Tentative Rulings for May 13, 2025
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

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

20CECG02232 ***Paredes v. Daniels, et al.*** **is continued to Thursday, May 15, 2025 at 3:30 p.m in Department 403**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(20) **Tentative Ruling**

Re: ***Estate of Jae-Luv Smith and Keona Smith v. County of Fresno et al.***
Superior Court Case No. 22CECG00120
Consolidated with
Doe 1 v. County of Fresno et al.
Superior Court Case No. 23CECG00777

Hearing Date: May 13, 2025 (Dept. 403)

Motion: By Defendants for Summary Judgment

If oral argument is timely requested, it will be entertained on Thursday, May 15, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To deny.

Explanation:

These are two consolidated actions arising from the death of Jae-Luv Smith, allegedly caused by the physical abuse and neglect of his great-aunt and great-uncle, Crystal and Patrick Johnson. Plaintiffs, the Estate of Jae-Luv, with his biological mother as his successor-in-interest, and Jae-Luv's two siblings, sue the County of Fresno and two social workers employed by the Department of Social Services, Richard Plantz and Julie Donnelly. The two First Amended Complaints ("FAC") assert causes of action for (1) Violation of Child Abuse and Neglect Reporting Act; (2) Breach of Mandatory Duties; and (3) Breach of Duties Arising under Special Relationship.

Defendants County of Fresno, Plantz and Donnelly now move for summary judgment, on the following grounds as stated in the notice of motion:

1. Public entity liability must be based on statute;
2. The Penal Code sections and Department of Social Services Regulations were either not violated and/or do not provide a basis for mandatory duty liability.
3. No special relationship existed between the defendants and the plaintiffs or plaintiffs' decedent;
4. As a matter of law, defendants did not cause plaintiffs' alleged injuries;
5. Defendant are absolutely immune from liability; and
6. Plaintiffs' punitive damage claim has no merit.

Defendants do not move for summary adjudication of any of the above issues, or of any particular cause of action for claim for damages. A motion for summary judgment asks the court to determine that the entire action has no merit (or that there is no defense) and to terminate the action without the necessity of a trial. (Code Civ. Proc., § 437c, subd. (a).) The court must determine from the evidence presented that "there is no triable

issue as to *any material fact* and that the moving party is entitled to judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).)

The requirement that there be "no triable issue of material fact" means that summary judgment can be granted only where the essential facts are either conceded or beyond dispute. If there is one, single material fact in dispute, the motion must be denied. A factual issue is material whenever its determination could make a difference to the disposition of the motion. (See Cal. Rules of Court, rule 3.1350(a)(2).)

The motion is denied because, due to the way the motion is structured, it does not comply with the Rules of Court, and is unnecessarily difficult determine whether the facts truly are undisputed as to each defendant and the two complaints. Furthermore, there is a triable issue as to at least one basis for liability.

The motion is extremely fact-intensive, with defendants presenting 103 purportedly undisputed facts, each of which defendants apparently contend is material to each cause of action, each of the three defendants, and every issue set forth above in the notice of motion. The fact summary in defendants' memorandum is 15 pages long. Highly fact-intensive cases do not often lend themselves to summary judgment because of how likely it is that there are some triable issues of fact.

Defendants' separate statement does not comply with the Rules of Court.

> (1) The Separate Statement of Undisputed Material Facts in support of a motion **must separately identify**:
> (A) **Each cause of action**, claim for damages, issue of duty, or affirmative defense that is the subject of the motion; and
> (B) **Each supporting material fact claimed to be without dispute with respect to the cause of action**, claim for damages, issue of duty, or affirmative defense that is the subject of the motion.

(Cal. Rules of Court, rule 3.1350(d), emphasis added.)

