

**Tentative Rulings for May 1, 2023**  
**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)**

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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*

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

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(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 501**

Begin at the next page

(20)

**Tentative Ruling**

Re: **Larios v. Wallace et al.**  
Superior Court Case No. 21CECG03838

Hearing Date: May 1, 2024 (Dept. 501)

Motion: by Plaintiffs for Orders: Deeming Requests for Admissions Admitted, as to Susan Wallace; Compelling Initial Responses From Robert Wallace and Susan Wallace to Form Interrogatories – General, Set One; and Compelling Initial Responses From Susan Wallace to Requests for Production of Documents, Set One

**Tentative Ruling:**

To grant. (Code Civ. Proc., §§ 2030.290, 2031.300, 2033.280.) Within 10 days, defendants Robert and Susan Wallace shall serve verified responses to Form Interrogatories, Set One, and Susan Wallace shall serve verified responses to Requests for Production of Documents, Set One. All objections are waived. The truth of all matters specified in the Request for Admissions, Set One, are deemed admitted. (Code Civ. Proc., § 2033.280, subd. (b).) To impose reasonable sanctions on both in the sum of \$1,120 against defendants and in favor of plaintiffs, to be paid to plaintiffs' counsel within 30 days of service of the order by the clerk.

**Explanation:**

On December 6, 2023, plaintiffs served on Robert Wallace and Susan Wallace Form Interrogatories – General, Set One. On that date plaintiffs also served on Susan Wallace Requests for Admissions, Set One and Requests for Production of Documents, Set One. To date no responses have been served. Since no responses have been served, and the response deadline has clearly passed, an order compelling defendants to provide initial responses to the interrogatories and production demand without objections (Code Civ. Proc., § 2030.290, subd. (a), 2031.300, subd. (a)), and ordering admitted all matters specified in the requests for admission (Code Civ. Proc., § 2033.280, subd. (b)), is warranted, and reasonable sanctions must be imposed (Code Civ. Proc., §§ 2023.010, subd. (d), 2023.030, subd. (a); Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants (2007) 148 Cal.App.4th 390, 404). With respect to the requests for admissions, this will be the order of the court unless Susan Wallace serves, before the hearing on the motion, proposed responses that are in substantial compliance with Code of Civil Procedure section 2033.220. 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 4/23/2024.  
(Judge's initials) (Date)

(41)

**Tentative Ruling**

Re: **Wesley Wilson v. Martin McCubbin**  
Superior Court Case No. 22CECG03648

Hearing Date: May 1, 2024 (Dept. 501)

Motion: by Plaintiffs for Judgment on the Pleadings

**Tentative Ruling:**

To continue the hearing on plaintiffs' motion for judgment on the pleadings to June 13, 2024, at 3:30 p.m. in Department 501. Plaintiffs may file and serve an amended notice and supporting papers for entry of judgment on the pleadings, including damages. The amended notice and supporting papers shall be filed and served no later than 5:00 p.m. on May 15, 2024. Any opposition and reply due dates shall run from the new hearing date.

**Explanation:**

Plaintiffs Wesley Wilson (Wilson) and Press Box, Inc. (Press Box), have dismissed most of the causes of action in their Complaint against defendant Martin McCubbin (McCubbin). One cause of action arising out of a bar fight caused by McCubbin in October 2022 remains for each plaintiff. For plaintiff Wilson, only the third cause of action for assault and battery remains. For plaintiff Press Box, only the sixth cause of action for private nuisance remains.

Meet and Confer

Before filing their motion for judgment on the pleadings, plaintiffs met their obligation to meet and confer.

Plaintiffs' Motion for Judgment on the Pleadings

A motion for judgment on the pleadings can be made at any time before or during trial. The motion performs the same function as a general demurrer, and thus attacks defects disclosed on the face of the pleadings or by matters that can be judicially noticed. (*Martinez v. San Diego County Credit Union* (2020) 50 Cal.App.5th 1048, 1058.) If the moving party is the plaintiff, a motion for judgment on the pleadings may be made on the grounds "that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint." (Code Civ. Proc., § 438, subd. (c)(1)(A).) When a motion for judgment on the pleadings is granted without leave to amend, "judgment shall be entered forthwith in accordance with the motion[.]" (Code Civ. Proc., § 438, subd. (h)(3).)

