

Tentative Rulings for April 29, 2025
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.*

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

(03)

Tentative Ruling

Re: ***In re: Milagros Hernandez***
Case No. 25CECG01607

Hearing Date: April 29, 2025

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To deny the Petition, without prejudice.

If oral argument is timely requested, such argument will be entertained on Thursday, May 1, 2025, at 3:30 p.m. in Department 501.

Explanation:

While the settlement appears to be reasonable and in the best interest of the minor, petitioner's counsel has not provided the court with a declaration that addresses the factors set forth in California Rules of Court, rule 7.955(b), which discusses the factors that the court may consider when determining the amount of fees to award in minor's compromise cases. "A petition requesting court approval and allowance of an attorney's fee under (a) must include a declaration from the attorney that addresses the factors listed in (b) that are applicable to the matter before the court." (Cal. Rules of Court, rule 7.955(c).)

Petitioner's counsel has not provided a declaration that addresses the factors under rule 7.955(b). His declaration merely states that he is seeking fees equal to 25% of the gross settlement as provided under the fee agreement. Therefore, since counsel has not provided a declaration discussing the reasonableness of his requested fees, there is no factual basis for concluding that the fees are reasonable, and the court intends to deny the Petition without prejudice.

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 4/18/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Hayer v. Reade & Sons Funeral Home***
Superior Court Case No. 24CECG00728

Hearing Date: April 29, 2025 (Dept. 501)

Motion: Demurrer to the Complaint

Tentative Ruling:

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

If oral argument is timely requested, such argument will be entertained on Thursday, May 1, 2025, at 3:30 p.m. in Department 501.

Explanation:

Defendant Reade & Sons Funeral Home, Inc., demurs to the Complaint on the basis that it fails to state a cause of action and is uncertain. (Code Civ. Proc. § 430.10, subds. (e), (g).) The court intends to sustain the general and special demurrers.

Plaintiff Sukhinder Hayer filed the Complaint using the Judicial Form for contract disputes. The Complaint alleges the parties entered into a contract and indicates at paragraph 8 that plaintiff is alleging causes of action for breach of contract, mental and emotional duress, violation of religious beliefs, and mishandling of a deceased. The cause of action attached to the Complaint is titled "general negligence" and alleges plaintiff entrusted the remains of a loved one to the defendant funeral home and defendant failed to obtain the proper license for disposal of the loved one in order to meet a certain timeline. The delay required family members to need to extend their stay and incur additional travel expenses. Plaintiff also alleges additional costs were incurred to reserve the church for additional time.

In ruling on a demurrer, the trial court is obligated to look past the form of the pleading to its substance; erroneous or confusing labels attached by the inept pleader are to be ignored if complaint pleads facts that would entitle plaintiff to relief. (*Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.) Here, it cannot be said that plaintiff has pleaded a cause of action for breach of contract or negligence.

A cause of action for damages for breach of contract is comprised of the following elements: (1) the existence of a contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff. (*Careau & Co. v. Security Pacific Business Center* (1990) 222 Cal.App.3d 1371, 1388.) Where plaintiff alleges breach of contract, "the terms must be set out verbatim in the

body of the complaint or a copy of the written agreement must be attached and incorporated by reference." (*Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 307). Although the form complaint suggests there exists a contract between the parties, the terms of the contract are not pleaded and no breach of contract is pleaded.

The elements of a cause of action for negligence are duty, breach of duty, legal cause and damages. (*Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463.) Here, there are no allegations as to a duty owed by defendant to plaintiff and the breach of that duty. It is also unclear whether the damages alleged in the Complaint were incurred by plaintiff or by persons not parties to the action.

Accordingly, the general demurrer is sustained, with leave to amend. (Code Civ. Proc. § 430.10, subd. (e).)

Additionally, 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 clear causes of action are discerned from the facts alleged to allow the defendant to determine what issues must be admitted or denied. Accordingly, the Complaint is uncertain and the special demurrer is sustained, with leave to amend. (Code Civ. Proc. §430.10, subd. (f).)