The separate statement does not separately identify each cause of action or claim for damages, or identify the facts material to each cause of action or claim for damages. This failure is compounded by the fact that the motion is brought by three different defendants, each of whom acted in different capacities, and for whom there are separate bases for liability. Plantz and Donnelly were social workers who conducts their own investigations in response to different reports of child abuse at different times. The extent and statutory basis of their liability is distinct from that of the County. Yet defendants simply present a single undifferentiated sequence of 103 facts, without separately identifying any of the three causes of action (or punitive damages claim), or separating out the facts relevant to the distinct defendants. This leaves the court to guess whether some facts are material to certain causes of action or defendants but not others. The failure of the moving papers to differentiate and follow Rule 3.1350(d) makes it unnecessarily difficult to assess the merits of the motion.

Moreover, there are two operative pleadings in this action. The first is the FAC filed by the Estate of Jae-Luv Smith filed on 9/5/2024. The other is the FAC filed by Jane Doe 1

and Jane Doe 2 on 9/10/24. The Notice of Motion does not specify the plaintiffs or the pleadings to which the motion is directed. "A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Proc., § 437c, subd. (a)(1).) This language inherently requires the motion to be directed at specific pleadings and parties, as it is arguing the absence of a claim or defense against those specific parties. However, defendants' Notice of Motion does not specify the parties to whom notice is given, merely stating "NOTICE IS HEREBY GIVEN that on May 13, 2025 …" defendants will move for summary judgment, as to unspecified parties and pleadings. "If summary judgment is sought, the notice of motion should *name the party* in whose favor and against whom the judgment is sought …" (Weil & Brown, *Cal. Practice Guide Civ. Proc. Before Trial* (TRG 2024) ¶ 10:85.)

Cal. Rules of Court, rule 3.1112(d) provides that a motion must contain the identity of the parties to whom it is addressed and if a pleading is challenged, the specific portion challenged. This notice of motion does not identify the parties to whom it is addressed or identify the pleading or pleadings challenged. One opposition was filed, but it also does not specifically identify on whose behalf it was filed, simply referencing "Plaintiffs."

One example of how it is problematic that defendants present a single series of 103 facts without specifying causes of action or parties to which they are relevant is found in the first discussion section of defendants' memorandum. It is unclear what cause or causes of action are at issue in defendants' first argument (starting at section IV at page 16). Defendants correctly point out that "[e]xcept as provided by statute: (a) A public entity is not liable for injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Gov. Code, § 815.) Under the Tort Claim Act, "liability must be based on statute; all common law or judicially declared forms of tort liability, except as may be required by state or federal constitution, were abolished." (*Michael J. v. Los Angeles County Dept. of Adoptions* (1988) 201 Cal.App.3d 859, 866.) As a result of the Tort Claims Act, a public entity cannot be held liable on a theory of common law negligence. (See *Munoz v. City of Union* (2004) 120 Cal.App.4th 1077, 1132.) Government Code section 815.6, however, provides that public entities may be liable for breach of mandatory duty.

Defendants conclude this section arguing,

> Plaintiffs' first amended complaints allege that the County "arbitrarily classified" referrals of alleged physical abuse as "'non crisis' and failed to perform several mandatory duties." DOES' first am. Compl., 2:26-27, Estate's first am. Compl., 3:8-9. They further allege that the County "failed to conduct a complete and thorough investigation." Ibid. They allege a "botched investigation." DOES' first am. Compl., 3:25, Estate's first am. Compl., 3:15. The undisputed facts are that these allegations are unfounded and false.

(MPA 17:22-28.)

Yet defendants do not identify the facts that establish these conclusions. Defendants apparently expect the court to sift through the extensive facts set forth in the separate statement and find those that support its conclusory argument.

The court has determined, in granting plaintiffs' motion for summary adjudication, that defendants owed duties under Penal Code section 11166(j)(1), Welfare and Institutions Code section 16501(f) and CDSS regulations 31-115.1, 31-120.1 and 31-125.2 to cross-report both referrals and to see Jae-Luv within 10 days (as to the 2016 referral) or immediately (as to the 2020 referral).

Since defendants only move for summary judgment, it is sufficient to defeat the motion if there is a single statutory or regulatory basis for plaintiffs' claims.

Defendants present no evidence that the 2016 referral was cross-reported. With regard to the 2020 referral, defendants contend that Fresno County Hotline social worker Nataska Mohair made a cross-report to law enforcement by generating a form Word document in the computer system, and the document was then **mailed** to the Fresno Police Department. (UMF 72.) It is not disputed that this occurred, but there is a dispute as to whether it satisfies the County's duty to cross-report.

