Tentative Rulings for July 23, 2026
Department 502

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.

23CECG05132	***Sal Montano v. John Doe* is continued to Thursday, September 3, 2026, at 3:30 p.m. in Department 502.**
26CECG00219	***Silvia Voorhees v. Jeremy Alvarado* is continued to Thursday, September 3, 2026, at 3:30 p.m. in Department 502.**
24CECG05051	***Kevin Seele v. David Nino* is continued to Wednesday, July 29, 2026, at 3:30pm in Department 502.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(03)

Tentative Ruling

Re: ***Rodriguez v. Valleywide Farm Labor, Inc.***
Case No. 22CECG01009

Hearing Date: July 23, 2026 (Dept. 502)

Motion: Plaintiff's Motion for Final Approval of Class and PAGA Settlement

Tentative Ruling:

To grant plaintiff's motion for final approval of class and PAGA settlement.

Explanation:

1. Class Certification

The court has already granted preliminary approval of the request for certification of the class for the purpose of settlement. Nothing has changed that would cause the court to change its ruling. In fact, the lack of any objections from the class indicates that the class members agree that the class should be certified. Therefore, the court intends to grant certification of the class for the purpose of settlement.

2. Fairness and Reasonableness of the Settlement

The court has already granted preliminary approval of the settlement, including finding that the amount of the settlement is fair, adequate and reasonable. After the court granted preliminary approval of the settlement, the class administrator served notice of the settlement on the class members, and no objections and only two requests for exclusion have been received. The class members' lack of objections supports a finding that the settlement is fair, reasonable, and adequate. Therefore, the court intends to grant final approval of the settlement amount.

3. Attorney's Fees and Costs

The court has already granted preliminary approval of the request for attorney's fees and costs. No class members have objected to the settlement or the requested fees and costs. Therefore, the court intends to grant final approval of the requested attorney's fees and costs.

4. Payment to Class Representative

The court has already granted preliminary approval of the $7,500 incentive award to the named plaintiff. No class members have objected to the requested incentive award. Therefore, the court intends to grant final approval of the incentive award to the named plaintiff.

5. Payment to Class Administrator

The court has already granted preliminary approval of the $8,000 payment to the administrator. No class members have objected to the $8,000 payment. Therefore, the court intends to grant final approval of the payment to the administrator.

6. PAGA Settlement

The court has already found that settling the PAGA claims for $7,500 is fair, adequate and reasonable. Nothing has changed since the court's preliminary ruling that would cause it to change its ruling. Therefore, the court intends to grant final 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: <u>lmg</u> on <u>7-20-26</u>.
(Judge's initials) (Date)

(48)

Tentative Ruling

Re:	***Manning-Hegle v. Amazon Logistics, Inc. et al.*** Superior Court Case No. 25CECG00102
Hearing Date:	July 23, 2026 (Dept. 502)
Motion:	By Defendant J.L. Marquez Properties, Inc. for Order Determining Good Faith Settlement

Tentative Ruling:

To grant. (Code Civ. Proc., § 877.6.)

Explanation:

"Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005." (Code Civ. Proc., § 877.6, subd. (a)(1).)

"The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counter affidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing." (Code Civ. Proc., § 877.6, subd. (b).)

"A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault." (Code Civ. Proc., § 877.6, subd. (c).)

Where the motion for good faith settlement is not contested, a barebones motion which sets forth the ground of good faith, accompanied by a declaration which sets forth a brief background of the case, is sufficient to meet the settling party's burden of showing good faith. (*City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1261.)

All parties required to be noticed have been given notice of this motion. Inasmuch as the motion is uncontested, the court finds that the motion is sufficient to show a prima facie showing of good faith.

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 ___7-22-26___.
(Judge's initials) (Date)

(35)

<u>Tentative Ruling</u>

Re: ***Dorsey v. Wells Fargo Bank, N.A. et al.***
Superior Court Case No. 25CECG01531

Hearing Date: July 23, 2026 (Dept. 502)

Motion: Motion to Set Aside Judgment

Tentative Ruling:

To take off calendar, as the moving papers were <u>untimely</u> filed. (Code Civ. Proc., § 1005, subd. (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: <u>lmg</u> on <u>7-22-26</u>.
(Judge's initials) (Date)

(20) **<u>Tentative Ruling</u>**

Re: ***Hayes vs. GSF Properties, Inc., et al.***
Superior Court Case No. 25CECG04191

Hearing Date: July 23, 2026 (Dept. 502)

Motion: By Defendants for Sanctions for Filing Frivolous Pleading in Violation of Code of Civil Procedure Section 128.7

Tentative Ruling:

The motion is denied. (Code Civ. Proc. § 128.7.)

