Tentative Rulings for April 15, 2025
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.

24CECG04801 ***Marez v. Pacific Gas and Electric Company*** **is continued to Wednesday, May 14, 2025, 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

(03)

Tentative Ruling

Re: ***Hecht v. Right Swing, Inc.***
Case No. 24CECG04241

Hearing Date: April 15, 2025 (Dept. 403)

Motion: Defendant's Petition to Compel Arbitration

Tentative Ruling:

To grant defendant's petition to compel plaintiffs to arbitrate their individual claims. To dismiss plaintiffs' class claims, as they have waived their right to bring representative claims on behalf of defendants' other employees. To stay the pending court action until the arbitration of the individual claims has been resolved.

Explanation:

Pursuant to California Code of Civil Procedure section 1281.2,

> On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that:
>
> (a) The right to compel arbitration has been waived by the petitioner; or
>
> (b) Grounds exist for the revocation of the agreement.
>
> (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact. (Cal. Civ. Proc. Code § 1281.2.)

Also, under Code of Civil Procedure section 1290, "The allegations of a petition are deemed to be admitted by a respondent duly served therewith unless a response is duly served and filed." (Code Civ. Proc., § 1290.)

"California courts traditionally have maintained a strong preference for arbitration as a speedy and inexpensive method of dispute resolution. To this end, 'arbitration agreements should be liberally construed', with 'doubts concerning the scope of arbitrable issues [being] resolved in favor of arbitration [citations].'" (*Market Ins. Corp. v. Integrity Ins. Co.* (1987) 188 Cal. App. 3d 1095, 1098, internal citations omitted.)

"This strong policy has resulted in the general rule that arbitration should be upheld 'unless it can be said with assurance that an arbitration clause is not susceptible to an interpretation covering the asserted dispute. [Citation.]' [Citations.] [¶] It seems clear that

the burden must fall upon the party opposing arbitration to demonstrate that an arbitration clause cannot be interpreted to require arbitration of the dispute.'" (*Bono v. David* (2007) 147 Cal.App.4th 1055, 1062.)

However, "[a]s our Supreme Court stressed several decades ago, the contractual terms themselves must be carefully examined before the parties to the contract can be ordered to arbitration: 'Although "[t]he law favors contracts for arbitration of disputes between parties" [citation], " 'there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate....'" [Citations.] In determining the scope of an arbitration clause, "[t]he court should attempt to give effect to the parties' intentions, in light of the usual and ordinary meaning of the contractual language and the circumstances under which the agreement was made [citation]." [Citation.]' [¶] Following on from this, and as other courts of appeal have regularly observed, the terms of the specific arbitration clause under consideration must reasonably cover the dispute as to which arbitration is requested. This is so because '[t]here is no public policy favoring arbitration of disputes which the parties have not agreed to arbitrate.'" (*Id*. at p. 1063.)

"[W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement - either fraud in the execution voiding the agreement, or a statutory defense of waiver or revocation (see § 1281.2, subds. (a), (b)) - that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (Rosenthal v. Great Western Fin. Securities Corp. (1996)14 Cal. 4th 394, 413.) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute, and general principles of California contract law guide the court in making this determination. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534.)

In the present case, defendant has met its burden of showing that an agreement to arbitrate all disputes between the parties exists. Plaintiffs signed the arbitration agreement when they were hired by defendant. (Kahn decl., ¶¶ 3, 4, and Exhibits 1 and 2 thereto.) The agreement states that the parties agree that, "[a]ny and all claims or controversies arising out of Employee's application or candidacy for employment, employment, or cessation of employment with the Company shall be resolved through final and binding arbitration using the Judicate West, Inc. Arbitration Rules & Procedures in existence as of the time the dispute arises." (Kahn decl., Exhibits 1 and 2, p. 1, § 1.) "The claims which are subject to arbitration shall include, but not be limited to, any and all employment-related claims or controversies, such as breach of employment agreement, breach of the covenant of good faith and fair dealing, negligent supervision or hiring, wrongful discharge in violation of public policy, *unpaid wages or overtime under the state and federal wage payment laws, claims for minimum wages, meal and rest period violations, inaccurate wage statement claims,* breach of privacy claims, intentional or negligent infliction of emotional distress claims, fraud, defamation, and divulgence of trade secrets." (*Id*. at § 2, italics added.)