A motion for judgment on the pleadings by a plaintiff is unusual, but the same general principles apply to determine if an answer states a defense or a complaint states a cause of action:

Motions for judgment on the pleadings are usually made by defendants. In such instances the motion is the equivalent of a general demurrer, and on appeal from the judgment the appellate court will assume the truth of all facts properly pleaded in the complaint. Motions by a plaintiff for judgment on the pleadings, which are less common, are the equivalent of a demurrer to an answer, and the standard of review is obverse: the appellate court will assume the truth of all facts properly pleaded in the answer and will disregard the controverted allegations of the complaint. Such a motion must be denied if the defendant's pleadings raise a material issue or set up affirmative matter constituting a defense. Stated differently, where the answer, fairly construed, suggests that the defendant may have a good defense, a motion for judgment on the pleadings should not be granted.

*(Engine Manufacturers Assn. v. State Air Resources Bd. (2014) 231 Cal.App.4th 1022, 1034, citations and internal quotation marks omitted.)*

Plaintiffs properly submit a request to take judicial notice (RJN) of the Complaint (ex. 1), the Answer (ex. 2), the court's order deeming the plaintiffs' requests for admissions admitted (ex. 3), and the requests for admissions referenced in the court's order (ex. 4) in this action. The court intends to grant the request in all respects.

Plaintiff Wilson has demonstrated the Complaint's allegations include all elements for the third cause of action for assault and battery, including an allegation that McCubbin "cold cocked Wilson in the face. McCubbin's punch to Wilson's face was so destructive so as to break bones in Wilson's face." (Comp., pp. 2:26-3:2, capitalization omitted.) McCubbin has been deemed to have admitted all the elements of battery, including the monetary amounts flowing from the harm. (RJN exs. 3, 4 [Wilson's RFA Nos. 1-11].) Because every completed battery includes an assault (see *People v. Yeats* (1977) 66 Cal.App.3d 874, 878), McCubbin also has been deemed to have admitted all the elements of assault.

Plaintiff Press Box demonstrates the Complaint's allegations include all elements for a private nuisance, as set forth in Judicial Council of California Civil Jury Instructions (CACI) No. 2021. McCubbin has been deemed to have admitted all the elements of a private nuisance, including the monetary amounts flowing from the harm. (RJN exs. 3 and 4 [Press Box's RFA Nos. 1-11].)

The governing statute for a motion for judgment on the pleadings provides that the plaintiffs would have been entitled to judgment "forthwith" had they asked for it:

"If the motion is granted with respect to the entire complaint or answer without leave to file an amended complaint or answer, as the case may be, then judgment shall be entered forthwith in accordance with the motion granting judgment to the moving party."

(Code Civ. Proc., § 438, subd. (h)(3).)

Instead, plaintiffs ask for an interlocutory judgment of liability and a later hearing to determine damages. They cite to cases addressing appealable orders in the context of final judgments, and a default case, in lieu of relying on the express provisions of Code of Civil Procedure section 438, subdivision (h)(3). Here, defendant has admitted all relevant allegations, he has not requested leave to amend, and there is no reasonable possibility that the defect can be cured by amendment. When there is no reasonable possibility of curing the defect, a motion for judgment on the pleadings is properly granted without leave to amend. (*Smiley v. Citibank* (1995) 11 Cal.4th 138, 164, fn. 18.)

If plaintiffs give defendant notice that are requesting the court to enter a judgment forthwith, which includes the amount of damages deemed admitted as set forth in the RJN, exhibits 3 and 4, the court intends to grant the motion for judgment on the pleadings. Therefore, the court has continued the hearing to allow plaintiffs to file an amended motion, in which they ask the court to enter a judgment forthwith, including the damages deemed admitted, and to serve defendant with the amended papers.

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 4/29/2024.  
(Judge's initials) (Date)

(37)

**Tentative Ruling**

Re: ***Diane Hensley v. Paula Bremel***  
Superior Court Case No. 23CECG05289

Hearing Date: May 1, 2024 (Dept. 501)

Motion: 1) Defendants Ben Carlson and Kingsburg Insurance Agency's Demurrer  
2) Defendant North Anna Gardens Homeowners Association No. 4's Demurrer and Motion to Strike  
3) Defendant Philadelphia Indemnity Insurance Company's Demurrer and Motion to Strike

**Tentative Ruling:**

To continue to Tuesday, May 21, 2024, at 3:30 p.m. in Department 501, in order to allow defendant North Anna Gardens Homeowners Association No. 4 to meet and confer in person or by telephone, as required. If this resolves the issues, defendant shall call the court to take the demurrer and motion to strike as to defendant North Anna Gardens Homeowners Association No. 4 off calendar. If it does not resolve the issues, counsel for defendant shall file a declaration on or before May 10, 2024, stating, with detail, the efforts made.