Explanation:

Defendants GSF Properties Inc., Trans Asian Investment Group, Inc., Stephen Kao, Maria Mcanally, Shannon Zepeda and Levon Baladjanian ("defendants") move for sanctions against plaintiff's counsel Reza Sina ("counsel") under Code of Civil Procedure section 128.7 because the First Amended Complaint ("FAC") contains fabricated quotations, nonexistent legal authority, and objectively unreasonable legal contentions (not much of which counsel disputes).

Courts may impose sanctions for a pleading which was "filed for an improper purpose or was indisputably without merit, either legally or factually." (*Peake v. Underwood* (2014) 227 Cal.App.4th 428, 440.) Code of Civil Procedure section 128.7, subdivision (b) provides:

> By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:
> (1) It is not being presented *primarily* for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
> (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.
> (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
> (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(*Ibid.*)

Violations of Code of Civil Procedure section 128.7, subdivision (b) are tested objectively. (*Peake v. Underwood, supra*, 227 Cal.App.4th at p. 440.) A claim is "objectively unreasonable if 'any reasonable attorney would agree that [it] is totally and completely without merit.'" (*Ibid*, citations omitted.) Such sanctions are discretionary, even where a claim is frivolous, and the court is to award such with restraint. (*Id*. at p. 448.)

Section 128.7 provides for a 21-day safe harbor provision "during which a party may avoid sanctions by withdrawing the offending pleading or other document." (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 190.) "If a party does not take advantage of the safe harbor period by withdrawing a frivolous filing, a court has broad discretion to impose sanctions." (*Ibid*.)

On January 8, 2026, defense counsel served plaintiff's counsel with a copy of the instant motion for sanctions. (Kandarian Decl., ¶ 10, Exh. F.) Counsel did not seek to withdraw or amend the pleading within 21 days of service of that motion. Counsel argues in the opposition that the motion is moot because the FAC has been superseded by the filing of a Second Amended Complaint ("SAC") which omits all of the challenged allegations. On April 14, 2026, plaintiff and defendants stipulated that "that the attached SAC *can be filed* by Plaintiff" (emphasis added) and the stipulation was signed into an order by the court on April 20.

Aside from the fact that the proposed SAC still has not been filed, counsel's argument clearly misses the point. Counsel can only avoid sanctions by withdrawing the offending pleading within the 21-day safe harbor period. The stipulation to file a SAC was not submitted until more than three months after notice of the intent to seek sanctions was served. Because counsel did not withdraw the FAC, defendants were forced to file a demurrer and motion to strike the FAC, responding to allegations that counsel does not deny are frivolous. Because counsel failed to avail himself of the safe harbor, he cannot avoid sanctions under section 128.7.

Counsel does not dispute that the FAC contains "claims … and other legal contentions [that are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law …" The moving papers show:

1. The FAC asserts causes of action not recognized under California law – claims styled as "wage deprivation through housing termination," "violation of public policy: illegal working conditions," a cause of action under Health and Safety Code § 17031.5 [a statute providing no private right of action, but creating only a rebuttable presumption and defensive mechanism in limited possession proceedings];
2. The FAC asserts claims barred by a final court order and absolute privilege. The claims for wrongful eviction, tenant harassment, abuse of process, and conversion, are premised on an eviction that was carried out pursuant to a valid court order and write of possession. (Kandarian Decl., ¶ 8, Ex. D; ¶ 11.) Claims that seek to impose tort liability based on conduct authorized by a final unlawful detainer judgment constitute an impermissible collateral attack and are barred as a matter of law. (See *Gombiner v. Swartz* (2008) 167 Cal.App.4th 1365.) Defendants contend, and counsel does not dispute, that "Plaintiff's claims for

tenant harassment, wrongful eviction and forcible dispossession, and conversion of personal property are premised entirely on the act of dispossession itself—namely, the Sheriff's execution of a writ of possession issued in the unlawful detainer action—those claims are barred by res judicata." And the defamation claim is predicated on statements made in communications to the Employment Development Department ("EDD"), which qualify for absolute privilege as statements made in official or quasi-judicial proceedings. (Civ. Code, § 47(b); see *Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 362 ["the privilege protect[s] communications to or from governmental officials which may precede the initiation of formal proceedings"].)

