Tentative Rulings for June 4, 2026
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.

22CECG03000 ***Marlene Torres v. Robert L. Jensen & Associates*** **is continued to Thursday July 16, 2026 at 3:30 p.m. in Department 503**

24CECG04549 ***Christina Florez v. Saint Agnes Medical Center*** **is continued to Thursday July 16, 2026 at 3:30 p.m. in Department 503**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(37)

Tentative Ruling

Re: ***Simpson v. Brar***
Superior Court Case No. 25CECG05496

Hearing Date: June 4, 2026 (Dept. 503)

Motion: By Defendant to Compel Arbitration

Tentative Ruling:

To continue the hearing to Tuesday, August 11, 2026 at 3:30 p.m. in Department 503. Plaintiff may file a response no later than July 21, 2026. Any response shall not exceed ten pages.

Explanation:

Timeliness

Defendant asserts that the opposition filed by plaintiff is untimely pursuant to Code of Civil Procedure section 1290.6. Here, defendant did not file a true Petition to Compel Arbitration, but rather filed a motion in response to plaintiff initiating a case by filing her complaint. It is not clear whether the general motions statute or the statute for a petition to compel arbitration governs the timing of any opposition here. (See Code of Civ. Proc., §§ 1005, subd. (b), 1290.6; *Correia v. NB Baker Electric, Inc*. (2019) 32 Cal.App.5th 602, 613.) However, courts are authorized to consider late-filed oppositions where there is no prejudice to the moving party. (*Correia v. NB Baker Electric, Inc., supra,* 32 Cal.App.5th at p. 613.) Thus, even if the petition timeline governs, the Court has discretion to consider the opposition here. The Court has considered the opposition.

New Evidence on Reply

"The general rule of motion practice … is that new evidence is not permitted with reply papers … [and] should only be allowed in the exceptional case …" (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538.) The same is true with new arguments presented for the first time on reply. (See *Mocek v. Alfa Leisure, Inc.* (2003) 114 Cal.App.4th 402, 409—court declined to consider arguments raised for first time in reply brief under rule an issue is waived when not raised in opening brief. See also *Katelaris v. County of Orange* (2001) 92 Cal.App.4th 1211, 1216, fn 4.) However, if the court exercises its discretion to allow new evidence or argument in reply papers, the opposing party must be given an opportunity to respond. (*Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1307-1308.) The court is exercising its discretion to consider the new information provided in defendant's reply. As such, the matter is continued to provide plaintiff an opportunity to respond.

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 6/2/2026.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Dao Cha v. Lee Heu***
Superior Court Case No. 25CECG03030

Hearing Date: June 4, 2026 (Dept. 503)

Motions: (1) Demurrer to First Amended Complaint

(2) Motion to Strike Attorney Fees from First Amended Complaint

Tentative Ruling:

To sustain the demurrer to plaintiff's first amended complaint with leave to amend (Code Civ. Proc., § 430.10); to deny the motion to strike attorney fees from plaintiff's first amended complaint without prejudice (Code Civ. Proc., § 436). Plaintiff is granted leave of 20 days to file a second amended complaint, which shall run from service by the clerk of the minute order. New language must be set in **boldface** type.

Explanation:

Plaintiff, Dao Cha (Plaintiff), initiated this action by filing her initial complaint on July 7, 2025, against defendant Lee Heu (Defendant). On December 1, 2025, Plaintiff filed the operative pleading, her first amended complaint (FAC), in which she alleges a single cause of action for defamation against Defendant. Defendant now demurs to the FAC on two grounds: (1) it is barred by the statute of limitations; and (2) Plaintiff fails to allege facts sufficient to constitute a cause of action. Defendant also moves to strike the words "attorney fees," included on page eight of the FAC, at paragraph six of the prayer for relief.

Meet and Confer

The demurring party must meet with the opposing party, in person, by telephone, or by video conference prior to filing a demurrer or motion to strike, and file and serve with the motion a declaration detailing the meet-and-confer efforts. (Code Civ. Proc., §§ 430.41, subd. (a), (b), 435.5, subd. (a), (b).) Communicating by letter first, as counsel did here, can be helpful to the process, but this does not satisfy the meet-and-confer requirement. The Legislature specified in-person, telephone, or video-conference contact.