Penal Code section 11166(j)(1) requires that the written cross-report be sent by fax or electronic transmission (not regular mail) within 36 hours, and the defendants submit no evidence that that happened here. The cross-report was not made as required by subdivision (j)(1), since this was an immediate response referral. Defendants contend that the cross-report was mailed, but the statute requires fax or electronic transmission. So there is evidence of a mandatory duty that was breached. Plaintiffs also point out that the County served a request for admission response in which it admitted that it did not cross-report the 2020 referral. (Booth Decl., Exh. B at pp. 2-3.)

While the entire set of facts may be relevant to the County's liability, the motion is made on behalf of Plantz and Donnelly as well, whose involvement was more limited in scope and time. Yet all these facts are presented as material to all defendants, apparently all plaintiffs, and all causes of action.

Defendants also seek to negate any liability because there is no causation. "To establish liability under section 815.6, a plaintiff 'must demonstrate breach of the statute's mandatory duty was a proximate cause of the injury suffered." (*Wilson v. County of San Diego* (2001) 91 Cal.App.4th 974, 980.) Defendants assert without evidentiary support that "[t]here is no evidence that law enforcement did anything in response to this cross-report." (MPA 20:23-24.) However, they cite to no evidence in support of this assertion. Similarly, they assert that "there is absolutely no evidence that either law enforcement or anyone from the District Attorney's office would have conducted an investigation further or any different from what was done by the County, Plantz and/or Donnelly." (MPA 21:16-19.) Facts are established by way of evidence, and simply stating it does not make it so.

Accordingly, defendants have not negated liability for breach of mandatory duty to cross-report. Since this is identified as a material issue as to all claims and all defendants, the court intends to deny the motion in its entirety.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 5-9-25 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Rivera v. S&B Auto, LLC, et al.***
Superior Court Case No. 24CECG03782

Hearing Date: May 13, 2025 (Dept. 403)

Motion: by Defendant S&B Auto, LLC dba Auto City to Compel Arbitration

If oral argument is timely requested, it will be entertained on Thursday, May 15, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant the motion to compel arbitration and to stay proceedings pending the arbitration of plaintiff's claims against defendant S&B Auto, LLC. To stay this action and the remaining claims against the remaining parties pending the completion of arbitration.

Explanation:

In moving to compel arbitration, defendants must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. The party opposing the motion must then prove by a preponderance of evidence that a ground for denial of the motion exists (e.g., fraud, unconscionability, etc.). (*Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413-414; *Hotels Nevada v. L.A. Pacific Ctr., Inc.* (2006) 144 Cal.App.4th 754, 758; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.) There is a strong policy in favor of arbitration. (*AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339.) Courts are to enforce valid arbitration agreements according to their terms. (*Ibid*.)

Here, there is no challenge that there is an applicable arbitration agreement and that it covers the scope of plaintiff's claims in this action. (See Nesser Decl., Ex. A at p. 5.) Defendant S&B Auto, LLC (hereinafter, defendant) has met its burden of presenting evidence that shows there was an agreement to arbitrate all disputes and claims with limited exceptions between the parties. Defendant presents a copy of the Retail Installment Sales Contract ("RISC"), which contains a broadly worded arbitration provision that requires the parties to arbitrate any dispute arising out of plaintiff's purchase or condition of the vehicle. (*Ibid*.) The RISC was signed by plaintiff on September 13, 2023. (See Nesser Decl., Ex. A at p. 6.)

While plaintiff does not deny that he signed the agreement plaintiff contends that the arbitration agreement is unconscionable and therefore should not be enforced. (*Armendariz v. Foundation Health Psychcare Services, Inc*. (2000) 24 Cal.4th 83, 114 ("*Armendariz*").)

Unconscionability

"The party resisting arbitration bears the burden of proving unconscionability. Both procedural unconscionability and substantive unconscionability must be shown, but 'they need not be present in the same degree' and are evaluated on '"a sliding scale."' '[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa.'" (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 247, internal citations omitted.)