3. The FAC contains material misrepresentations of fact – that defendants' counsel sought a "global resolution" thirteen hours before a writ of possession was executed against plaintiff (FAC ¶ 185(e)) and plaintiff requested personnel records (FAC ¶ 42). Both allegations are false. (Kandarian Decl., ¶¶ 14-16, Exs. H-I.)
4. The FAC includes fabricated quotations and misleading legal citation. It includes direct quotations that do not appear in the referenced sources (FAC ¶ 25) and cites case law for propositions those cases do not support. Off all the frivolous allegations identified in the motion for sanctions, in the whole opposition counsel only disputes the latter – pertaining to a reference to *Karz v. Mecham* (1981) 120 Cal.App.3d Supp. 1. Defendants correctly show that *Karz* does not contain the proposition asserted in paragraph 25 of the FAC. Counsel claims that he was referring to the "progeny" of *Karz,* but does not point to any case supporting the claimed proposition.

Regardless of whether sanctions are appropriate for the *Karz* allegation, there is ample evidence of other frivolous, fake and false allegations in the FAC to justify an award of sanctions under section 128.7. Counsel does not dispute that all of the above (other than *Katz*) are frivolous claims and allegations. Sanctions are clearly warranted here.

The problem is that the motion fails to specify the sanctions to be imposed. The notice of motion states that "Defendants seek an order awarding reasonably attorneys' fees and costs incurred in responding to the FAC and in bringing this motion, together with such further relief as the Court deems appropriate to deter repetition of the offending conduct." But the sanctions amount is not specified, either in the notice, the memorandum of points and authorities, nor declaration of counsel in support of the motion (see Kandarian Decl.), where counsel would provide evidence of the attorneys' fees incurred.

Though defense counsel filed a declaration specifying the sanctions amount on the day of the hearing (July 9, 2026), a notice of motion must state what relief is sought and the grounds. (Code Civ. Proc., § 110; Cal. Rules of Court, Rule 3.1110(a).) Courts cannot grant different relief, or relief different grounds, than stated in the notice of motion. (*People v. American Sur. Ins. Co.* (1999) 75 Cal.App.4th 719, 726.)

Additionally, awarding sanctions not specified in the notice of motion would be problematic in view of section 128.7's safe harbor. The 21-day safe harbor period allows counsel to correct the issue by withdrawing the offending document without facing sanctions. (Code Civ. Proc., § 128.7, subd. (c)(1).) By serving a motion for sanctions without specifying the sanction amount, plaintiff's counsel did not have notice of the substantial monetary exposure that would follow from not withdrawing the FAC. Allowing defendants to fix the amount for the first time six months later, on the day of the hearing, would defeat the notice function the safe harbor is designed to serve. Accordingly, the motion is denied.

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 7-21-26 .
(Judge's initials) (Date)

(47)

<u>Tentative Ruling</u>

Re:	***Gregory Smith v. Nationwide Mutual Insurance Company*** Superior Court Case No. 25CECG02550
Hearing Date:	July 23, 2026 (Dept. 502)
Motion:	Defendant, Visual Changes Skin Care International, Inc.'s Demurrer to Fifth through Fifteenth and Eighteenth Causes of Action as to Plaintiff's Second Amended Complaint Defendant, Lori Smith's Demurrer to Fifth through Eighteenth Causes of Action as to Plaintiff's Second Amended Complaint

Tentative Ruling:

To overrule both defendant Visual Changes Skin Care International, Inc.'s and Lori Smith's demurrer to the fifth through fifteenth, seventeenth and eighteenth causes of action, in Gregory Smith's Second Amended Complaint.

To sustain Ms. Smith's demurrer to the sixteenth cause of action in Gregory Smith's Second Amended Complaint, without leave to amend.

Explanation:

Plaintiff, Gregory Smith ("Mr. Smith" or "Plaintiff") asserts 18 causes of action, including 14 against Lori Smith ("Ms. Smith") and/or her business, Visual Changes Skin Care International, Inc. ("Visual Changes.") (Collectively "defendants.")

Mr. Smith's action arises from defendant Nationwide Mutual Insurance Company's ("Nationwide") alleged failure and refusal to fully honor its contractual and statutory obligations under a commercial property insurance policy issued for the real property located at 4676 W. Jacquelyn Avenue, Fresno, California (the "Jacquelyn Property"). All of these causes of action stem from Ms. Smith's alleged misconduct with respect to Jacquelyn Property. (Second Amended Complaint (SAC), ¶3.)

The Jacquelyn Property is co-owned by Mr. Smith and Ms. Smith, as tenants in common. (Second Amended Complaint (SAC), ¶3.) Although Mr. Smith and Ms. Smith are legally married, they have been separated since March 8, 2017. A dissolution action is pending in Fresno County, Fresno Superior Court Case No. 17CEFL04963. ("Dissolution Action.")

