Tentative Rulings for June 26, 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.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(03)

Tentative Ruling

Re: ***Lopez v. Applebee's Neighborhood Grill & Bar***
Case No. 20CECG03419

Hearing Date: June 26, 2025 (Dept. 403)

Motion: Plaintiff's Motion to Require Defendant to Pay Costs of Proof

Tentative Ruling:

To deny plaintiff's motion to require defendant to pay costs of proof

Explanation:

Plaintiff moves for an award of her attorney's fees and other costs of proof under Code of Civil Procedure section 2033.420, which provides that, "If a party fails to admit the genuineness of any document or the truth of any matter when requested to do so under this chapter, and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees." (Code Civ. Proc., § 2033.420, subd. (a).)

"The court shall make this order unless it finds any of the following: (1) An objection to the request was sustained or a response to it was waived under Section 2033.290. (2) The admission sought was of no substantial importance. (3) The party failing to make the admission had reasonable ground to believe that that party would prevail on the matter. (4) There was other good reason for the failure to admit." (Code Civ. Proc., § 2033.420, subd. (b), paragraph breaks omitted.)

"The federal and the California rules are designed to compel admission of matters which cannot reasonably be contradicted. [¶] The plain language of the admission sections makes it apparent that they were enacted to eliminate the necessity of putting on formal proof of essentially uncontroverted facts, not as a substitute for trial of genuinely disputed facts. The sections are not a discovery device. Compliance avoids the necessity of proving what is assumed the requesting party will be able to prove. It is no objection that the requesting party already knows the truth of the matter. [¶] Of course, a serious and real contest as to the subject matter of a requested admission constitutes 'good cause.'" (*Hillman v. Stults* (1968) 263 Cal.App.2d 848, 885–886, citations omitted.)

" 'The primary purpose of requests for admissions is to set at rest triable issues so that they will not have to be tried; they are aimed at expediting trial. The basis for imposing sanctions ... is directly related to that purpose. Unlike other discovery sanctions, an award of expenses ... is not a penalty. Instead, it is designed to reimburse reasonable expenses incurred by a party in proving the truth of a requested admission ... such that trial would have been expedited or shortened if the request had been admitted.' " (*Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 865, citations omitted.) " 'The determination of whether a party is entitled to expenses under [Code of Civil Procedure] section 2033,

subdivision (o) is within the sound discretion of the trial court.'" (*Id*. at p. 864, citation omitted.)

"[I]it is entirely within the trial court's discretion to determine whether a party proved the truth of matter that had been denied. That an issue be proved is an express statutory prerequisite to recovery under section 2033, subdivision (o). Proof is something more than just evidence. It is the establishment of a fact in the mind of a judge or jury by way of evidence. Until a trier of fact is exposed to evidence and concludes that the evidence supports a position, it cannot be said that anything has been proved." (*Id*. at pp. 865–866, citations omitted.)

"We first consider the factors which may properly be considered in determining whether a requested admission is 'of substantial importance.' Federal courts considering the issue have generally found a request for admission to have been of substantial importance when the matter requested for admission was central to disposition of the case. We agree with this view. Although circumstances may occur in some future case where a request for admission might be of substantial importance even though it is not at least partially outcome determinative, as a general rule a request for admission should have at least some direct relationship to one of the central issues in the case, i.e., an issue which, if not proven, would have altered the results in the case." (*Brooks v. American Broadcasting Co.* (1986) 179 Cal.App.3d 500, 509, citations and footnote omitted.)

"Finally, in considering this issue, a court may properly consider whether at the time the denial was made the party making the denial held a reasonably entertained good faith belief that the party would prevail on the issue at trial. In this regard, we disagree with the suggestion in *Haseltine v. Haseltine*, *supra.*, 203 Cal.App.2d 48, 61, that it is enough for the party making the denial to 'hotly contest' the issue. In our view, there must be some reasonable basis for contesting the issue in question before sanctions can be avoided." (*Id.* at p. 511, citation omitted.)

