Tentative Rulings for May 20, 2025
Department 503

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

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

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

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Tentative Rulings for Department 503

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(20)

Tentative Ruling

Re: ***Melissa Garza v. Cerutti & Sons Transportation Co., Inc.***
Superior Court Case No. 22CECG03793

Hearing Date: May 20, 2025 (Dept. 503)

Motion: By Defendants Cerutti & Sons Transportation Company, Inc. and David Lightsey:
(1) To Compel Deposition of Plaintiff Mackenzie Garza
(2) To Compel Deposition of Plaintiff Anthony Garza
(3) For Deemed Admissions Order as to Plaintiff Mackenzie Garza
(4) For Deemed Admissions Order as to Plaintiff Anthony Garza

Tentative Ruling:

(1) To grant. Plaintiff Mackenzie Garza shall appear for deposition within ten (10) days of the hearing on this motion. (Code Civ. Proc., §§ 2025.450, subd. (a), 2025.280, subd. (a).) To impose $360 in monetary sanctions against Mackenzie Garza and in favor of defendants Cerutti & Sons Transportation Company, Inc. and David Lightsey (collectively, "defendants"), to be paid to defendants' counsel within 30 days of service of the order by the clerk.

(2) To grant. Plaintiff Anthony Garza shall appear for deposition within ten (10) days of the hearing on this motion. (Code Civ. Proc., §§ 2025.450, subd. (a), 2025.280, subd. (a).) To impose reasonable sanctions in the sum $360 against Anthony Garza and in favor of defendants, to be paid to defendants' counsel within 30 days of service of the order by the clerk.

(3) To grant. The truth of all matters specified in the Request for Admissions, Set One, propounded on plaintiff Mackenzie Garza are deemed admitted. (Code Civ. Proc., § 2033.280, subd. (b).)

(4) To grant. The truth of all matters specified in the Request for Admissions, Set One, propounded on plaintiff Anthony Garza are deemed admitted. (Code Civ. Proc., § 2033.280, subd. (b).)

Explanation:

Where a party deponent fails to appear at a properly noticed deposition, and no valid objection under section 2025.410 has been served, the party giving the notice may move for an order compelling the deponent's attendance and testimony. (Code Civ. Proc., § 2025.450, subd. (a).) Defendants' motion is supported by evidence of the subject deposition notices served on plaintiffs Mackenzie and Anthony Garza and their failure to appear. There is neither evidence of objection to the notice nor is there opposition to this motion, despite proofs of service of each. Therefore, the motion is granted.

Requests for Admission, Set One, were served on Mackenzie and Anthony Garza on 1/2/2025. Since no responses have been served, an order admitted all matters specified in the requests for admission is warranted. (Code Civ. Proc., § 2033.280, subd. (b).) This will be the order of the court unless plaintiffs serve, before the hearing on the motion, proposed responses that are in substantial compliance with Code of Civil Procedure section 2033.220.

No sanctions are imposed on the motions for deemed admissions orders. Code of Civil Procedure section 2023.040, requires that the notice of motion specify the type of discovery sanction sought. Defendants' notices of motion only states that they will seek "an order for sanctions."

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: JS on 5/12/2025.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Ramirez v. Reintjes***
Case No. 23CECG02304

Hearing Date: May 20, 2025 (Dept. 503)

Motion: Defendant's Motion for Summary Judgment

Tentative Ruling:

To grant defendant's motion for summary judgment of the entire complaint.

Explanation:

"In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of legal action exceed three years unless tolled for any of the following: (1) upon proof of fraud, (2) intentional concealment, or (3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person." (Code Civ. Proc., § 340.5.)

"[S]ection 340.5 establishes two hurdles, not one, to the timely maintenance of a medical malpractice claim. Thus, if a malpractice litigant brings her action within three years from the date of injury, she must still satisfy the one-year limitations period or the action is time barred. Conversely, if the action is properly brought within one year of reasonable discovery, the action is nevertheless barred if the three-year period is not also satisfied." (*Hills v. Aronsohn* (1984) 152 Cal.App.3d 753, 758, footnote omitted.)

"The one-year limitations period of section 340.5 does not commence to run until the patient is reasonably aware not only of the physical manifestation of her injury but the negligent cause as well." (*Hills v. Aronsohn, supra,* at p. 759.) "Thus, once a patient knows, or by reasonable diligence should have known, that he has been harmed through professional negligence, he has one year to bring his suit." (*Gutierrez v. Mofid* (1985) 39 Cal.3d 892, 896.)

"The patient is charged with 'presumptive' knowledge of his negligent injury, and the statute commences to run, once he has '"notice or information of circumstances to put a reasonable person *on inquiry*, or *has the opportunity to obtain knowledge* from sources open to his investigation ...."' Thus, when the patient's 'reasonably founded suspicions [have been aroused],' and she has actually 'become alerted to the necessity for investigation and pursuit of her remedies,' the one-year period for suit begins." (*Gutierrez, supra*, at pp. 896–897, citations omitted, italics in original.)