Thus, the agreement broadly covers all disputes between the parties, including the types of wage and hour claims that plaintiffs have alleged in their complaint. Also, the agreement contains a waiver of the right to bring class or representative actions on behalf of other employees. (*Id*. at p. 2, § 6.)

Nevertheless, plaintiffs have now filed a complaint against defendant on behalf of themselves and other similarly situated employees of defendant, alleging claims for unpaid minimum wages and overtime, failure to provide meal and rest breaks, failure to reimburse business expenses, failure to pay final wages on termination, failure to provide accurate wage statements, and unfair business practices. Plaintiffs have refused to submit their claims to arbitration despite defendants' request that they do so. As a result, defendants have met their burden of showing that an agreement to arbitrate exists and that it covers plaintiffs' claims.

Consequently, the burden shifts to plaintiffs to show that the agreement is invalid or unenforceable. However, plaintiffs have not filed any opposition to the petition or presented any evidence or legal argument that would tend to show that the agreement should not be enforced. Therefore, the court intends to find that plaintiffs have not met their burden of showing that agreement should not be enforced, and it will grant the petition to enforce the agreement. The court intends to order plaintiffs to arbitrate their individual claims under the terms of the agreement. It will also dismiss the putative class claims, as plaintiffs have agreed to waive their right to bring class claims on behalf of defendant's other employees. Finally, the court will stay the pending court action until the arbitration has been resolved.

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 4-7-25.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Guadalupe Garcia-Fuentes v. Timothy Howes***
Superior Court Case No. 23CECG05191

Hearing Date: April 15, 2025 (Dept. 403)

Motion: Plaintiff's Motion for Relief Under Code of Civil Procedure Section 473, Subdivision (b)

Tentative Ruling:

To deny the plaintiff's motion for discretionary relief under Code of Civil Procedure section 473, subdivision (b).

Explanation:

After she was injured in a motor vehicle accident, the plaintiff, Guadalupe Garcia-Fuentes (Plaintiff), filed a complaint for personal injury against one named defendant—the driver, Timothy Connor Howes (Defendant). Defendant moved for summary judgment against Plaintiff, based on a release dated June 13, 2023 (Release). Defendant presented undisputed evidence that Plaintiff signed the Release before filing her complaint.

On January 30, 2025, the court granted Defendant's motion for summary judgment and entered judgment on February 24, 2025. Plaintiff now moves to set aside the Release and the subsequent judgment, claiming "it was the result of an excusable clerical mistake[.]" (See Rpy., p. 9:13-15.) Plaintiff bases her motion on the discretionary provisions of subdivision (b) of the Code of Civil Procedure section 473 (hereafter section 473), which provide in part:

> The court may, upon any terms as may be just, relieve a party . . . from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.

The court denies Plaintiff's motion for the following reasons: (1) Plaintiff's motion did not include a proposed pleading; (2) the alleged mistake was not excusable; (3) the Release from which Plaintiff seeks relief is not a judgment, dismissal, order, or other proceeding taken against Plaintiff; and (4) Plaintiff failed to act with diligence in bringing her motion.

Proposed Pleading Must Accompany Application

Section 473, subdivision (b) explicitly requires Plaintiff, as the moving party, to include proposed new pleadings as part of the application, "*otherwise the application shall not be granted*[.]" (§ 473, subd. (b), italics added.) Plaintiff fails to do so. Therefore, the court denies Plaintiff's motion for failure to include any proposed pleadings, or otherwise show how the alleged clerical mistake could have altered the result.