"Since section 2033, subdivision (o) specifically would not be operative until after [the responding party] served its denial, any expenses incurred prior to [the service date of the denials] were improperly awarded." (*Garcia v. Hyster* Co. (1994) 28 Cal.App.4th 724, 736.) "It should be further noted, the statute authorizes only those expenses 'incurred in making that proof,' i.e., proving the matters denied by the opposing party." (*Id*. at pp. 736–737, footnote omitted.)

In the present case, plaintiff contends that defendant unjustifiably denied several of the requests for admission, and therefore defendant should have to pay her costs of proving up those matters. In particular, defendant objected to and denied request for admission number 1, which asked defendant to admit that there was a substantial amount of substance on the floor of the premises on the date of the incident. Request for admission number 3 asked defendant to admit that it breached its duty to keep the floors free of dangerous conditions on the date of the incident, thereby causing the incident. Request for admission number 5 asked defendant to admit that the substance on the floor of the premises caused plaintiff to slip and fall. Request for admission number 22 asked defendant to admit that it had notice of the substance on the floor prior to plaintiff's fall. Request for admission number 23 asked defendant to admit that the presence of the substance on the floor was a dangerous condition. Request for admission number 24 asked defendant to admit that it had a duty to warn plaintiff of the presence of the substance on the floor. Request number 25 asked defendant to admit

that it failed to warn plaintiff of the substance which caused the incident. Request number 27 asked defendant to admit that it was negligent in failing to correct the dangerous condition on the premises. Request number 30 asked defendant to admit that it knew that the floor was wet at the time of the incident, and that it had a duty to clear it from the floor. Request number 31 asked defendant to admit that it knew the floor was wet and that it had a duty to warn customers of the presence of the substance on the floor until the condition abated.

Defendant objects that the motion was not served in a timely manner under Code of Civil Procedure section 1005, subdivision (b), and therefore it should be denied. Defendant notes that the motion was served by email, and therefore had to be served at least 18 court days before the hearing. Since it was served late, defendant asks the court to deny the motion.

However, although the motion was served one court day late, apparently because plaintiff did not take into account the Juneteenth holiday, defendant has not shown that the delay in serving the motion caused any prejudice to it. In fact, defendant was still able to file a detailed opposition on the merits. Therefore, defendant has waived any objection due to the delay in serving the motion, and the court will not deny the motion based on the fact that it was served one day late.

On the other hand, plaintiff has not shown that she is entitled to an award of her attorney's fees and costs to prove up the matters that defendant denied. As discussed above, plaintiff is only entitled to an award of her fees and costs if she shows that defendant unreasonably denied the matters in the requests for admission, and that the matters that defendant denied were substantially important to the issues of the case. (Code Civ. Proc., § 2033.420, subd. (b).)

Here, the matters that defendant denied were clearly of substantial importance to the issues of the case, as they dealt with the question of whether there was a dangerous condition on the premises, and whether defendant failed to warn of or correct the condition and thus caused plaintiff to fall and injure herself. However, it appears that defendant had a reasonable and good faith basis for its denials, as it reasonably believed that there was evidence that the liquid spilled on the floor was not necessarily a dangerous condition, that it was open and obvious, and that plaintiff's own negligence in failing to look where she was going was a contributing factor to her fall.

For example, while there was no dispute that the video showed that there was liquid and debris on the floor of defendant's premises, there was some reason to dispute whether the amount of liquid was substantial enough to constitute a dangerous condition, or whether it was so open and obvious that defendant had no duty to warn about it. Also, although plaintiff claimed that the liquid on the floor was the sole cause of her fall, defendant points out that the video showed that she was not looking where she was going just before she fell, which tended to show that her own negligence was a contributing factor to her fall. Plaintiff herself admitted that she was looking back and that she was talking to her co-worker when she fell. The jury also concluded that she was at least somewhat negligent in its verdict.

In addition, while plaintiff claims that the bartender had a clear view of the liquid on the floor, the video indicated that the bartender did not look in the direction of the spilled liquid until after plaintiff fell. The bartender also may not have had a clear view of

the area where the liquid was spilled due to the fact that the bar was in the way, which supported defendant's denial that it had knowledge of the dangerous condition before the accident. If defendant did not have actual or constructive knowledge of the dangerous condition, then it would not have had duty to warn of or correct the condition. (*Ortega v. Kmart Corp*. (2001) 26 Cal.4th 1200, 1206.) There was also no evidence showing how long the substance was on the floor before the incident. Therefore, defendant's denials of the matters in the requests was reasonable and justified under the circumstances, and the plaintiff is not entitled to an award of her fees and costs for proving up the matters.