Visual Changes demurs to the fifth through fifteenth, and eighteenth causes of action to Mr. Smith's Second Amended Complaint because the Court lacks jurisdiction because the family court presiding over plaintiff's and Ms. Smith's marital dissolution has sole jurisdiction over the subject matter of plaintiff's claims. Visual Changes further demurs as to each of the aforementioned causes of action for other reasons.

Ms. Smith demurs to the fifth through eighteenth causes of action to Mr. Smith's Second Amended Complaint on the grounds that the Court lacks jurisdiction, and further demurs as to each of the aforementioned causes of action for other reasons.

The function of a demurrer is to test the sufficiency of a pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) As relates to a complaint, the test is whether plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of plaintiff's possible difficulty or inability in proving the allegations of the complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) A demurrer is proper where the court lacks jurisdiction. (Code Civ. Proc., § 430.010 subd. (c).) "After a family law court acquires jurisdiction to divide community property in a dissolution action, no other department of a superior court may make an order adversely affecting that division. [Citation.]" (*Askew v. Askew* (1994) 22 Cal.App.4th 942, 961 ("*Askew*").)

Jurisdiction

Visual Changes demurs on the fifth through fifteenth, and eighteenth causes of action, while Ms. Smith demurs on the fifth through eighteenth causes of action for lack of jurisdiction.

The following briefly describes each cause of action and how Nationwide is part of those causes of action. Mr. Smith's fifth and sixth causes of action concern implied contractual indemnity and equitable indemnity. The allegations in these causes of action concern what both Visual Changes and Ms. Smith reported to, and what was recovered from Nationwide. (SAC, ¶¶ 64, 71.) Mr. Smith's seventh through ninth causes of action are negligence actions premised on allegations of Ms. Smith and Visual Changes underreporting claims to Nationwide. (SAC, ¶¶ 77, 79-80, 84-85, 88, 92-95.) Mr. Smith's tenth through twelfth causes of action center on waste claims, alleging an underreporting of material facts to Nationwide in order to get proper indemnification. (SAC, 97, 102, 107.) Mr. Smith's thirteenth through fifteenth causes of action pertain to nuisance causes of action by alleging damages due to an underreporting of material facts to Nationwide. (SAC, ¶¶ 112, 117, 122.) Mr. Smith's sixteenth cause of action for accounting alleges Ms. Smith collected rent from Visual Changes and other third parties without distributing profits to Mr. Smith. (SAC, ¶128.) This cause of action does not involve Nationwide. The seventeenth cause of action of unjust enrichment alleges Ms. Smith received insurance proceeds from Nationwide without distributing any proceeds to Mr. Smith. (SAC, ¶¶ 132-133.) Mr. Smith's eighteenth cause of action is an indemnity claim seeks declaratory relief against both Ms. Smith and Visual Changes with respect to the Jacquelyn Property, and is intertwined with the fifth and sixth causes of action, already described above. (SAC, ¶¶ 135-136.)

Once a marital dissolution action is underway, the family law court acquires jurisdiction over the characterization and division of all alleged marital property, including alleged community property in the hands of third parties, and a civil trial court has no jurisdiction to act in a later-filed suit involving ownership of the same property. (*McMillin v. Eare* (2021) 70 Cal.App.5th 893, 919-920; *Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1454-1455 ("*Glade*")—after a family law court acquires jurisdiction to divide community property in a dissolution action, no other department of a superior court may make an order adversely affecting that division.)

Family Code section 2010, which governs the jurisdiction of the family law court, provides that in a dissolution action, the family law court "has jurisdiction to inquire into and render any judgment and make orders that are appropriate concerning . . . [t]he settlement of the property rights of the parties." (Fam. Code, §2010, subd. (e).) Further, Family Code §§2550, et seq., directs the family law court to characterize, value, and divide the community's assets and liabilities. (*Glade, supra,* 38 Cal.App.4th at p. 1452.) "[P]riority of jurisdiction in the marital dissolution context relates to the subject matter of such an action—the marital community's property interests—and that such jurisdiction commences once the action is underway." (*Id*. at n.13.)