When the court previously analyzed Defendant's motion for summary judgment, it based its analysis, as it must, on the allegations in Plaintiff's complaint. The court found Defendant met his burden and Plaintiff failed to raise a triable issue of material fact. The court notes Plaintiff has sometimes misinformed the court about various facts. For example, in her memorandum opposing Defendant's summary judgment motion, Plaintiff misinformed the court that Kaylie R. Quarles (Quarles) was a co-defendant. Contradicting the allegations of her complaint, Plaintiff argued that when the accident occurred, Defendant "was operating a vehicle owned by Co-defendant [Quarles], which was insured under a separate automobile insurance policy issued by Progressive Insurance." (Plaintiff's Opp., p. 2:9-12, some capitalization omitted, attached to Plaintiff's moving papers as part of ex. B.) In fact, Plaintiff did not name Quarles as a co-defendant in the complaint, Plaintiff did not allege Quarles owned the vehicle involved in the accident, and Plaintiff made no reference to a settlement agreement or an insurance company. Instead, Plaintiff alleged Defendant's negligence caused "Defendant's vehicle" to collide with Plaintiff's vehicle. (Ex. B [Comp., p. 5].)

In her statement of facts in support of the instant motion for relief, Plaintiff misinforms the court that AAA Insurance, not Defendant, filed the summary judgment motion. Plaintiff also presents a timeline that differs from the undisputed facts presented in Defendant's summary judgment motion.

For example, to support its summary judgment motion, Defendant submitted a true and correct copy of the Release, dated June 13, 2023, which included Plaintiff's signature and a statement that Plaintiff signed it "under the direction and advice" of her attorney, Alex Megeredchian, followed by Mr. Megeredchian's purported signature. Plaintiff presented no admissible evidence to dispute the genuineness of the signatures, the date of the Release, or the language of the Release. For this motion for discretionary relief, Plaintiff's failure to follow the required procedure by submitting a proposed pleading gives the court no factual or legal basis to grant the motion.

Nature of Mistake—Clerical or Failure to Meet Professional Standard

Not only does Plaintiff fail to submit a proposed pleading, but she fails to demonstrate the excusable nature of the claimed mistake. To determine if a mistake warrants discretionary relief, the court must determine if the mistake was excusable (due to a clerical error anyone without legal training could have made) or inexcusable (due to an attorney's failure to meet the professional standard of care). Plaintiff now asks the court to set aside the Release and the Judgment based on the following "mistake":

> On April 13, 2023, [Mr.] Megeredchian instructed his employee, Gonzalo Torres (Torres), not to send the signed [R]elease back to Progressive

> Insurance until Plaintiff had settled with [Defendant's] insurer, AAA Insurance, for an amount in excess of the $15,000.00 policy limit. Despite these explicit instructions, Torres inadvertently sent the executed [R]elease back to Progressive Insurance. . . . [¶] Following this, on June 8, 2023, Plaintiff issued a thirty-day time-limited demand to AAA Insurance for $120,000 as a full and final settlement of all claims against [Defendant]. However, AAA Insurance refused to extend any settlement offer, forcing Plaintiff to initiate litigation. [¶] . . . [¶] As a result of this inadvertent mistake, which was made contrary to the direct instructions given by [Mr.] Megeredchian, Plaintiff now seeks relief under . . . [section 473, subdivision (b)] to set aside the unintended [R]elease and prevent substantial prejudice to Plaintiff's claims.

(Plaintiff's memo., pp. 3:24 – 4:11; 5:1-3, citations and some capitalization omitted.)

Plaintiff states a release was executed on or before April 13, 2023, mistakenly mailed to an insurer, then a subsequent settlement offer was made to a different insurer on June 8, 2023. These events necessarily occurred before Plaintiff and Mr. Megeredchian signed the Release, which is dated June 13, 2023. In light of Plaintiff's discovery admission that the Release was genuine, the court finds Plaintiff's timeline for this motion, which differs from the timeline presented in the summary judgment motion, lacks credibility.

The court previously considered Plaintiff's argument concerning a mistake in connection with its determination of the summary judgment motion, but suggested Plaintiff would not be entitled to relief based on a mistake:

> Furthermore, Plaintiff's complaint, filed after she signed the Release, does not include a request to set aside the Release, nor does she make a motion to set aside the Release now based on mandatory or discretionary grounds under Code of Civil Procedure section 473. Had Plaintiff made such a request, it is unlikely she could have established an excusable error.
>
> *In Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249 (*Zamora*), the California Supreme Court held that the trial court properly granted relief from a mistake after a legal assistant made a "typo" in preparing a section 998 settlement offer by typing the word "against" instead of "in favor of." The defendant promptly accepted the offer, which was the exact opposite of the plaintiff's intent. The high court explained the analysis the trial court must apply to exercise its discretion to determine if an error is excusable--because it is a clerical or ministerial mistake that anyone with no legal training could have made—or inexcusable due to an attorney's failure to meet the professional standard of care:
>
> > "A party who seeks relief under section 473 on the basis of mistake or inadvertence of counsel must demonstrate that such mistake, inadvertence, or general neglect was excusable because the negligence of the attorney is imputed to his client and may not be offered by the latter as a basis for relief." (*Generale Bank Nederland v. Eyes of the*