Defendant's counsel submits a declaration and evidence that she requested an appointment to meet and confer by telephone or video conference with Plaintiff's counsel, but Plaintiff's counsel failed to respond to her request. Counsel's meet-and-confer declaration fails to establish the requirement to meet and confer in person, by telephone, or by video conference. However, Code of Civil Procedure section 430.41, subdivision (a)(4) provides that this "shall not be grounds to overrule or sustain the demurrer." (See also, Code Civ. Proc., § 435.5, subd. (a)(4) [same for motion to strike].)

In light of the parties' unsuccessful attempts at informal resolution, the court has considered the merits of Defendant's demurrer and motion to strike. However, in the future, the parties are advised to meet and confer in person, by telephone, or by video conference, as required by the statute.

Demurrer

In testing a pleading against a demurrer, the alleged facts are deemed true, "however improbable they may be." (*Del E. Webb Corp. v. Structural Materials* Co. (1981) 123 Cal.App.3d 593, 604.) A demurrer tests only the legal sufficiency of the pleading--not the truth of the plaintiff's allegations or the accuracy of the plaintiff's description of the defendant's conduct. (*Quelimane Co. v. Stewart Title Guaranty Co*. (1998) 19 Cal.4th 26, 47.)

To be "demurrer-proof," a complaint must allege sufficient *ultimate facts* to state a cause of action under a statute or case law. (*People ex rel. Dept. of Transportation v. Superior Court* (1992) 5 Cal.App.4th 1480, 1484 [adoption of official forms does not relieve plaintiff from alleging essential ultimate facts to state cause of action]; Code Civ. Proc., § 425.10, subd. (a).) Although California courts take a liberal view of inartfully-drawn complaints, "[i]t remains essential...that a complaint set forth the actionable facts relied upon with sufficient precision to inform the defendant of . . . what remedies are being sought." (*Signal Hill Aviation Co. v. Stroppe* (1979) 96 Cal.App.3d 627, 636.)

At paragraph 10 of the FAC, Plaintiff alleges Defendant posted the following message in a family Facebook group chat:

Plaintiff alleges her husband, Ndzeu Heu, confronted Defendant and asked him to remove the post, but Defendant refused to remove it. Plaintiff alleges, among other damages, prolonged pain and suffering, anxiety, depression, wage loss, and loss of earning capacity.

Statute of Limitations

The statute of limitations for a defamation claim based on libel or slander is one year. (Code Civ. Proc., § 340, subd. (c).) The single-publication rule, codified in Civil Code section 3425.3, provides a statement is generally considered "published" when it is first made available to the public:

> No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication or exhibition or utterance, such as any one issue of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions.

(Civ. Code, § 3425.3.) The single-publication rule applies to the Internet. (*Traditional Cat Assn., Inc. v. Gilbreath* (2004) 118 Cal.App.4th 392, 395 (*Traditional Cat*); *Yeager v. Bowlin* (9th Cir. 2012) 693 F.3d 1076, 1081(*Yeager*).)

In Shively *v. Bozanich* (2003) 31 Cal.4th 1230, the California Supreme Court explained the single-publication rule as follows:

> Under the single-publication rule, with respect to the statute of limitations, publication generally is said to occur on the "first general distribution of the publication to the public." [Citations.] Accrual at that point is believed to provide adequate protection to potential plaintiffs, especially in view of the qualification that repetition of the defamatory statement in a *new edition* of a book or newspaper constitutes a new publication of the defamation that may give rise to a new cause of action, with a new accrual date. [Citation.] Under this rule, the cause of action accrues and the period of limitations commences, *regardless* of when the plaintiff secured a copy or became aware of the publication. [Citations.]

(*Id.* at pp. 1245–1246, italics original, fn. omitted.)