Defendants Ben Carlson, Kingsburg Insurance Agency, and Philadelphia Indemnity Insurance Company's demurrers and motion to strike are continued in order to have these motions heard on the same date.

**Explanation:**

Code of Civil Procedure section 430.41 makes it clear that meet and confer must be conducted "in person or by telephone." (*Id.*, subd. (a).) The moving party is not excused from this requirement unless they show that the plaintiff failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. (*Id.*, subd. (a)(3)(B).) Here, it has come to the attention of the court that efforts to meet and confer may have been stymied due to the focus on a potential conflict of interest issue involving defense counsel representing North Anna Gardens Homeowners Association No. 4 and Paula Bremel. The court would note that this issue should not act to prevent plaintiff and defendant North Anna Gardens Homeowners Association from effectively meeting and conferring on the issues germane to the demurrer and motion to strike. These two defendants are represented by separate counsel at this time and the court sees no reason the parties cannot have productive conversations now.

The court's normal practice in such instances is to take the motion off calendar, subject to being re-calendared once the parties have met and conferred. However, given the extreme congestion in the court's calendar currently, the court will instead continue the hearing to allow the parties to meet and confer, and only if efforts are unsuccessful will it rule on the merits. In the event the demurrer by defendant North Anna

Gardens Homeowners Association goes off calendar, the court will still address defendants Ben Carlson, Kingsburg Insurance Agency, and Philadelphia Indemnity Insurance Company's demurrers and motion to strike on the continued date.

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 4/29/2024.  
(Judge's initials) (Date)



(35)

**Tentative Ruling**

Re: ***Iler v. Fresno Community Hospital and Medical Center***  
Superior Court Case No. 23CECG03097

Hearing Date: May 1, 2024 (Dept. 501)

Motion: by Defendant Fresno Community Hospital and Medical Center on Demurrer and Motion to Strike Portions of the Third Amended Complaint

**Tentative Ruling:**

To overrule the special demurrer in its entirety. (Code Civ. Proc. § 430.10, subd. (f).) To sustain the general demurrer as to all causes of action except the causes of action for intentional infliction of emotional distress and medical negligence, with leave to amend. (Code Civ. Proc. § 430.10, subd. (e).) To overrule the general demurrer as to the causes of action for intentional infliction of emotional distress and medical negligence. (Code Civ. Proc. § 430.10, subd. (e).)

To grant the motion to strike portions of the Third Amended Complaint in part, and strike: the attachment of a phone log; the attachment of a letter dated September 14, 2022; the prayer for attorney fees as to the defamation cause of action; the prayer for attorney fees as to the sexual assault cause of action; the prayer for punitive damages as to the conspiracy cause of action; the prayer for attorney fees as to the conspiracy cause of action; the prayer for punitive damages as to the discrimination cause of action; and the prayer for attorney fees on the discrimination cause of action; with leave to amend.

To grant the motion to strike portions of the Third Amended Complaint as to the attachment for punitive damages. Leave to amend as to this portion may be sought under Code of Civil Procedure section 425.13.

To grant the motion to strike portions of the Third Amended Complaint as to the statement amount sought in punitive damages of \$20,000,000.00, without leave to amend to restate an amount.

To deny the motion to strike portions of the Third Amended Complaint as to the prayer for punitive damages at large; the prayer for punitive damages as to the emotional distress causes of action; the prayer for punitive damages as to the defamation cause of action; and the prayer for punitive damages as to the sexual assault cause of action.

Plaintiff Henry Justin Iler shall serve and file an amended complaint within 10 days of the date of service of the minute order by the clerk. All new allegations shall be in **boldface**.

## Explanation:

On August 7, 2023, plaintiff Henry Justin Iler ("Plaintiff") filed suit against defendant Fresno Community Hospital and Medical Center dba Clovis Community Medical Center ("Defendant"). On October 3, 2023, Plaintiff filed a First Amended Complaint. On October 23, 2023, Plaintiff filed a Second Amended Complaint. On November 20, 2023, Plaintiff filed a Third Amended Complaint ("TAC"). Defendant now challenges the TAC by way of demurrer and motion to strike.

The TAC appears to state several causes of action: (1) injunctive relief; (2) emotional distress; (3) false imprisonment; (4) defamation; (5) invasion of privacy; (6) sexual assault; (7) negligence; (8) conspiracy; (9) discrimination; and (10) medical negligence. The TAC seeks relief by way of compensatory damages and punitive damages.