> *Beholder Ltd.* (1998) 61 Cal.App.4th 1384, 1399.) In determining whether the attorney's mistake or inadvertence was excusable, "the court inquires whether 'a reasonably prudent *person* under the same or similar circumstances' might have made the same error.' " (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276, italics added by Supreme Court.) In other words, the discretionary relief provision of section 473 only permits relief from attorney error "fairly imputable to the client, i.e., mistakes anyone could have made." (*Garcia* [*v. Hejmadi* (1997)] 58 Cal.App.4th [674,] 682.) "Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore excusable. To hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice." (*Ibid.*)

(*Zamora, supra,* 28 Cal.4th at p. 258.)

Under the "reasonably prudent person standard," an attorney gets the benefit of relief under section 473, subdivision (b) only where the mistake might be made by a person with no special training or skill. (*Pazderka v. Caballeros Dimas Alang, Inc.* (1998) 62 Cal.App.4th 658, 671 (*Pazderka*).) For example, an attorney's failure to include a provision for attorney fees and costs in an offer to compromise is not the type of mistake "'ordinarily made by a person with no special training or skill.'" (*Ibid.*; *Premium Commercial Services Corp. v. Nat. Bank of Cal.* (1999) 72 Cal.App.4th 1493, 1496-1497 [trial court abused its discretion by setting aside section 998 settlement based on counsel's mistaken belief that offer included provision for attorney fees and costs].)

Thus, had Plaintiff requested relief based on a mistake, to prevail, she would have the burden to show the Release contained a ministerial mistake "anyone could have made." (*Zamora, supra,* 28 Cal.4th at p. 258.) But the preparation or review of a Release is not a clerical task ordinarily performed by a person without legal training. If an attorney fails to meet the professional standard of care, the appropriate relief is via an attorney malpractice action. (*Ibid.*)

The entire one-page Release does not contain language ordinarily used by a person with no special training or skill. Unlike *Zamora,* the mistake here is more than a clerical error. Furthermore, the law favors settlements:

> It is important to recognize there is a strong public policy favoring settling of disputes. (*Zhou v. Unisource Worldwide* (2007) 157 Cal.App.4th 1471, 1475.) "We note that there is a well-established policy in the law to discourage litigation and favor settlement. Pretrial settlements are highly favored because they diminish the expense of litigation." (*Nicholson*

> v. *Barab* (1991) 233 Cal.App.3d 1671, 1683.) Additionally, "Freedom of contract is an important principle, and courts should not blithely apply public policy reasons to void contract provisions." (*VL Systems, Inc. v. Unisen, Inc.* (2007) 152 Cal.App.4th 708, 713.) [Fn.] The power to void a contract should be exercised only where the case is free from doubt. (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 777, fn. 53.)

(*Kaufman v. Goldman* (2011) 195 Cal.App.4th 734, 745–746 [upholding settlement agreement negotiated with advice of counsel].)

Here there is neither an allegation nor evidence of fraud or undue influence, and the Release is not unconscionable. As the court explained in *Pazderka*:

> Permitting the court to unravel such [settlement] agreements based on mistake or evidence of no intent, as the trial court did here, would contravene the policy objectives of section 998. [¶] . . . . [¶] Our conclusion is consistent with the Supreme Court's holding that a " 'valid compromise agreement has many attributes of a judgment, and in the absence of a showing of fraud or undue influence is decisive of the rights of the parties thereto and operates as a bar to the reopening of the original controversy.' (*Shriver v. Kuchel* (1952) 113 Cal.App.2d 421, 425.)" (*Folsom [v. Butte County Assn of Governments* (1982)] 32 Cal.3d [668,] 677.) Here, there is no evidence of fraud or undue influence; thus, the court abused its discretion in vacating the judgment and granting rescission.

