Tentative Rulings for July 30, 2026
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.

24CECG05080	***Sergio Perez-Santillan v. American Honda Motor Co., Inc.*** **is continued to Thursday, September 3, 2026, at 3:30 p.m. in Department 403.**
24CECG02689	***Teresa Bernal v. Town N Country Reedley, Inc.*** **is continued to Thursday, August 13, 2026, at 3:30 p.m. in Department 403.**
26CU00149	***Shelly Broadstreet v. Wonder Valley Property Owners' Association*** **is continued to Tuesday, November 17, 2026 at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(20) **Tentative Ruling**

Re: ***Wheeler v. Spane et al.***
Superior Court Case No. 25CECG02378

Hearing Date: July 30, 2026 (Dept. 403)

Motion: Defendant Jeffrey Kertson's Demurrer to Second Amended Complaint

Tentative Ruling:

To sustain the demurrer to the third cause of action with leave to amend. To overrule the demurrer to the fourth cause of action with regards to the claim brought by Elisa Wheeler ("Elisa"), but sustain without leave to amend as to the claims brought by James Wheeler ("James") and Skyla Wheeler ("Skyla") against Jeffrey Kertson ("Kertson") only. To overrule the demurrer to the fifth cause of action. To sustain the demurrer to the ninth cause of action without leave to amend as to Kertson only. (Code Civ. Proc., § 430.10, subd. (e).) Any amended complaint shall be filed within 10 days of service of the order by the clerk. All new allegations shall be in **boldface** type.

Explanation:

Third Cause of Action for Defamation

Defamation is a false, unprivileged and defamatory statement about an individual, published to a third person (not the plaintiff). (*Shively v. Boznich* (2003) 31 Cal.4th 1230, 1242; see also, Civ. Code, §§44-46.) To plead defamation, a plaintiff "must set forth 'either the specific words or the substance of' the allegedly defamatory statements." (*Comstock v. Aber* (2012) 212 28 Cal.App.4th 931, 948, quoting *Lipman v. Brisbane Elementary Sch. Dist.* (1961) 55 Cal.2d 224, 234.)

Here, the court finds that the allegations that Kertson stated to plaintiffs' neighbors, including Caroline and Roger Peterson, Mike and Holly, and Felmus, "that Plaintiffs enabled Jim, or were otherwise complicit in his crime," and that plaintiffs were "complicit in and enablers of child pornography," is sufficient to allege false defamatory statements published to a third person. However, the demurrer is sustained because the Second Amended Complaint's ("SAC") references to statements made about "Plaintiffs" are still vague as to what was said with regards to each of the three individual plaintiffs. Here we have three plaintiffs, two of whom were minors at the time of the alleged incidents, and there is no clarity about what Kertson said about each plaintiff. There was no "plaintiff" among the parties involved in these events at the time the alleged statements were made. What did Kertson say that specifically referenced Elisa Wheeler? What did Kertson say that specifically referenced James Wheeler? What did Kertson say that specifically referenced Skyla Wheeler? If Kertson spoke words to a third party to the effect that "James Wheeler is an enabler of and complicit in pedophilia," for example, that would be enough. The court will sustain the demurrer as to each plaintiff, and grant leave to amend *one more time*.

Fourth Cause of Action for Invasion of Privacy

California has recognized common law rights of privacy (see, *e.g.*, *Melvin v. Reid* (1931) 112 Cal.App. 285), comprising four distinct torts: (1) intrusion upon the plaintiff's seclusion or solitude or into his private affairs; (2) public disclosure of embarrassing private facts about the plaintiff; (3) publicity which places the plaintiff in a false light in the public eye; and (4) appropriate for the defendant's advantage, of the plaintiff's name or likeness. (*KNB Enterprises v.* Matthews (2000) 78 Cal.App. 362, 365, citing *Eastwood v. Superior Court* (1983) 149 Cal.App.3d 409, 416, citing Prosser, *Law of Torts* (3d ed. 1964) 829-851.) An expectation of privacy must be "objectively reasonable" in light of the circumstances (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 26-27, 37.)

Though the court stated in the ruling on the demurrer to the First Amended Complaint ("FAC") that this cause of action alleged no invasion of privacy by Kertson as to plaintiffs James and Skyla, no amendment was made to state such a claim, if one was intended. Accordingly, Kertson's demurrer is sustained without leave to amend as to James and Skyla (though their claims against other defendants remain as they are not at issue in this demurrer).

As to Elisa, the SAC alleges, that "Kertson and Spane [] obtained access to Elisa's private medical and financial information, which was kept on her private computers, and which Kertson and Spane shared with at least Mike and Holly. Specifically, Elisa kept information about her disability and disability income on her private computer which was confiscated by the Fresno County Sheriffs when conducting a search pursuant to Jim's arrest. This invasion and disclosure of private information was wrong and highly hurtful to Elisa." (SAC ¶ 68.) "A reasonable person would be offended by … sharing of private information discovered during a police search which was outside the scope of the search warrant and was not used in relation to another investigation, but was shared with private citizens for the sole purpose of pestering and harassing Plaintiffs." (SAC ¶ 69.)