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 4/24/2025.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***United Health Centers of the San Joaquin Valley v. Glover et al.***

Superior Court Case No. 24CECG04558

Hearing Date: April 29, 2025 (Dept. 501)

Motion: By Plaintiff for Default Judgment

Tentative Ruling:

To deny.

If oral argument is timely requested, such argument will be entertained on Thursday, May 1, 2025, at 3:30 p.m. in Department 501.

Explanation:

A “default judgment ... can be entered only upon proof to the court of the damage sustained.” (*Taliaferro v. Hoogs* (1963) 219 Cal.App.2d 559, 560; see also Code Civ. Proc., § 585, subd. (b) [“The court shall ... render judgment in the plaintiff’s favor ... not exceeding the amount stated in the complaint ... as appears by the evidence to be just.”].) Accordingly, “conclusory” demands attached to a declaration are insufficient default prove-up evidence. (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 288.)

The court preliminarily notes the following. On a common count, and a breach of contract claim, the remedies are limited to compensatory damages. (E.g., Civ. Code § 3300 *et seq.*) On an unfair business practices claim, the only nonpunitive monetary relief available is the disgorgement of money that has been wrongfully obtained, or, in the language of the statute, an order restoring money which may have been acquired by means of unfair competition. (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1266; Bus. & Prof. Code § 17203.)

Here, the Complaint alleges that there is a “subtotal of actual damages of \$70,000.” (Complaint, ¶ 46.) However, the application for default judgment states that the demand of the Complaint is \$186,000. Upon review of the evidence submitted, the agreement submitted shows a total service fee of \$35,000. (Driscoll Decl., ¶ 2, and Ex. A thereto.) Counsel’s declaration further suggests that the breach of contract has an actual value of \$12,000. (*Id.*, ¶ 11.) Thus does counsel suggest that to reach \$186,000, one must first sum the actual damages of \$12,000, with a proposed \$50,000 in punitive damages, then treble the damages under Business and Professions Code section 17082 to obtain the demanded damages of \$186,000. (*Ibid.*) This appears to be consistent with the allegations of the Complaint, that the actual damages total to no more than \$12,000. (Complaint, ¶¶ 35, 46, 59.)

Regarding punitive damages, neither the Complaint nor the application indicate under what statutory authority and why punitive damages are awardable. Further, the seeking of punitive damages is additionally procedurally defective. Punitive damages may not be pled in specific amounts on the Complaint. (Code Civ. Proc. § 425.10, subd. (b).) Thus, the allegations of the Complaint seeking no less than \$50,000 in punitive damages is improper. To obtain punitive damages on a default judgment, a Statement of Punitive Damages must be personally served on a defendant **before** the entry of default. (Code Civ. Proc. § 425.115, subd. (b), (f), (g)(1).) Default was entered on December 26, 2024. The notice of punitive damages, dated February 6, 2025, postdates the entry of default and therefore cannot support an award of punitive damages in a default judgment application. As noted, punitive damages may not be sought where a statement has not been served prior to the entry of default.

Neither is there a basis to seek treble damages. The Complaint and application rely on Business and Professions Code section 17082, which awards treble damages in an action under Chapter 4 of Part 2 of Division 7 of the Business and Professions Code, covering unfair **trade** practices. (Bus. & Prof. Code § 17082; *id.*, § 17040 *et seq.*) Unfair **business** practices are specifically defined, in Chapter 5, and independent of the statutes regarding unfair trade practices. (*Id.*, §§ 17200, 17500 *et seq.*) Here, the Complaint states a cause of action under Business and Professions Code section 17200 only. (Complaint, ¶ 49.) There are no conceded allegations regarding any type of unfair trade practices. (See *generally id.*)

For the above reasons, the court finds that the only actual damages demonstrated total to \$12,000. As the application seeks far in excess of that amount, the application for default judgment is denied.¹

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** 4/25/2025.
(Judge's initials) (Date)

¹ The application is further denied due to seeking fees in excess of Local Rules. (Superior Court of Fresno County, Local Rules, rule 2.8.3, Appendix A1.) Even on actual damages in the amount of \$186,000, scheduled fees would be set at \$6,610. On actual damages in the amount of \$12,000, fees would be set at \$2,050. In either event, the amount sought of \$11,400 far exceeds what is allowed by schedule.

