Tentative Rulings for April 16, 2024
Department 503

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.

20CECG02931 ***Tiffany Higgins v. Brian Gooch*** **is continued to Thursday, May 16, 2024, at 3:30 p.m. in Department 503**

21CECG03472 ***Isaac Clark v. Jason Pritchard, SR*** **is continued to Wednesday, May 15, 2024, at 3:30 p.m. in Department 503**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

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(41)

Tentative Ruling

Re: ***Sophia Burgess vs. McHenry Auto Sales***
Superior Court Case No. 22CECG00020
Hearing Date: April 16, 2024 (Dept. 503)

Motion: Plaintiff's motion for order granting leave to amend complaint

Tentative Ruling:

To grant. The court does not deem the proposed first amended complaint filed as of the date of the order. Rather, plaintiff must separately file the first amended complaint within 10 days from the clerk's service of the minute order granting this motion (New allegations/language must be set in **boldface** type.).

Explanation:

Motions for leave to amend the pleadings are directed to the sound discretion of the judge. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading[.]" (Code Civ. Proc., § 473, subd. (a)(1); see also Code Civ. Proc., § 576.) Judicial policy favors resolution of cases on the merits, and thus the court's discretion as to allowing amendments will usually be exercised in favor of permitting amendments. This policy is so strong, that denial of a request to amend is rarely justified, particularly where "the motion to amend is timely made and the granting of the motion will not prejudice the opposing party." (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.)

The plaintiff seeks to amend the complaint to add a specific dollar amount for damages, to name a Doe defendant, to add a dba allegation, and to allege three new causes of action to clear title to the subject vehicle. The court finds the plaintiff has followed the applicable procedural statutes and the California Rules of Court, and the defendants will not be prejudiced by the proposed amendments,

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: jyh on 4/15/24.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Earl Riley v. SMART Sheet Metal Workers' Local Union No. 104***
Superior Court Case No. 22CECG00829

Hearing Date: April 16, 2024 (Dept. 503)

Motion: by Defendant for Entry of Judgment

Tentative Ruling:

To grant and dismiss the complaint with prejudice. The court will sign the proposed judgment in favor of defendant SMART Sheet Metal Workers' Local Union No. 104 and against plaintiff Earl Riley.

Explanation:

Under Code of Civil Procedure section 438, subdivision (h)(4),

> …[I]f the motion [for judgment on the pleadings] is granted with respect to the entire complaint or answer with leave to file an amended complaint or answer, as the case may be, but an amended complaint or answer is not filed, then after the time to file an amended complaint or answer, as the case may be, has expired, judgment shall be entered forthwith in favor of the moving party.

(Code Civ. Proc., § 438, subd. (h)(4)(D).)

In the case at bench, defendant filed a motion for summary judgment of plaintiff's claims that was heard December 21, 2023. The court ordered that the motion be treated as one for judgment on the pleadings due to the clear failure of the complaint to state fact sufficient to constitute a cause of action. Motion for judgment on the pleadings was granted with plaintiff given 20 days leave to amend. After 47 days, plaintiff has not filed an amended complaint despite being granted leave to do so.

Defendant's motion for entry of judgment complies with the requirements of Code of Civil Procedure sections 438, subdivisions (h) and (i).

Therefore, the court intends to grant the motion and enter judgment as requested.

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: jyh on 4/15/24.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Gary Hatcher v. Sri Gorty, MD Inc***
Superior Court Case No. 23CECG01981

Hearing Date: April 16, 2024 (Dept. 503)

Motion: Defendants' Demurrer to the First Amended Complaint

Tentative Ruling:

To sustain the demurrer as to defendant Sri Gorty, MD Inc. Plaintiff is granted 10 days' leave to file the Second Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

To find the demurrer moot as to Jose Renteria in light of the dismissal entered November 17, 2023 as to this defendant.

Explanation:

No Continuance/Extension

Plaintiff, after the time his opposition was due, has filed a request for a continuance or extension of time to file his opposition. This request was filed as a notice and motion, without a new hearing date attached to said notice. In addition to procedural issues with this request, the request does not appear well founded. Plaintiff asserts that he was struggling with the effects of long Covid-19 from September 2023 to approximately the end of January 2024. However, while it does appear that plaintiff was repeatedly ill during this time, he acknowledges that he was able to work during much of this time. The court is concerned that if plaintiff was well enough, albeit fatigued, to attend work as a physician, then it would seem that at some point during the three months he had to file an opposition, he would have been able to do so. The court will note that it will take into consideration that plaintiff did not intend to concede on the merits of defendants' demurrer and will address the merits.

Merits

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 plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of 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.)

