Tentative Rulings for May 8, 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

(34)

Tentative Ruling

Re: ***Villareal v. Landeros***
Superior Court Case No. 24CECG04077

Villareal v. Renteria
Superior Court Case No. 24CECG04079

Villareal v. Puryear
Superior Court Case No. 24CECG04080

Villareal v. Garza
Superior Court Case No. 24CECG04082

Hearing Date: May 8, 2025 (Dept. 501)

Motion: by Defendant Angel Landeros to Consolidate Actions

Tentative Ruling:

To continue the hearing on this matter to June 12, 2025, at 3:30 p.m., to allow counsel for moving party to file the Notice of Motion in case number 24CECG04079, 24CECG04080 and 24CECG04082 within 10 days of the clerk's service of the minute order.

If oral argument is timely requested, such argument will be entertained at 2:00 p.m. (not 3:30 p.m.) on May 8, 2025.

Explanation:

California Rules of Court, rule 3.350(a)(1)(C), requires the moving party to file the Notice of Motion to Consolidate in all cases proposed to be consolidated. The supporting memorandum of points and authorities, declarations and other supporting papers only need to be filed in the lower-numbered case. Here, defendant neglected to file the Notice of Motion in case no. 24CECG04079, 24CECG04080 and 24CECG04082 as required. (Cal. Rules of Court, rule 3.350(a)(1)(C).) The hearing on this matter is continued to June 12, 2025, to allow the moving party to comply with this requirement.

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 4/30/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Cortez v. KWPH Enterprises, Inc., et al.***
Superior Court Case No. 23CECG03750

Hearing Date: May 8, 2025 (Dept. 501)

Motion: by Defendants for Summary Judgment

Tentative Ruling:

To deny.

If oral argument is timely requested, such argument will be entertained at 2:00 p.m. (not 3:30 p.m.) on May 8, 2025.

Explanation:

In this case, plaintiff Carmen Cortez alleges KWPH Enterprises, Inc., dba American Ambulance and its paramedics Marty Martinez and Andrew Luna were negligent during a call to her home on June 22, 2022, following a fall. Plaintiff was subsequently diagnosed and treated for a fracture of her ankle and skin infection on June 29, 2022. Defendants KWPH Enterprises, Inc., Marty Martinez, and Andrew Luna move for summary judgment of the cause of action asserted against them.

As the moving party, a defendant bears the initial burden of proof to show that plaintiff cannot establish one or more elements of their causes of action or to show that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Only after the moving party has carried this burden of proof does the burden of proof shift to the other party to show that a triable issue of one or more material facts exists – and this must be shown via specific facts and not mere allegations. (*Id.*)

> "California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence."

(*Munro v. Regents of Univ. of Calif*. (1989) 215 Cal.App.3d 977, 984-85.)

Where the moving party produces competent expert opinion declarations showing that there is no triable issue of fact on an essential element of the opposing party's claim (e.g. that a medical defendant's treatment fell within the applicable standard of care), the opposing party's burden is to produce competent expert opinion declarations to the contrary. (Weil & Brown, *Cal. Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2024) ¶ 10:205.5, citing *Ochoa v. Pacific Gas & Elec. Co.* (1998) 61 Cal.App.4th 1480, 1487.)

To establish that a physician's care was negligent, a plaintiff must provide expert testimony establishing that the treatment fell below the applicable standard, unless the medical process at issue is matter of common knowledge and thus susceptible to comprehension by a lay juror. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001.)

Although defendants have included the declaration of an expert with the moving papers and rely upon this declaration in their memorandum there are no citations within the separate statement to this declaration as supporting any undisputed material fact. "This is the Golden Rule of Summary Adjudication: If it is not set forth in the separate statement, *it does not exist*." (*United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 337 [superseded by statute on other grounds]; *Allen v. Smith* (2002) 94 Cal.App.4th 1270, 1282; *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 173 [failure of defendant's separate statement to address material allegation in complaint was "fatal flaw"].)

In the context of an action alleging medical negligence where expert testimony is necessary to establish there is no triable issue of fact as to one or more elements plaintiff's claim, the court anticipates the expert's declaration will be cited within the evidence supporting the moving party's undisputed facts. Defendants have failed to do so here which would support denial of the motion. Plaintiff has likewise failed to cite to expert evidence in her separate statement submitted in opposition to the motion despite also producing expert declarations in support of the opposition. Under the circumstances, the court will exercise its discretion to consider evidence not referenced in the parties' separate statements. (Code Civ. Proc. §437c, subd. (b)(1), (b)(3); *San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 315-316.)

Defendants rely on a declaration by expert Gary M. Vilke, M.D., an emergency room physician and medical director for EMS agencies. Based on his knowledge, education, training, professional experience and review of the relevant materials in this case, Dr. Vilke concludes that paramedics Martinez and Luna complied with the applicable standard of care with respect to their June 22, 2022 assessment of plaintiff, lack of Patient Care Report for the encounter, and decision not to transport plaintiff to the emergency department. (Vilke Decl., ¶¶ 28-35.) treatment and care of decedent during his admission to the MCH emergency department. Dr. Vilke additionally concludes to a reasonable degree of medical probability that there was no fracture or dislocation present at the June 22, 2022 encounter with plaintiff. (*Id*. at ¶ 37.)