(*Pazderka, supra,* 62 Cal.App.4th at pp. 672-672.)

In summary, the court finds Plaintiff fails to meet her burden to raise a triable issue of material fact. But this does not leave Plaintiff without a remedy. As the court restated in *Pazderka*:

> Although our conclusion may seem harsh, it will advance the clear purpose of section 998, which is to encourage the settlement of lawsuits prior to trial [citation]. If courts could set aside compromise agreements on the grounds of mistake, section 998 judgments would spawn separate, time-consuming litigation. It bears repeating: Section 473, subdivision (b), was not intended to permit attorneys "to escape the consequences of their professional shortcomings" (*Hejmadi, supra,* 58 Cal.App.4th at p. 685) or to insulate them from malpractice claims.

(*Pazderka, supra,* 62 Cal.App.4th at p. 672.)

(Jan. 30, 2025, Minute Order, pp. 15-17.) As the court suggested in its ruling on the summary judgment motion, the court now finds the review of a release to settle a claim is not a clerical task. Therefore, Plaintiff fails to provide sufficient credible evidence of a clerical error to justify a basis for discretionary relief.

Section 473 Applies Only to Judgments, Dismissals, Orders or Other Proceedings Taken Against the Moving Party

Furthermore, Defendant correctly contends Code of Civil Procedure section 473, subdivision (b) applies only to a "judgment, dismissal, order, or other proceeding taken against' the moving party—that is the section applies only to litigation—judicial actions and proceedings. (See, e.g., Code Civ. Proc., §§ 22 and 23 [defining "action" and "special proceeding" for purposes of that code]; see also *English v. IKON Business Solutions, Inc.* (2001) 94 Cal.App.4th 130, 36–149 [it is not court's task to extend scope of § 473, subd. (b); its mandatory provisions do not apply to summary judgments, even if unopposed, because a summary judgment is not a "default," "default judgment," or "dismissal" within the meaning of the mandatory dismissal provisions of § 473, subd. (b).])

Plaintiff provides no authority to support her contention that section 473 applies to an agreement made before the plaintiff files a lawsuit. Defendant correctly distinguishes Plaintiff's cited cases: *Zamora, supra,* 28 Cal.4th 249, 260-261, involved an offer to compromise under Code of Civil Procedure section 998 after a lawsuit had been filed, which is part of a judicial proceeding; the other cases Plaintiff cites involve either the filing or entry of dismissals, a default judgment, or an unauthorized stipulated judgment. (See Def.'s memo., p. 3:24-18.)

Unreasonable Delay

Finally, the court finds Plaintiff's motion is untimely. Had Plaintiff been entitled to relief under section 473, that section requires plaintiff to seek relief "within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." Plaintiff seeks to set aside the Release based on a mistake allegedly occurring on April 13, 2023, more than six months before she filed her complaint to initiate this action on December 20, 2023. Plaintiff not only failed to file her motion within a reasonable time of learning of the mistake, she filed it far beyond the six-month mandatory deadline. For these reasons, the court exercises its discretion to deny Plaintiff's motion for discretionary relief under section 473, subdivision (b).

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 4-14-25.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Fridoon Alvand v. Kaiser Permanente***
Superior Court Case No. 24CECG04119

Hearing Date: April 15, 2025 (Dept. 403)

Motion: Defendant's Demurrer and Motion to Strike

Tentative Ruling:

To sustain the demurrer to the complaint, with Plaintiff granted 30 days' leave to file a First Amended Complaint. Plaintiff must include cause of action attachments for each cause of action if filing a Judicial Council form complaint. (Code Civ. Proc., § 430.10, subd. (e), (f).) The time in which the complaint may be amended will run from service of the order by the clerk.

To grant Defendant's motion to strike the prayer for punitive damages. (Code Civ. Proc., §§ 436, 425.13; Civ. Code, § 3294.)

The striking of the punitive damages allegations is without prejudice to Plaintiff filing a motion under Code of Civil Procedure section 425.13, subdivision (a).