Also, plaintiff's counsel has not provided the court with a breakdown of the amount of fees they incurred to prove up the specific requests that defendant denied, which is another reason to deny the request for an award of costs. (*Garcia, supra*, 28 Cal.App.4th at pp. 736-737.) Fees incurred in proving other matters that were not denied by defendant are not recoverable under section 2033.420. (*Ibid*.) Here, plaintiff's counsel has not made any attempt to show which fees were incurred to prove up which matters, or how the requested fees were necessary to prove up the matters that defendant denied. Therefore, plaintiff has not presented sufficient evidence to meet her burden of showing that the requested fees were reasonably incurred to prove the matters that defendant denied.

Furthermore, plaintiff's counsel has failed to show that their requested rate of $575 is a reasonable rate for Fresno attorneys of similar education, background, skill and experience. In fact, it seems inconsistent that Mr. Bonakdar and Mr. Stamper both charge the same rate, $575 per hour, even though Mr. Bonakdar has only been admitted to the Bar since 2007, whereas Mr. Stamper has been admitted since 1987. It is unclear why Mr. Bonakdar, who has 20 years' less experience than Mr. Stamper, should be allowed to recover at the same rate. Therefore, plaintiff's counsel has not shown that their requested fee rate is reasonable.

Nor has counsel shown that, even if they are entitled to an award of fees, they should also receive a multiplier of 3.0, which appears to be excessive for a relatively simple slip and fall case. Counsel presents no evidence that would tend to show that the case was complex or difficult, or that it required exceptional skill to litigate, and that the results were so excellent that a multiplier should be awarded.

As a result, the court intends to deny plaintiff's motion for an award of costs of proof.

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 6-23-25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***In re: Peachtree Settlement Funding, LLC***
Superior Court Case No. 25CECG01622

Hearing Date: June 26, 2025 (Dept. 403)

Motion: by Petitioner Peachtree Settlement Funding, LLC for Approval of Transfer of Payment Rights

Tentative Ruling:

To deny.

Explanation:

The Structured Settlement Protection Act governs transfers of structured settlement payments to factoring companies for immediate cash payments. (See Ins. Code, §§ 10134 et seq.) The Act's purpose is to "protect structured settlement payees from exploitation by factoring companies." (*RSL Funding, LLC v. Alford* (2015) 239 Cal.App.4th 741, 745.) The Act provides that a transfer of structured settlement payment rights is void unless the following conditions are met:

1) The transfer is fair and reasonable, and in the payee's best interest, taking into account the welfare and support of the payee's dependents (Ins. Code, § 10137, subd. (a)); and
2) The transfer complies with the requirements of the Act, will not contravene other applicable law, and the judge has reviewed and approved the transfer (Ins. Code, § 10137, subd. (b); Ins. Code, § 10139.5.).

To determine what is fair and reasonable, and in the payee's best interest, the court is to consider the totality of the circumstances and the factors listed in Insurance Code section 10139.5, subdivision (b), including the purpose of the transfer and the payee's financial and economic situation. (Ins. Code, § 10139.5.)

Here, Petitioner, Peachtree Settlement Funding, LLC has not demonstrated how this transfer is in Mr. Walker's best interests. Although the petition and declaration of Mr. Walker represent that a copy of the settlement and annuity policy are included with the petition as Exhibits C and D no such documents are attached. The affidavits in their place explain that the settlement agreement from 2009 is not in Mr. Walker's possession and provide a policy number for the annuity at issue. There is no reason Petitioner could not have sought out a copy of the annuity policy with this information to include it with the petition and to provide needed context for the proposed transfer of payment rights.