A claim for defamation accrues when the defendant publishes a defamatory statement by communicating it to a third person who "understands its defamatory meaning as applied to the plaintiff." (*Shively v. Bozanich, supra,* 31 Cal. 4th at pp. 1237, 1242.) Under the single-publication rule, publication of a defamatory statement "generally is said to occur on the first general distribution of the publication to the public." (*Id.* at p. 1243.) However, "the statute of limitations is reset when a statement is republished." (*Yeager, supra,* 693 F.3d at p. 1082; *Shively v. Bozanich*, *supra,* 31 Cal. 4th at p. 1242 ["Each publication ordinarily gives rise to a new cause of action for defamation]".)

Republication occurs "when the original defamer repeats or recirculates his or her original remarks to a new audience." (*Shively v. Bozanich, supra,* 31 Cal. 4th at p. 1243.) The one-year statute begins to run regardless of whether a prospective plaintiff is aware that a cause of action has accrued. (*Id.* at pp. 1245-1246.) Tolling of the statute of

limitations occurs only if there is fraudulent concealment, or where a plaintiff could not reasonably have discovered the facts giving rise to the claim. (*Id.* at p. 1237 ["[t]his so-called discovery rule has been applied to defamation actions in limited circumstances when the defamatory statement is made is secret or is inherently undiscoverable"].)

In *Traditional Cat, t*he court explained the rationale for not applying the discovery rule—which ordinarily would postpone accrual until a plaintiff discovers or has reason to discover the factual basis for a claim—to a defamatory statement subject to the single-publication rule, including a statement on the Internet, as follows:

> [T]he need to protect Web publishers from almost perpetual liability for statements they make available to hundreds of millions of people who have access to the Internet is greater even than the need to protect the publishers of conventional hard copy newspapers, magazines and books. Importantly, the interests in free expression, which the court in *Firth v. State* [(Ct.App.2002) 98 N.Y.2d 365] found were worthy of protection by application of the single-publication rule to Web pages, are the very same interests which the court in *Shively v. Bozanich* relied upon in rejecting the notion the single-publication rule should be subject to any discovery exception.

(*Traditional Cat, supra*, 118 Cal.App.4th at p. 404.)

Without citation to authority, Plaintiff contends Facebook "is an active distribution platform" that should be treated differently. The court in *Traditional Cat* disagreed:

> Given the protection the court gave those interests [in free expression] in *Shively v. Bozanich,* we have very little doubt that, like the court in *Firth v. State,* our Supreme Court would find that those interests require application of the single-publication rule to Web page publication.

(*Traditional Cat, supra,* 118 Cal.App.4th at p. 404.)

The parties agree that republication of a statement resets the statute of limitations. (*Shively v. Bozanich*, *supra*, 31 Cal. 4th at 1242; *Yeager, supra,* 693 F.3d at p. 1082.) Republication occurs "when the original defamer repeats or recirculates his or her original remarks to a new audience." (*Shively v. Bozanich* at p. 1243.) But Plaintiff argues the rule for republication is different for Facebook posts because "[w]hen a member posts content to a Facebook group, the platform's algorithm actively serves that content to group members[.]" (Opp., p. 4:25-26.) Plaintiff cites no authority for her contention that republication occurs on Facebook whenever a post is viewed by a new person.

Here, Plaintiff alleges Defendant posted the defamatory message on May 29, 2024. Plaintiff fails to allege facts to show Defendant republished his message by repeating or recirculating it. Plaintiff's cause of action accrued and the statute of limitations began to run on May 29, 2024. Because Defendant posted the message on Facebook more than a year before Plaintiff filed her original complaint on July 7, 2025, the applicable statute of limitations bars her defamation cause of action as alleged. Therefore, the court sustains the demurrer to the FAC based on the statute of limitations.

Failure to State a Cause of Action for Defamation

Defendant demurs to the FAC on the second ground that Plaintiff fails to state a cause of action because the alleged Facebook post must be written as a "fact," not merely an opinion. Under Civil Code section 45, libel includes "a false and unprivileged publication . . . which exposes any person to hatred, contempt, ridicule, or obloquy[.]" Civil Code section 45a defines "libel on its face" as "[a] libel which is defamatory of the plaintiff without the necessity of explanatory matter, such as an inducement, innuendo or other extrinsic fact[.]" Civil Code section 46 defines slander as a false and unprivileged oral publication that includes charging any person with a crime.

