Tentative Rulings for July 23, 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.

25CECG03814 ***Jonathan Reiter v. ACDF, LLC* is continued to Thursday, September 3, 2026, at 3:30 p.m. in Department 503.**

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Tentative Rulings for Department 503

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Tentative Ruling

Re:	***Helsel v. West Coast Mennonite Central Committee, Inc.*** Superior Court Case No. 25CECG03228
Hearing Date:	July 23, 2026 (Dept. 503)
Motion:	Cross-Defendant's Motion to Strike Request for Punitive Damages

Tentative Ruling:

To grant cross-defendants' motion to strike the allegations and prayer for punitive damages from the complaint, without leave to amend. In particular, the court strikes paragraph 29 and the prayer for punitive damages from the First Amended Cross-Complaint.

Explanation:

Cross-defendants Jason Helsel and Melissa Helsel, as Trustees of the Helsel Family Trust, Mark Vogt, and John Fowler (collectively "cross-defendants") move for an order striking allegations seeking punitive damages in connection with cross-complainant West Coast Mennonite Central Committee, Inc.'s cross-complaint alleging trespass on their property.

Civil Code section 3294 states that, "In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." (Civ. Code, § 3294, subd. (a).) "'Malice' means conduct which is intended by the defendant to cause injury to the plaintiff or <u>despicable conduct</u> which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1), emphasis added.)

"In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff. In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth. In ruling on a motion to strike, courts do not read allegations in isolation." (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255, internal citations omitted.) However, conclusory allegations of malice, fraud, or oppression will not suffice to support a claim for punitive damages. (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.)

"The adjective 'despicable' connotes conduct that is '"… so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people."' '"[A] breach of a fiduciary duty alone without malice, fraud or oppression does not permit an award of punitive damages. The wrongdoer '"must act with the intent to vex, injure, or annoy, or with a conscious disregard of the plaintiff's rights. [Citations.]"' Punitive damages are appropriate if the defendant's acts are reprehensible, fraudulent or in blatant violation of law or policy. The mere carelessness or ignorance of the defendant does not justify the imposition of punitive damages. … Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate."'" (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210, internal citations omitted.)

Here, cross-complainant alleges cross-defendants, their guests, invitees and clients have continued to access the WCMCC property despite a demand that cross-defendants cease and desist and that a sign was removed from the property by cross-defendant(s) and damaged. Cross-complainant has added further allegations as to cross-defendant's knowledge of cross-complainant's intent to use the sign to enforce its rights to have unauthorized vehicles towed from the property. (FACC, ¶¶ 17-22.) Cross-complainant further alleges the removal of the sign was intended to violate its statutory rights under Vehicle Code section 22658 for the removal of unauthorized vehicles from the property. (*Id.*, ¶ 23.) Cross-complainant argues these allegations plead cross-defendant's conscious disregard for its rights to support the prayer for punitive damages.

That the removal of the sign was intentional or done knowing it would interfere with cross-complainant's ability to tow vehicles from the property is not sufficient to plead malice. The acts alleged do not rise to a level of conduct that could fit a definition of despicable conduct necessary to support a prayer for punitive damages. (Code Civ. Proc. § 3294, subd. (c)(1).)

"Used in its ordinary sense, the adjective 'despicable' is a powerful term that refers to circumstances that are 'base,' 'vile,' or 'contemptible.' (4 Oxford English Dict. (2d ed. 1989) p. 529.) As amended to include this word, the statute plainly indicates that absent an intent to injure the plaintiff, 'malice' requires more than a 'willful and conscious' disregard of the plaintiffs' interests. The additional component of 'despicable conduct' must be found. [Citations]" (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725.)

Accordingly, the court intends to grant the motion to strike the allegations and prayer regarding punitive damages from the cross-complaint, without leave to amend.

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 7/21/2026 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***In the Matter of Brandon Aguirre Figueroa***
Superior Court Case No. 26CU00567

Hearing Date: July 23, 2026 (Dept. 503)

Motion: Expedited Petition to Compromise Claim of Minor

Tentative Ruling:

To deny the petition, without prejudice, for the reasons explained below. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders.

In the event that oral argument is requested the minor is excused from appearing.

Explanation:

According to the petition, the minor has fully recovered from injuries received in a car collision and is to receive a gross settlement of $500 with the balance of the settlement after medical costs and attorney fees to be deposited in a blocked account. There are several issues with the petition that prevent approval.