More importantly, Petitioner has not demonstrated that the financial terms of the transfer are fair and reasonable. Mr. Walker has agreed to accept $12,389.85 for two annuity payments totaling $25,417.00. The payments to be transferred include a payment of $6,500.00 scheduled for October 20, 2025 and a payment of $18,917.00 on October

20, 2029. Mr. Walker is set to receive $6,500 in four months on October 20, 2025. This is over half of the proposed amount Mr. Walker is to receive in the transfer to be approved. When the imminent October payment is factored out of the transaction, Mr. Walker is receiving $5,889.85 in exchange for his payment of $18,917.00 in four years. This is comparable to a loan at a 75% interest rate. Mr. Walker intends to invest the funds in his e-commerce business. (Walker Decl., ¶11.) A lack of investment capital is not a financial hardship. Moreover, Mr. Walker is likely to get more favorable interest rates than 75% if the $6,500.00 to be receiving in October 2025 is insufficient for his business needs. When examined in this context, the terms of the transaction do not appear to be fair or reasonable. (Ins. Code, § 10139.5, subd. (b)(4).)

Therefore, the court does not intend to approve the proposed transfer of annuity payment rights.

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 6-23-25.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Pastor Isabel Vela vs. Kelli Mendez***
Superior Court Case No. 23CECG03871

Hearing Date: June 26, 2025 (Dept. 403)

Motions: Demurrer to Complaint and Motion to Strike by Defendant Kelli Mendez

Tentative Ruling:

To sustain the demurrer with leave to amend; to deny the motion to strike without prejudice. Plaintiff is granted 20 days' leave to file the First Amended Complaint, which shall run from service by the clerk of the minute order. New language must be set in **boldface** type.

Explanation:

The self-represented "Petitioner," Pastor Isabel Vela (Plaintiff), filed a complaint against three defendants (labeled "Respondent")—Kelli Mendez (Mendez), Nivninder Kaur (Kaur), and John Doe. Defendant Mendez demurs to the complaint, arguing it is uncertain and fails to state a cause of action. In the alternative, Mendez seek an order striking the complaint.

Meet and Confer

Counsel for Mendez filed and served a declaration stating counsel met and conferred with Plaintiff by telephone at least five days before a responsive pleading was due to be filed, but was unable to reach an agreement resolving the matters raised by the demurrer and motion to strike. This satisfies the requirements of Code of Civil Procedure sections 430.41 for the demurring party to meet and confer in person, by telephone, or by video conference with the opposing party. (See also, Code Civ. Proc., §435.5 [motion to strike]).

Demurrer

In California, a complaint shall contain a statement of the facts constituting the cause of action, in ordinary and *concise* language; and a demand for judgment for the relief to which the pleader claims to be entitled. (Code Civ. Proc., §425.10.) If the recovery of money or damages is demanded, the amount demanded shall be stated unless it is an action brought to recover actual or punitive damages for personal injury or wrongful death, in which case the amounts sought shall not be stated. (*Id*.)

In other words, a cause of action must allege every fact that the plaintiff is required to prove in order to allege the facts, or elements, necessary to constitute a cause of

action. Where the plaintiff fails to allege essential facts, the pleading is subject to demurrer. (See Code Civ. Proc., §§ 425.10, 430.10.)

In testing a pleading against a demurrer, the facts alleged are deemed to be 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.) Courts indulge in great liberality in allowing amendments to a complaint in order that no litigant is deprived of its day in court due to pleading technicalities. (*Saari v. Superior Court* (1960) 178 Cal.App.2d 175, 178.) Where the complaint alleges facts showing the plaintiff is entitled to relief under a possible legal theory, the court should permit amendment. (*Ibid*.; see also *Smith v. Wells Fargo Bank, N.A*. (2005) 135 Cal.App.4th 1463, 1485.)

The Code of Civil Procedure permits a defendant to demur to a complaint on the ground that it is uncertain, a term that includes pleadings that are "ambiguous and unintelligible." (Code Civ. Proc., § 430.10; see also Code Civ. Proc., § 425.10, subd. (a)(1) [a complaint must include a "statement of the facts constituting the cause of action, in ordinary and concise language"].) Under the liberal pleading rules, demurrers for uncertainty are generally disfavored (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822), and the court ordinarily will overrule a demurrer for uncertainty or give a plaintiff leave to amend. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

The California Rules of Court require that each cause of action must be "separately stated" by "number" and must include the "nature" of the claim, and the "party or parties to whom it is directed." (Cal. Rules of Court, rule 2.112.) Nevertheless, courts must look past the form of a pleading to its substance. (*Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.) Looking past the unusual format of the complaint here, the court still sees an uncertainty problem that renders the complaint subject to demurrer. (See *Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1014 [failure to comply with rule 2.112 presumably renders complaint subject to special demurrer for uncertainty or motion to strike].)