Earlier in the SAC, plaintiffs allege,

> Mike also relayed details of Elisa's private medical information and sources of her fixed income and threatened to report Elisa for insurance fraud. Specifically, Mike stated he knows Elisa is on disability and how much fun "they" were going to have watching Elisa go down for disability fraud. Mike stated he knows when Elisa's grandchildren come and go from her home, and that they are transported in a white Mercedes, insinuating that Mike believed Elisa was getting paid to take care of her grandchildren. Mike also stated that he knew Elisa had multiple sources of disability income, not a publicly known fact. Elisa's medical and financial information is not widely available but was safeguarded on Elisa's computer. Plaintiffs allege that Mike obtained this information from Kertson and/or Spane as they had access to that information in light of the criminal investigation. Specifically, Kertson has already indicated he had access to information about the case not known to the public, which includes the information copied, obtained from, and/or reviewed by the Fresno County Sheriff's office during the execution of the search warrant on Plaintiffs' property. This resulted in a search of Elisa's computer, which contained medical records, vocational

expert reports, communications with Elisa's disability attorney, communications with Elisa's previous employer, the nature of her disability, the Social Security Disability Income Adjudicator's findings, and Elisa's filings with her Long Time Disability carrier. Further, during Elisa's initial interview with the officers who arrested Jim, she relayed to them that she had a disability, however, she did not relay that she had multiple sources of disability income, indicating that Kertson and/or Spane obtained this information or otherwise spoke to the officers who reviewed this information and then relayed it to Mike as no one but Elisa's family, her disability income providers, and the Fresno County Sheriff's had this information.

(SAC ¶ 37.)

The demurrer is based primarily on the contention that plaintiffs are speculating that Mike got the information from Kertson, who got the information from police investigating Jim. (See *Marsh v. Anesthesia Services Medical Group, Inc.* (2011) 200 Cal.App.4th 480, 491 [the court "treat[s] the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law"].) However, the complaint must be "liberally construed, with a view to substantial justice between the parties." (Code Civ. Proc., § 452; see *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238 [where allegations are subject to different reasonable interpretations, court must draw "inferences favorable to the plaintiff, not the defendant"].) Here, the inferences plaintiffs draw are reasonable in light of Kertson's position as a law enforcement officer, and his law enforcement connections and knowledge of the investigation. (See SAC ¶ 19.) The question of a plaintiff's ability to prove even unlikely allegations, or possible difficulties in making such proof, is of no concern in ruling on a demurrer. (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.)

The SAC pleads the substance and nature of the information disclosed such that an expectation of privacy existed. The demurrer to this cause of action is as to Elisa.

Fifth Cause of Action for IIED

To state a cause of action for intentional infliction of emotional distress ("IIED"), plaintiffs must allege: "'(1) outrageous conduct by the defendant, (2) intention to cause or reckless disregard of the probability of causing emotional distress, (3) severe emotional suffering and (4) actual and proximate causation of the emotional distress.'" (*Agarwal v. Johnson* (1979) 25 Cal.3d 932, 946.) "Outrageous conduct" denotes conduct which is so extreme as to exceed all bounds of decency and which is to be regarded as "atrocious and utterly intolerable in a civilized community." (*Bartling* v. *Glendale Adventist Medical Center* (1986) 184 Cal.App.3d 961, 969.)

Here, the cause of action is based on defendants' "harassing, demeaning, disparaging, and distressing behavior" … "with the express intent of causing Plaintiffs so much distress that they are forced to move out of the neighborhood." (SAC ¶¶ 73, 74.)

The fifth cause of action incorporates by reference all prior allegations of the SAC, including Kertson's use of his position with the Fresno County Sherriff's office to access Elisa's private medical and financial information and disclose that information to plaintiffs' neighbors with the intention of causing plaintiffs' so much emotional distress they would have no choice but to leave the neighborhood. (SAC, ¶¶ 19, 37, 67-68.) The cause of action is also supported by the following allegations: SAC ¶¶ 19 [Kertson "threatened to collaborate with Plaintiffs' other neighbors to induce Plaintiffs to move out of the neighborhood…."]; 20 [Kertson "used his position and connections with the Fresno County Sheriff's to gather information about Jim's investigation, and then relayed that information to Spane, and then later to Plaintiff's neighbors."]; 21 ["Making good on their threat, Plaintiffs have been informed by other neighbors—like Caroline and Roger Peterson—that [Defendant] and Spane approached them and encouraged them to stop associating with Plaintiffs, and assist in efforts to convince Plaintiffs to move out of the neighborhood."]; 23 [In accordance with Kertson's "threats from April 2024, the two have collaborated with and encouraged Plaintiff's other neighbors to engage in harassing, threatening, defamatory, and demeaning behavior, and did so by telling Mike, Holly, Felmus, the Petersons, and other neighbors that Plaintiffs were not innocent and played a role in Jim's crimes."]; 73 [defendants have "yelled at Plaintiffs and their guests that Plaintiffs are pedophiles, enablers and complicit in child pornography, and are perverts. Defendants have taken steps to alienate Plaintiffs from their neighborhood by ... lobbying Plaintiffs' neighbors to engage in harassing behavior, following Plaintiffs to their places of work and leisure, and telling community members and neighbors that Plaintiffs are associated with child pornography."

While liability for IIED "does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities" (*Agarwal v. Johnson* (1979) 25 Cal.3d 932, 946), the court agrees with plaintiffs that the SAC alleges sufficient facts to state a cause of action for IIED. Accordingly the demurrer is overruled.