### *Demurrer*

As to every cause of action, Defendant specially demurs on the grounds of uncertainty, and generally demurs for failure to state sufficient facts to constitute a cause of action.

#### *Special Demurrer – Uncertainty*

As to each cause of action, Defendant demurs on the grounds that the TAC is uncertain for failing to clearly identify the nature of the claim against it. Defendant makes no specific arguments and does not identify what portions of the TAC are uncertain or ambiguous.

Demurrers for uncertainty are disfavored. (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822.) Demurrers for uncertainty are strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. (*Khoury v. Maly's of Cal., Inc.* (1993) 14 Cal.App.4th 612, 616.) A demurrer for uncertainty is granted only when the pleading is so incomprehensible that a defendant cannot reasonably respond. (*Lickiss v. Financial Industry Reg. Authority* (2012) 208 Cal.App.4th 1125, 1135.) A special demurrer for uncertainty must distinctly specify exactly how or why the pleading is uncertain, and where such uncertainty appears by reference to page and line numbers of the complaint. (See *Fenton v. Groveland Community Svcs. Dist.* (1982) 135 Cal.App.3d 797, 809.)

Here, Defendant makes no reference to page and line numbers of the TAC that it argues are uncertain. Rather, Defendant argues that the structure of the TAC is confusing because the various causes of action are alleged on a form indicating "Intentional Tort". However, no error or defect in a pleading is to be regarded unless it affects substantial rights. (*Buxbom v. Smith* (1944) 23 Cal.2d 535, 542.) The primary function of a pleading is to give the other party notice so that it may prepare its case. (*Leet v. Union Pac. R.R. Co.* (1944) 25 Cal.2d 605, 619.) A defect in a pleading that otherwise properly notifies a party cannot be said to affect substantial rights. (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 240.) Accordingly, despite Plaintiff stating multiple causes of action on a pleading paper titled "Intentional Tort", each cause of action is alleged therein, and the defect is

not a grounds for uncertainty.<sup>1</sup> The special demurrer of uncertainty is overruled in its entirety. (Code Civ. Proc. § 430.10, subd. (f).)

### *General Demurrer – Sufficiency of Facts*

As to all causes of action, Defendant generally demurs to each for failure to state facts sufficient to constitute a cause of action.

In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883.) On demurrer, the court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.)

### *Injunctive Relief*

Defendant submits, among other comments, that injunctive relief is not a cause of action. Injunctive relief is a remedy, and not, in itself, a cause of action. (*Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 356.) A cause of action must exist before injunctive relief may be granted. (*Ibid.*) The demurrer to the cause of action for injunctive relief is sustained, with leave only to restate injunctive relief as a prayer or as sought under Code of Civil Procedure section 525 *et seq.*, if applicable.

### *Intentional Infliction of Emotional Distress*

The TAC indicates that the type of emotional distress claim is for both intentional and negligent infliction. Defendant argues that the TAC fails to state who did what was alleged, when, where or how things occurred.

To state a cause of action for intentional infliction of emotional distress, a plaintiff must allege that there is (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering of severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-1051.)

Here, the TAC alleges that Defendant subjected Plaintiff to unwarranted procedures, ridiculed Plaintiff's condition, and disregarded Plaintiff's mental health issues. (TAC, p. 7.) The TAC alleges that the above acts resulted in severe emotional distress. (*Ibid.*) The TAC alleges that Plaintiff's ability to work and engage in activities has been severely compromised due to Defendant's actions. (*Ibid.*) The demurrer to the cause of action for intentional infliction of emotional distress is overruled.

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<sup>1</sup> Moreover, the first page of the form complaint identified "2+9 causes", which is consistent with item 10 of the form complaint. The court notes that the box marked "Intentional Tort" is just a category, and not a true count of cause of action, reducing the reported 11 causes of action to 10. However, the court notes that the emotional distress claim is for both intentional and negligent infliction.

### *Negligence/Negligent Infliction of Emotional Distress*

Negligent infliction of emotional distress generally is not an independent tort, but is the tort of negligence. (*Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.* (1989) 48 Cal.3d 583, 588.) Accordingly, the traditional elements of duty, breach of duty, causation, and damages apply. (*Ibid.*)

Here, the TAC fails to identify, under this heading, a duty owed by Defendant, for which Defendant breached, the breach of which caused, resulting damages. Neither do the negligence claims stated on page 10 or 13 of the TAC identify a duty owed. The demurrer as to the general negligence and negligent infliction of emotional distress claim is sustained, with leave to amend.