Breach

On demurrer, the court accepts as true facts appearing in the exhibits attached to the complaint, although if the facts in the exhibits contradict the facts in the complaint, the facts stated in the exhibits take precedence. (*Holland v. Morse Diesel Intern., Inc.* (2001) 86 Cal.App.4th 1443, 1446; *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567-568; *Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 180; *Software Design & Application, Ltd. v. Hoefer & Arnett, Inc.* (1996) 49 Cal.App.4th 472, 484.)

The interpretation of a contract is a question of law unless the interpretation turns upon the credibility of extrinsic evidence. The clear language of a provision governs unless it leads to an absurdity (Civ. Code, § 1638). The undisclosed belief or intention of a party is irrelevant in the absence of fraud or mistake. (*Meyers v. Guarantee Sav. & Loan Association* (1978) 79 Cal. App. 3d 307, 311.) Generally, on demurrer a plaintiff's interpretation of a contract must be accepted as correct in testing the sufficiency of the complaint. (*Aragon-Haas v. Family Security Ins. Services, Inc.* (1991) 231 Cal.App.3d 232, 239—court must regard the complaint as admitting "not only the contents of the instrument, but also any pleaded meaning to which the instrument is <u>*reasonably*</u> susceptible" (emphasis added).) But as this is limited to *reasonable* interpretations, it does <u>not</u> give a plaintiff license to place a *clearly erroneous* construction upon the terms. (*Marina Tenants Ass'n v. Deauville Marina Dev. Co.,* (1986) 181 Cal.App.3d 122, 128—allegations taken as true "[s]o long as the pleading does not place a clearly erroneous construction upon the provisions of the contract…")

Here, plaintiff has pled a breach of contract claim, specifically stating that defendants failed to comply with section 5.2.1 of the contract. Section 5.2.1 governs notice of early termination of the agreement: "Either party at any time may terminate this Agreement with or without cause upon giving the other party ninety (90) days' written notice of termination." (FAC, Exh. A.) Plaintiff asserts that he was not given this notice, because the contract was terminated <u>by plaintiff</u> on May 11, 2019 and defendants caused plaintiff to leave his employment on May 31, 2019. (FAC, BC-2.) Plaintiff asserts that when he terminated the contract on May 11, 2019, then the 90 days began.

Defendants argue that the contract was set to expire on May 31, 2019 pursuant to Section 5.1. Section 5.1 states, "This Agreement shall commence on June 1, 2018 ("Effective Date") and continue for a term of one (1) year, expiring on May 31, 2019 ("Expiration Date"), unless earlier terminated as hereinafter provided." (FAC, Exh. A.) There is also a holdover provision in section 5.1.1 which states, "If, upon mutual agreement of the parties, Provider continues to provide Services after the Expiration Date of this Agreement, this Agreement may continue on the same terms and conditions for a holdover period of not greater than six (6) months." (FAC, Exh. A.)

Here, as alleged, it would appear that while plaintiff gave notice of terminating the contract on May 11, 2019, the expiration date of the contract happened to be sufficiently near in time that it would expire naturally prior to the conclusion of a 90-day notice period. Plaintiff has not alleged that there had been any mutual agreement for plaintiff to provide his services beyond the May 31, 2019 expiration date.

Courts are generally very liberal in permitting amendments. "Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." (*Angie M. v. Sup. Ct. (Hiemstra*) (1995) 37 CA4th 1217, 1227.) Especially since the plaintiff has the right to amend the original complaint once, without leave of court, "[u]nless the complaint shows on its face that it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion, irrespective of whether leave to amend is requested or not." (*McDonald v. Sup.Ct (Flintkote Co*.) (1986) 180 CA3d 297, 303-304, 225 CR 394, 398.)

The court sustains defendants' demurrer, with leave to amend.

Jose Renteria

The First Amended Complaint names defendants as "Sri Gorty, MD, Inc, and Jose Renteria (dba) Apollo Medical". On November 17, 2023, plaintiff filed a Request for Dismissal as to "Jose Renteria (In his individual capacity only.)" without prejudice. The dismissal of Jose Renteria renders his portion of the demurrer moot, as he is no longer a party to this action. As such, the court need not address the bases of the demurrer specific to this 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: jyh on 4/15/24.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Vickie Grayson v. County of Fresno***
Superior Court Case No. 22CECG01628
Hearing Date: April 16, 2024 (Dept. 503)

Motion: Plaintiff's motion for order granting leave to file second amended complaint

Tentative Ruling:

To continue the hearing on the motion to Thursday, May 2, 2024, at 3:30 p.m. in Department 503, to allow the plaintiff to submit a revised proposed second amended complaint as explained below, to be filed no later than April 23, 2024, by 2:00 p.m.