Plaintiff's self-styled complaint includes pages of citation to authorities and argument, interspersed with a disjointed unintelligible narrative of events that occurred in a family law matter. For example, Plaintiff begins with an allegation that Mendez "submitted a court form FL-158 on behalf of her client . . . KAUR." (Comp., p. 1:21-23 [Plaintiff's complaint has no numbered paragraphs or headings].) In the next paragraph, Plaintiff alleges "[u]nder federal law, you have a 'reasonable expectation of privacy' in

your home." (Comp., p. 1:26-28, underlining original.) Then Plaintiff partially describes court documents from a family law matter between Kaur as petitioner, and Gurmeet Singh Rai as respondent, which she attaches as exhibits A and B. Next, Plaintiff alleges Mendez violated "the ethical code," and quotes from the California State Rules of Professional Conduct, rule 1.2.1. The complaint includes citations to case authority and argument, in lieu of causes of action with supporting facts about Mendez's alleged conduct. (See, e.g., Comp., pp. 3-4.)

Plaintiff's inartfully-pleaded "causes of action" mention terms such as invasion of privacy, intrusion, collusion, conspiracy, and emotional distress. The court agrees with Mendez and finds the complaint is uncertain—Mendez cannot reasonably ascertain what specific facts, legal theories or causes of action are alleged against her. And more generally, Plaintiff's complaint fails to include the nature of each cause of action in the body of the complaint and fails to label and state as to each separate cause of action the party or parties to whom it is directed, as required by California Rules of Court, rule 2.112.

Accordingly, the court sustains the demurrer to the complaint with leave to amend. The format of the first amended complaint should comply with the California Rules of Court, including rule 2.112 (regarding headings, separately-stated and numbered causes of action, and identity of parties against whom claim asserted), and should *not* include legal argument with citation to authorities. The court need not reach Mendez's remaining grounds for demurrer or the merits of the motion to strike at this juncture.[1]

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 6-24-25.
(Judge's initials) (Date)

[1]Mendez's attempt to preserve a ground for demurrer based on improper service fails because Mendez waived the alleged defect by making a general appearance. "[I]t has long been the rule in California that a party waives any objection to the court's exercise of personal jurisdiction when the party makes a general appearance in the action. (*Roy v. Superior Court* (2005) 127 Cal.App.4th 337, 341.) "A general appearance by a party is equivalent to personal service of summons on such party." (Code Civ. Proc., § 410.50, subd. (a).) The acts constituting an appearance include the statutory list, such as filing an answer, demurrer or a motion to strike. (*Id.,* § 1014; see *Hamilton v. Asbestos Corp., Ltd.* (2000) 22 Cal.4th 1127, 1147 [statutory list is not exhaustive, defendant confers jurisdiction on court by taking part in some act that recognizes court's authority to proceed].)

(27)

Tentative Ruling

Re: ***Gurnam Mann v. Donald Neal***
Superior Court Case No. 20CECG03281

Hearing Date: June 26, 2025 (Dept. 403)

Motion: Default Prove-Up

Tentative Ruling:

To deny without prejudice.

Explanation:

As with plaintiff's previous hearing for default judgment, no Judicial Council Form CIV-100 – Request for Court Judgment has been filed. This is a required form, in the absence of which the Court cannot proceed.

Plaintiff is reminded that applications for default judgment on declarations pursuant to Code of Civil Procedure section 585, subdivision (d) is the preferred procedure in Fresno County. (See Superior Court of Fresno County Local Rules, rule 2.1.14.) When submitting a matter for default judgment on declarations, the party must comply with California Rules of Court, rule 3.1800, and submit the required material together as a single packet. (*Ibid*.) Default packets should be filed with the Clerk's Office at least ten court days before the hearing. (*Ibid*.)

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 6-25-25 .
(Judge's initials) (Date)