

**Tentative Rulings for July 2, 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)**

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

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

22CECG03052	<i>Charles Yocum v General Motors LLC</i> is continued to Wednesday, July 16 2025 at 3:30 p.m. in Department 403
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(Tentative Rulings begin at the next page)

## **Tentative Rulings for Department 403**

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(20)

**Tentative Ruling**

Re: **Cruz v. Fresno Ambulatory Surgery Center**  
Superior Court Case No. 23CECG01792

Hearing Date: July 2, 2025 (Dept. 403)

Motion: Plaintiff's Motion to Stay Proceedings

Defendant's Demurrer to Third Amended Complaint

**Tentative Ruling:**

To deny the motion to stay proceedings.

To continue the hearing on the demurrer to August 13, 2025, at 3:30 p.m. in Department 403. All opposition and reply deadlines will be based on the continued hearing date.

**Explanation:**

Plaintiff moves to stay proceedings for 90 days due to injuries he sustained in a car accident on February 25, 2025. The motion is brought pursuant to Code of Civil Procedure section 128(a)(3), and the court's inherent authority to manage its docket and ensure due process. He quotes from *People v. Engram* (2010) 50 Cal.4th 1131, 1146, as stating, "courts have inherent power to stay proceedings when required in the interest of justice." However, this quote is not found in *Engram*, and the opinion does not even include the word "stay." Plaintiff also cites to "*People v. Burnett*, (2005) 129 Cal.App.4th 382, 387 [recognizing due process implications where a party cannot participate effectively].," a case that does not exist.

Aside from plaintiff's fake case citations, he cites to no authority supporting a stay of proceedings under the circumstances. The motion is lacking in foundation, as plaintiff presents no declaration or letter from his physician supporting the request for stay. Even though the court does not find that a complete stay is warranted, the court will accommodate plaintiff and provide time to recover by continuing the hearing on the demurrer to August 13, 2025.

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:          on     6-27-25    .  
(Judge's initials) (Date)

(47)

**Tentative Ruling**

Re: **Romeo Cabrera vs Robin Ribb**  
Superior Court Case No. 21CECG03230

Hearing Date: July 2, 2025 (Dept. 403)

Motion: Petition to Compromise

**Tentative Ruling:**

To grant petition. Order signed. No appearance necessary. The court sets a status conference for Wednesday, October 8, 2025, at 3:30 p.m., in Department 403, for confirmation of deposit of the minors' funds into the blocked accounts. If Petitioner files the Acknowledgment 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(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: Img on 6-27-25.  
(Judge's initials) (Date)

(41)

**Tentative Ruling**

Re: **Abel Perez v. Roberto Perez**  
Superior Court Case No. 23CECG00025

Hearing Date: July 2, 2025 (Dept. 403)

Motions: (1) Demurrer to Second Amended Complaint;  
(2) Plaintiff's Motion for Sanctions;  
(3) Plaintiff's Motion to Strike;  
(4) Defendants' Motion to Strike.

**Tentative Ruling:**

To overrule the demurrer to the second amended complaint with defendants granted leave to answer within 10 days. The time to answer shall run from the date of service by the clerk of the minute order.

To deny plaintiff's motion for sanctions and motion to strike; to take defendants' motion to strike off calendar.

**Explanation:**

Plaintiff Abel Perez (Plaintiff) filed a second amended complaint (SAC) against his parents, Roberto Perez and Nina Perez (together, Defendants). This court sustained the demurrer to his first amended complaint because Plaintiff failed to allege facts to fall within the delayed discovery rule set forth in Code of Civil Procedure section 340.15, governing the time to commence an action for damages suffered as result of domestic violence.

The SAC has one cause of action for civil battery based on physical abuse that caused psychological injury. Defendants demur on the grounds that the single cause of action fails to state sufficient facts to constitute a cause of action and Plaintiff's claims are barred by the applicable statute of limitations. Defendants also contend the parties entered into a settlement agreement that bars all claims between the parties.

**Meet and Confer**

Defendants' counsel filed and served a declaration stating counsel met and conferred with Plaintiff by telephone on April 24, 2025 (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 a 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, subd. (a)(4) [same for motion to strike].)

### General Principles for Demurrer

A general demurrer tests the legal sufficiency of a complaint, cross-complaint or answer. (Code Civ. Proc., § 589.) The court takes as true all properly pleaded material facts, but not conclusions of fact or law asserted in the pleading. (*Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 916.) A defendant against whom a complaint has been filed may object to it by demurrer on the ground that it fails to state facts sufficient to constitute a cause of action where the ground for objection appears on the face of the complaint or from any matter of which the court must or may take judicial notice. (Code Civ. Proc., §§430.10, subd. (e), 430.30, subd (a); *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

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.)