### *False Imprisonment*

The tort of false imprisonment consists of the nonconsensual intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short. (*Scofield v. Critical Air Medicine, Inc.* (1996) 45 Cal.App.4th 990, 1001.) False imprisonment requires some restraint of the person and that he be deprived of his liberty or compelled to stay where he does not want to remain, or compelled to go where he does not wish to go, and that the person be restrained of his liberty without sufficient complaint or authority. (*Collins v. County of Los Angeles* (1966) 241 Cal.App.2d 451, 459-460.)

Here, the TAC alleges that Plaintiff did not consent to various acts by Defendant, to transfer Plaintiff to a place he objected to. (TAC, p. 8.) The TAC however alleges that Defendant merely attempted to do so. Reasonable inference suggests that Defendant did not actually do so, due to, as alleged, the timely intervention of a third-party, and Plaintiff remained at the location in which he consented to be by being admitted. (*Ibid.*) Accordingly, the act of restraint is not well stated, nor is the causal link to the alleged harm well stated. The demurrer to the cause of action for false imprisonment is sustained, with leave to amend.

### *Defamation*

Defamation is either by libel or slander. (Civ. Code § 44.) Slander is a false and unprivileged publication, orally uttered, which: charges a person with a crime; imputes in him the present existence of an infectious, contagious, or loathsome disease; tends directly to injure him in respect to his office, profession, trade or business; imputes to him impotence or a want of chastity; or by natural consequences causes actual damages. (*Id.*, § 46.)

Here, the TAC alleges that Plaintiff overheard some person making derogatory comments about Plaintiff on implication of Plaintiff's use of drugs. (TAC, p. 9.) The allegations do not sufficiently state any of the categories identified by statute. The demurrer to the cause of action for defamation is sustained, with leave to amend.

### *Invasion of Privacy*

Violation of privacy giving rise to tort liability occurs from four distinct kinds of activities: (1) intrusion into private matters; (2) public disclosure of private facts; (3) publicity placing a person in a false light; and (4) misappropriation of a person's name or likeness. (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 24.) The cause of action has two elements: (1) intrusion into a private place, conversation, or matter; and (2) in a manner highly offensive to a reasonable person. (*Sanders v. American Broadcasting Co.* (1999) 20 Cal.4th 907, 914-915.) In other words, the violation of privacy runs to a zone of physical or sensory privacy surrounding or by obtaining unwanted access to data about a plaintiff. (*Ibid.*)

Here, Plaintiff alleges that his privacy was violated by the insertion of a urinary catheter. The allegation as stated does not sufficiently state a cause of action for invasion of privacy. The demurrer to the cause of action for invasion of privacy is sustained, with leave to amend.

### *Sexual Assault*

The essential elements of a cause of action for assault are: (1) the defendant acted with intent to cause harmful or offensive contact, or threatened to touch the plaintiff in a harmful or offensive manner; (2) the plaintiff reasonably believed he was about to be touched in a harmful or offensive manner or it reasonably appeared to the plaintiff that the defendant was about to carry out the threat; (3) the plaintiff did not consent to the defendant's conduct; (4) the plaintiff was harmed; and (5) the defendant's conduct was a substantial factor in causing the plaintiff's harm. (*So v. Shin* (2013) 212 Cal.App.4th 652, 668-669.)

Here, the TAC alleges that an agent of Defendant knelt between Plaintiff's legs while Plaintiff attempted to urinate. (TAC, p. 10.) The allegations of the TAC do not suggest that Defendant's agent acted with intent to cause harmful or offensive contact. Nor do the allegations suggest that Plaintiff reasonably believed that Defendant's agent was about to touch Plaintiff in a harmful or offensive manner. The demurrer to the cause of action for sexual assault is sustained, with leave to amend.

### *Conspiracy*

Conspiracy is not a separate tort, but a form of vicarious liability by which one defendant can be held liable for the acts of another. (*IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 652.) A conspiracy requires evidence that each member of the conspiracy acted in concert and came to the mutual understanding to accomplish a common and unlawful plan, and that one or more of them committed an overt act to further it. (*Ibid.*) To state a civil conspiracy, there must be: (1) a formation and operation of the conspiracy; a wrongful act done in furtherance of the conspiracy; and resulting damage to the plaintiff. (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510-511.) It is the acts done and not the conspiracy to do them which should be regarded as the essence of the civil action. (*Id.* at p. 511.) A conspiracy, in and of itself, however atrocious, does not give rise to a cause of action unless a civil wrong has been committed resulting in damage. (*Pettitt v. Levy*(1972) 28 Cal.App.3d 484, 491.)