Explanation:

Motions for leave to amend the pleadings are directed to the sound discretion of the trial court. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading[.]" (Code Civ. Proc., § 473, subd. (a)(1); see also Code Civ. Proc., § 576.) Judicial policy favors resolution of cases on the merits, and thus the court's discretion to allow amendments will usually be exercised in favor of permitting amendments. (*Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 488–489 [trial courts have discretion to allow amendments and should liberally permit amendments at any stage].) This policy is so strong, that denial of a request to amend is rarely justified, particularly where "the motion to amend is timely made and the granting of the motion will not prejudice the opposing party." (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.)

As a general rule, an amended complaint that adds a new defendant does not relate back to the date of filing the original complaint. (*Woo v. Superior Court* (1999) 75 Cal.App.4th 169, 176.) An exception to the general rule exists when a plaintiff has named a "Doe" defendant in the complaint, then seeks to substitute a new defendant for the Doe defendant. (Code Civ. Proc., § 474.) If the requirements of Code of Civil Procedure section 474 are met, the amendment relates back to the filing date of the original complaint. (*Ibid.*)

The plaintiff seeks leave to file a second amended complaint by "substituting" four named parties; but the substitution is defective because the plaintiff fails to name a fictitiously-named Doe defendant in the original complaint for each named individual. For example, does the plaintiff intend to substitute the name of Margaret Mims as Doe One, Joe Smith as Doe Two, Andrew Machoian as Doe Three, and Ivana Hamilton-Cortez as Doe Four?

The parties have briefed the issue of whether the court should grant leave to amend as if the plaintiff had substituted the named individuals for specific Doe defendants. The plaintiff may easily cure her procedural error by revising the proposed

second amended complaint to substitute the four individuals for some of the fictitiously-named Doe defendants in her original complaint. (See *Streicher v. Tommy's Electric Co.* (1985) 164 Cal.App.3d 876, 884 [trial court erred by denying leave to amend complaint to cure failure to allege new defendants were being substituted for fictitiously-named defendants in original complaint].) The court intends to grant leave to amend provided the plaintiff submits a revised second amended complaint that cures the defective substitution of the new defendants by properly identifying each one as a specific Doe defendant.

The plaintiff correctly notes she may rely on the provisions of Code of Civil Procedure section 474 if she was ignorant of the facts giving rise to a cause of action against a person who is otherwise know to her:

> In keeping with this liberal interpretation of section 474, it is now well established that even though the plaintiff knows of the existence of the defendant sued by a fictitious name, and even though the plaintiff knows the defendant's actual identity (that is, his name), the plaintiff is "ignorant" within the meaning of the statute if he lacks knowledge of that person's connection with the case or with his injuries. [Citations.]

(*General Motors Corp. v. Superior Court* (1996) 48 Cal.App.4th 580, 593–594.)

The plaintiff has submitted declarations to explain the plaintiff was genuinely unaware of the scope of liability for the newly-named parties until the plaintiff received discovery responses with documents that revealed a theory of liability based on newly-discovered ratification acts. The plaintiff describes the nature of the proposed amendments as follows:

> The proposed amendment seeks to add two officials, Sheriff Margaret Mims and Captain Joe Smith under a Monell ratification theory of liability for ratifying all actions of the County Defendants [sic] actions toward Decedent Nathaniel Grayson when Mr. Grayson was not a in [sic] condition to care for himself, while he was left unmonitored in a general population cell, yet was still detoxifying from alcohol and suffering from seizures. The Amendment also seeks to add Correctional officer Andrew Machoian and his supervisor Sergeant Ivana Hamilton-Cortez as responsible officers and supervisor for making determinations that Grayson was safe to be released from the sobering tank.

(Memo., pp. 3:25 – 4:3.)

The granting of leave to amend would not deprive the opposing parties of the opportunity to attack the second amended complaint's validity at a later time. "[E]ven if the proposed legal theory is a novel one, 'the preferable practice would be to permit the amendment and allow the parties to test its legal sufficiency by demurrer, motion for judgment on the pleadings or other appropriate proceedings." (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048; see also *California Casualty Gen. Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 281, disapproved on another ground in *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390, 407, fn. 11;

Atkinson v. Elk Corp. (2003) 739, 760 [better course of action is to allow plaintiff to amend complaint then let parties test legal sufficiency in other appropriate proceedings].)

The plaintiff's attorney is directed to file, no later than April 23, 2024, at 2:00 p.m., a declaration with the revised second amended complaint attached in two forms: (1) a revised redline version showing the changes from the first amended complaint; and (2) a proposed second amended complaint in file-ready (black and white) format with the new allegations in bold.

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: jyh on 4/15/24.
(Judge's initials) (Date)