<u>Ninth Cause of Action – Tom Bane Civil Rights Act</u>

Civil Code section 52.1, known as the Tom Bane Civil Rights Act, provides in pertinent part,

> (b) If a person or persons, whether or not acting under color of law, interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the peaceable exercise or enjoyment of the right or rights secured. …
>
> (c) Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as described in subdivision (b), may institute and prosecute in their own name and on their own behalf a civil action for damages, including, but not limited to, damages under Section 52, injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured, including

> appropriate equitable and declaratory relief to eliminate a pattern or practice of conduct as described in subdivision (b).
>
> "The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., 'threats, intimidation or coercion'), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law. (*Jones* [*v. Kmart Corp.* (1998)] 17 Cal.4th [329,] 334 [70 Cal.Rptr.2d 844, 949 P.2d 941] [*Jones*].)" (*Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 883, 57 Cal.Rptr.3d 454.) The legislative history of section 52.1, enacted in 1987, makes clear that the crucial motivation behind passage of section 52.1 was to address the increasing incidence of hate crimes in California. (Stats.1987, ch. 1277, § 3, p. 4544; see (A.B.63). See *Jones, supra,* at p. 338, 70 Cal.Rptr.2d 844, 949 P.2d 941.) However, the statutory language does not limit its application to hate crimes. Notably, the statute does not require a plaintiff to allege the defendant acted with discriminatory animus or intent based upon the plaintiff's membership in a protected class of persons. (Cf. § 51.7; *Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 841–843, 11 Cal.Rptr.3d 692, 87 P.3d 1 (*Venegas II*).) A defendant is liable if he or she interfered with or attempted to interfere with the plaintiff's constitutional rights by the requisite threats, intimidation, or coercion. (*Venegas II, supra,* at p. 843, 11 Cal.Rptr.3d 692, 87 P.3d 1.)

(*Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 955–956.)

The demurrer is premised on the provision that "**[s]peech alone is not sufficient** to support an action brought pursuant to subdivision (b) or (c), except upon a showing that **the speech itself threatens violence** against a specific person or group of persons; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat." (Civ. Code, § 52.1, subd. (k), emphasis added.) "The plaintiff must show 'the defendant interfered with or attempted to interfere with the plaintiff's legal right by threatening or committing violent acts.'" (*Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 395.) "Speech is insufficient to establish the requisite threat unless it includes threat of violence." (*Ibid.*)

The SAC does not allege that Kertson engaged in any act of violence. The action is based on statements made by Kertson to other neighbors, none of which were accompanied by violence or threat of violence. Plaintiffs argue that Kertson's threat to "take it to level two" and "make [Plaintiffs'] lives miserable in the neighborhood" (SAC ¶ 19) is inherently threatening, especially when made by a law enforcement officer with demonstrated access to and knowledge of sealed investigative details involving child pornography.

However, the fact remains none of the allegations referenced by plaintiffs actually constitute a threat of violence. A remark that one has access to investigative details and is willing to disclose them is not a threat of *violence*; it is a threat of *speech*, which the

Bane Act makes clear is not actionable. (Civ. Code, § 52.1, subd. (k). This cause of action is simply too big a stretch to apply to the facts of this case. Though plaintiffs request leave to amend, they make no showing of what facts they could add tot eh pleading that would constitute violence or threat of violence. Accordingly, the demurrer to the ninth cause of action is sustained 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: SMC on 7/29/26 .
(Judge's initials) (Date)

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

Re: ***Aguilar v. Crescent View South Inc. et al.***
Superior Court Case No. 25CECG00968

Hearing Date: July 30, 2026 (Dept. 403)

Motion: By Defendants to Compel Arbitration

Tentative Ruling:

To deny. (Code Civ. Proc., § 1281.2, subd. (a).)

Explanation:

In this employment action plaintiff sues her alleged former joint employers Crescent View South, Inc. dba Learn4Life dba Kings Valley Academy II ("CVS") and Lifelong Learning Administration Corp. ("LLAC") for retaliation and other employment claims. Defendants move to compel arbitration pursuant to a Mandatory Arbitration Policy electronically signed by plaintiff on April 10, 2024. (Perkins Decl., ¶ 3.)

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc., § 1281.2) However, there is "no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate." (*Garlach v. Sports Club Co.* (2012) 209 Cal.App.4th 1497, 1505) Thus, when a motion to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine: (1) whether the agreement exists, and (2) if any defense to its enforcement is raised, whether it is enforceable. The moving party bears the burden of proving the existence of an arbitration agreement by a preponderance of the evidence. The party claiming a defense bears the same burden as to the defense. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413-414.)

In this case plaintiff denies signing any arbitration agreement. (See Aguilar Decl., ¶¶ 5, 7.) However, between the original and supplemental Perkins declarations, sufficient evidence is submitted to show that only plaintiff could have electronically signed the arbitration policy. (See *Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1062.) While the court finds that there is an agreement to arbitrate (even if forced upon plaintiff as a condition of continued employment), the motion will be denied because defendants have waived the right to compel arbitration.

"On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that ... the right to compel arbitration has been waived by the petitioner ...." (Code Civ. Proc., § 1281.2, subd. (a).) "To establish waiver under generally applicable contract law, the party opposing enforcement of a contractual agreement must prove by clear and convincing evidence that the waiving party knew of the contractual right and intentionally relinquished or abandoned it." (*Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 584.) The waiving party's knowledge of the right may be actual or constructive. (*ibid.,* citing *Outboard Marine Corp. v. Superior Court* (1975) 52 Cal.App.3d 30, 41.)

Intentional relinquishment or abandonment of the right to arbitrate may be express or implied. (*Quach, supra*, 16 Cal.5th at pp. 569, 584.) Express intentional relinquishment or abandonment may be shown by "evidence of words expressing an intent to relinquish the right." (*Id.* at p. 584.) Implied intentional relinquishment or abandonment may be shown by "conduct [including litigating the case in a judicial forum] that is so inconsistent with an intent to enforce the contractual right [to arbitrate] as to lead a reasonable fact finder to conclude that the party had abandoned it." (*Ibid*.; see generally *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 31 [looking to conduct is appropriate in assessing waiver].)

In analyzing waiver, the following factors may be relevant: " ""(1) whether the party's actions are inconsistent with the right to arbitrate; (2) whether "the litigation machinery has been substantially invoked" and the parties "were well into preparation of a lawsuit" before the party notified the opposing party of an intent to arbitrate; (3) whether a party either requested arbitration enforcement close to the trial date or delayed for a long period before seeking a stay; (4) whether a defendant seeking arbitration filed a counterclaim without asking for a stay of the proceedings; and (5) "whether important intervening steps [e.g., taking advantage of judicial discovery procedures not available in arbitration] had taken place." "" " (*Id*. at p. 573, quoting *St. Agnes Med. Ctr. v. PacifiCare of Calif.* (2003) 31 Cal.4th 1187, 1196.)