- *Procedural Unconscionability*

An agreement may be unconscionable where it is adhesive. An agreement is adhesive where a standardized contract, drafted and imposed by the party with superior bargaining strength, gives the other party only an opportunity to adhere to the terms or to reject them. (*Armendariz, supra*, 24 Cal.4th 83, 113.) Here, there is no real dispute about the adhesive nature of this consumer contract. Even so, adhesion does not *per se* render the arbitration agreement unenforceable, since such contracts "are an inevitable fact of life for all citizens, businessman and consumer alike." (*Graham v. Scissor-Tail, Inc.* (1981) 28 Cal.3d 807, 817-818.) The Supreme Court has stated this is the reason for "the various intensifiers in our formulations: '*overly* harsh,' '*unduly* oppressive,' '*unreasonably* favorable.'" (*Baltazar v. Forever 21, Inc.*, (2016) 62 Cal.4th 1237, 1245 (emphasis in the original).) A finding of procedural unconscionability "does not mean that a contract will not be enforced, but rather that courts will scrutinize the substantive terms of the contract to ensure they are not manifestly unfair or one-sided." (*Id.* at p. 1244.)

Plaintiff further alleges that the agreement was allegedly buried and he was not given sufficient time to review the documents. Based on all of these assertions, it does appear that the arbitration agreement is at least somewhat procedurally unconscionable. However, the court notes that the degree of procedural unconscionability is likely limited, since the arbitration provision is on the fifth page of the six-page RISC, and written in bold font and all capitalized letters. (Nassar Decl., Ex. A at p. 5.) The arbitration provision is further referenced in bold font and in all capital letters in a paragraph immediately preceding the signature line on the last page of the RISC, which states in pertinent part: "**YOU ACKNOWLEDGE THAT YOU HAVE READ ALL PAGES OF THIS CONTRACT, INCLUDING THE ARBITRATION PROVISION ON PAGE 5, BEFORE SIGNING BELOW.**" (*Id*., at Ex. A at p. 6.) Additionally, there is no evidence showing that plaintiff was prevented from taking the time to review the documents, i.e., that he would otherwise lose the opportunity to purchase the vehicle unless he signed the agreement in a limited amount of time.[1]

Because procedural unconscionability has been found, the analysis turns on consideration of the substantive unconscionability prong.

- *Substantive Unconscionability*

[1] Plaintiff's absence of discovery argument is addressed under the substantive unconscionability section.

Plaintiff argues the discovery limitations and arbitrator selection procedures for the American Arbitration Association ("AAA") is substantively unconscionable and require finding the arbitration agreement unenforceable. The argument is not that the terms of the arbitration agreement result in such unconscionable limitations, but that the AAA rules on their own are unconscionable. Plaintiff's position is not supported by authority and the court is not inclined to find that the rules of AAA are inherently unconscionable.

Regarding discovery limitations, plaintiff cites to *Fitz v. NCR Corp.* (2004) 118 Cal.App.4th 702 for the position that the court should scrutinize whether there is adequate discovery permitted under the arbitration agreement. In *Fitz*, the court contrasted the arbitration agreement's limitation of two depositions with the AAA rules allowing the arbitrator authority to order discovery as the arbitrator considers necessary to allow full and fair exploration of the issues and found the arbitration agreement's limitation, not the AAA rules, to result in Fitz's inability to vindicate his claims. (*Id*., at pp. 715-721.) There, "NCR deliberately replaced the AAA's discovery provision with a more restrictive one, and in so doing failed to ensure that employees are entitled to discovery sufficient to adequately arbitrate their claims." (*Id*., at p. 721.) NCR's "policy limits discovery to two depositions and then permits the arbitrator to grant additional discovery only if a compelling need is shown. The AAA rule on the other hand, imposes no initial limitation on discovery… There is, therefore, an adverse material inconsistency between the two discovery provisions." (*Id*., at p. 720.) Moreover, although neither party cites to this case, the AAA rules were addressed directly in *Roman v. Superior Court* (2009) 172 Cal.App.4th 1462, where the court found the AAA rules allowing the arbitrator to make determinations that may limit discovery is no different from the limited scope of discovery approved by the California Supreme Court in *Armendariz*. (*Roman v. Superior Court*, supra, 172 Cal.App.4th 1462, 1475-1476.)