In simplest terms, the Family Court's jurisdiction focuses on the division of assets – how to divide a pizza, whereas the general powers of Civil Court can potentially determine how big the pizza is – one court focuses on the division of assets, and the other court can impact the underlying base of assets due to alleged actions from a third party, in this case Nationwide. Using this framework, Ms. Smith's and Visual Changes' demurrer with respect to Mr. Smith's fifth through fifteenth, seventeenth and eighteenth causes of action are overruled as those causes of action. These causes of action pertain to what Nationwide's proper indemnification should have been and do not concern how the Jacquelyn Property should be used between Mr. Smith and Ms. Smith, or the division of profits emanating from the Jacquelyn Property. However, the sixteenth cause of action explicitly does not require Nationwide, and is centered on the division of both use and lost profits with respect to the Jacquelyn Property.

Both Ms. Smith and Visual Changes assert that family court retains jurisdiction where Mr. Smith has reframed his causes of action in civil court. Both Ms. Smith and Visual Changes cite *Neal v. Superior Ct*., (2001) 90 Cal. App. 4th 22, 25 ("*Neal*") for this proposition. (Ms. Smith's Moving Papers, pg. 14:3-19; Visual Changes' Moving Papers, pg. 7:9-21.)

In *Neal*, the ex-husband never paid any of the obligations he owed under the divorce judgment. After the ex-wife sought help from the District Attorney to collect the arrearages, the parties entered into a stipulation. Instead of complying with the stipulation, the ex-husband filed a civil complaint against the ex-wife. The appellate court held that the trial court should have sustained the ex-wife's demurrer, reasoning that the substance of the claims in the civil complaint "all stem directly from the family law case." (*Neal*, supra, 90 Cal.App.4th at p. 26.)

Unlike *Neal*, the fifth through fifteenth, seventeenth and eighteenth causes of action are not based on the dissolution proceedings. Here, Mr. Smith, based on his one-half, tenancy-in-common interest, brought claims for breach of contract against Nationwide based on payments that were allegedly "grossly insufficient to cover the actual damages" to the Jacquelyn Property. (SAC ¶¶ 39, 47, 53, and 58.) Mr. Smith's claims against Nationwide are intertwined with Ms. Smith and Visual Changes' alleged conduct where they were the ones who submitted claims for damages to Nationwide, and allegedly received payments from Nationwide that don't necessarily reflect the true value of damages. (SAC, ¶¶ 10, 12, 15, 16, and 20.) Mr. Smith's claims against Nationwide were brought before the statute of limitations against Nationwide expired. (SAC, ¶¶ 13, 18, and 22.) The fifth through fifteenth, seventeenth and eighteenth causes of action are all derivative of the claims Mr. Smith brought forth against Nationwide.

Burkle v. Burkle (2006) 144 Cal.App.4th 387 and *Askew*, are similarly distinguishable where those cases pertained to the classification of what was considered community assets.

Equally unavailing are Ms. Smith's and Visual Changes' arguments pertaining to the application of the primary right doctrine. (Ms. Smith's Moving Papers, pps. 14:3-16:14; Visual Changes' Moving Papers, pps. 8:4-9:3.) One of the key elements invoking the primary right doctrine depends on an overlap in facts in two separate actions in order to trigger the assertion of a primary right. (*Lodi v. Lodi* (1985) 173 Cal.App.3d 628, 631.) As already stated, the facts plead by Mr. Smith are different than the Dissolution Action, where the fifth through fifteenth, seventeenth and eighteenth causes of action are all based on what the alleged proper amount of recovery should have been from Nationwide.

Furthermore, Visual Changes' arguments that Mr. Smith has no standing to sue Nationwide and the imposition of the "unclean hands" doctrine (Visual Changes' Moving Papers, pg. 9:9-22) do not pertain to the analysis of jurisdiction for purposes of a demurrer.

Accordingly, Visual Changes' and Ms. Smith's demurrer for lack of jurisdiction is overruled for the fifth though fifteenth, seventeenth and eighteenth causes of action.

Ms. Smith's demurrer to the sixteenth cause of action is sustained. Leave to amend should be granted where there is a "reasonable possibility the pleading can be cured by amendment." (*Brenner v. City of El Cajon*, B (2003) 113 Cal.App.4th 434, 444.) Here, Mr. Smith has not demonstrated that the pleading for the sixteenth cause of action can be cured. Accordingly, leave to amend for the sixteenth cause of action is denied.

Indemnity Causes of Action – Fifth, Sixth and Eighteenth Causes of Action

In the fifth and sixth causes of action, Mr. Smith alleges claims for implied contractual indemnity and equitable indemnity. In the eighteenth cause of action, Plaintiff seeks a declaration that defendants are obligated to indemnify Plaintiff.