Plaintiff objects to Dr. Vilke's qualifications to opine as to prehospital medical care based on his experience as an emergency room physician and medical director of an ambulance company. Plaintiff similarly objects to Dr. Vilke's qualifications to opine as to causation, as he is not an orthopedic physician. Having reviewed Dr. Vilke's curriculum vitae, the objections to his opinions as to standard of care and causation are overruled.

The declaration of Dr. Vilke sufficient to shift the burden to plaintiff to raise a triable issue of fact. Plaintiff submits the declarations of John B. Everlove, M.S., NRP on the issue of standard of care and Thomas P. Schmalzried, M.D. on the issue of causation.

Mr. Everlove is an experienced paramedic and qualified to opine on the standard of care for pre-hospital emergency services. Mr. Everlove opines based on his training

and experience as an emergency services paramedic that paramedics Martinez and Luna did not meet that standard of care in failing to complete a Patient Care Record, failing to document the cancellation of transport based on a refusal of transport by the patient or patient refusal of assessment, and based on plaintiff's lack of competence she should have been transported to the hospital for further evaluation or contacted the based hospital for physician consultation. (Everlove Decl., ¶¶ 12a-h, 13.) Plaintiff has met her burden to raise a triable issue as to whether defendants met the standard of care.

Dr. Schmalzried is a board certified orthopaedic surgeon and qualified to opine on whether the failure to transport plaintiff to the hospital on June 22, 2022 caused harm to the plaintiff. Dr. Schmalzried opines to a reasonable degree of medical probability that the lack of transportation to the hospital caused plaintiff to be deprived of medical care and was a substantial factor in causing plaintiff's harm. (Schmalzried Decl., ¶ 7.) Dr. Schmalzried reasons that the "extended period of time that Ms. Cortez's ankle remained broken and displaced lead to her skin becoming compromised." (*Id*. at ¶ 8.)

Although defendant is critical of the declarations submitted in support of the opposition as not addressing Dr. Vilke's opinion that there was no fracture at the time of the June 22, 2022 encounter, the court finds Dr. Schmalzried's finding in his review of the evidence that plaintiff's ankle remained broken and displaces for an extended period of time is sufficient to dispute Dr. Vilke's opinion. The court views the evidence in the light most favorable to the party opposing summary judgment, liberally construing the opposing party's submissions and resolving all doubts concerning the evidence in favor of the opposing party. (*Aguilar v. Atlantic Richfield* (2001) 25 Cal.4th 826, 856.) Given the policy of liberal treatment of opposing declarations, Plaintiff has met her burden of raising a triable issue of fact as to causation.

Plaintiff has met her burden to raise triable issues of fact with respect to both elements challenged in defendants' motion for summary judgment. Accordingly, the motion is denied.

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 5/2/2025.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Pearson Realty v. 580 North 11th Street, LLC***
Superior Court Case No. 23CECG04647

Hearing Date: May 8, 2025 (Dept. 501)

Motion: by Respondent to Vacate Judgment Confirming Arbitration Award

Tentative Ruling:

To deny.

If oral argument is timely requested, such argument will be entertained at 2:00 p.m. (not 3:30 p.m.) on May 8, 2025.

Explanation:

On 3/26/2025, the court granted respondent's counsel's request for a remote appearance on an earlier motion to vacate the judgment confirming an arbitration award against respondent, which motion was scheduled to be heard on 3/27/2025. Counsel did *not* make a timely request for oral argument on the posted tentative ruling. This mooted the request for a remote appearance. The tentative ruling became the order of the court. (Cal. Rules of Court, rule 3.1308(a)(1); Super. Ct. Fresno County, Local Rules 2.2.5.) The tentative ruling was an unequivocal denial of the motion, *not a denial of the motion without prejudice*. Staff's apparent comment to the contrary has no force or effect. Staff comments are not orders of the court, and the adopted tentative ruling is abundantly clear.

This is a motion for reconsideration, though respondent carefully does not mention reconsideration or Code of Civil Procedure section 1008. A party may bring a motion to reconsider, and have a different order entered, if the motion is:

1. brought before the same judge that made the order;
2. made within 10 days after service upon the party of notice of the entry of the order;
3. based on new or different facts, circumstances, or law; and
4. made and decided before entry of judgment.

(Code Civ. Proc., § 1008, subds. (a), (b).)

The instant motion is based on the same facts argued in the first motion to vacate the judgment. "[F]acts of which the party seeking reconsideration was aware at the time of the original ruling are not 'new or different.'" (*In re Marriage of Herr* (2009) 174 Cal.App.4th 1463, 1468.) The burden under section 1008 "is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial." (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th

206, 212–213.) Respondent makes no showing or argument that there are any new or different facts, circumstances or law. Accordingly, the motion is denied.

