, and the temporary assumption of a patient's basic needs while the medical care is provided, does not appear to be sufficiently robust to equate the caretaking or custodial relationship contemplated under the Elder Abuse Act.

(3) Denial of Necessary Services to Meet the Elder's Basic Needs

Even should a custodial relationship be found, a cause of action for Elder Abuse would require that Saint Agnes denied or withheld services necessary to meet the decedent's basic needs, with knowledge of disregard of the probability of causing injury to the elder.

Plaintiff alleges that the decedent required total care responsibility from Saint Agnes, including discharge services. (FAC, ¶ 38.) Plaintiff asserts that Saint Agnes had a duty to discharge its patients only to care facilities that could meet the individualized needs of each patient. (*Id*., ¶ 41.)

Again, there are no allegations in the FAC that Saint Agnes failed to adequately care for decedent's basic physical needs while in the care of Saint Agnes. Here, the essence of plaintiff's argument is that Saint Agnes knowingly and inappropriately discharged the decedent to an unlicensed board and care facility that could not meet the decedent's care needs, constituting abandonment and neglect.

Much of plaintiff's arguments and allegations rely on the fact that Nina's Home "did not have any licenses whatsoever to operate in any capacity." (FAC, ¶ 48.) By discharging decedent to Nina's Home, an *unlicensed* facility, Saint Agnes "failed to follow Health and Safety Code section 1262.5 and further failed to protect decedent from health and safety hazards when they abandoned her on April 3, 2024 and discharged her to Nina's Home (a knowingly unlicensed residential care facility for the elderly that was cited by the CDSS for being unlicensed)." (*Id*., ¶ 50.)

The court has taken judicial notice of the license verification on the California Department of Social Services ("CDSS") website. The allegations of the Complaint are not accepted as true if they contradict or are inconsistent with facts judicially noticed by the court. While the FAC alleges many times that Nina's Home was unlicensed, the FAC goes so far as to allege that Nina's Home had no license to operate *in any capacity*. (See FAC, ¶ 48.) This is contradicted by the judicially noticed evidence of the license verification on the CDSS website, which indicates Nina's Home has been licensed since December 31, 2015. (See RJN, ¶ 4, Exh. D.)

The crux of plaintiff's cause of action for elder abuse by abandonment and neglect is that Saint Agnes discharged decedent to "an unlicensed, understaffed, and unsafe facility incapable of meeting her individualized needs." (FAC, ¶ 112.) The FAC goes so far as to allege that defendant "had actual knowledge" that Nina's Home had

been cited by CDSS for unlicensed operations. (*Ibid*.) However, this allegation presents as a mere contention, deduction, or conclusion of fact, which is not admitted on demurrer. (See *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

Ultimately, the elder's "condition" relied on by plaintiff is the decedent's severe dementia. Plaintiff purports that Saint Agnes's knowledge of this condition created a "duty" of Saint Agnes to discharge decedent to a facility that could appropriately care for the patient. (See Health and Saf. Code, § 1262.5.) Health and Safety Code section 1262.5 merely provides that a hospital have a written discharge planning policy and process that makes appropriate arrangements, which may be a skilled nursing or intermediate care facility. (*Ibid*.) The discharge plan must "ensure that planning is appropriate to the condition of the patient being discharged from the hospital and to the discharge destination and meets the needs and acuity of patients." (*Id*., § 1262.5 subd. (j).) Plaintiff's entire opposition on this point is that discharge to an unlicensed board and care facility is neglect that led to decedent's death. Confirming licensure is not a requirement of the code section, and, according to the fact judicially noticed, Nina's House did have licensure in some capacity, contradictory to the allegations of the FAC and the opposition by plaintiff.

The allegations in the FAC are insufficient to allege the type of particular facts needed to support a statutory elder abuse claim, as they heavily rest on defendant's knowledge of decedent's severe dementia and purported knowledge of Nina's Home's lack of license. While plaintiff's allegations regarding decedent's discharge from Saint Agnes may support a claim for professional or general negligence, they do not show the type of reckless, malicious, fraudulent, or oppressive conduct needed to state a claim for elder abuse or neglect. (*Carter*, *supra*, at pp. 405-407.) The facts that have been alleged do not show the type of egregious abuse or neglect that would show elder abuse. Causes of action based on a healthcare provider's alleged professional negligence are specifically excluded from the Elder Abuse Act. (Welf. & Inst. Code § 15657.2.)

As the cause of action for elder abuse by neglect and abandonment does not stand as currently pled, neither does the cause of action for wrongful death as a result of such elder abuse. Therefore, the court intends to sustain the demurrers to the first and fourth cause of action for elder abuse and resulting wrongful death by elder abuse, for failure to state facts sufficient to constitute a cause of action. Leave to amend is granted.

Uncertainty

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

Defendant demurred on the basis of uncertainty, but then did not argue uncertainty in support of its demurrers. Defendant had every opportunity to argue uncertainty in its demurrer and failed to do so. Therefore, the special demurrers for uncertainty as to the first and fourth causes of action are overruled.

MOTION TO STRIKE

The court intends to grant the motion to strike the prayers for damages corresponding with the first cause of action, including punitive damages and attorneys' fees, as requested in the Notice of Motion to Strike.

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: DTT on 1/23/2026.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Leandro Leal v. Julian Govea***
Superior Court Case No. 25CECG02067

Hearing Date: January 27, 2026 (Dept. 501)

Motion: to Compel Initial Responses to Discovery (3x)

Tentative Ruling:

These motions are taken off calendar as it does not appear from the court's record that moving papers were filed.

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: DTT on 1/26/2026.
(Judge's initials) (Date)