Implied indemnity, where it exists, is a contractual obligation. (*Prince v. Pacific Gas & Electric Co.* (2009) 45 Cal.4th 1151, 1160.) "A claim for implied contractual indemnity is a form of equitable indemnity." (*Id.* at p. 1166.) "An action for implied contractual indemnity… is grounded upon the indemnitor's breach of duty owing to the indemnitee to properly perform its contractual duties." (*West v. Superior Court* (1994) 27 Cal.App.4th 1625, 1633.) "The elements of a cause of action for [equitable] indemnity are (1) a showing of fault on the part of the indemnitor and (2) resulting damages to the indemnitee for which the indemnitor is ... equitably responsible." (*C.W. Howe Partners Inc. v. Mooradian* (2019) 43 Cal.App.5th 688, 700, internal quotations omitted.)

Ms. Smith demurs with respect to the fifth, sixth and eighteenth causes of action on the basis that "[Mr. Smith] does not allege what third party he faces potential liability to. Also, it is not clear who should she seek "damages for damages" or what statute of limitations she did not protect, neither of which appear to be issues related to indemnity due to liability to a third party. (Ms. Smith Moving Papers, pg. 20:21-24.)

Visual Changes demurs to the fifth cause of action on the basis that "Even as an indemnitee, [Mr. Smith] has alleged insufficient facts because 1) he has asserted no contract between himself and Visual Changes, and 2) he has not shown that he and Visual Changes owed a joint legal obligation to a third party. Plaintiff has failed to assert a cognizable implied contractual indemnification claim against Visual Changes." (Visual Changes Moving Papers, pg. 12; 10-13.) Visual Changes demurs to the sixth cause of action on the basis that "Plaintiff has not alleged any injured third party or any joint legal obligation owed thereto with Visual Changes. Thus, Plaintiff has failed to assert a cognizable claim for equitable indemnification against Visual Changes." (Visual Changes Moving Papers, pps. 12:21-13:2.) Visual Changes demurs to the eighteenth cause of action because Visual Changes asserts that the eighteenth cause of action is based on an alleged contract between Mr. Smith and Ms. Smith, and that there was no alleged contract between Mr. Smith and Visual Changes. (Visual Changes Moving Papers, pg. 18-9-18.)

First, Mr. Smith has plead an implied contract, not an express contract. Claims for implied contractual indemnity and equitable indemnity are based on tort, not contract law. (*Ranchwood Communities Limited Partnership v. Jim Beat Construction Co.* (1996) 49 Cal.App.4th 1397, 1416-1417 and 1418.)

Second, Plaintiff, Ms. Smith and Visual Changes are named insureds on the subject policies. (SAC, ¶¶ 13, 18, and 21.)

Third, Mr. Smith alleges that Ms. Smith and Visual Changes abrogated their duties to Mr. Smith in relation to the claims they submitted to Nationwide. (SAC, ¶¶ 71-72.) Mr. Smith seeks to be indemnified for any liability resulting from claims submitted to Nationwide, a third party to the implied contract for indemnity. (SAC, ¶¶ 65, 71.)

Accordingly, Ms. Smith's and Visual Changes' demurrers with respect to the fifth, sixth and eighteenth causes of action are overruled. Mr. Smith has stated sufficient facts to constitute causes of action for implied contractual indemnity, equitable indemnity, and declaratory relief.

Negligence Causes of Action – Seventh, Eighth and Ninth Causes of Action

Mr. Smith alleges claims for negligence in the seventh through ninth causes of action.

Negligence consists of the following elements: (1) the defendant owed the plaintiff a duty of care; (2) the defendant breached that duty; and (3) the breach proximately caused the plaintiff's damages or injuries. (*Lueras v. BAS Home Loan Servicing, LP* (2013) 221 Cal.App.4th 49, 62 ("*Lueras*").) "The existence of a duty of care owed by a defendant to a plaintiff is a prerequisite to establishing a claim for negligence." (*Nymark v. Heart Fed. Savs. & Loan Ass'n* (1991) 231 Cal.App.3d 1089, 1095.) "Whether a duty of care exists is a question of law to be determined on a case-by-case basis." (*Lueras*, 221 Cal.App.4th at p. 62.)

Ms. Smith demurs to the seventh through ninth causes of action on the basis that "[Mr. Smith] does not allege a statute of limitations was missed (no harm alleged), and does not allege how it could be that she had a duty to him to institute legal proceedings. He does not allege how it could be that Ms. Smith has a duty to him [to] inform him of the information. This tort is for damage to real property, but the allegations appear to be grievances about insurance claims." (Ms. Smith's Moving Papers, pg. 20:2-11.)