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 5/2/2025.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Arviso v. Osmanovic***
Case No. 19CECG03948

Hearing Date: May 8, 2025 (Dept. 501)

Motion: Petition to Appoint Trustee re: Minor's Settlement Funds

Tentative Ruling:

To deny the petition to appoint the law firm of Perez, Williams, Medina & Rodriguez, LLP as trustee for the settlement funds of minor Ayden Alejandro Torres, without prejudice.

If oral argument is timely requested, such argument will be entertained at 2:00 p.m. (not 3:30 p.m.) on May 8, 2025.

Explanation:

The court ordered plaintiffs' counsel to file a declaration by April 30, 2025, describing in detail his efforts to contact the petitioner, Ruvicela Zuniga, and obtain her cooperation in placing the funds for Ayden into a blocked account pursuant to the court's order granting the minor's compromise. The court also ordered counsel to provide proof that the annuities ordered for both minors have been funded. (See Court's Order dated March 27, 2025.)

However, plaintiffs' counsel has not yet filed a declaration in compliance with this court's order. Therefore, at this time the court does not have enough information to support granting the petition to appoint plaintiffs' counsel as trustee for the minor's settlement funds. It is still not clear that plaintiffs' counsel has made sufficient efforts to contact petitioner and obtain her cooperation to open a blocked account for Ayden, or that the annuities for Ayden and Kennia have been funded. As a result, 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 5/2/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Potts, et al. v. FCA US, LLC, et al.***
Superior Court Case No. 24CECG04489

Hearing Date: May 8, 2025 (Dept. 501)

Motion: by Defendant FCA US, LLC Demurring to the Complaint

Tentative Ruling:

To sustain the demurrer to the third and sixth causes of action, with leave to amend. (Code Civ. Proc., § 430.010, subd. (e).)

Plaintiffs are granted 20 days' leave to file a First Amended Complaint. The time in which such pleading may be filed run from service by the clerk of the minute order. All new allegations in a First Amended Complaint are to be set in **boldface** type.

If oral argument is timely requested, such argument will be entertained at 2:00 p.m. (not 3:30 p.m.) on May 8, 2025.

Explanation:

Third Cause of Action – Violation of Civil Code Section 1793.2, subdivision (a)(3)

Defendant FCA US, LLC (hereinafter, defendant) demurs to the third cause of action for violation of Civil Code section 1793.2, subdivision (a)(3), on the ground that the complaint fails to state facts sufficient to state a claim.

The relevant provisions of Civil Code section 1793.2, subdivision (a)(3) provides:

> (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall: …
> (3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.

(Civ. Code, § 1793.2, subd. (a)(3).)

Here, plaintiffs allege "Defendant FCA failed to make available to its authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period." (Compl., ¶ 52.) However, plaintiffs do not plead any facts to support this conclusory allegation. Where statutory remedies are invoked, the cause of action "must be pleaded with particularity." (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 410, citations omitted.)

In opposition, plaintiffs argue that further particularity cannot be pled, as the information is known only to defendant. However, plaintiffs fail to even allege what parts

or literature defendant failed to provide or when the alleged violation occurred. Accordingly, the demurrer to the third cause of action is sustained.

Sixth Cause of Action – Fraudulent Concealment

Next, defendant demurs to the sixth cause of action, for fraudulent concealment. Plaintiffs oppose the demurrer by contending that the specificity requirement is unnecessary to state a cause of action for fraudulent concealment where there exists a duty to disclose, and relies primarily on *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828.

" 'As with all fraud claims, the necessary elements of a concealment/suppression claim consist of " '(1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage.' " ' [Citation.]" (*Dhital v. Nissan North America, Inc.*, *supra,* 84 Cal.App.5th at p. 843.)

"Fraud, including concealment, must be pleaded with specificity. [Citation.]" (*Dhital v. Nissan North America, Inc., supra,* 84 Cal.App.5th at p. 843-844.) "Suppression of a material fact is actionable when there is a duty of disclosure, which may arise from a relationship between the parties, such as a buyer-seller relationship. [Citation.]" (*Id.*, at p. 843.) The First District Court of Appeal in *Dhital* determined a cause of action for fraudulent concealment was sufficiently pled, where the "plaintiffs alleged the CVT transmissions installed in numerous Nissan vehicles (including the one plaintiffs purchased) were defective; Nissan knew of the defects and the hazards they posed; Nissan had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; Nissan intended to deceive plaintiffs by concealing known transmission problems; plaintiffs would not have purchased the car if they had known of the defects; and plaintiffs suffered damages in the form of money paid to purchase the car." (*Id.*, at p. 844.) It was held that the plaintiffs sufficiently alleged the existence of a buyer-seller relationship between the parties by alleging that "they bought the car from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers." (*Ibid.*)

Here, just as in *Dhital*, the Complaint alleges defendant knew of the defects and the hazards they posed; defendant had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; plaintiffs would not have purchased the vehicle if they had known of the defects; and plaintiffs suffered damages in the form of money paid to purchase the vehicle. (*E.g.*, Compl. ¶¶ 65-70.) Notably, however, the Complaint does not allege who plaintiffs purchased the car from, and whether the seller was defendant's agent. Accordingly, the demurrer is sustained to the sixth cause of action.

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 (Judge's initials) on 5/6/2025 (Date).