(36)

Tentative Ruling

Re: ***Davis, et al. v. Hyundai Motor America, et al.***
Superior Court Case No. 23CECG04428

Hearing Date: April 29, 2025 (Dept. 501)

Motions: (1) by Defendants and Cross-Complainants Hyundai Motor America and Hyundai Motor Company Contesting the Good Faith Settlement Application; and

(2) by Cross-Defendants Donald Stallings and Michael Bransey for Judgment on the Pleadings

Tentative Ruling:

To grant the motion contesting the good faith settlement application and to deny the motion for judgment on the pleadings without prejudice. (Code Civ. Proc., § 877.6, subd. (a)(2).)

If oral argument is timely requested, such argument will be entertained on Thursday, May 1, 2025, at 3:30 p.m. in Department 501.

Explanation:

Defendants and cross-complainants Hyundai Motor America and Hyundai Motor Company (together "Hyundai") move to contest the application for good faith settlement filed by cross-defendants Donald Stallings and Michael Bransey.²

"Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005." (Code Civ. Proc. § 877.6, subd. (a)(1).)

"[T]he intent and policies underlying section 877.6 require that a number of factors be taken into account including a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants. [Citation.] Finally, practical considerations obviously require that the evaluation be made on the basis of information available at

² The court notes that cross-defendant Michael Bransey is referred to by multiple names by both parties in these papers: Michael Bransey, Michael Bransby, Michael Bransley. This ruling is made on the assumption that all three of these names refer to the same party.

the time of settlement. '[A] defendant's settlement figure must not be grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate the settling defendant's liability to be.' [Citation.] The party asserting the lack of good faith, who has the burden of proof on that issue (§ 877.6, subd. (d)), should be permitted to demonstrate, if he can, that the settlement is so far 'out of the ballpark' in relation to these factors as to be inconsistent with the equitable objectives of the statute. Such a demonstration would establish that the proposed settlement was not a 'settlement made in good faith' within the terms of section 877.6." (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.)

"Another key factor is the settling tortfeasor's potential liability for indemnity to joint tortfeasors. The trial court calculates 'the culpability of the [settling] tortfeasor vis-à-vis other parties alleged to be responsible for the same injury. Potential liability for indemnity to a nonsettling defendant is an important consideration for the trial court in determining whether to approve a settlement by an alleged tortfeasor.'" (*Long Beach Memorial Medical Center v. Superior Court* (2009) 172 Cal.App.4th 865, 873, internal citations and italics omitted.)

Where the application for good faith settlement is not contested, a barebones application which sets forth the ground of good faith, accompanied by a declaration which sets forth a brief background of the case, is sufficient to meet the settling party's burden of showing good faith. (*City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1261.)

Where the application is contested, the moving party must make a sufficient showing of the *Tech-Bilt* factors by an "evidentiary showing, through expert declarations or other means, that the proposed settlement is within the reasonable range permitted by the criterion of good faith." (*Mattco Forge, Inc. v. Arthur Young & Co.* (1995) 38 Cal.App.4th 1337, 1351; see also *City of Grand Terrace v. Superior Court*, *supra*, 192 Cal.App.3d at p. 1262.) "Once there is a showing made by the settlor of the settlement, the burden of proof on the issue of good faith shifts to the non-settlor who asserts that the settlement was not made in good faith." (*City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1261, citations omitted.)

