

Tentative Rulings for January 29, 2026
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

25CECG00221 *Ochoa v. Carniceria Colima, Inc.* (Dept. 403)

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

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Tentative Ruling

Re: ***Cruz v. Fresno Ambulatory Surgery Center***
Superior Court Case No. 23CECG01792

Hearing Date: January 29, 2026 (Dept. 403)

Motion: Unopposed Demurrer to Fourth Amended Complaint

Tentative Ruling:

To sustain without leave to amend. (Code Civ. Proc., § 430.10, subd. (e).) Within seven days of service of the order by the clerk defendant shall submit to the court a proposed order dismissing the action.

Explanation:

This action arises out of a medical procedure performed by Fresno Ambulatory Surgery Center on decedent Julia de la Cruz on 5/11/2020, mother of plaintiff Frank Cruz. Plaintiff alleges that decedent passed away on 5/13/2020 as a result of the negligence by defendant Fresno Ambulatory Surgery Center. The second cause of action, the sole cause of action remaining, alleges intentional concealment of the risk of internal bleeding.

To make a claim for “fraud and deceit based on concealment,” the plaintiff must assert: (1) the defendant intentionally “concealed or suppressed a material fact”; (2) the defendant had “a duty to disclose” to the plaintiff; (3) the defendant “[intended] to defraud the plaintiff”; (4) the plaintiff was “unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact”; and (5) the plaintiff suffered damages as a result. (*Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 248.)

Here, plaintiff still fails to allege a duty to disclose to the plaintiff, Frank Cruz. Plaintiff alleges that “[defendant] had a duty to disclose to Plaintiff because Decedent had designated Plaintiff as her agent to make health care decisions for her (Exhibit A) and Defendants knew and had such designation in their medical records.” (4AC ¶ 2.) While plaintiff may have been decedent's agent for purposes of communication and making health care decisions, the duty to disclose risks is owed to the patient. (See *Flores v. Liu* (2021) 60 Cal.App.5th 278, 292.) Inasmuch as plaintiff is asserting this cause of action for his own damages, he has not shown or cited to authority establishing that a duty to disclose is owed to family of the patient such that failure to disclose would create a cause of action for the family member. Accordingly, the court intends to sustain the demurrer. No leave to amend will be granted, as the complaint has already been amended three times, and plaintiff has not opposed this demurrer.

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

(03)

Tentative Ruling

Re: **Ortiz v. Aguilar**
Case No. 23CECG00742

Hearing Date: January 29, 2026 (Dept. 403)

Motion: Defendant Kiavi Funding, Inc.'s Demurrer to First Amended Complaint

Tentative Ruling:

To sustain defendant Kiavi Funding, Inc.'s demurrer to the first amended complaint for failure to state facts sufficient to constitute a cause of action and uncertainty, with leave to amend. Plaintiffs shall serve and file their second amended complaint within ten days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

The court intends to sustain the demurrer to the entire first amended complaint (FAC) as to Kiavi Funding, Inc., as the FAC does not state any facts that would tend to support plaintiffs' claims against Kiavi, nor have plaintiffs alleged that Kiavi has asserted an interest in the subject property. Plaintiffs' FAC alleges detailed facts against defendants Joseph Aguilar and Varo-Real Investments, Inc. in support of their claims for declaratory relief, unjust enrichment, quiet title, fraudulent transfer, and quiet title – adverse possession. However, no facts whatsoever are alleged against Kiavi Funding, which was added to the action in place of Doe 1. Plaintiffs do not allege any facts showing how Kiavi has asserted an interest in the subject property, or that it has done or failed to do anything that would tend to injure plaintiffs or affect their claim on the property. Plaintiffs also fail to allege facts showing that there is any present dispute between them and Kiavi regarding the property. Therefore, plaintiffs' FAC fails to state any valid causes of action against Kiavi, and it is uncertain as to what the basis for plaintiffs' claims is.

As a result, the court will sustain the demurrer to the entire FAC against Kiavi for failure to state facts sufficient to constitute a cause of action and uncertainty. Plaintiffs have not filed any opposition to the demurrer or made any attempt to show how they could allege more facts to state a claim against Kiavi. However, it does appear that plaintiffs might be able to allege more facts to support their claims against Kiavi, as Kiavi apparently admits that it holds a deed of trust on the property, which tends to show that it has an interest in the property. (Demurrer, p. 10:12-14.) Therefore, the court will grant leave to amend.

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

Tentative Ruling

Issued By: Img on 1-28-26.
(Judge's initials) (Date)

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Tentative Ruling

Re: ***Bobby Ocampo v. Charles Matoian Enterprises, Inc.***
Superior Court Case No. 24CECG02091

Hearing Date: January 29, 2026 (Dept. 403)

Motion: Compel Further (2x)

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: img on 1-28-26
(Judge's initials) (Date)