The court finds that these factors favor finding that defendants waived the right to compel arbitration. Thirteen months passed between plaintiff's filing of the Complaint and defendants' filing of the motion to compel arbitration. Defendants assert that they did not learn of the existence of the agreement to arbitrate because it was stored in a separate electronic onboarding and acknowledgment repository rather than in the personnel file initially gathered for this litigation. Even if defense counsel were not immediately and initially aware of the arbitration agreement, one of the first things any employment defense counsel would do is inquire about the existence of an arbitration agreement. And defendants' personnel would certainly know of the arbitration policy and practice, which appears ubiquitous for all employees, and should have communicated that to counsel if arbitration was something the employers wanted to pursue. The employee handbooks produced by defendants in this litigation set forth an arbitration policy and sample arbitration agreement which employees are required to sign annually. (Plaintiff's Exhs. 4, 5.) LLAC Chief HR Officer Perkins attested that CVS presented all new hires with form arbitration agreements through an online onboarding process. The new hire accessed the onboarding documents via a password, then electronically signed a variety of new-hire forms, including the arbitration agreement. The arbitration agreements were stored in a separate onboarding repository apart from the employee's personnel file. (Perkins Decl., ¶ 10.) Perkins had access to this repository and knew where to search for any signed arbitration agreements. (Perkins Decl., ¶¶ 2-3.) Despite this access and ability, Perkins did not search for the signed agreement signed by plaintiff Hoskins until November 2025. (Perkins Decl., ¶ 11.) The court finds that defendants at the very least had constructive knowledge of the arbitration agreement all along.

Moreover, defendants engaged in significant litigation activity in this court before moving to compel arbitration. Defendants answered the complaint, and participated in discovery and motion practice regarding discovery disputes. Defendants stated their preference for a jury trial on their case management conference statement filed on June 25, 2025. On that filing defendants left the box blank for indicating it was "willing to participate" in arbitration, and represented that the only motion it intended to file was "a "dispositive motion," "discovery motions," and "a mental examination." (Plaintiff's Exh. 11.) At the conference, defendants agreed to the March 22, 2027 trial date. (Plaintiff's Exh. 13.)

Defendants actively engaged in discovery, produced hundreds of pages of documents, obtained discovery responses and document production from plaintiff, met and conferred with plaintiff's counsel about discovery disputes, attended two Pre-Trial Discovery Conferences, and entered into a Stipulation and Order to be bound by this court's proceedings. (Fox Decl., ¶¶ 10-15.) And even after the purported discovery of the arbitration agreement in November 2025, defendants waited another four months to file a motion to compel arbitration. The court finds that defendants, through their litigation conduct in this judicial forum, waived the right to compel arbitration.

It is unnecessary to address plaintiff's other arguments against compelling arbitration. However, the court notes that all evidentiary objections are 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: SMC on 7/29/26 .
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Gatica v. Valley Ag, Inc.***
Case No. 19CECG03018

Hearing Date: July 30, 2026 (Dept. 403)

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

Tentative Ruling:

To deny plaintiff's motion for preliminary approval of class and PAGA settlement, without prejudice.

Explanation:

1. Class Certification

a. Standards

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 313.)

b. Numerosity and Ascertainability

"Ascertainability is achieved by defining the class in terms of objective characteristics and common transactional facts making the ultimate identification of class members possible when that identification becomes necessary. While often it is said that class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records, that statement must be considered in light of the purpose of the ascertainability requirement. Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata." (*Nicodemus v. Saint Francis Memorial Hospital* (2016) 3 Cal.App.5th 1200, 1212, internal citations and quote marks omitted.)

Here, the class is ascertainable, as defendant's personnel records should be sufficient to allow the parties to identify the class members. The class is also sufficiently numerous to justify certification, as plaintiff's counsel claims that there are approximately 11,756 class members who worked for defendant during the class period. Therefore, the court intends to find that the class is sufficiently numerous and ascertainable for certification.

c. Community of Interest

"[T]he 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021, internal citations omitted.) "The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.) "[T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 669.)

Here, it does appear that there are common questions of law and fact, as all of the proposed class members worked for the same defendant and allegedly suffered the same type of Labor Code violations. Therefore, the proposed class involves common issues of law and fact.

With regard to the requirement of typicality of the representative's claims, Ms. Gatica's claims are typical of the rest of the class and she seeks the same relief as the other class members. There is no evidence that she has any conflicts between her interests and the interests of the other class members that would make her unsuitable to represent their interests. Therefore, plaintiff has shown that Ms. Gatica has claims typical of the other class members.

Plaintiff's counsel have submitted declarations that establish that they are experienced and qualified to represent the class. Counsel's declarations discusses their background, education, and experience in class action litigation. Therefore, counsel have met their burden of showing that they are experienced and qualified to represent plaintiff and the other class members here.

d. Superiority of Class Certification

It does appear that certifying the class would be superior to any other available means of resolving the disputes between the parties. Absent class certification, each employee of defendant would have to litigate their claims individually, which would result in wasted time and resources relitigating the same issues and presenting the same testimony and evidence. Class certification will allow the employees' claims to be resolved in a relatively efficient and fair manner. (*Sav-On Drugs Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.) Therefore, plaintiff has shown that class certification is the superior means of resolving her claims.

Conclusion: The court intends to grant certification of the class for the purpose of settlement.