In the present case, plaintiff alleges that she was injured by defendant's allegedly negligent performance of four root canal procedures on November 19, 2019, and that she was in "near constant pain for two years and seven months" after the procedures.

(Complaint, ¶¶ 16, 17.) She consulted with an endodontist regarding her pain in June of 2022. (*Id*. at ¶ 17.) The endodontist informed her that she required corrective procedures, which were performed on June 13, 2022. (*Ibid*.) When the corrective procedures were performed, she was informed that two of the four procedures had been improperly performed. (*Id*. at ¶ 18.) The endodontist also discovered a small, rusted piece of metal in her mouth that was the source of the inflammation and pain that she had experienced after defendant performed the root canals. (*Ibid*.)

Thus, plaintiff admits in her complaint that she was in "near constant pain" for about two and a half years after defendant performed the root canals on her on November 19, 2019, which should have been enough to place her on notice that defendant might have done something wrong during the procedures that caused her injuries. Also, plaintiff confirmed in her deposition that she has been in pain since the November 19, 2019 root canal procedures. (Defendant's Undisputed Material Fact Nos. 13, 14.) She also testified that she believed defendant had done something wrong when he performed the root canals, and that she formed this belief by no later than April 29, 2021, which was the last time she went to defendant for treatment. (UMF Nos. 25-29.) She believed at the time that defendant finished his work that defendant had "done something wrong and that's why [she] had those complaints of discomfort." (UMF No. 27.) She stopped seeing defendant because she believed he'd "done something wrong and that's why [she has] discomfort…" (UMF No. 28.)

As a result, the undisputed material facts presented by defendant show that the one-year statute of limitations started to run by no later than April 29, 2021, when plaintiff first suspected that defendant had done something wrong in his treatment of her that caused her to feel discomfort. However, plaintiff did not file her complaint until June 12, 2023, over two years after she first suspected that defendant was negligent and that his negligence caused her injuries. Therefore, defendant has met his burden of showing that the plaintiff's complaint is barred by the one-year statute of limitations.

In her opposition, plaintiff does not deny that she was in pain since she underwent the root canals in November of 2019, or that she stopped seeing defendant in April of 2021 because she felt he had done something wrong. Indeed, she has not disputed any of the facts presented by defendant in support of his motion for summary judgment, other than Fact No. 29, which asserts that the piece of metal left in her mouth served a therapeutic purpose because it helped to fill in the space in the canal. However, other than raising evidentiary objections[1], plaintiff has not offered any evidence to raise a triable issue of material fact with regard to this fact. Therefore, plaintiff has failed to raise any triable issues of material fact with regard to the question of whether she became aware of her injury and its negligent cause more than one year before she filed her complaint.

[1] The court intends to overrule the objections based on lack of foundation, lack of personal knowledge, and hearsay. Defendant has presented the declaration of an expert on dental procedures, who asserts that it is common practice if a surgical instrument breaks off during a root canal to leave the broken piece in the canal rather than attempting to remove it, as it can help to fill in the space in the canal. (Janian decl., ¶ 7.) Therefore, the metal piece left in plaintiff's mouth had a therapeutic purpose. (*Ibid*.) Experts are entitled to rely on hearsay to form their opinions, so the objections based on hearsay and lack of personal knowledge are without merit.

Plaintiff argues that the statute did not start to run until she consulted with another endodontist in June of 2022, who informed her that defendant had not performed the root canals properly and that there was a piece of metal left in her mouth that was causing her pain and inflammation. She claims that it was then that she first understood that defendant had negligently injured her. She also argues that it is common to experience pain after a dental procedure, so the fact that she was in pain after the root canal procedures in November of 2019 does not mean that the statute started to run at that time. She notes that she is a layperson, and contends that she needed to consult with a dental expert in order to determine that defendant had been negligent.

However, plaintiff's contention is contrary to California law. As discussed above, the one-year statute for medical and dental malpractice begins to run as soon as the plaintiff discovers, or through the exercise of reasonable diligence should have discovered, their injury and its negligent cause. Plaintiff does not have to obtain an opinion from an expert for the statute to begin running. Even the reasonable suspicion of wrongdoing by a layperson is enough to start the statute.

"It is well established that, '[t]he term "injury," as used in section 340.5, means both a person's physical condition and its negligent cause.' However, a person need not *know* of the actual negligent cause of an injury; mere *suspicion* of negligence suffices to trigger the limitation period." (*Knowles v. Superior Court* (2004) 118 Cal.App.4th 1290, 1295, citations omitted, italics in original.)

"[T]he plaintiff discovers the cause of action when he at least suspects a factual basis, as opposed to a legal theory, for its elements, even if he lacks knowledge thereof—when, simply put, he at least 'suspects ... that someone has done something wrong' to him, 'wrong' being used, not in any technical sense, but rather in accordance with its 'lay understanding'. He has reason to discover the cause of action when he has reason at least to suspect a factual basis for its elements. He has reason to suspect when he has 'notice or information of circumstances to put a reasonable person *on inquiry*'; he need not know the 'specific "facts" necessary to establish' the cause of action; rather, he may seek to learn such facts through the 'process contemplated by pretrial discovery'; but, within the applicable limitations period, he must indeed seek to learn the facts necessary to bring the cause of action in the first place—he 'cannot wait for' them 'to find' him and 'sit on' his 'rights'; he 'must go find' them himself if he can and 'file suit' if he does." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397–398, citations, footnotes, and some quote marks omitted.)