Plaintiff additionally argues the AAA arbitrator selection process is unconscionable. Particularly, plaintiff contends that by specifying the arbitration forum, defendant has unilaterally selected the pool of arbitrators. Plaintiff also further argues the following: "that Fontana Motors Direct gets to further limit the pool without input from Plaintiff." (Opp., 4:14-15.) The court does not see Fontana Motors Direct referenced in the arbitration agreement. Nor does plaintiff explain to the court who or what this entity is and how it is related to the instant proceedings. Plaintiff also has not demonstrated that AAA's unilateral appointment of an arbitrator from their rosters of neutral arbitrators is inconsistent with the requirement of a neutral arbitrator.

Accordingly, there is no substantive unconscionability, and the agreement must be enforced.

Selection of Arbitrator

Plaintiff alternatively asks the court to compel arbitration, but to strike out the AAA rules on discovery and appoint an arbitrator or to compel the parties to arbitrate with an alternative arbitration company.

The arbitration agreement provides that arbitration should be conducted with either the AAA or National Arbitration and Mediation ("NAM") unless the parties agree to select a different arbitration organization. (Nasser Decl., Ex. A., p. 5.)

"The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. (Civ. Code. § 1636.) If contractual language is clear and explicit, it governs. (Civ. Code § 11638.)" (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264.) Any ambiguity in the language of the arbitration clause must be interpreted against the drafter. (Civ. Code § 1654; *Victoria v. Superior Court* (1985) 40 Cal.3d 734,745, 747.)

The plain language of the agreement allows either party to select AAA or NAM to conduct the arbitration. Plaintiff's proposal to circumvent the AAA rules and processes is not expressly provided for in the agreement. And as previously explained, nor has plaintiff shown that the AAA rules are inherently substantively unconscionable so as to allow the court to sever these provisions. However, plaintiff's proposal to use an alternative organization is an action that is within the language of the agreement. However, it is clear the parties have not come to an agreement to use an alternative organization. As a result, the court finds defendant's demand for arbitration through AAA consistent with the language of the agreement and enforceable in this motion.

Therefore, the motion to compel the plaintiff to arbitrate his claims through AAA against defendant S&B Auto, LLC 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: lmg on 5-9-25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***TXT E Solutions USA Inc. v. Queclink of North America LLC***
Superior Court Case No. 24CECG04290

Hearing Date: May 13, 2025 (Dept. 403)

Motion: by Defendant to Set Aside Default

If oral argument is timely requested, it will be entertained on Thursday, May 15, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant the motion to set aside Entry of Default of defendant Queclink of North America LLC. (Code Civ. Proc., § 473, subd. (b).) Defendant Queclink of North America LLC is ordered to file and serve its responsive pleadings within 10 days of the clerk's service of the minute order.

Explanation:

Legal Standard

The trial court has broad discretion to vacate the judgment and/or the clerk's entry of default that preceded it. However, that discretion can be exercised only if the moving party establishes a proper ground for relief, by the proper procedure, and within the statutory time limits. (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495.) "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Code Civ. Proc., § 473, subd. (b).) This discretionary relief can be based on a declaration or other evidence showing "mistake, inadvertence, surprise or excusable neglect."

The burden is on the moving party to show that the neglect was excusable: i.e., that the default could not have been avoided through the exercise of ordinary care. (*Jackson v. Bank of America* (1983) 141 CA3d 55, 58 ["the acts which brought about the default must have been the acts of a reasonably prudent person under the same circumstances."]