Here, the TAC alleges that Defendant conspired with its hospital staff to suppress investigation and reporting of Plaintiff's complaints on his care. Defendant is already liable for its own actions by and through its hospital staff. There are no other parties alleged against which to make Defendant vicariously liable for those other parties' actions. The demurrer to the cause of action for conspiracy is sustained, with leave to amend.

### *Discrimination*

All persons within the jurisdiction of this state are free and equal, and no matter what their, among other things, medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of any kind whatsoever. (Civ. Code § 51, subd. (b).)

Here, the TAC alleges that Plaintiff suffered discrimination based on mental health. (TAC, p. 12.) The acts alleged were derogatory remarks, accusations, and threats. The TAC fails to allege facts in support of any disparate treatment as a result of Plaintiff's medical health condition. Whether Defendant focused disproportionately on the mental health concerns over the concerns that brought Plaintiff under Defendant's alleged care does not, by itself, suggest any sort of adverse action. The demurrer to the cause of action for discrimination is sustained, with leave to amend.

### *Medical Negligence*

The elements of a cause of action for medical negligence are: (1) a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) a breach of the duty; (3) a proximate causal connection between the negligent conduct and the injury; and (4) resulting loss or damage. (*Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 968.) The duty, or standard of care, is a matter particularly within the knowledge of experts. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001.)

Here, the TAC alleges that Defendant conducted unnecessary medical procedures, including the insertion of a catheter without consent. (TAC, p. 12.) The TAC further alleges that instead of promptly addressing a severe foot injury, Plaintiff was left waiting in a lobby and subsequently placed on a gurney for over 20 hours without clarity of his medical status. (*Id.*, p. 13.) The TAC alleges not being properly fed, and subjected Plaintiff to an unjustified forced catheterization without medical necessity. (*Ibid.*) The TAC alleges that Defendant's staff wrongly prioritized mental health over the urgent medical issue of the life-threatening foot infection. (*Ibid.*) The TAC alleges that as a result, Plaintiff suffered mental anguish. (*Ibid.*)

Based on the above, the TAC states sufficient facts to support the cause of action of medical negligence. Giving all reasonable inference to the TAC, and reading in context, the TAC inferably puts at issue what medical care was called for in treating Plaintiff's foot concerns, and whether other issues took priority. The demurrer to the cause of action for medical negligence is overruled.

In sum, the general demurrer as to the entirety of the TAC is sustained, with leave to amend, except the causes of action for intentional infliction of emotional distress and medical negligence, which are overruled. (Code Civ. Proc. § 430.10, subd. (e).)

#### *Motion to Strike*

Defendant seeks to strike certain portions of the TAC:

1. Item 14(a)(2) for punitive damages;
2. Item 14(a)(2)(2) stating a seeking of \$20,000,000.00 in punitive damages;
3. Exhibit to the TAC regarding a phone log;
4. Exhibit to the TAC regarding a letter to Defendant;
5. Prayer for punitive damages as to the Emotional Distress causes of action;
6. Prayer for punitive damages as to the Defamation and Invasion of Privacy causes of action;
7. Prayer for attorney fees as to the Defamation and Invasion of Privacy causes of action;
8. Prayer for punitive damages as to the Sexual Assault cause of action;
9. Prayer for attorney fees as to the Sexual Assault cause of action;
10. Prayer for punitive damages as to the Conspiracy cause of action;
11. Prayer for attorney fees as to the Conspiracy cause of action;
12. Prayer for punitive damages as to the Discrimination cause of action;
13. Prayer for attorney fees as to the Discrimination cause of action;
14. Attachment to the TAC regarding the seeking of exemplary damages; and
15. Attachment to the TAC regarding the seeking of \$20,000,000.00 in exemplary damages.

The challenges are based off four arguments: failure to comply with Code of Civil Procedure section 425.13 [Portions 1, 5, 6, 8, 10, 12 and 14]; irrelevance under Code of Civil Procedure section 436, subdivision (a) [Portions 3 and 4]; failure to comply with Code of Civil Procedure 425.10, subdivision (b) [Portions 2 and 15]; and pursuant to Code of Civil Procedure section 1021 [Portions 7, 9, 11 and 13].

#### *Code of Civil Procedure Section 425.13*

Code of Civil Procedure section 425.13 states that 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 unless the court enters an order allowing an amended pleading that includes a claim for punitive damages to be filed. (Code Civ. Proc. § 425.13, subd. (a).)