"Under the discovery rule, suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period… Rather than examining whether the plaintiffs suspect facts supporting each specific legal element of a particular cause of action, we look to whether the plaintiffs have reason to at least suspect that a type of wrongdoing has injured them." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807, citations omitted.) "[P]laintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation." (*Id*. at p. 808.) "Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1111.)

In the present case, plaintiff admitted in her complaint that she was in near constant pain since the November 2019 root canal procedures. She also admitted in her deposition that, not only was she in constant pain since the procedures, but she stopped going to see defendant in April of 2021 because she believed that he had done something wrong to cause her pain. Thus, she was clearly aware of the fact that she was injured and that defendant had possibly caused her injuries by his negligence by no later than April 29, 2021. As a result, the one-year statute started to run no later than April 29, 2021, and she needed to file her complaint by April 28, 2022. However, she did not file her complaint until June 12, 2023, more than two years after she suspected defendant had negligently injured her. Thus, her complaint is time-barred.

Also, to the extent that plaintiff contends that the statute was tolled by the fact that defendant left a piece of broken metal in her mouth during the procedure, the fact that a non-therapeutic object was left in the patient's body after a procedure only serves to toll the three-year statute, not the one-year statute. (Code Civ. Proc., § 340.5.) "The three-year period is tolled '"(1) upon proof of fraud, (2) intentional concealment, or (3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.' The statute makes clear, however, that the one-year period is not similarly extended. (1) Thus, regardless of extenuating circumstances, the patient must bring his suit within one year after he discovers, or should have discovered, his 'injury.'" (*Gutierrez v. Mofid*, *supra*, 39 Cal.3d at p. 896, citation omitted.)

Thus, even if the metal in plaintiff's mouth did not have a therapeutic purpose or effect, its presence would not serve to toll the one-year statute, which is the relevant statute here. As discussed above, plaintiff failed to file her complaint within one year of when she first suspected that defendant negligently injured her, so any tolling of the three-year statute would not save her claim.

In any event, defendant has presented the declaration of an expert who testifies that the piece of metal served a therapeutic purpose, since it helped to fill in the space in the root canal. (Janian decl., ¶ 7.) Plaintiff has not presented a declaration from her own expert to dispute defendant's expert's statement. Therefore, plaintiff has not shown that the presence of the broken piece of metal in her mouth tolled the statute.[2]

Finally, plaintiff has argued that the fact that the court granted defendant's motion to bifurcate the trial of the issue of the statute of limitations from the trial of the other issues somehow shows the existence of a triable issue of fact with regard to the question of whether the statute has run on her claim. However, this argument is nonsensical. The court's ruling on the bifurcation was mandated by the language of Code of Civil Procedure section 597.5, which requires that the trial of the statute of limitations defense be heard before the trial of the other issues in the case. The fact that the court granted bifurcation of the statute of limitations defense does not mean that there are triable issues of material fact with regard to whether the statute has run. The court made no finding that there was any evidentiary dispute about whether the statute

[2] Also, even if the three-year statute applied here, plaintiff admits that she was injured in November of 2019 and she did not file her complaint until June 12, 2023, so her complaint is barred by the three-year statute as well.

had run or not. It simply held that it was required by the language of section 597.5 to hold the trial of the statute of limitations issue first.

Consequently, since the undisputed facts show that plaintiff first suspected that defendant had negligently harmed her by no later than April 29, 2021, and since she did not file her complaint until June 12, 2023, plaintiff's complaint is time-barred. Therefore, the court intends to grant the motion for summary judgment in favor of defendant.

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

Tentative Ruling
Issued By: JS on 5/12/2025.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Ponce v. Balanced Comfort, Inc.***
Case No. 23CECG00573

Hearing Date: May 20, 2025 (Dept. 503)

Motion: Plaintiff's Motion for Preliminary Approval of Class Action Settlement

Tentative Ruling:

To grant plaintiff's motion for preliminary approval of the class action and PAGA settlement. **However, plaintiff's counsel must submit a revised notice of settlement within ten days of the date of service of this order, which accurately reflects the amount to be paid to the class representative before the court will grant preliminary approval of the settlement.**

Explanation:

1. Class Certification

a. Standards

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 313.)

b. Numerosity and Ascertainability

"Ascertainability is achieved by defining the class in terms of objective characteristics and common transactional facts making the ultimate identification of class members possible when that identification becomes necessary. While often it is said that class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records, that statement must be considered in light of the purpose of the ascertainability requirement. Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata." (*Nicodemus v. Saint Francis Memorial Hospital* (2016) 3 Cal.App.5th 1200, 1212, internal citations and quote marks omitted.)

Here, the class appears to be ascertainable, as defendants' personnel records should be sufficient to allow the parties to identify the class members. The class is also sufficiently numerous to justify certification, as plaintiff's counsel claims that there are approximately 305 class members who worked for defendant during the class period.