"[I]t is the policy of the law that every case should be heard on its merits, and section 473 is a remedial provision to be liberally construed to the end that cases be disposed of upon their merits; that for these reasons a reviewing court listens more readily to an appeal for an order denying relief than one granting relief; and that where there is any doubt as to whether a default should be set aside such doubt should be resolved in

favor of the application." (*Gore v. Witt* (1957) 149 Cal.App.2d 681, 685; see also *Fasuyi v. Permatex* (2008) 167 Cal.App.4th 681, 696.) Where the party seeking relief seeks such relief promptly and no prejudice will result to the opposing party, "very slight evidence will be required to justify a court in setting aside the default." (*Elston v. City of Turlock*, (1985) 38 Cal.3d 227, 233 [superseded by statute on other grounds].)

Application

The court finds that the moving party has sufficiently shown excusable neglect for not filing a responsive pleading in a timely manner. With excusable neglect, the issue comes down to whether the moving party has shown a reasonable excuse for the default. (*Shapiro v. Clark,* (2008) 164 Cal.App.4th 1128, 1141-1142 (rejecting "categorical statements about what can be found to constitute excusable neglect").)

Defendant Queclink of North America LLC ("defendant" or "Queclink") was a suspended corporation from July 1, 2024 to January 31, 2025. (Hernandez Decl., ¶¶ 2, 4.) During its suspension, defendant was served with this lawsuit and its default subsequently entered.[2] The parties do not dispute that "during the period that a corporation is suspended for failure to pay taxes, it may not prosecute or defend an action." (*Grell v. Laci Le Beau Corp.* (1999) 73 Cal.App.4th 1300, 1306.) (Opp., 4:4-7.) Plaintiff TXT E Solutions USA Inc. ("plaintiff") attempts to argue that "excusable neglect" is not appropriate to apply to defendant's conduct here, but does not support this suggestion with any authority. The question is, then, whether the evidence supports an inference that defendant's neglect in failing to plead is excusable. (*Shapiro v. Clark, supra,* 164 Cal.App.4th at p. 1142.)

Defendant here did not respond because it could not legally respond, and the court finds this to be excusable. Defendant was *already* suspended when this action was filed and the summons served. The default entered against it could not have been avoided through the exercise of ordinary care, as defendant was suspended from the start of litigation and could not legally respond at any time during this suit until after January 31, 2025. A reasonably prudent person in the same circumstances, i.e. another suspended corporation served with a lawsuit, would have been left with the same options and been unable to respond to the complaint. No argument was made alleging that defendant was not actively attempting to get reinstated between July 2024 and January 2025. After January 31, 2025, defendant appears to have taken steps to quickly address the default. While plaintiff criticizes the six-week delay in filing this motion, defense counsel had to be retained, conduct a case review, and prepare this motion along with the proposed pleadings. Six weeks is a reasonable amount of time for these actions to be taken. Plaintiff has not described a significant prejudice that will be imposed by granting the motion. Pursuant to the facts before it, the court finds excusable neglect has been shown and intends to grant the motion to set aside the defendant's default.

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

[2] Plaintiff's requests for judicial notice are granted, pursuant to Evid. Code sec. 452 subd. (d).

adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 5-9-25.
(Judge's initials) (Date)

(36) **Tentative Ruling**

Re: ***Altamirano v. Gebhart***
Superior Court Case No. 23CECG03931

Hearing Date: May 13, 2025 (Dept. 403)

Motion: Petition for Compromise of Minor

If oral argument is timely requested, it will be entertained on Thursday, May 15, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant. Orders signed. No appearances necessary.

The court sets a status conference on Tuesday, August 12, 2025, at 3:28 p.m., in Department 403, for confirmation of deposit of the minor's funds into a blocked account. If Petitioner files the Acknowledge of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

Pursuant to California Rules of Court, Rule 3.1312 and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg **on** 5-9-25 .
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Donna Hine-Langley v. IDLS Sierra Avenue LLC***
Superior Court Case No. 25CECG01227

Hearing Date: May 13, 2025 (Dept. 403)

Motion: by Plaintiff for Trial Preference

If oral argument is timely requested, it will be entertained on Thursday, May 15, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant. (Code Civ. Proc. § 36, subd. (a).) A trial date shall be set for a date within the next 120 days.

