Tentative Rulings for March 3, 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.***

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

25CECG01341 ***John Delafuente v. Alexandria Osornio*** **is continued to Wednesday March 4, 2026, at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(37)

Tentative Ruling

Re: ***Pickens v. Macias***
Superior Court Case No. 25CECG03419

Hearing Date: March 3, 2026 (Dept. 403)

Motion: Defendant Dr. Edgar S. Macias, M.D.'s Demurrer to the Complaint

Tentative Ruling:

To overrule.

Explanation:

Judicial Notice

Defendant seeks judicial notice of the Complaint. Plaintiffs have raised no objection to this. Judicial notice of court documents is appropriate pursuant to Evidence Code section 452, subdivision (d). The court will take judicial notice of the Complaint.

Plaintiffs seek judicial notice of medical literature on Guillain-Barre Syndrome, a list of medications taken by plaintiff Lawrence Pickens and articles regarding cognitive impairment associated with each medication listed, and plaintiff Lawrence Pickens' medical records. Plaintiffs argue these are proper subjects of judicial notice pursuant to Evidence Code section 452, subdivision (h). This provides judicial notice may be taken of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code, § 452, subd. (h).) Defendant objects as to each. Here, these are not appropriate subjects for judicial notice, particularly where plaintiffs utilize these documents to argue the merits of their claim that plaintiff Lawrence Pickens' medical condition resulted in physical and cognitive incapacity. The court declines to take judicial notice of these documents.

Demurrer

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether the plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of a plaintiff's possible difficulty or inability in proving the allegations of his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc*. (1974) 12 Cal.3d 915, 918.)

In ruling on a demurrer, whether a plaintiff will be able to prove his or her case at trial is not considered. (*Griffith v. Department of Public Works* (1956) 141 Cal.App.2d 376, 381.) A demurrer admits the truth of all material factual allegations in the complaint. The question of a plaintiff's ability to prove those allegations, or the possible difficulty in making such proof does not concern the reviewing court. (*Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 922.) On 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 University of California* (2008) 44 Cal. 4th 876, 883.) A demurrer is not the appropriate procedure for determining the truth of disputed facts or what inferences should be drawn when competing inferences are possible. (*Crosstalk Productions, Ltd. v. Jacobson* (1998) 65 Cal.App.4th 631, 635.)

It is not the function of the demurrer to challenge the truthfulness of the complaint and for purposes of ruling on the demurrer, all facts pleaded in the complaint are assumed to be true, no matter how improbable. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

Statute of Limitations

Regarding the statute of limitations, where the dates alleged in the complaint show the cause of action is time-barred, a general demurrer is appropriate. (*Vaca v. Wachovia Mortgage Corp*. (2011) 198 Cal.App.4th 737, 746.) Plaintiffs are to bring claims "within the limitations period after accrual of the cause of action." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806.) Causes of action accrue when the cause of action is complete, with all of its elements. (*Ibid*.) However, where a plaintiff does not discover, or have reason to discover, a cause of action, then the discovery rule postpones accrual. (*Id. at p. 807.*) Reason to discover exists where a plaintiff has reason to suspect a factual basis for a cause of action. (*Ibid*.)

The relevant statute of limitations for a medical negligence claim is "three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered the injury, whichever occurs first." (Code Civ. Proc., § 340.5) "[M]ere *suspicion* of negligence suffices to trigger the limitation period." (*Knowles v. Superior Court* (2004) 118 Cal.App.4th 1290, 1295, emphasis in original.) Plaintiff Lawrence Pickens' negligent infliction of emotional distress claim is tethered to his professional medical negligence claim. Thus, the relevant statute of limitations is the same as that for medical negligence.

The relevant statute of limitations for a loss of consortium claim is "one year from the date of injury [giving] rise to the loss of consortium." (*Priola v. Paulino* (1977) 72 Cal.App.3d 380, 383.)

A demurrer based on the statute of limitations is appropriate where "the complaint shows on its face that the statute bars the action." (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315, quoting 1 Schwing, Cal. Affirmative Defenses (Thompson West 2007) Statute of Limitations, § 25:78, p. 1609.) The bar "must clearly and affirmatively appear on the fact of the complaint." (*Id*. at p. 1316.) Here, defendant argues that the date for accrual of injury appears with Exhibit A to the Complaint, a complaint to the Medical Board of California by plaintiff Lawrence Pickens dated

December 28, 2023 asserting professional negligence. Notably, Exhibit A contains two different dates: December 28, 2023 appears at the top of the document, but January 10, 2024 appears where plaintiff's signature is found on the document. It does indicate a suspicion that defendant's negligence led to plaintiff having to pursue a more aggressive and difficult course of treatment from a belated cancer diagnosis. (Complaint, Exh. A.) It does not discuss Guillain-Barre Syndrome. (Ibid.) However, plaintiffs assert, at least in part, that defendant's negligence resulted in plaintiff Lawrence Pickens acquiring Guillain-Barre Syndrome. (Complaint, ¶ 21.) Clear and affirmative dates are not alleged on the face of the Complaint regarding this alleged injury. As such, it cannot be said that a date indicating an absolute bar based on the statute of limitations for medical negligence or negligent infliction of emotional distress appears on the face of the Complaint here. Additionally, as it is unclear whether the injury for which plaintiff Mary Pickens attributes her loss of consortium claim is related to the surgical procedures or Guillain-Barre Syndrome, it cannot be said that a date indicating an absolute bar based on the statute of limitations for loss of consortium appears on the face of the Complaint. (Complaint, ¶¶ 42-45.)

Thus, the court overrules the demurrer as to each cause of action. In light of this, the court need not address plaintiff Lawrence Pickens' potential incapacity or the doctrine of equitable tolling.

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: lmg on 3-2-26.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Leticia Verduzco Delgado v. Jensen Packing, L.P.***
Superior Court Case No. 25CECG04861

Hearing Date: March 3, 2026 (Dept. 403)

Motion: Compel Arbitration

Tentative Ruling:

The motion is 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: ________lmg____________________ on ______3-2-26________________.
(Judge's initials) (Date)