Explanation:

Demurrer

The Judicial Council form complaint indicates that the action is based on general negligence, products liability, and premises liability. However, there are no cause of action attachments.

Use of the Judicial Council form complaint requires the use of attachments for alleging the causes of action. Paragraph 10 of the form pleading states, "[t]he following causes of action are attached and the statements above apply to each *(each complaint must have one or more causes of action attached)*: …" The plaintiff is to check the boxes indicating the causes of action being alleged, and add to the form complaint attachments alleging the elements and facts pertinent to each cause of action. Having failed to include any cause of action attachments, the complaint fails to state facts sufficient to state any cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

Moreover, 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*.)

Here, no facts are pled to allow the defendant to determine what issues must be admitted or denied. Accordingly, the complaint is uncertain and the special demurrer is sustained.

Leave to amend is granted so that Plaintiff can include the relevant cause of action attachments if he opts to utilize the Judicial Council form complaint again.

Motion to Strike

Defendant moves the court for an order striking the prayer for punitive damages pursuant to Code of Civil Procedure section 425.13.

Code of Civil Procedure section 425.13, subdivision (a), provides,

> (a) In any action for damages arising out of the professional negligence of a health care provider, **no claim for punitive damages shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive damages to be filed**. The court may allow the filing of an amended pleading claiming punitive damages on a motion by the party seeking the amended pleading and on the basis of the supporting and opposing affidavits presented that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294 of the Civil Code. The court shall not grant a motion allowing the filing of an amended pleading that includes a claim for punitive damages if the motion for such an order is not filed within two years after the complaint or initial pleading is filed or not less than nine months before the date the matter is first set for trial, whichever is earlier. (Emphasis added.)

As pled, the complaint is unclear as to which cause of action Plaintiff prays for punitive damages. Also, no facts have been alleged to provide clarity to this request. Seeking punitive damages from a healthcare provider based upon an intentional act does not necessarily relieve plaintiffs of the requirements of Code of Civil Procedure section 425.13. Where the injury is alleged to have arisen out of the manner in which the professional services were provided, the cause of action falls under the purview of Code of Civil Procedure section 425.13. (*Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, 192.)

Furthermore, even if Plaintiff's allegations, particularly for the premises and products liability claims, do not arise out of the manner in which professional medical services were provided, then Plaintiff's request for punitive damages is still subject to strike as there are no factual allegations regarding malice, oppression, or fraud. When seeking punitive damages, the plaintiff must allege facts showing fraud, malice or oppression. (Civ. Code, § 3294, subd. (a), (c); *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29-30.)

As such, the Court strikes the prayer for punitive damages. If Plaintiff amends the complaint and still wishes to seek punitive damages based on services provided by a medical professional, he must first seek leave of the court pursuant to Code of Civil

Procedure section 425.13. In the event Plaintiff amends the complaint and seeks punitive damages unrelated to services provided by a medical professional, such request will remain subject to Civil Code section 3294.

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 4-14-25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Angulo v. Toyota Motor Sales, USA, Inc. et al.***
Superior Court Case No. 23CECG04712

Hearing Date: April 15, 2025 (Dept. 403)

Motion: By Plaintiff Julieta Angulo for an Award of Attorney Fees and Costs

Tentative Ruling:

To grant the motion for an award of attorney fees and award $13,415.00 in fees in favor of plaintiff Julieta Angulo. To award costs in the amount of $1,058.26.

Explanation:

Fees

Plaintiff Julieta Angulo ("Plaintiff") seeks an award of attorney fees under Civil Code section 1794, subdivision (d).

It is not this court's practice to presume the statutory basis upon which an award of fees may issue. California law requires express authorization, by statute or contract, for an attorney fee award to a prevailing party. (Code Civ. Proc. § 1021.) The court looks to the understanding of the duty of candor owed to the court by attorneys. (Rules of Prof. Conduct, rule 3.3(a).) The court considers the lack of opposition by defendant Toyota Motor Sales, USA, Inc. ("Defendant") to the basis upon which Plaintiff seeks an award of fees, which is suggestive of an agreement by the parties to seek a fee award independent of the settlement. Accordingly, the court proceeds. As Plaintiff does not attach the settlement agreement, it is unclear whether Plaintiff received a full restitution. (*See* Saeedian Decl., ¶ 23.) Neither party suggests whether the settlement contemplated any treatment of the civil penalty sought. The fee request is considered in light of this outcome.