A general demurrer will lie where the complaint clearly discloses some affirmative defense or bar to recovery. (*Casterson v. Superior Court* (2002) 101 Cal.App.4th 177, 183 [directing trial court to sustain demurrer without leave to amend where complaint's allegations disclosed that affirmative defense barred recovery].) A demurrer admits material facts properly pleaded except contentions, deductions or conclusions of fact or law. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 713.)

Once again, the parties submit many factual allegations apart the allegations of the SAC. The court has disregarded all factual allegations, except those alleged in the SAC, which the court accepts as true for purposes of these demurrers.

### Proof of Service – Improper Notice

"A party objecting on grounds of lack of notice forfeits the objection by appearing at a hearing to tender a substantive argument on the issue for which the lack of notice is asserted." (*Felisilda v. FCA US LLC* (2020) 53 Cal.App.5th 486, 492 [even if issue of defective notice is preserved for appeal, to secure reversal, party must demonstrate prejudice due to lack of notice].) Plaintiff objects that he was served with the demurrer 37 days after it was filed, but he provides no authority for his contention that a motion and its proof of service must be filed concurrently.

Rule 3.1300(c) of the California Rules of Court, provides "[p]roof of service of the moving papers must be filed no later than five court days before the time appointed for the hearing." To date, the court's file has no proof of service to show when Plaintiff was served, but Plaintiff supplies the proof of service in his declaration dated June 11, 2025, wherein he states he was served with the demurrer to the SAC ("2nd Demurrer") by electronic transmission on June 6, 2025. Defendants' notice of hearing on the demurrer was one day late for the July 2, 2025 hearing on the demurrer, due to the June 19, 2025 court holiday. (See Code Civ. Proc., §§ 1005, subd. (b), 1010.6; Cal. Rules of Court, rule 3.1320(c) [demurrer requires notice of 16-court days plus 2 court days for electronic

transmission].) In light of the court's consideration of Plaintiff's opposition and its tentative ruling to overrule the demurrer, the court finds Plaintiff has waived any objections based on improper notice.

### Statute of Limitations

Defendants demur to Plaintiff's single cause of action based on alleged domestic violence, contending it is barred by the applicable statute of limitations. They acknowledge that Plaintiff attempts to cure the defects of the first amended complaint "by alleging delayed discovery of unspecified emotional and psychological damages." (Mem., pp. 6:25-7:1.) But they contend Plaintiff's attempts fail because Plaintiff provides no specific dates for the alleged diagnosis, nor does he name a treating psychologist or identify the "diagnosis which would explain why he was unable to be aware of the alleged claim for more than 20 years." (*Id.*, at p. 7:3-4.)

The Court of Appeal has determined that Plaintiff's cause of action for damages caused by physical abuse falls within the statute of limitations set forth in Code of Civil Procedure section 340.15. (*Perez v. Perez* (Cal. Ct. App., Dec. 30, 2024, No. F087666) 2024 WL 5251175, at p. 3 (*Perez*)). This statute provides that an action for damages suffered as a result of domestic violence may be commenced "[w]ithin three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act of domestic violence by the defendant against the plaintiff."

In Plaintiff's successful appeal after this court properly sustained the demurrer to his first amended complaint, but erred by failing to grant leave to amend, the Court of Appeal addressed the timeliness of Plaintiff's complaint as follows:

Subtracting the three-year statute of limitations period (§ 340.15, subd. (a)(2)) and the 178-day tolling of all statutes of limitations due to the COVID-19 pandemic from January 3, 2023, when [Plaintiff] filed his original complaint, gives us July 9, 2019. So, [Plaintiff's] suit is timely only if he neither "ha[d], or should have [had], inquiry notice of [his] cause of action" before that date. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807–808.)

(*Perez, supra*, 2024 WL 5251175, at p. 4, fn. omitted.) In other words, if Plaintiff had or should have had notice of his cause of action before July 9, 2019, his complaint is time-barred. But if he discovered the facts to put him on inquiry notice after July 9, 2019, his complaint is timely.