Here, Portions 1, 5, 6, 8, 10 and 12 are not causes of action for professional negligence. (*Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal.4th 75, 88 [finding that acts constituting professional negligence must be necessary or otherwise integrally related to the medical treatment and diagnoses of the patient].) Ridiculing Plaintiff's condition, as alleged on the emotional damages claim, does not appear to be the exercise of professional expertise. Derogatory comments, as alleged in the defamation claim, do not appear to be the exercise of professional expertise. The

allegations under the conspiracy and discrimination claims are insufficient to ascertain whether what is alleged falls under a professional negligence claim.

As to Portion 14, the attachment to the TAC regarding a statement of exemplary damages appears to arise out of the care provided to Plaintiff by Defendant as a health care provider. The attachment refers to certain medical concerns, and feeling as if the providers were either not timely or accurately assessing the nature of those medical concerns. (TAC, p. 14.) The attachment further questions the necessity of the catheterization procedure. These allegations arise from the conduct alleged to be medical negligence.

As to Portions 1, 5, 6 and 8, the motion to strike is denied on the grounds of Code of Civil Procedure section 425.13. As to Portions 10 and 12, the motion to strike is granted, with leave to amend due to the allegations being uncertain as to whether the prayers for punitive damages arise out of professional negligence. As to Portion 14, the motion to strike is granted. Plaintiff may seek appropriate relief to amend by separate motion as to Portion 14 to state a prayer for punitive damages as contemplated by Code of Civil Procedure section 425.13.

#### *Code of Civil Procedure Section 436*

Under Code of Civil Procedure section 436, the court may, upon motion, strike out any irrelevant, false, or improper matter asserted in the pleading. Defendant argues that the phone log and letter attachments are irrelevant to the pleadings. No opposition was filed. The court is unable to ascertain the purpose of the phone log or the letter. The motion to strike as to Portions 3 and 4 are granted, with leave to amend.

#### *Code of Civil Procedure Section 425.10*

Code of Civil Procedure section 425.10, subdivision (b), states that where an action is brought to recover actual or punitive damages for personal injury, the amount demanded shall not be stated. Portions 2 and 15 of the TAC improperly state the amount sought in punitive damages. The motion to strike as to Portions 2 and 15 are granted, without leave to amend to restate an amount.

#### *Code of Civil Procedure Section 1021*

Code of Civil Procedure section 1021 provides that, except as specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties. Defendant challenges Plaintiff's prayer for attorney fees for lack of clear statutory authorization. The court agrees that the TAC fails to identify sufficient bases upon which to seek attorney fees. The motion to strike Portions 7, 9, 11 and 13 are granted, with leave to amend.

In sum, the motion to strike is granted as to Portions 3, 4, 7, 9, 10, 11, 12 and 13, with leave to amend. The motion to strike is granted as to Portion 14, and leave to amend is conditioned on Plaintiff seeking such relief under Code of Civil Procedure section 425.13. The motion to strike is granted as to Portions 2 and 15, without leave to amend to restate



an amount sought in punitive damages. The motion to strike is denied as to Portions 1, 5, 6 and 8.

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** 4/29/2024.  
(Judge's initials) (Date)

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**Tentative Ruling**

Re: ***Doe v. Fresno Unified School District, et al.***  
Superior Court Case No. 22CECG02468

Hearing Date: May 1, 2024 (Dept. 501)

Motion: by Defendant Fresno Unified School District for Summary Judgment or, in the Alternative, for Summary Adjudication

**Tentative Ruling:**

To grant summary judgment in favor of Fresno Unified School District. (Code Civ. Proc., § 437c.) Each request for judicial notice is granted. (Evid. Code, § 452, subd. (d).)

Fresno Unified School District is directed to submit a proposed judgment consistent with this order, within five days of service of the minute order by the clerk.

**Explanation:**

Fresno Unified School District ("FUSD") moves for summary judgment or, in the alternative, for summary adjudication as to the third, fourth and fifth causes of action for negligent hiring, supervision or retention of an unfit employee, failure to report suspected child abuse, and negligent supervision of a minor.

Burden on Summary Judgment

In determining a motion for summary judgment, courts usually follow a three-prong analysis: identifying the issues as framed by the pleadings; determining whether the moving party has established facts negating the opposing party's claims and justifying judgment in the movant's favor; and determining whether the opposition demonstrates the existence of a triable issue of material fact. (*Hutton v. Fidelity National Title Co.* (2013) 213 Cal.App.4th 486, 493.) The moving party bears the burden of showing the court that the plaintiff 'has not established, and cannot reasonably expect to establish, a prima facie case ... .' [Citation.]" (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460; Code Civ. Proc., § 437c, subd. (f)(1).)