2. Settlement

a. Fairness and Reasonableness of the Settlement

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.' The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–245, internal citations omitted, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Here, plaintiff's counsel has presented a sufficient discussion of the strength of the case if it went to trial, the risks, complexity, and duration of further litigation, and an explanation of why the settlement is fair and reasonable in light of the risks of taking the case to trial.

Plaintiff's counsel estimates that defendant faced a maximum potential liability of $827,918 for rest period violations, $1,019,521 for meal period violations, $1,804.250 for inaccurate wage statements, and $15,956,371 for waiting time penalties. In addition, plaintiff estimates that maximum PAGA penalties would have been $1,969,800. However, there were substantial barriers to recovery, including defendants' contention that the claims were without merit and were not suitable for class certification. Thus, plaintiff substantially discounted the defendant's liability based on the inherent risks of trying the class claims.

The PAGA claim also carried substantial risks. The parties agreed that it was reasonable to allocate $118,188 to the PAGA claims. The PAGA claims are subject to the same defenses and risks as the other claims, as well as defenses unique to PAGA, the risk that PAGA penalties would not be stacked, and the risk that the court might reduce the penalties in order to avoid duplicative, arbitrary, or oppressive penalties.

Therefore, plaintiff has now shown that the settlement is fair, reasonable, or adequate in light of the unique facts and legal issues raised by the plaintiff's case. Even though plaintiff has a strong case and defendant's liability is potentially much higher than $1,800,000, plaintiff reasonably accepted less than the maximum potential liability based on the risks of going to trial, the possibility that she might not be able to establish willful violations of the law, and the danger that the court might reduce the amount of penalties even if plaintiff did prevail at trial. As a result, the court intends to find that the settlement is fair, adequate and reasonable under the circumstances.

b. Proposed Class Notice

The proposed notice appears to be adequate. The notice will provide the class members with information regarding their time to opt out or object, the nature and amount of the settlement, the impact on class members if they do not opt out, the amount of attorney's fees and costs, and the service award to the named class representative. As a result, the court intends to find that the proposed class notice is adequate.

3. Attorney's Fees and Costs

Plaintiff's counsel seeks attorney's fees of $600,000, which is one-third of the gross settlement. Plaintiff's attorneys have provided their declarations, which describe their education, skill, and experience. However, counsel has not provided any evidence regarding the time they spent on the case or what their hourly rates are. Therefore, plaintiff's counsel has not provided any information that would allow the court to conduct a lodestar analysis of the requested fees to determine whether they are reasonable in light of the work done on the case. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 504 [holding that trial court may award fees based on a percentage of the common fund in class actions, but it may also conduct a lodestar cross-check of the request for attorney's fees in order to confirm the fees are reasonable].) As a result, the court intends to find that plaintiff's counsel has not adequately supported the request for $600,000 in fees.

In addition, counsel also seeks an award of up to $100,000 in costs. However, counsel has not provided a summary of its actual costs incurred so far in the case, so it is impossible to determine that the request for up to $100,000 in costs is reasonable.

4. Payment to Class Representative

Plaintiff seeks preliminary approval of a $10,000 service award to the named plaintiff/class representative, Ms. Gatica. Ms. Gatica has provided a declaration that supports the request for a service award, as she states that he worked closely with plaintiff's counsel, provided documents, answered questions, and participated in meetings about the case with counsel. Therefore, the court intends to grant preliminary approval of the incentive award to the named plaintiff.

5. Payment to Class Administrator

CPT Group, Inc. will receive up to $69,500 to administer the settlement. The declaration of CPT's representative includes an estimate for administration services of $69,500. (Exhibit B to Green decl.) As a result, the court intends to grant preliminary approval of the payment to the administrator.

6. PAGA Settlement

Plaintiff proposes to allocate $100,000 of the settlement to the PAGA claims, with 75% of that amount being paid to the LWDA as required by law and the other 25% being paid out to the aggrieved employees. Plaintiff's counsel states that he gave notice of the settlement to the LWDA on February 18, 2026. (Exhibit E to decl. of Moen.) Therefore, plaintiff's counsel has shown that he complied with PAGA's requirement to give notice of the settlement to the LWDA. (See Labor Code, § 2699, subd. (s)(2).)

Plaintiff's counsel also states that she believes that paying $100,000 to settle the PAGA claim is fair, reasonable and adequate in light of the substantial risks in litigating the PAGA claims, including the risk that the court might reduce the penalties to avoid an unduly harsh result.

Therefore, plaintiff's counsel has adequately explained why settling the PAGA claims is fair, adequate and reasonable, and the court intends to grant preliminary 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: **SMC** **on** **July 27, 2026** .
(Judge's initials) (Date)

(48)

<u>Tentative Ruling</u>

Re: ***Long v. Esquivel***
Superior Court Case No. 24CECG04998

Hearing Date: July 30, 2026 (Dept. 403)

Motion: By Defendant for Terminating Sanctions

Tentative Ruling:

To grant and impose terminating sanctions against plaintiff Joshua C. Long, for plaintiff's willful refusal to comply with this court's order compelling him to respond to discovery requests and pay sanctions. (Code Civ. Proc., §§ 2023.010 (d) & (g).) The complaint filed by plaintiff Joshua C. Long on November 14, 2024, is dismissed, without prejudice. (Code Civ. Proc., §2023.030, subd. (d)(3).)

Explanation:

Section 2023.010 defines "misuses of the discovery process" as including, "failing to respond or submit to an authorized method of discovery" and "disobeying a court order to provide discovery." (Code Civ. Proc., § 2030.010, subds. (d) & (g).) Section 2023.030 states, in relevant part:

> To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process:
>
> *   *   *
>
> (d) The court may impose a terminating sanction by one of the following orders:
>
> *   *   *
>
> (3) An order dismissing the action, or any part of the action, of that party.