The Petition at Item 9a indicates that the minor has recovered completely from his injuries, however, there is no doctor's report of the minor's condition reflecting that he has recovered. The last record is from November 5, 2024 indicating the minor was experiencing headaches and was prescribed Acetaminophen. (Petn., Item 9a, Att. 9.)

Counsel's supplemental declaration attesting to what the minor's parent has communicated regarding the minor's recovery is hearsay and will not support finding the minor's injuries have resolved.

The Petition at Items 11 and 12 indicates a total settlement of $25,000 apportioned with Agustin Aguirre Perez, the minor's father, receiving $24,000, and claimant and his minor brother both receiving $500. Attachment 12 indicates the settlement was apportioned between the parties based on the extent of injuries and treatment sought and generally describes the father's injuries as moderate, the claimant's injuries as minimal, and brother as having no injuries. This information is not sufficient to explain why the settlement is heavily apportioned in favor of father Agustin Aguirre Perez or why the two minors are receiving the same amount in settlement where only one is injured. The court also notes that the total settlement amount of $25,000 is less than the 2024 minimum per occurrence policy limits of $30,000. Additional information as to the at-fault driver's policy limits and whether policy limits are exhausted is requested.

Counsel's supplemental declaration explains that the at-fault driver's policy limits were $25,000 per person and $50,000 per occurrence. This suggests that no apportionment should have been necessary as the three claimants settled for less than the per occurrence policy limit of $50,000. This suggests counsel believes $500 is the full value of the minor's claim. If this is the case the petition should so state rather than suggesting apportionment was necessary and all claimants are receiving less than the value of their claims.

Attorney Fees

As a matter of law, in addition to approval of the settlement itself, attorney fees to be paid for representing the minor or incompetent must be approved by the court. (Prob. Code § 3601.) Unless the court has approved the attorney's fee agreement in advance, the court **must determine** a reasonable fee based on all the circumstances of the case and may consider the factors set forth in California Rules of Court, Probate Rule 7.955, subdivision (b).

The court must consider the terms of any fee agreement between the attorney and the representative of the minor or disabled person and must evaluate the agreement based on the facts and circumstances at the time the agreement was made. (Cal. Rules of Court, Prob. Rule 7.955(a).) The court may allow attorney fees under a valid contingency fee agreement so long as the fees are reasonable. (Cal. Rules of Court, Prob. Rule 7.955(a), Advisory Comm. Comment; see *Gonzalez v. Chen* (2011) 197 Cal.App.4th 881, 885-886 [lawyer not automatically entitled to maximum MICRA fees as provided in contingency agreement because court must apply factors stated in Cal. Rules of Court, Prob. Rule 7.955].) A petition seeking fees must be supported by a declaration by the attorney that addresses the factors that are relevant to the fee request. (Cal. Rules of Court, Prob. Rule 7.955(c).) Similarly, reasonable expenses and court costs to be paid out of the settlement proceeds must be approved by the court. (Prob. Code § 3601.)

Here, the attorney fee of $125, representing 25% of the settlement, is to be paid pursuant to a client fee agreement. The exhibit included with the petition is in Spanish and the requested percentage of 25% is discounted from the contracted 33 1/3% to be recovered should the case settle within 90 days of the representation or 40% should the case settle after the first 90 days of representation. (Petn., Att. 14a, Declaration of William White, ¶ 2, Ex. A.) Agustin Aguirre Perez is anticipated to pay $9,600, representing 40% of the $24,000 settlement apportioned to him. (Petn., Item 18b.) The fee is supported in part by counsel's argument that the firm incurred costs of $100 for the minor that are being waived. (*Id*., Att. 14a, White Decl., ¶ 6b.) A ledger of costs for the claimant includes a charge for a "Demands Processing Fee" to be paid to "Demands R Us, LLC." (*Id*., Att. 14a, White Decl., Ex. B.) It is unclear why a demand letter for a personal injury claim would be considered a cost rather than part of the attorney fee since this task is one ordinarily completed by the attorney. There is nothing in the declaration to indicate there was any novelty or difficulty presented in the action, or that the action required significant time or labor of counsel, or that taking this case precluded counsel from accepting other cases.

Counsel's supplemental declaration includes the English language version of the fee agreement but does not include additional information to suggest there was work specific to this minor that necessitates a fee. Rather it appears counsel is adequately compensated from petitioner's settlement for the work performed settling all three claims. (See Petn., Item 18b indicating counsel anticipates receiving $9,600 in attorney fees from Agustin Aguirre Perez.) The anticipated $9,600 fee from petitioner Agustin Aguirre Perez's $24,000 claim is 38.4% of the $25,000 recovered for all three claimants.