Plaintiff cites *Briganti v. Chow* (2019) 42 Cal.App.5th 504, 510, where the court explained the clearest example of "libel per se" might be an accusation of crime. Here, Plaintiff alleges Defendant posted a statement that Plaintiff and her husband "plot to kill me." (FAC, ¶ 10.) In the statement, Defendant accuses Plaintiff and her husband of conspiring to commit a serious crime—murder. Plaintiff sufficiently alleges an actionable defamatory statement of a criminal accusation made on Facebook. (*Briganti v. Chow, supra,* 42 Cal.App.5th at p. 510 [court found Facebook post stating plaintiff was a convicted criminal sufficient to support actionable defamation claim].) Therefore, the court overrules Defendant's demurrer to the FAC based on the failure to state a cause of action.

Leave to Amend

It is the opposing party's responsibility to request leave to amend, and to show how the pleading can be amended to cure its defects. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "[T]he plaintiff bears the burden of proving an amendment would cure the defect." (*Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1251.) To meet this burden, "[t]he plaintiff must identify some legal theory or state facts that can be added by amendment to change the legal effect of his or her pleading." (*Ibid.*; accord, *Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 520, fn. 16.)

It is an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility the defect can be cured by amendment. Plaintiff has the burden to demonstrate how the FAC might be amended. Here, Plaintiff opposes the demurrer and suggests how she can amend her pleading to cure its alleged defects. Given the court's liberal policy of amendment and Plaintiff's opposition, the court grants leave to amend.

Motion to Strike

Defendant also moves under Code of Civil Procedure section 436 to strike the request for attorney fees included on page eight of the FAC, at paragraph six of the prayer for relief, on the ground that the requested damages for attorney fees are not recoverable as a matter of law. Code of Civil Procedure section 436 provides:

> The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: [¶](a) Strike out any

> irrelevant, false, or improper matter inserted in any pleading, [¶] (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.

Defendant contends Plaintiff fails to allege a sufficient statutory basis for attorney fees, so the request for fees is improper and should be stricken. (Code Civ. Proc., § 1021.) The California Supreme Court has explained the general rule for recovery of attorney fees as follows:

> California follows what is commonly referred to as the American rule, which provides that each party to a lawsuit must ordinarily pay his own attorney fees. [Citations.] The Legislature codified the American rule in 1872 when it enacted Code of Civil Procedure section 1021, which states in pertinent part that "Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties...."

(*Trope v. Katz* (1995) 11 Cal.4th 274, 278–279.)

Civil Code section 47.1 provides a statutory exception permitting the recovery of attorney fees in a defamation case for a prevailing defendant accused of making a communication "without malice, regarding an incident of sexual assault, harassment, or discrimination" that is privileged under Civil Code section 47. Another fee-shifting statute, Code of Civil Procedure section 1021.5, provides for an award of attorney fees to a successful party in an action that results "in the enforcement of an important right affecting the public interest." Plaintiff opposes the motion to strike by suggesting that even if the FAC is imperfectly pleaded, she can amend the FAC to include allegations that may support recovery of attorney fees under applicable statutes, such as the private attorney general doctrine of Code of Civil Procedure section 1021.5.

The court agrees that Plaintiff's action could potentially vindicate important rights affecting the public interest, or Plaintiff may be able to plead with greater specificity the grounds for recovery of her attorney fees. Therefore, it would be premature at this juncture to hold that Plaintiffs is not entitled to attorney fees as a matter of law. Therefore, the court denies the motion to strike the prayer for attorney's fees without prejudice.

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

Tentative Ruling
Issued By: JS on 6/2/2026.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Giumarra Brothers Fruit Co. v. Mora***
Superior Court Case No. 23CECG03466

Hearing Date: June 4, 2026 (Dept. 503)

Motion: (1) Motion for Leave to Amend;
(2) Motion to Compel Financials

Tentative Ruling:

To take off calendar, as no moving papers have been filed.