Therefore, the court intends to find that the class is sufficiently numerous and ascertainable for certification.

c. Community of Interest

"[T]he 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021, internal citations omitted.) "The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.) "[T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 669.)

Here, it does appear that there are common questions of law and fact, as all of the proposed class members worked for the same defendant and allegedly suffered the same type of Labor Code violations. Therefore, the proposed class involves common issues of law and fact.

With regard to the requirement of typicality of the representative's claims, it does appear that Mr. Ponce's claims are typical of the rest of the class and that he seeks the same relief as the other class members based on his allegations and prayer for relief in the complaint. There is no evidence that he has any conflicts between his interests and the interests of the other class members that would make him unsuitable to represent their interests. Therefore, plaintiffs have shown that Mr. Ponce has claims typical of the other class members.

Plaintiff's counsel has submitted a supplemental declaration in an effort to establish that she is experienced and qualified to represent the class. Counsel's declaration discusses her background, education, and experience in class action litigation. She states that she has been a licensed attorney since November of 2008, and that she has worked as counsel in four class action cases. (Lovegren-Tipton decl., ¶¶ 4, 6.) She was defense counsel in two cases, and plaintiff's counsel in the other two cases. (*Id*. at ¶ 6.) She is working on a contingent fee basis. (*Id*. at ¶ 5.) Therefore, the declaration provides sufficient evidence to support counsel's assertion that she is experienced and qualified to represent plaintiff and the other class members here.

d. Superiority of Class Certification

It does appear that certifying the class would be superior to any other available means of resolving the disputes between the parties. Absent class certification, each employee of defendants would have to litigate their claims individually, which would result in wasted time and resources relitigating the same issues and presenting the same testimony and evidence. Class certification will allow the employees' claims to be resolved in a relatively efficient and fair manner. (*Sav-On Drugs Stores, Inc. v. Superior*

Court (2004) 34 Cal.4th 319, 340.) Therefore, it does appear that class certification is the superior means of resolving the plaintiff's claims.

Conclusion: The court intends to grant certification of the class for the purpose of settlement.

2. Settlement

a. Legal Standards

"When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair." (*Koby v. ARS National Services, Inc.* (9th Cir. 2017) 846 F. 3d 1071, 1079.)

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement . . . The courts are supposed to be the guardians of the class." (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal. App. 4th 116, 129.)

"[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished . . . [therefore] the factual record must be before the … court must be sufficiently developed." (*Id*. at p. 130.) The court must be leery of a situation where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Id*. at p. 129.)

b. Fairness and Reasonableness of the Settlement

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.' The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–245, internal citations omitted, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Here, plaintiff's counsel has now presented a sufficient discussion of the strength of the case if it went to trial, the risks, complexity, and duration of further litigation, and an explanation of why the settlement is fair and reasonable in light of the risks of taking the case to trial. Plaintiff's counsel states that the defendant is potentially liable for $3,660,320.00 in total class damages, including $69,920.00 for failure to reimburse business expenses, $1,216,000.00 in meal and rest break penalties, $900,000.00 in penalties under Labor Code section 203, and $744,800.00 for paystub penalties. She contends that defendant had a pattern and practice of not providing its employees with proper meal and rest periods, failed to pay minimum and overtime wages, and did not reimburse its employees for the use of their personal cellphones. She claims that defendant was clearly liable and had no viable defenses.

However, plaintiff's counsel was allowed to review defendant's financial statements and bank balances. She concluded that, even though plaintiff has a high likelihood of prevailing at trial, defendant's financial status is such that there is a high risk that if a jury awarded a verdict in favor of plaintiff, defendant would go out of business and there would be no funds from which to pay an award, as defendant's funds would have been expended in attorney's fees after an anticipated 12-18 months of litigation. Thus, under the circumstances, plaintiff's counsel believes that the $60,000 settlement is the best outcome.

Therefore, plaintiff has now shown that the settlement is fair, reasonable, or adequate in light of the unique facts and legal issues raised by the plaintiff's case. Even though plaintiff has a strong case and defendant's liability is potentially much higher than $60,000, defendant's is apparently unable to pay a large settlement or judgment, and demanding a higher amount in settlement would simply result in defendant closing up its business and the class receiving nothing. As a result, the court intends to find that the settlement is fair, adequate and reasonable under the circumstances.

c. Proposed Class Notice

The proposed notice appears to be generally adequate, although it does have some problems. The notices will provide the class members with information regarding their time to opt out or object, the nature and amount of the settlement, the impact on class members if they do not opt out, the amount of attorney's fees and costs, and the service award to the named class representatives.