Visual Changes demurs to the seventh through ninth causes of action, pertaining to each element of negligence. Visual Changes argues it had no duty to protect the property where it rented the property, and had no duty to disclose any damages to Mr. Smith. (Visual Changes' Moving Papers, pps. 13:6-14:12.)

Here, Ms. Smith and Visual Changes fail to cite legal authority to challenge the sufficiency of Plaintiff's allegations. "As against a general demurrer, plaintiff need only plead facts which, liberally interpreted, disclose that he is entitled to some relief." (*Cameron v. Wernick* (1967) 251 Cal.App.2d 890, 892.) " '[T]he complaint ordinarily is sufficient if it alleges ultimate rather than evidentiary facts.' " (*Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 641.)

Here, Mr. Smith has alleged sufficient facts alleging that he suffered monetary harm through Ms. Smith and Visual Smith's actions. Mr. Smith, alleged that Ms. Smith and Visual Changes, as co-insureds and occupants of the Jacquelyn property, failed to adequately inform him of the damages done to the property caused by vandalism, resulting in damages. The arguments both defendants raise are more questions of fact, that are not proper at the demurrer stage of the proceedings.

Accordingly, Ms. Smith and Visual Changes demurrers to Plaintiff's seventh through ninth causes of action are overruled.

Waste Causes of Action – Tenth, Eleventh and Twelfth Causes of Action

Mr. Smith alleges claims for waste in the tenth through twelfth causes of action.

Waste is injury to property that results in "substantial depreciation of the market value of the land." (*Sallee v. Daneri* (1942) 49 Cal.App.2d 324, 327.) "[W]hile we acknowledge that statutes and common law envision waste primarily as an action by an out-of-possession owner against an offending party in possession (Civ. Code, §§ 818, 840; Code Civ. Proc., § 732; 3 Witkin, Summary of Cal. Law (8th ed. 1973) Real Property, § 3273 Witkin, Summary of Cal. Law (8th ed. 1973) Real Property, § 327, p. 2032), nothing in the statutes or case law requires that the action for waste be directed solely against a party with an interest in the land. In fact, we find the contrary to be true. (*Smith v. Cap Concrete, Inc.* (1982) 133 Cal.App.3d 769, 776 ("*Smith*")."

Ms. Smith demurs to the tenth through twelfth causes of action by disputing whether she owed Mr. Smith a duty of care and the alleged damages caused by her actions. (Ms. Smith's Moving Papers, pg. 21:13-24.)

Visual Changes demurs to the tenth through twelfth causes of action based on arguments focused on mitigation and what its duties were. (Visual Changes' Moving Papers, pps. 15:4-16:2.)

Here, Mr. Smith alleges sufficient facts pertaining to the tenth through twelfth causes of action where he alleged defendants caused injury to the Jacquelyn Property by failing to protect it from damage, vandalism, and/or destruction, resulting in a reduction in fair market rental value from approximately $7,500 per month to zero, and fair market value from approximately $1.8 million to $800,000. (SAC, ¶¶ 97-99, 102-104, and 107-109.) Furthermore, *Smith* rebuts Visual Changes argument that privity of estate is required. (Visual Changes' Moving Papers, pps. 15:10-16:6.)

With respect to Visual Changes' demurrer pertaining to treble damages, (Visual Changes' Moving Papers, pg. 16:3-4), there is no requirement that Plaintiff plead that defendants' waste was "willful or malicious." As Plaintiff notes, "a claim for punitive damages is not an element of a claim for waste but rather an added remedy for waste, and thus not subject to a demurrer." (Mr. Smith's Opposition Papers to Visual Changes, pg. 17:3-4.) W*hether* treble damages are awarded is not a consideration at the pleading stage of a case: "The section is not mandatory in character, and contemplates a showing of wilfulness [SIC] or maliciousness; whether the damages should be trebled is left to the court's discretion." (*Kanner v. Globe Bottling Co.* (1969) 273 Cal.App.2d 559, 568 [emphasis added].)

Accordingly, defendants' demurrers with respect to the tenth through twelfth causes of action are overruled.

Nuisance Causes of Action – Thirteenth, Fourteenth, and Fifteenth Causes of Action

Mr. Smith alleges claims for nuisance in the thirteenth through fifteenth causes of action.