In light of the de minimus settlement to the minor, the court is not inclined to deem the fee reasonable.

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 7/21/2026 .
(Judge's initials) (Date)

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Tentative Ruling

Re: ***Steve Lathrop vs. Lennar Fresno, Inc.***
Superior Court Case No. 17CECG03900

Hearing Date: July 23, 2026 (Dept. 503)

Motion: Defendants Lennar Fresno, Inc. and Lennar Sales Corp.'s Motion to Dismiss Plaintiff Steve Lathrop's (et. al) Complaint with Prejudice for Delay in Prosecution

Tentative Ruling:

To grant Defendants Lennar Fresno, Inc. and Lennar Sales Corp. motion to dismiss plaintiff Steve Lathrop's (et. al) Complaint with prejudice for delay in prosecution. The matter is dismissed pursuant to Code of Civil Procedure section 583.340. Defendants to submit a judgment of dismissal to the court within 10 days of the clerks service of this ruling.

Explanation:

Defendants Lennar Fresno, Inc. and Lennar Sales Corp., (collectively, "Lennar" or "defendants"), file this motion to dismiss plaintiff Steve Lathrop's, et. al,[1] ("plaintiffs") Complaint with prejudice for delay in prosecution

Code of Civil Procedure section 583.130 provides that it "is the policy of the state that a plaintiff shall proceed with reasonable diligence in the prosecution of an action but that all parties shall cooperate in bringing the action to trial or other disposition. Except as otherwise provided by statute or by rule of court adopted pursuant to statute, the policy favoring the right of parties to make stipulations in their own interests and the policy favoring trial or other disposition of an action on the merits are generally to be preferred over the policy that requires dismissal for failure to proceed with reasonable diligence in the prosecution of an action in construing the provisions of this chapter."

Code of Civil Procedure section 583.310 requires that an "action shall be brought to trial within five years after the action is commenced against the defendant." Further, Code of Civil Procedure section 583.360 provides, in relevant part: "(a) An action shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties, if the action is not brought to trial within the time prescribed in this article. [¶] (b) The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute."

In computing the time within which an action must be brought to trial there shall be excluded the time during which any of the following conditions existed:

[1] Multiple plaintiffs have been dismissed from this case without prejudice since the action was first commenced. Accordingly, the term "Plaintiffs" as used herein shall collectively refer to all plaintiffs presently in the action.

> (a) The jurisdiction of the court to try the action was suspended.
> (b) Prosecution or trial of the action was stayed or enjoined
> (c) Bringing the action to trial, for any other reason, was impossible, impracticable, or futile.

(Code Civ. Proc., §583.340.)

This action was filed more than five years ago. The Complaint was filed on November 20, 2017. (Request for Judicial Notice ("RJN"), ¶6; McCalla Decl., ¶21. Ex. N.)

This case was briefly stayed on May 7, 2018, for 168 days, to allow the parties to complete Lennars Alternative Non-Adversarial Pre-Litigation Procedures ("Pre-litigation Procedures"), the stay was lifted on January 8, 2019. (RJN, ¶8; McCalla Decl., ¶24, Ex. P.)

Although, while the action was stayed, the parties further stipulated to permit plaintiffs to file a second amended complaint to: (1) remove both causes of actions for strict products liability and the cause of action for violation of statute, and (2) identify which Plaintiffs were original the cause of action for violation of statute, and (2) identify which Plaintiffs were original homeowners. (RJN, ¶9; McCalla Decl., ¶25, Ex. Q.) The Court entered the order authorizing plaintiffs to file their Second Amended Complaint on July 13, 2018. (*Id*.)

Following the parties' completion of the Pre-litigation Procedures, the Court ordered the stay lifted on January 8, 2019, and Lennar timely filed its answer to the Second Amended Complaint. (RJN, ¶¶ 10, 11; McCalla Decl. ¶¶ 26-27, Exs. R, S.)

The plaintiffs bears the burden of proving that the circumstances warrant application whether the circumstances warrant any of the exceptions set forth in the Code of Civil Procedure section 583.340, subsection (c). (*Bruns v.E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717, 731.)

Since this motion is unopposed, plaintiffs failed to establish their due diligence and, in addition, whether it was impossible, impracticable, or futile for the plaintiff to comply with the statutory five year constraint due to causes beyond his or her control. Accordingly, the motion is granted. The matter is dismissed pursuant to Code of Civil Procedure section 583.340.

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 7/21/2026 .
(Judge's initials) (Date)