However, the amount of the service award is incorrectly stated in the notice as being $3,500, when it is actually $6,000. This is a fairly substantial difference, and could potentially affect a class member's decision as to whether to oppose or opt out of the settlement. Therefore, this issue needs to be fixed before the court can approve the notice. As a result, the court intends to find that the proposed class notice is not adequate at this time. However, plaintiff's counsel should be able to fix this issue fairly easily. The court will therefore grant preliminary approval of the class notice, ***provided that counsel submits a corrected notice that accurately states that the class representative will receive $6,000 rather than $3,500.***

3. Attorney's Fees and Costs

Plaintiff's counsel seeks attorney's fees of $20,000. Plaintiff's counsel has now provided a new declaration to describe her education, skill, and experience, as well as the challenges presented in the litigation. She states that she was admitted to the California Bar in November of 2008, and that she has worked as counsel in four class actions, two as defense counsel and two as plaintiff's counsel. She also states that her firm took the case on a contingent basis, which supports the requested fees due to the risk that she would receive nothing if she were unsuccessful. She states that she has incurred $20,022.50 in fees and costs of $3,553.74. Her hourly rate is $375 per hour in non-class cases and $475 per hour for class cases. Her associate charges $250 per hour for non-class cases and $300 per hour for class cases. She claims that these rates are comparable to the rates charged by other attorneys in specialty practice areas in California. Her fees do not include a lodestar enhancement, although she would normally seek a multiplier based on the difficulty and risks associated with class actions.

Therefore, plaintiff's counsel has provided the court with enough information to assess the reasonableness of her fees. It appears that the requested fees of $20,000 in the settlement are fair and reasonable, especially in light of the fact that counsel incurred about the same amount of fees to litigate the case. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 504.) As a result, the court intends to grant preliminary approval of the requested fees.

In addition, counsel also seeks an award of up to $3,500 in costs. Plaintiff's counsel states that she incurred $3,553.74 in costs to litigate the case, so the court intends to find that the request for an award of $3,500 is fair and reasonable.

4. Payment to Class Representative

Plaintiff seeks preliminary approval of a $6,000 service award to the named plaintiff/class representative, Mr. Ponce. Mr. Ponce has provided a declaration which supports the request for a service award, as he states that he worked closely with plaintiff's counsel, provided documents, answered questions, and participated in meetings about the case with counsel. Therefore, plaintiff has shown that the incentive award to the named plaintiff is fair, adequate, and reasonable.

5. Payment to Class Administrator

Plaintiff's counsel has provided a declaration stating that the class administrator, ILYM Group, will receive $7,000 to administer the settlement. This amount is actually slightly less than the amount ILYM requested in its original estimate in April of 2024. (Exhibit A to Lovegren-Tipton decl. re: Class Administrator Fees.) Therefore, the court intends to find that the class administrator fees are fair and reasonable.

6. PAGA Settlement

Plaintiff proposes to allocate $5,000 of the settlement to the PAGA claims, with 75% of that amount being paid to the LWDA as required by law and the other 25% being paid

out to the aggrieved employees.[3] Plaintiff's counsel now states that she gave notice of the settlement to the LWDA on February 24,2025. If any response is received, counsel will file an updated declaration before the hearing. Therefore, plaintiff's counsel has now shown that she complied with PAGA's requirement to give notice of the settlement to the LWDA. (See Labor Code, § 2699, subd. (s)(2).)

Plaintiff's counsel also states that she believed that paying $5,000 to settle the PAGA claim is fair, reasonable and adequate. She notes that the PAGA claims are potentially worth at least $1,300,000, assuming a violation for each pay period that each of the class members worked. Again, however, given the state of defendant's financials, plaintiff's counsel believes that it would not be possible to recover the full amount of penalties under PAGA, and that recovering $5,000 is reasonable under the circumstances.

Therefore, plaintiff's counsel has adequately explained why settling the PAGA claims is fair, adequate and reasonable, and the court intends to grant preliminary approval of the PAGA portion of the settlement.

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: JS on 5/13/2025.
(Judge's initials) (Date)

[3] The motion and counsel's declaration incorrectly state that the amount paid to the LWDA for the PAGA penalties will be $5,000. In fact, the settlement agreement provides that the total PAGA settlement allocation is $5,000, with $3,750 paid to the LWDA and the other $1,250 paid to the aggrieved employees. (See Settlement Agreement, ¶ 3.2.4.)

(46)

Tentative Ruling

Re: ***Cyrus Goodman v. Clovis Unified School District***
Superior Court Case No. 23CECG04735

Hearing Date: May 20, 2025 (Dept. 503)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To deny, without prejudice, the petition to approve the compromised claim of minor Cyrus Goodman. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

Explanation:

Petition Item 12b(5) Insufficient

Item 12b(5) of the petition contains multiple discrepancies in the amounts indicated to have been charged, paid, and reduced by three of the four medical treatment providers, as detailed below. In a future submission, the court will require evidence that each medical treatment provider has agreed to accept the sum represented in the petition at Item 12b(5), and that the total sum is representative of the charges billed.