The delayed discovery rule is a pleading rule that applies when a plaintiff, exercising reasonable diligence, is unable to discover a possible injury earlier. To fall within the delayed discovery rule, Plaintiff "' must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence.' [Citation.]" (*Fox v. Ethicon Endo-Surgery, Inc.*, *supra*, 35 Cal.4th at p. 808, italics added by Fox court; accord, *Holman v. County of Butte* (2021) 68 Cal.App.5th 189, 197-198 [survivor of child abuse adequately alleged delayed discovery of claims against welfare agency for breach of reporting duties where the survivor alleged he had suffered trauma-induced amnesia until memories of childhood abuse were triggered by parent's violent outburst nine years later].)

Application of the delayed discovery rule is generally a question of fact:

"When a plaintiff reasonably should have discovered facts for purposes of the accrual of a cause of action or application of the delayed discovery rule is generally a question of fact, properly decided as a matter of law only if the evidence (or, in the case of a demurrer, the allegations in the complaint and facts properly subject to judicial notice) can support only one reasonable conclusion."

(*Perez, supra*, 2024 WL 5251175, at p. 4, quoting *People ex rel. Allstate Ins. Co. v. Discovery Radiology Physicians, P.C.* (2023) 94 Cal.App.5th 521, 552.)

Here Plaintiff alleges at age 18 he repressed all memories of his childhood, and he still has unexplained gaps in his memories. (SAC, p. 6:17, 24-25.) It took Plaintiff several decades to make a connection between the physical abuse and the psychological injury, as he built a sense of self-worth. Two major events caused Plaintiff to question the reality of his coping mechanisms:

One of them was getting married in September 2018 and Plaintiff was now living in intimate proximity with another person. Behaviors Plaintiff had never questioned, were now reflected back onto him. This culminated in the 2019 psychologist visits. Before 2019 Plaintiff had never seen a psychologist in his life.

(SAC, p. 7:7-10.)

Plaintiff alleges he first discovered the alleged psychological damage upon visiting a psychologist for the first time in his life in the latter half of July 2019, after he suffered a panic attack while driving during the weekend of July 14, 2019. (SAC, pp. 7:9-10; 8:6-11.) "In August the psychologist diagnosed Plaintiff with PTSD from childhood abuse, and trauma induced amnesia." (SAC, p. 8:11-12.) The court finds Plaintiff has alleged specific facts to show (1) the time and manner of discovery, which occurred on or after July 14, 2019, and (2) his inability to have made an earlier discovery despite reasonable diligence based on his repressed memory.

Defendants' contentions that Abel should have discovered all of his injuries resulting from the domestic violence long before July 9, 2019, raise a question of fact. As the appellate court determined in *Perez*, Plaintiff's contention "that he 'repressed his memories at the age of 18' is sufficient to raise at least a triable issue of fact as to the reasonableness of [Plaintiff's] discovery of his psychological injuries." (*Perez, supra*, 2024 WL 5251175, at p. 4.) The delayed discovery rule applies, making Plaintiff's suit timely under the statute of limitations set forth in Code of Civil Procedure section 340.15. Therefore, the court overrules Defendants' demurrer based on the statute of limitations.

#### Settlement Agreement

Defendants provide no authority for their contention that the court may determine on demurrer that the SAC is barred by a settlement agreement. No motion to enforce a



settlement agreement is pending and the court declines to rule on a request to enforce a settlement agreement as part of a demurrer.

## Vexatious Litigant

Likewise, Defendants provide no authority for their request in the conclusion of their moving papers to deem Plaintiff a vexatious litigant. No motion to deem Plaintiff a vexatious litigant is pending and the court declines to rule on the request as part of a demurrer.

## Defendants' Motion to Strike

Defendants have filed no paperwork in connection with their motion to strike. Therefore, the court takes the motion off calendar.

## Plaintiff's Motion to Strike

The court's tentative ruling is to overrule Defendants' demurrer to the SAC. Therefore, Plaintiff's motion to strike is moot.

## Plaintiff's Motion for Sanctions Under Rule 8.276

Plaintiff moves for sanctions under "Rule 8.276." Rule 8.276 of the California Rules of Court is part of Article 4, that sets forth the rules applicable to appeals. (See "Article 4. Hearing and Decision in the Court of Appeal (Rule 8.240 to Rule 8.278).") These "rules of court authorize the imposition of sanctions on a party or an attorney not only for the filing of a frivolous appeal or motion or for including in the record matters not reasonably material to the appeal, but also for '[c]omitting any other unreasonable violation of these rules.' " (*Huschke v. Slater* (2008) 168 Cal.App.4th 1153, 1155–1156, citing Cal. Rules of Court, rule 8.276(a)(1)-(4).) The court denies Plaintiff's motion for sanctions under an appellate rule of 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: img on 6-27-25  
(Judge's initials) (Date)