"If 'there is no substantial evidence to support a critical assumption as to the nature and extent of a settling defendant's liability, then a determination of good faith based upon such assumption is an abuse of discretion.'" (*Mattco Forge, Inc. v. Arthur Young & Co.*, *supra*, 38 Cal.App.4th at p. 1350, internal citation and italics omitted.) Also, "[a]ll affidavits relied upon as probative must state evidentiary facts; they must show facts and circumstances from which the ultimate fact sought to be proved may be deduced by the court. [Citation.] Affidavits or declarations setting forth only conclusions, opinions or ultimate facts are to be held insufficient; even an expert's opinion cannot rise to the dignity of substantial evidence if it is unsubstantiated by facts." (*Greshko v. County of Los Angeles* (1987) 194 Cal.App.3d 822, 834 [finding an attorney's declaration regarding the settling defendant's liability insufficient where counsel failed to provide specific supporting facts or expert opinion].)

Here, cross-defendants provide the declaration of their attorney, Andrei Serpik, stating that the settlement was fair and reasonable and that it was reached pursuant to

open, arm's length negotiations. (Serpik Decl., filed on Dec. 16, 2024, ¶¶ 6, 11.) The amount of the settlement is \$1,000,000. (*Id.*, at ¶¶ 3, 5, Ex. B.) In exchange for payment of \$1,000,000, plaintiffs dismissed their Complaint filed against cross-defendants in Fresno County Superior Court Case No. 22CECG00032. (*Id.*, at ¶ 4, Ex. C.) The settlement was entered into without collusion, fraud or any other tortious conduct between the parties, and without any other improper purpose. (*Id.*, at ¶ 11.)

The Statement of Damages served by plaintiffs to cross-defendants in Fresno County Superior Court Case No. 22CECG00032 indicates that plaintiffs sought damages totaling \$75 million. (See the Statement of Damages attached to Exhibit A of Serpik Decl., filed on Dec. 16, 2024.) The settlement paid by cross-defendants to plaintiffs is only \$1 million, or just over 1% of the total damages. However, cross-defendants present evidence that plaintiffs' recovery was likely limited given that the decedent was their adult child who was unmarried with no children, and a student attending Merced Community College while working at Merced Golf and Country Club. He was also intermittently residing with plaintiffs. (Serpik Decl., filed on Dec. 16, 2024, ¶ 9, Exs. E and F.)

Nonetheless, cross-defendants have not provided evidence regarding their potential proportionate liability, which is not be confused with facts relating to the decedent's potential contributory negligence. Nor have they addressed their potential liability for indemnity to the other non-settling defendants. (*TSI Seismic Tenant Space, Inc. v. Superior Court* (2007) 149 Cal.App.4th 159, 166.) Mr. Serpik indicates that cross-defendant Bransey's exposure was limited, because despite being the owner of the vehicle that was driven by cross-defendant Stallings at the time of the incident, cross-defendant Stallings was not acting as his agent. (Serpik Decl., filed on Dec. 16, 2024, ¶ 7.) Cross-defendants do not present any evidence or specific facts to support Mr. Serpik's statement. This is also challenged by the evidence presented by Hyundai which shows, at least according to cross-defendant Stallings, he was employed by Vermillion Valley Resort on the date of the incident and the owner of the resort at that time was cross-defendant Bransey. Additionally, no evidence is presented to support the contention that cross-defendant Stallings' liability was limited. Hyundai presents evidence suggesting even cross-defendant Stallings believes that he is substantially responsible for causing the accident and decedent's death, since he was the party who rear-ended the vehicle. (Ball Decl., filed on Apr. 22, 2025, Ex. 2, 50:14-18.)

Therefore, cross-defendants have not met their burden of showing that their settlement with plaintiffs is within the ballpark under *Tech-Bilt* and section 877.6, and the court intends to grant Hyundai's motion contesting cross-defendants' application for a determination that the settlement between them and plaintiffs is in good faith. Consequently, cross-defendants' motion for judgment on the pleadings on the ground that a determination of good faith settlement bars Hyundai's Cross-Complaint claims for indemnity is denied without prejudice.

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** 4/25/2025.
(Judge's initials) (Date)