Explanation:

Under Code of Civil Procedure section 36, subdivision (a),

> A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both of the following findings:
>
> (1) The party has a substantial interest in the action as a whole.
>
> (2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.

(Code Civ. Proc., § 36, subd. (a).)

"Upon the granting of such a motion for preference, the court shall set the matter for trial not more than 120 days from that date and there shall be no continuance beyond 120 days from the granting of the motion for preference except for physical disability of a party or a party's attorney, or upon a showing of good cause stated in the record. Any continuance shall be for no more than 15 days and no more than one continuance for physical disability may be granted to any party." (Code Civ. Proc., § 36, subd. (f).)

Assuming the elements of the statute are met and there has not been untoward delay by the plaintiff or other extenuating circumstance, the plaintiff is entitled to a mandatory trial preference. (*Landry v. Berryessa Union School Dist*. (1995) 39 Cal.App.4th 691, 696–697.) "Mere inconvenience to the court or to other litigants is irrelevant. Failure to complete discovery or other pretrial matters does not affect the absolute substantive right to trial preference for those litigants who qualify for preference under subdivision (a) of section 36. The trial court has no power to balance the differing interests of opposing litigants in applying the provision. The express legislative mandate for trial preference is

a substantive public policy concern which supersedes such considerations." (*Swaithes v. Superior Court* (1989) 212 Cal.App.3d 1082, 1085-1086, internal citations omitted.)

Moreover, "[a]n affidavit submitted in support of a motion for preference under subdivision (a) of Section 36 may be signed by the attorney for the party seeking preference based upon information and belief as to the medical diagnosis and prognosis of any party. The affidavit is not admissible for any purpose other than a motion for preference under subdivision (a) of Section 36." (Code Civ. Proc., § 36.5.)

"The standard under subdivision (a), unlike under subdivision (d), which is more specific and more rigorous, includes no requirement of a doctor's declaration. To the contrary, a motion under subdivision (a) may be supported by nothing more than an attorney's declaration 'based upon information and belief as to the medical diagnosis and prognosis of any party.'" (*Fox v. Superior Court* (2018) 21 Cal.App.5th 529, 534, internal citations omitted.)

A plaintiff moving for a trial preference under subdivision (a) does not have to show that she is likely to die or become incapacitated before the case goes to trial if a preference is not granted. "Section 36, subdivision (a), says nothing about 'death or incapacity.' Whether there is 'substantial medical doubt of survival ... beyond six months' is, to be sure, a matter of specific concern under subdivision (d), but the relevant standard under subdivision (a) is more open-ended. The issue under subdivision (a) is not whether an elderly litigant might die before trial or become so disabled that she might as well be absent when trial is called. Provided there is evidence that the party involved is over 70, all subdivision (a) requires is a showing that that party's 'health ... is such that a preference is necessary *to prevent prejudicing [their] interest in the litigation*.' (Italics added.)" (*Ibid*.) The moving party does not have to show that he or she would be likely to be unavailable for trial, but only that his or her interests in litigation would be prejudiced if a preferential date is not granted. (*Ibid*.) "Where a party meets the requisite standard for calendar preference under subdivision (a), preference must be granted. No weighing of interests is involved." (*Id*. at p. 535; see also *Rice v. Superior Court* (1982) 136 Cal.App.3d 81, 86-89.)

Here, plaintiff Donna Hine-Langley ("plaintiff") moves for trial preference under section 36, subdivision (a), based on evidence that she is 85 years old and she suffers from several serious health conditions. (Attarchi Decl., ¶¶ 8, 9.) A declaration from Dr. Shahab Attarchi indicates plaintiff has a history of strokes and remains at high risk for future stroke events. (*Ibid*.) She suffers from conditions negatively impacting her heart health and is at high risk for heart failure. (*Ibid*.) She also claims that she has a substantial interest in the litigation, and that her interest will be prejudiced if the case does not go to trial within 120 days. It is Dr. Attarchi's opinion that "to a reasonable degree of medical certainty there exists a substantial medical doubt that Donna Langley has more than six months to live." (*Id*., ¶ 10.)