(Code Civ. Proc., § 2023.030, subd. (d)(3).)

Accordingly, terminating sanctions must be authorized by a specific discovery statute; they are not available merely because they are an option listed in Code of Civil Procedure section 2023.030.

The failure to respond to interrogatories is controlled by Code of Civil Procedure section 2030.290, subdivision (c). That section provides that if a party unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust, the court "shall" impose monetary sanctions. It is only when a party disobeys an order compelling responses that a terminating sanction is called for.

> If a party then fails to obey an order compelling answers, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(Code Civ. Proc., § 2030.290, subd. (c).)

A party's failure to obey an order to respond to requests for production of documents is also subject to "the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010)." (Code Civ. Proc., § 2031.300, subd. (c).)

Courts generally follow a policy of imposing the least drastic sanction required to obtain discovery or enforce discovery orders, because the imposition of terminating sanctions is a drastic consequence, one that should not lightly be imposed, or requested. (*Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 604.)Appellate courts have generally held that before imposing a terminating sanction, trial courts should usually grant lesser sanctions first. (Weil, Brown, Edmon & Karnow, *California Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2026) § 8:2235.) However this is not an "inflexible" policy, and it is not an abuse of discretion to issue terminating sanctions on the first request, where circumstances justify it (e.g. where the violation is egregious or the party is using failure to respond as a delaying tactic). (*New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1433.)

Where a violation of the discovery rules is willful, preceded by a history of abuse, and the evidence shows that a less severe sanction would not produce compliance, the trial court is justified in imposing the ultimate sanction. (*Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279–280 [Party failed to respond despite court orders and monetary sanctions].) Terminating sanctions are appropriate where the trial court concludes that lesser sanctions would not bring about the compliance of the offending party. (*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496 [Terminating sanctions affirmed where there were violations of stipulations and court orders, forged document offered as true, and deliberate destruction of evidence to expose that fact].)

Sanctions are supposed to further a legitimate purpose under the Discovery Act, i.e., to compel disclosure so that the party seeking the discovery can prepare their case, and secondarily to compensate the requesting party for the expenses incurred in enforcing discovery. Sanctions should not constitute a "windfall" to the requesting party; the choice of sanctions should not give that party more than would have been obtained had the discovery been answered. (Weil, Brown, Edmon & Karnow, *supra*, § 8:2212.) "The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks but the court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment. [Citations.]" (*Caryl Richards, Inc. v. Superior Court In and For Los Angeles County* (1961) 188 Cal.App.2d 300, 304.) Where there is no showing that the requested discovery has any legitimate purpose, an order of terminating sanctions for failing to respond would be punitive rather than remedial. (*Morgan v. Ransom* (1979) 95 Cal.App.3d 664, 669-670.)

Here, plaintiff Joshua C. Long ("Plaintiff") was ordered on October 21, 2025, to provide further responses to form interrogatories, special interrogatories, and requests for production, and to pay monetary sanctions to defendant Joe Esquivel's counsel. Plaintiff failed to serve responses as ordered by the court. (Kearney Decl., ¶ 15.)

Defendant Joe Esquivel ("Defendant") argues the terminating sanction is warranted based on Plaintiff's willful refusal to provide discovery responses. The "willfulness" of Plaintiff's actions is demonstrated in his pattern of failing to participate in the prosecution of his case. Defendant points to Plaintiff's failure to respond to discovery, failure to respond to Defendant's meet and confer letters ahead of the motions to compel discovery, Plaintiff's failure to oppose the motions to compel his discovery responses, and Plaintiff's failure to comply with the court's April 23, 2025 order compelling him to provide discovery responses. (Kearney Decl., ¶¶ 11, 15-17.) Further proving Plaintiff's willful disregard of his obligations to participate in his own case, Plaintiff has failed to oppose the motion seeking to terminate this action.

The evidence presented by Defendant of Plaintiff's repeated failure to participate in discovery as ordered demonstrates willfulness in Plaintiff's failure to comply with the court's orders. It does not appear additional monetary sanctions or other lesser sanctions will prompt Plaintiff's compliance with court orders.

Therefore, the court intends to grant Defendant's motion for terminating sanctions and dismiss the complaint filed by Plaintiff on November 14, 2024, without prejudice.

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

Tentative Ruling
Issued By: SMC on 7/29/26 .
(Judge's initials) (Date)

(03)

<u>Tentative Ruling</u>

Re:	***Peterson v. Nationwide Agribusiness Insurance Co.*** Case No. 24CECG00667
Hearing Date:	July 30, 2026 (Dept. 403)
Motion:	Defendant's Motion to Dismiss Complaint, or in the Alternative to Stay the Action and Vacate or Continue Trial and Related Deadlines

Tentative Ruling:

To grant defendant's motion to dismiss the complaint, as the sole named plaintiff has now died and there is no one left to prosecute the action. (Code Civ. Proc., § 128.)

Explanation:

The court has the power to dismiss a complaint under various circumstances, as set forth in Code of Civil Procedure sections 581 to 583.110. However, "[t]he provisions of this section shall not be deemed to be an exclusive enumeration of the court's power to dismiss an action or dismiss a complaint as to a defendant." (Code Civ. Proc., § 581, subd. (m).) The court also has the inherent power "[t]o provide for the orderly conduct of proceedings before it, or its officers." (Code Civ. Proc., § 128, subd. (a)(3), para. breaks omitted.) Thus, the court has the inherent power to dismiss an action where there is no one left to prosecute the case.