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 6/3/2026.
(Judge's initials) (Date)

(48)

Tentative Ruling

Re: ***Bledsoe v. True North Detox, LLC***
Superior Court Case No. 24CECG04930

Hearing Date: June 4, 2026 (Dept. 503)

Motion: By Defendant True North Detox, LLC for Protective Order

Tentative Ruling:

To take the motion off calendar due to the moving party's failure to comply with Fresno County Local Rules, rule 2.1.17.

Explanation:

Before a motion made under Code of Civil Procedure sections 2017.010 through 2036.050 may be heard, the moving party must request an informal Pretrial Discovery Conference and either the request must have been denied and permission to file the motion was granted, or, a conference was held and permission to file was granted. (Fresno County Local Rules, rule 2.1.17.)

This motion is brought pursuant to Code of Civil Procedure section 2025.240. Accordingly, Fresno County Local Rules, rule 2.1.17 applies. Defendant True North Detox, LLC has not filed any request for pretrial discovery conference in connection with this motion and obtained prior leave to file the instant motion As such, the matter is ordered off calendar.

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 6/3/2026.
(Judge's initials) (Date)

(49)

Tentative Ruling

Re: ***Smith v. Abakah et al.***
Superior Court Case No. 24CECG01640

Hearing Date: June 4, 2026 (Dept. 503)

Motion: By Defendant Joseph Abakah to Compel Attendance of Fraisure Smith for Deposition

Tentative Ruling:

To grant the motion and compel Fraisure Smith to appear for deposition. (Code Civ. Proc., § 2025.450, subd. (a).) The parties are directed to meet and confer on dates for the deposition, which shall occur within three weeks from service of the order by the clerk.

To impose monetary sanctions in favor of Joseph Abakah and against Fraisure Smith. (Code Civ. Proc., § 2025.450, subd. (g)(1).) Plaintiff is ordered to pay $1966 in sanctions to Schroeder Schaff & Low, Inc., within 30 days of the clerk's service of the minute order.

Explanation:

Defendant Joseph Abakah ("Defendant") moves to compel plaintiff Fraisure Smith ("Plaintiff") to appear for a deposition. Plaintiff has not filed an opposition to this motion.

Proper service of a notice of deposition compels any deponent who is a party to the action to attend, to testify, and to produce documents if requested. (Code Civ. Proc., § 2025.280, subd. (a).) Where a party deponent fails to appear at a properly noticed deposition, and no timely, 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. (*Id.*, § 2025.450, subd. (a).)

On April 7, 2026, Defendant served Plaintiff with the *Notice of Taking Videotaped Deposition of Plaintiff, Fraisure Earl Smith*. (Shroeder Decl., ¶ 2.) The deposition of Plaintiff was scheduled for April 28, 2026. (*Ibid*.) On April 17, 2026, Plaintiff served a document responding to Defendant's discovery requests. (*Id*., ¶ 3, Exh. B.) Plaintiff did not appear for the April 28, 2026 deposition. (*Id*., ¶ 7.) On May 4, 2026, Defendant called Plaintiff for the reason to Plaintiff's nonappearance. (*Id.,* ¶ 8.) Plaintiff's response was Plaintiff's objection to the deposition notice and that Plaintiff would not comply. (*Ibid*.)

Plaintiff has not filed an opposition to Defendant's motion. Defendant has met the requirements of Code of Civil Procedure section 2025.450. Accordingly, the motion to compel the deposition of Plaintiff is granted. Plaintiff is directed to appear for deposition.

Defendant has additionally requested sanctions against Plaintiff pursuant to Code of Civil Procedure section 2025.450, subdivision (g)(1). Code of Civil Procedure section

2025.450, subdivision (g)(1), states in pertinent part "the court shall impose a monetary sanction…in favor of the party who noticed the deposition and against the deponent". Defendant's request for sanctions is granted. Plaintiff is ordered to pay $1,966 in sanctions to Schroeder Schaff & Low, Inc., within 30 days of the service of the minute order.

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 6/3/2026.
(Judge's initials) (Date)