Age and Substantial Interest

For demonstrating the party's age, admissible evidence is required. Admissible evidence includes a declaration by the party or admissible records showing the party is over 70 years old. (Weil & Brown, *Cal. Practice Guide: Civ. Proc. Before Trial* (TRG 2022) ¶

12:247.3) An attorney's declaration is not sufficient. (*Ibid*.) Here, the evidence presented to demonstrate plaintiff's age, a declaration by a physician who examined plaintiff and her medical records (Attarchi Decl., ¶¶ 8, 9) and a copy of plaintiff's driver's license issued April 18, 2021(Hine Decl., ¶¶ 2-3, Exh. 1), are sufficient to establish that she is 85 years old. While there is no singular definition of one's "substantial interest," the outcome of the present litigation concerns injuries plaintiff suffered as a result of her care, or alleged lack thereof, while admitted to the Residential Care Facility for the Elderly, owned/operated by defendants IDLS Sierra Avenue LLC and Michael Sigala ("defendants"). Defendants did not oppose that this is a substantial interest. Plaintiff has met the first prong of section 36, as she is over the age of 70 and she has a substantial interest in the action as a whole.

Interests Prejudiced if Trial Preference Not Granted

Plaintiff argues that her interest in the litigation will be prejudiced if the case does not go to trial in the next 120 days. Plaintiff's counsel in his declaration articulates that plaintiff's interests will be prejudiced because the first cause of action is premised on "important distinctions between what must be proven pursuant to the EADACPA post-mortem and the simply preponderance of the evidence standard of proof required for an award of non-economic damages prior to death." (Garcia Decl., ¶ 9.) Counsel relies on Dr. Attarchi's opinion that plaintiff will not survive more than six months. (*Id.,* ¶ 10.) Plaintiff provides the declaration of Dr. Shahab Attarchi as evidence that plaintiff currently suffers from a multitude of severe health issues, which compromise her health and life expectancy. While a doctor's declaration is not required under Section 36, subdivision (a), plaintiff has provided one to support her motion for trial preference, and evidence that plaintiff's present health conditions could prejudice her interest in the litigation.

Dr. Shahab Attarchi describes "a medical history of two hemorrhagic strokes with residual left sided paresis, seizures status post stroke, atrial fibrillation, coronary artery disease, stent placement in heart, history of cardiac arrest requiring CPR with revival, Tachy-brady syndrome with permanent pacemaker placement, cardiac murmur, Stage 3 chronic kidney disease, respiratory failure, hyponatremia from intracranial bleed, Addison's disease, dysphagia, frequent urinary tract infections, ESBL infection, pneumonia, multiple falls resulting in injury, pelvic bone fracture, diabetes, hypertension, high cholesterol and GERD." (Attarchi Decl., ¶ 9.) He also states that she suffers from "atrial fibrillation, coronary artery disease, stent placement in heart, history of cardiac arrest requiring CPR wirg revival, Tachy-brady syndrome with permanent pacemaker placement, respiratory failure and cardiac murmur." (*Ibid*.)

Dr. Attarchi is a licensed physician board-certified in Internal Medicine Specialist and has practiced medicine for over 20 years. He currently is a Hospitalist at Mission Community Hospital and Valley Presbyterian Hospital. He conducted a telehealth examination of plaintiff on March 29, 2025 and reviewed her medical records. As a result of her various health complications, Dr. Attarchi concluded that she is at risk for severe stroke, heart failure, heart attack, and serious fall events. He expressed a substantial medical doubt whether plaintiff will live longer than six months from the time of examination.

Plaintiff has not delayed in bringing this motion and appears to be demonstrating an urgency in proceeding with her case. The action was filed on March 13, 2025 and this motion was filed April 9, 2025. Defendants were served with the summons and complaint on April 5, 2025 by personal service. Notice of the present motion was served on April 11, 2025 by personal service. Defendants submitted a joint answer that is pending filing in the court's queue, but defendants did not file opposition to this motion.

The court finds that plaintiff has adequately met her burden under Code of Civil Procedure section 36 subdivision (a), thus the court will grant the unopposed motion for trial preference.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 5-9-25.
(Judge's initials) (Date)