Here, the sole named plaintiff, Ms. Peterson, has now died, and no successor in interest or representative of her estate has been substituted into the case. When a plaintiff dies, the action may continue only if the decedent's personal representative or successor in interest is properly substituted into the action. (Code Civ. Proc., §§ 377.10, 377.11.) Here, no one has been substituted into the action to represent the deceased plaintiff's interests or to prosecute the action on behalf of her estate. She did not have an attorney, so there is no one who can appear on her behalf. Thus, her claims are subject to dismissal unless someone substitutes into the action to represent her interests.

While plaintiff's husband has claimed that he is ready, willing, and able to continue the action on his own behalf, he has not taken any steps to appear formally in the case. He claims that he is in the process of retaining an attorney and amending the complaint to have himself named as a plaintiff, but so far he has not filed a motion to amend or taken any other steps to appear in the action. Defendant's motion to dismiss has now been pending for over four months, and the trial date is less than three months away. Thus, it does not appear that plaintiff's husband has been diligently seeking to appear in the action to represent either his wife's interests or his own. In the meantime, defendant is likely to be prejudiced, since it will have to prepare to defend itself at trial even though there is no plaintiff prosecuting the action. As a result, the court intends to grant the motion to dismiss the action for lack of a plaintiff who is ready, willing and able to prosecute the case.

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: SMC on 7/29/26 .
(Judge's initials) (Date)

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

Re: ***Jared Schriver v. Nathan Pearsey***
Superior Court Case No. 25CECG03697

Hearing Date: July 30, 2025 (Dept. 403)

Motion: Plaintiff Jared Schriver Motion to Compel Production of Documents from Defendant Nathan Pearsey and Form Interrogatories from Defendant Jocelyn Pearsey

Tentative Ruling:

To find the motions moot, except to grant reasonable sanctions in the sum of $1,555.90 against Defendants Nathan Pearsey and Jocelyn Pearsey, in favor of plaintiffs, to be paid to plaintiffs' counsel at the Jurewitz Law Group, within 30 days of service of the minute order by the clerk.

Explanation

Defendants Nathan Pearsey and Jocelyn Peasey have provided responses to the aforementioned requests.

If anyone engages in conduct that is a misuse of the discovery process, the court may impose reasonable monetary sanctions. (Code Civ. Proc., §§ 2023.030, 2030.290, 2031.320.) Where responding party provided the requested discovery after the motion to compel was filed, the court is authorized to award sanctions. (Cal. Rules of Court, rule 3.1348(a).)

Plaintiff Jared Schriver ("Schriver" or "plaintiff") seeks sanctions a total amount of filing both motion in the amount of $5,065.00 comprised of 8.6 hours in preparation and anticipated time, at a rate of $650, as well $155.90. (Joseph Decl., ¶16.)

Under these circumstances, the Court finds that both the hourly rate and time spent on these motions are unreasonable. These are basic motions to compel. The Court reduces the hours spent preparing each motion to 2 hours, at a more appropriate rate of $350/hr. Where a party is seeking out-of-town rates, he or she is required to make a "sufficient showing…that hiring local counsel was impractical." (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1244.) Plaintiff has made no showing of any attempt to seek local counsel. There are local counsel who handle similar cases. Local rates are therefore appropriate.

Accordingly, the court finds that the reasonable amount of attorney fees to award as sanctions on these nearly identical motions is a total of $1,555.90.

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: ____________SMC______________ on _____7/29/26__________.
(Judge's initials) (Date)

(48)

<u>Tentative Ruling</u>

Re: ***Salinas v. Aulakh et al.***
Superior Court Case No. 25CECG01598

Hearing Date: July 30, 2026 (Dept. 403)

Motion: By Defendant Stephen Rusconi 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.)

"The party asserting the lack of good faith shall have the burden of proof on that issue." (Code Civ. Proc., § 877.6, subd. (d).)

"[T]he intent and policies underlying section 877.6 require that a number of factors be taken into account including a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants. [Citation.] Finally, practical considerations obviously require that the evaluation be made on the basis of information available at the time of settlement. '[A] defendant's settlement figure must not be grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate the settling defendant's liability to be.' [Citation.] The party asserting the lack of good faith, who has the burden of proof on that issue (§ 877.6, subd. (d)), should be permitted to demonstrate, if he can, that the settlement is so far 'out of the ballpark' in relation to these factors as to be inconsistent with the equitable objectives of the statute. Such a demonstration would establish that the proposed settlement was not a 'settlement made in good faith' within the terms of section 877.6." (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.)

Here, defendants Amardeep Aulakh and Chamkaur Singh Aulakh ("Aulakh Defendants") have the burden to show that the settlement agreement between plaintiffs Freddy Raymond Salinas, Jr. and Jennifer Williams ("Plaintiffs") and defendant Stephen Rusconi ("Defendant Rusconi") is not a settlement made in good faith.

Defendant Rusconi's motion for a determination of good faith settlement is supported by its counsel's declaration and exhibits thereto. The evidence includes responses to form interrogatories from Defendant Rusconi, responses to form interrogatories from Plaintiffs, and photos of the car accident. The evidence presented demonstrates that the settlement amount of $10,000 offered by Defendant Rusconi is proportional or greater than their liability for Plaintiffs' $67,626 in medical expenses. Equal apportionment of the total settlement to each plaintiff is acceptable as their respective medical expenses are similar.

Liability is disputed between codefendants. However, Aulakh Defendants do not specify, nor support by way of evidence, that Defendant Rusconi's portion of liability is not in the ballpark of $10,000. While the Aulakh Defendants argue that discovery is incomplete, the court is not persuaded that the deposition of Defendant Rusconi and subpoenas from Plaintiffs' unnamed medical providers would provide evidence that changes Defendant Rusconi's proportion of liability or significantly change Plaintiffs' total medical expenses.