Valley Children's Healthcare: Attached to the petition are 10 itemized statements (specifically labeled as "not a bill") from Valley Children's, half of them identified as "professional charges" and half as "hospital charges." The professional charges amount to $1,164.00, and the hospital charges amount to $5,591.72. The statements indicate that all of the professional charges were adjusted or paid (although the statements do not specify which), mostly by insurance [paid $1069.17] but partially by the patient [paid $94.83]. A portion of the hospital charges do not reflect as "paid" on the statements [$2,394.5], and the paid charges [$3,197.13] were adjusted or paid by insurance. Petitioner only identifies the amount of professional charges in the petition under 12b(5), and does not identify any patient payments. Petitioner does not evidence the reduced amounts of the charges and whether Valley Children's is agreeing to accept a lesser amount. The hospital charges appear to be charged and paid but are not addressed.

Dry Creek Clinic: There are two medical exam summaries from 01/27/23 and 02/09/2023 provided. There is an unlabeled summary of charges that follows the medical reports. Petitioner will need to clarify if this statement belongs to Dry Creek Clinic.

Presuming that the statement does correspond with the services by Dry Creek Clinic (as the other providers have corresponding statements), the summary of charges indicates "insurance charges" of $9,610.19, "insurance receipt" of $1,546.51, "patient

charges" of $85, and "patient receipt" of $60. The petition only identifies $600 charged and $284.10 paid by insurance. There is a huge discrepancy between the petition and this statement of charges. Even when only considering the amounts reflected in the petition at 12b(5), petitioner does not identify any negotiated reduction to explain the unaccounted for $315.90, per the petition amounts.

A Mind Above: The statement summary reflects charges of $3,940, with $60.99 adjusted, $2,221.09 paid by insurance, $982.92 paid by client, and $675 billed to insurance but not marked as paid. There are $4.54 "unassigned" credits. The petition states the correct amount of charges but does not demonstrate the payments and negotiated reductions.

Rule 7.955(b) Declaration Not in Compliance

In determining a reasonable attorney's fee, the court considers the factors set out in California Rules of Court, rule 7.955(b). Counsel for petitioner does not adequately address these factors in his declaration. In a future submission, counsel for petitioner should further detail the basis of the attorney fees requested pursuant to the enumerated factors of Rule 7.955(b).

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: JS on 5/15/2025.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Silas Simental v. Levi Sanders***
Superior Court Case No. 23CECG04659

Hearing Date: May 20, 2025 (Dept. 503)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To deny, without prejudice, the petition to approve the compromised claim of minor Silas Simental. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

Explanation:

Petition Item 12b(5) Insufficient

Petitioner did not list any of the medical service providers at Item 12b(5) of the petition, despite claiming $83,162.18 in medical expenses (Petn. ¶ 12a) and listing at least seven health care providers on Attachment 7 to the Petition. Petitioner provides a Medi-Cal reduction letter, but even before the reduction Medi-Cal only paid $4,351.06 of the medical expenses, leaving $78,811.12 in medical expenses unaccounted for. In a future submission, the court will require identification of the providers listed in the petition, the sums representative of all charges and subsequent payments to or reductions by those providers, and any evidence that each medical treatment provider has agreed to accept such reduction. Supporting documentation should be attached.

Evidence of Legal Costs

Counsel for petitioner seeks reimbursement of $9,173.91 in legal costs. While counsel breaks down the list of expenses in the petition, he needs to provide evidence of the expenses incurred.

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: JS on 5/16/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***In re: Levi Ellison***
Superior Court Case No. 25CECG01963

Hearing Date: May 20, 2025 (Dept. 503)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To deny, without prejudice, the petition to approve the compromised claim of minor Levi Ellison. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders for each minor plaintiff. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

Explanation:

The petition submitted by petitioner seek approval of settlement of personal injury claim of minor Levi Ellison. There are several issues within the petition that prevent approval of the settlement.

The petition states the minor's date of birth date as of the incident which appears to be incorrect. (Petn., 4a.) The medical records indicate the incident occurred on February 22, 2024.

The petition at Item 8 indicates the minor's injuries identified in the petition have resolved completely. The medical records attached do not reflect that the injuries have resolved. The most recent medical record attached is dated March 28, 2024 and was created by Accident Recovery Center. The record, a SOAP note, indicates the minor had subjective complaints of pain. This does not support the representation that the injuries have fully resolved.

Additionally, the petition indicates Accident Recovery Center has agreed to accept a reduced amount of $200.00 to satisfy its lien. (Petn., 12b(5)(a)(ii), 12b(5)(b)(i).) Written evidence of the agreed reduction is requested.

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

Tentative Ruling
Issued By: JS on 5/16/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Stuart Wong v. Third Federal Savings and Loan***
Superior Court Case No. 24CECG03163

Hearing Date: May 20, 2025 (Dept. 503)

Motion: Defendant's Demurrer to the Complaint

Tentative Ruling:

To sustain the demurrer to the seventh cause of action, with leave to amend. To overrule the demurrer as to the first, second, third, fourth, fifth, and sixth causes of action. Plaintiff is granted 30 days' leave to file the First Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

Explanation:

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether the plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of a plaintiff's possible difficulty or inability in proving the allegations of his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc*. (1974) 12 Cal.3d 915, 918.)