To establish an action for private nuisance, (1) "the plaintiff must prove an interference with his use and enjoyment of his property"; (2) "the invasion of the plaintiff's interest in the use and enjoyment of the land must be substantial, that is, that it causes the plaintiff to suffer substantial actual damage"; (3) "the interference with the protected interest must not only be substantial, but it must also be unreasonable, i.e., it must be of such a nature, duration, or amount as to constitute unreasonable interference with the use and enjoyment of the land." (*Mendez v. Rancho Valencia Resort Partners, LLC* (2016) 3 Cal.App.5th 248, 262-263, citations, italics, brackets, and quotation marks omitted.)

Ms. Smith demurs to the thirteenth through fifteenth causes of action on the basis that "Mr. Smith does not allege his use or enjoyment of Jacquelyn Avenue was interfered with by Ms. Smith, but rather that third parties committed acts of vandalism at the property. Also, he alleged she committed a nuisance by not informing him about damage to Jacquelyn Avenue, by not informing him she submitted an insurance claim for that damage and not acting to "protect the statute of limitations" by commencing legal action." (Ms. Smith's Moving Papers, pg. 22:6-10.)

Visual Changes demurs on these causes of action because Visual Changes alleges that Mr. Smith could have filed his own insurance claims separately and that plaintiff admits that Ms. Smith had exclusive possession of the Jacquelyn property. (Visual Changes Moving Papers, pps. 16:8-17:4.)

Here, Mr. Smith alleges that both defendants interfered with Plaintiff's use and enjoyment of the Jacquelyn Property by failing to secure and protect it from damage, vandalism, and/or destruction. (SAC, ¶¶ 112, 117, and 122.) Plaintiff alleges that the invasion by defendants of Plaintiff's use and enjoyment of the Jacquelyn Property caused substantial damages, constituted unreasonable interference, and was done intentionally and without Plaintiff's knowledge or consent. (SAC, ¶¶ 113-115, 118-120, and 123-125.)

Furthermore, the basis that Visual Changes demurs is either on grounds of mitigation, or the assertion, without caselaw, that Mr. Smith is precluded from filing a nuisance claim on property he owned where Ms. Smith had exclusive possession. Mitigation is not appropriate to test the sufficiency of a pleading in a demurrer. Nor is a legal assertion unsupported by caselaw.

Accordingly, the demurrers with respect to the thirteenth through fifteenth causes of action are overruled.

Seventeenth Cause of Action

Ms. Smith provides no points and authorities to challenge the seventeenth cause for unjust enrichment.

Accordingly, the demurrer with respect to the seventeenth cause of action is overruled.

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 7-22-26.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Cortez v. Volkswagen Group of America, Inc. et al.***
Superior Court Case No. 24CECG04142

Hearing Date: July 23, 2026 (Dept. 502)

Motion: By Plaintiff Luis Cortez to Compel Deposition of Person Most Knowledgeable

Tentative Ruling:

To grant and order the deposition of the person most knowledgeable of defendant Volkswagen Group of America, Inc. to be conducted on or before July 27, 2026.

Explanation:

Plaintiff Luis Cortez ("Plaintiff") filed the instant motion to compel the deposition of the person most knowledgeable ("PMK") for defendant Volkswagen Group of America, Inc. ("Defendant"). On this occasion only and due to the impacted calendar of the court, the court retroactively finds that under the circumstances, a Pretrial Discovery Conference pursuant to Fresno Superior Court Local Rule 2.1.17 would not have been beneficial, and proceeds.

Plaintiff submits, and the court agrees, that the deposition of Defendant's PMK is relevant and good cause exists to compel the deposition to go forward. Defendant in opposition proffers that Plaintiff's counsel "maintains a significant number of cases against [Defendant] and has taken over a thousand depositions of [Defendant's] PMK" and that this is indicative that Defendant is cooperative with the requests. What occurs outside of the four corners of this case is irrelevant to this deposition. What is relevant is that Defendant's opposition submits that the motion is moot due to the parties' agreement to conduct the deposition on July 16, 2026.

Almost on prediction that the deposition would not occur or would suffer delay, the opposition continues that Defendant requests the court conduct a discovery conference if the PMK deposition was not completed on July 16, 2026. Plaintiff represents on reply that counsel for Plaintiff attended the deposition as scheduled, and Defendant, and the deponent, failed to appear. (Hozven Decl., ¶ 6.) Following further meet and confer efforts, the parties appear to have set a future date of July 22, 2026, 10:00 a.m. for the deposition. Accordingly, the motion is granted to avoid further potential delay.[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

[1] The court will entertain any sanctions request should the deposition unreasonably fail to occur as scheduled. All issues regarding production are reserved due to the absence of the renewed notice of taking of deposition in evidence.

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 ______7-22-26_________________.
(Judge's initials) (Date)