The amount of attorney's fees awarded is a matter within the court's discretion. (*Clayton Development Co. v. Falvey* (1988) 206 Cal.App.3d 438, 447.) In determining the reasonable amount to award, "the court should consider ... 'the nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney's efforts, his learning, his age, and his experience in the particular type of work demanded [citation]; the intricacies and importance of the litigation, the labor and necessity for skilled legal training and ability in trying the cause, and the time consumed.'" (*Ibid*.) An award of costs must be "reasonably necessary to the conduct of the litigation" and per (c)(3), shall be "reasonable" in amount. (Code Civ. Proc. § 1033.5, subd. (c)(2).) Plaintiff as the moving party bears the burden to prove the reasonableness of the number of hours devoted to this action. (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1325.)

A trial court may not rubberstamp a request for attorney fees, and must determine the number of hours reasonably expended. (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271.) A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48.) Lodestar refers to the "number of hours reasonably expended multiplied by the reasonable hourly rate" of an attorney. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096.)

Counsel for plaintiff seeks to set the lodestar at $22,254.00. Counsel submits a total of 60.4 hours of billed time across six timekeepers. As to attorneys, counsel submits hourly rates of $695 for Michael Saeedian and Adina Ostoia; $525 for Christopher Urner; $350 for Jorge Acosta; $300 for Sergo Aivazov; and $250 for law clerks. The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group v. Drexler*, *supra*, 22 Cal.4th at p. 1095.) The rate is measured in the market place, and reflects several factors: the level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case. (*Shaffer v. Superior Court* (1995) 33 Cal.App.4th 993, 1002.) The proposed rates, based in part on the Laffey Matrix which has no calibration to Fresno County, are significantly higher than local community rates. The court sets Saeedian and Ostoia at $450 per hour, Urner at $400 per hour, Acosta and Aivazov at $300 per hour, and law clerks at $150 per hour.

Following a careful review of the entries submitted, the court finds that a few entries that are disproportionately billed (Saeedian Decl., ¶ 28, and Ex. A, p. 9 [0.3 to draft a proposed order]); purely clerical (*id.*, p. 3 [draft an email to client to schedule a phone call]); double billed tasks (*id*., p. 3 [reviewing client notes and repair records, draft memorandum]; 8 [correspondences to client to request payoff quote]); have no discernable purpose (*id.*, pp. 7 [reviewing a driver license], 8 [reviewing and updating payment history after a settlement has been reached, which is also double billed]); and excessive client communications. While Plaintiff correctly notes that it is the client's right to obtain updates as desired, that does not make the billing reasonable. Further, some of the contact appears to have been initiated by counsel on case status updates. (*E.g.*, *id.*, p. 7 [leaving a voice mail to client who then called for a discussion of the case].) The court does not credit 12.2 hours as billed. Using the rates set above, the lodestar is set at $13,415.00.

Plaintiff does not seek an imposition of a lodestar. Accordingly, the motion is granted for an award of attorney fees in the amount of $13,415.00.

Costs

Costs are sought via memorandum of costs.

If the items on a verified statement appear to be proper charges, the statement is prima facie evidence of their propriety and the burden is on the party contesting them to show that they were not reasonable or necessary. (*See Hooked Media Group, Inc. v. Apple Inc.* (2020) 55 Cal.App.5th 323, 338.) The losing party does not meet this burden by arguing that the costs were not necessary or reasonable but must present evidence to prove that the costs are not recoverable. (*Litt v. Eisenhower Med. Ctr.* (2015) 237

Cal.App.4th 1217, 1224.) If the claimed items are not expressly allowed by statute and are objected to, the burden of proof is on the party claiming them as costs to show that the charges were reasonable and necessary. (*Foothill-De Anza Community College Dist. v. Emerich* (2007) 158 Cal.App.4th 11, 29.)

Plaintiff submits costs in the amount of $1,058.26. No opposition was filed to contests the costs sought. Costs are awarded as costs in the amount of $1,058.26.

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 4-14-25.
(Judge's initials) (Date)