In ruling on a demurrer, whether a plaintiff will be able to prove his or her case at trial is not considered. (*Griffith v. Department of Public Works* (1956) 141 Cal.App.2d 376, 381.) A demurrer admits the truth of all material factual allegations in the complaint. The question of a plaintiff's ability to prove those allegations, or the possible difficulty in making such proof does not concern the reviewing court. (*Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 922.) On 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.) A demurrer is not the appropriate procedure for determining the truth of disputed facts or what inferences should be drawn when competing inferences are possible. (*Crosstalk Productions, Ltd. v. Jacobson* (1998) 65 Cal.App.4th 631, 635.)

It is not the function of the demurrer to challenge the truthfulness of the complaint and for purposes of ruling on the demurrer, all facts pleaded in the complaint are assumed to be true, no matter how improbable. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) To the extent that Defendant's arguments are to

the truthfulness of the allegations and not to whether Plaintiff has sufficiently alleged a cause of action, the Court has not considered these arguments.

Judicial Notice

Defendant requests the Court take judicial notice of 22 documents pursuant to Evidence Code section 452, subdivisions (c), (d), (g), and (h). These subdivisions provide the Court *may* take judicial notice of (c) official acts, (d) court records, (g) facts of such common knowledge in the jurisdiction that are not reasonably subject to dispute, and (h) facts not reasonably subject to dispute and capable of immediate and accurate determination. (Evid. Code, § 452, subds. (c), (d), (g), (h).) While the court may take judicial notice of these, this does not mean that the court accepts as true the contents of the documents. (*Dominguez v. Bonta* (2022) 87 Cal.App.5th 389, 400.) "Courts can take judicial notice of the existence, content and authenticity of public records and other specified documents." (*Ibid*.) Here, the Court will take judicial notice of Exhibits A through V, but, not for the truth of the factual matters asserted in these documents.

Homeowner Bill of Rights Causes of Action

Subordinate Position

Plaintiff's first five causes of action all relate to the Homeowner Bill of Rights ("HBOR"). Defendant argues that each of Plaintiff's HBOR causes of action fail because the loan at issue in the complaint was not a first lien deed of trust subject to HBOR. Here, Defendant requests the Court to take judicial notice of several deeds of trust and reconveyances. While the Court has taken judicial notice of the existence of these documents, it does not take judicial notice for the truth of the matter asserted here. At no point does Plaintiff's complaint allege that the loan at issue was a third position loan. Actually, Plaintiff alleges that it was in first position. (Complaint, ¶ 14.) The Court will not consider Defendant's evidence for the purposes of evaluating the merits of Plaintiff's claims at the pleadings stage. As such, the position of the loan is not properly at issue before the Court at this juncture. The Court does not find the asserted position of the loan to be a basis for sustaining a demurrer to the HBOR causes of action.

Small Servicer

Defendant also argues that each of Plaintiff's HBOR causes of action fail because Defendant is a small servicer not subject to the HBOR sections at issue in the complaint. Defendant requests the Court to take judicial notice of an annual report by the California Department of Financial Protection and Innovation. While the Court has taken judicial notice of the existence of the document, it does not take judicial notice for the truth of the matter asserted here. At no point does Plaintiff's complaint allege that Defendant is a small servicer. For the same reasons as those described above, the Court does not find the asserted status of Defendant as a small servicer to be a basis for sustaining a demurrer to the HBOR causes of action.

First Cause of Action

Plaintiff's first cause of action asserts a violation of Civil Code section 2923.5, subdivision (a)(2). This section provides that a mortgage servicer shall contact the borrower to assess the borrower's financial situation and explore options to avoid foreclosure. (Civ. Code, § 2923.5, subd. (a)(2)(A).) Defendant argues that Plaintiff has not sufficiently alleged facts to support this cause of action. Defendant primarily asserts that Plaintiff does not allege facts to show a material violation pursuant to Civil Code section 2924.19, subdivision (b). However, Plaintiff alleges that Defendant recorded a notice of default, but had not contacted him prior to recording the default. (Complaint, ¶¶ 10, 21.) To the extent Defendant argues this was not a material violation, this argues the merits of Plaintiff's claim, which is inappropriate on demurrer. The Court overrules the demurrer as to this cause of action.

Second Cause of Action

Plaintiff's second cause of action asserts a violation of Civil Code section 2923.6, subdivision (c). This section provides that where a borrower submits a completed application for a first lien loan modification at least five business days before a foreclosure sale, a notice of default should not be filed while such is pending. (Civ. Code, § 2923.6, subd. (c).) Defendant argues that this section does not apply because Plaintiff did not submit a complete first position loan modification application. Defendant argues that the complaint itself establishes that Plaintiff knew the application was incomplete. Actually, the complaint alleges a third party was informed about missing documents, that the third party was told a letter had been sent to Plaintiff regarding the documents, but that Plaintiff submitted a complete loan modification to the best of his knowledge. (Complaint, ¶¶ 14-16.) To the extent that Defendant argues the application was not complete, this argument goes to the merits of Plaintiff's claims and is not the appropriate subject of a demurrer. The Court overrules the demurrer as to this cause of action.

Third Cause of Action

Plaintiff's third cause of action asserts a violation of Civil Code section 2923.7. Defendant has not presented any reasons other than the position of the loan and status of Defendant as a small servicer which the Court will not consider at the pleadings stage. The Court overrules the demurrer as to this cause of action.