*Third Cause of Action – Negligent Hiring, Supervision, and Retention*

To prevail on a cause of action for negligent hiring, supervision, or retention of an unfit employee, plaintiff must establish: (1) that the employer defendant hired the employee; (2) the employee was or became unfit to perform the work for which he was hired; (3) the employer defendant knew or should have known the employee was or became unfit and that this unfitness created a particular risk to others; (4) the employee's unfitness harmed plaintiff; and (5) the employer defendant's negligence in hiring/supervising/retaining the employee was a substantial factor in causing in plaintiff's harm. (Judicial Council of Cal. Civ. Jury Instns. (Feb. 2024 rev.) CACI No. 426.)

Here, FUSD contends that plaintiff cannot establish her claim against it, because she cannot show that FUSD hired defendant Doe 1. Indeed, Doe 1 was never hired or employed by FUSD. (UMF, Issue No. 1, Nos. 5-6.) Additionally, Doe 1 was never a volunteer or agent of FUSD. (*Id.*, at Nos. 10-11.) According, FUSD has met its burden in showing that plaintiff cannot establish a prima face case for negligent hiring, supervision, and retention of an unfit employee.

#### *Fourth Cause of Action – Failure to Report*

The Child Abuse and Neglect Report Act (“CANRA”), codified in Penal Code sections 11164 *et seq.*, “requires a ‘mandated reporter,’ which includes teachers and certain other school employees, ‘to make a report to a law enforcement agency or a county welfare department “whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.” ’ [Citation.] ” (*Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113, 138, citations omitted.) “Failure to make the required report is a misdemeanor. (Pen. Code, § 11166, subd. (c).) In addition, an injured minor may bring a civil action where ‘ “a breach of the mandated reporter’s duty to report child abuse” ’ causes the minor’s injuries. [Citation.] ” (*Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113, 138, citations omitted.)

FUSD contends that it did not fail to report any act of child abuse under CANRA, because no act of child abuse occurred while plaintiff was enrolled as a student at FUSD. (UMF, Issue No. 2, Nos. 1-3.) Additionally, FUSD indicates that neither a former or current employee of FUSD had knowledge of the sexual misconduct alleged in the complaint. (*Id.*, at Nos. 12-13.) Therefore, the moving party has shown that plaintiff cannot establish its cause of action under CANRA against FUSD.

#### *Fifth Cause of Action – Negligent Supervision of a Minor*

“In any negligence action, a plaintiff must demonstrate the existence of a legal duty of care, a breach of that duty, and proximate causation linking the breach with resulting injury.” (*Roe v. Hesperia Unified School District* (2022) 85 Cal.App.5th 13, 24, footnote and citations omitted.) “In general, there exists ‘no duty to protect others from the conduct of third parties.’ [Citation.] ” (*Id.* at p. 25, citations omitted.) “But one exception to that rule exists when a ‘person is in what the law calls a “special relationship” with either the victim or the person who created the harm.’ [Citation.] ” (*Ibid.*, citations omitted.) “[S]uch a special relationship exists between a school district and its employees and students. [Citation.] A school district and its personnel owe students ‘the duty to use reasonable measures to protect [them] from foreseeable injury at the hands of third parties acting negligently or intentionally,’ including ‘injuries to a student resulting from a teacher’s sexual assault.’ [Citation.] ” (*Ibid.*, citations omitted.)

Here, however, FUSD has shown that none of the abuse alleged in the complaint occurred while plaintiff was enrolled as student at FUSD. (UMF, Issue No. 3, Nos. 1-2.) Nor was plaintiff the victim of any abuse perpetrated by any former or current employee of FUSD. (*Id.*, at Nos. 3-4.) FUSD has also shown that Doe 1 was never hired/employed by or



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**Tentative Ruling**

Re: **Yow v. Singh**  
Superior Court Case no. 22CECG02767

Hearing Date: May 1, 2024 (Dept. 501)

Motion: Application of Mona Lisa Wallace to Appear as Counsel *Pro Hac Vice*

**Tentative Ruling:**

To grant the application. (Cal. Rules of Court, rule 9.40.)

**Explanation:**

Plaintiff has filed an application for attorney Mona Lisa Wallace to appear in the above-titled case, *pro hac vice*. The application complies with the requirements of California Rules of Court, rule 9.40, and no opposition has been filed. The application is granted.

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 4/30/2024.  
(Judge's initials) (Date)