Fourth Cause of Action

Plaintiff's fourth cause of action asserts a violation of Civil Code section 2924.9. Defendant has not presented any reasons other than the position of the loan and status of Defendant as a small servicer which the Court will not consider at the pleadings stage. The Court overrules the demurrer as to this cause of action.

Fifth Cause of Action

Plaintiff's fifth cause of action asserts a violation of Civil Code section 2924.10. This section provides that when a borrower submits a complete first lien modification application, or any document in connection with such, the servicer shall provide written acknowledgment and receipt of such within five business days. (Civ. Code, § 2924.10, subd. (a).) Defendant argues, as above, that the loan modification application was

incomplete and therefore this section does not apply. For the same reasons as those stated above, the Court overrules the demurrer as to this cause of action.

Unfair Business Practices

Plaintiff's sixth cause of action alleges Defendant engaged in unfair business practices in violation of Business and Professions Code section 17200 et seq. Defendant argues that where the HBOR causes of action fail, the unfair business practices claim likewise fails. In light of the Court overruling Defendant's demurrer as to the HBOR causes of action, the Court similarly overrules the demurrer as to this cause of action.

Automatic Bankruptcy Stay

Plaintiff's seventh cause of action alleges Defendant violated an automatic bankruptcy stay pursuant to Title 11 U.S.C. section 362, subdivision (a)(4). Defendant argues that the cause of action for violation of the automatic bankruptcy stay fails because there was no automatic stay. Typically, when a person files for bankruptcy, an automatic stay goes into effect, preventing the collection of debt. (11 U.S.C. § 362, subd. (a).) However, where an individual has filed three petitions for bankruptcy within one year, the stay is not automatic for the third filing. (11 U.S.C. § 362, subd. (c)(4).) Here, the Court has taken judicial notice of the existence and authenticity of the Plaintiff's bankruptcy filings on August 8, 2023, January 23, 2024, and April 19, 2024. (RJN, Exhs. M, P, and S.) The Court has also taken judicial notice of the orders dismissing bankruptcy on August 29, 2023, February 5, 2024, and May 7, 2024. (RJN, Exhs. N, Q, and U.) As Plaintiff had previously filed two bankruptcy petitions, both of which were dismissed, within one year of the third filing, there was no automatic stay in place to be violated. The Court sustains the demurrer to this cause of action, with leave to amend only as to whether Plaintiff requested and was granted a stay by the bankruptcy court.

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: JS on 5/16/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Gross v. The City of Fresno***
Superior Court Case No. 24CECG03199

Hearing Date: May 20, 2025 (Dept. 503)

Motion: by Plaintiff for Leave to Amend

Tentative Ruling:

To deny without prejudice. (Code Civ. Proc., §§ 1005, subd. (b), 1010; Cal. Rules of Court, rules 3.1112, 3.1324.)

Explanation:

Service Required

Pursuant to Code of Civil Procedure section 1005, "all moving and supporting papers shall be served and filed at least 16 court days before the hearing." (Code Civ. Proc., § 1005, subd. (b).) Also, a "[p]roof of service of the moving papers must be filed no later than five court days before the time appointed for the hearing." (Cal. Rules of Court, rule 3.1300(c).) A proof of service has not been filed to show that defendants were served with notice of this motion.

Moving Papers Defective

"Unless otherwise provided by the rules in this division, the papers filed in support of a motion must consist of at least the following: [¶] (1) A notice of hearing on the motion; [¶] (2) The motion itself; and [¶] (3) A memorandum in support of the motion or demurrer." (Cal Rules of Court, rule 3.1112, subd. (a).) "Notices must be in writing, and the notice of a motion . . . must state when, and the grounds upon which it will be made, and the papers, if any, upon which it is to be based." (Code Civ. Proc., § 1010.)

Here, while plaintiff has filed a document which could serve as a notice of motion, it fails to indicate when and where the hearing on the matter will take place. A memorandum of point and authorities is also not filed.

Additionally, a motion to amend a pleading must provide a copy of the proposed amended pleading that is in compliance with California Rules of Court, rule 3.1324(a), and a separate declaration specifying: "(1) [t]he effect of the amendment; (2) [w]hy the amendment is necessary and proper; (3) [w]hen the facts giving rise to the amended allegations were discovered; and (4) [t]he reasons why the request for amendment was not made earlier."

Neither a copy of the proposed amended pleading nor a declaration is submitted.

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: JS on 5/16/2025.
(Judge's initials) (Date)

(36) **Tentative Ruling**

Re: ***Mejia, et al. v. Deboer, et al.***
Superior Court Case No. 25CECG01456

Hearing Date: May 20, 2025 (Dept. 503)

Motions (x2): Petition to Compromise Claim of Minors

Tentative Ruling:

To grant. Orders signed. No appearances necessary.

The court sets a status conference on Tuesday, August 19, 2025, at 3:28 p.m., in **Department 502**, 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: JS (Judge's initials) **on** 5/16/2025 (Date) .