Aulakh Defendants fail to argue or present evidence that the settlement at issue is based on Defendant Rusconi's financial condition or available insurance proceeds. Defendant Rusconi's proposed settlement is to make a meaningful contribution to resolve Plaintiffs' claims, despite his assertion that he lacks liability for the incident.

There is no suggestion of collusion, fraud, or other tortious conduct by the settling parties in negotiating and settling the claims against Defendant Rusconi in the complaint and cross-complaint.

There is sufficient evidence to find that the settlement between Defendant Rusconi and the Plaintiffs was reached in good faith. Therefore, the court grants the motion.

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: SMC on 7/29/26 .
(Judge's initials) (Date)

(49)

<u>Tentative Ruling</u>

Re: ***Fitzgerald v. Wright Equities, Inc. et al.***
Superior Court Case No. 25CECG04867

Hearing Date: July 30, 2026 (Dept. 403)

Motion: Defendant Wright Equities, Inc.'s Demurrer to the First Amended Complaint

Tentative Ruling:

To overrule defendant Wright Equities, Inc.'s general and special demurrer to the First Amended Complaint. (Code Civ. Proc., § 430.10, subd. (e), (f).) To direct defendant Wright Equities, Inc. to file and serve its answer within ten days of the date of service of this order by the clerk.

Explanation:

Defendant Wright Equities, Inc. ("Defendant") files a general and special demurrer to plaintiff Kenneth Fitzgerald's ("Plaintiff") First Amended Complaint ("FAC"). The sole cause of action raised in Plaintiff's FAC is a violation of the Unfair Competition Law ("UCL").

Demurrer

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v Poag* (1984) 150 Cal.App.3d 541, 545) The truth of the facts alleged in the complaint are assumed true as well as the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 2 Cal.4th 876, 883; see also *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1168 [actual reliance in support of a fraud claim reasonably inferable from the plaintiff's complaint]; Code Civ. Proc., 452 ["In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties."].)

A general demurrer, "admits the truth of all material factual allegations in the complaint;" the plaintiff's "ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court …." (*Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496; *Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 190 ["We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken."].)

Necessity of Lease Agreement

Defendant argues that Plaintiff was required to attach a copy of the lease agreement that includes the Foxen's renter insurance provision. However, "[i]n an action based on a written contract, a plaintiff may plead the legal effect of the contract rather than its precise language." (*Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189, 198–199, as modified (Nov. 14, 2002).) Here, Plaintiff sufficiently pled the legal effect of the contract. Defendant further argues that the FAC is unclear who the parties to the contract are. However, the FAC states that 5675 Fresno, LP ("5675 LP") operates the building and sufficiently information for the purposes of demurrer shows that 5675 LP was the owner of the property. (FAC, ¶ 4; Defendant's Request for Judicial Notice, Exh. A, B, & C.)[1] The relationships between Defendant and 5675 LP are laid out in the FAC. Plaintiff claims that actions taken by Defendant were as agent or employee of 5675 LP and all actions taken were within the scope of that agency or employment. (FAC, ¶ 7.) Thus, any causes of action against Defendant are sufficiently stated to allege that these acts were done as an agent or employee of 5675 LP.

UCL Cause of Action

Business and Profession Code section 17200, also known as the UCL, states, in pertinent part, "unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice". Plaintiff raises three different bases for Plaintiff's UCL cause of action. If any of the bases survive demurrer, then the whole cause of action survives demurrer. The first basis Plaintiff raises is based on the unlawful prong of the UCL. Plaintiff claims Defendant violated Civil Code section 827 by changing the terms of the lease without adequate notice. Defendant raises two arguments against the claim.

The first defense Defendant argues is that agency liability does not apply to Civil Code section 827. Defendant argues the statute specifically mentions landlords and not agents of landlords. Defendant then cites to *Otanez v. Blue Skies Mobile Home Park* (1991) 1 Cal.App.4th 1521 in support. In *Otanez,* the appellate court found that Civil Code section 789.3 does not apply to persons other than landlords. (*Id.* at p. 1526.) Civil Code section 789.3 is a subsection of general mobile home law. Mobile home law has its own statutes, legislative history, and precedents separate from general landlord-tenant law. Defendant fails to explain how laws specific to mobile homes are applicable in the present situation. Accordingly, the court finds the present situation distinguishable from the facts of *Otanez*.

The second defense to Plaintiff's claim that Defendant violated Civil Code section 827 is that Civil Code section 827 does not apply. Plaintiff submits in opposition that the allegations of the FAC support the conclusion that the lease would have become a month-to-month tenancy. Based on the lease becoming a month-to-month tenancy, Defendant needed to give proper notice as under Civil Code section 827. Defendant did not give proper notice under that Civil Code section 827. Defendant disputes this as a possibility. However, it is "not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which [plaintiff] describes the defendant's conduct. A demurrer tests only the legal sufficiency of the pleading. [Citation.]" (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47.) Thus, Plaintiff's claim under the unlawful prong survives demurrer.

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[1] Defendant's Request for Judicial Notice is granted as to Exhibits A, B, and C.

As at least one basis of the UCL cause of action has survived, the cause of action as a whole survives demurrer and the other bases need not be examined. Accordingly, Defendant's demurrer to the FAC 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: SMC on 7/29/26 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Fraga v. Arenas-Fierro, et al.***
Superior Court Case No. 25CECG00527

Hearing Date: July 30, 2026 (Dept. 403)

Motion: Application for Default Judgment

Tentative Ruling:

To deny the application for default judgment, without prejudice. (Code Civ. Proc., § 762.010.)

Explanation:

Adverse Claimants Not Named

The plaintiff must name as defendants "the persons having adverse claims to the title of the plaintiff against which a determination is sought." (Code Civ. Proc., § 762.010.)

> If a person required to be named as a defendant is dead, or is believed by the plaintiff to be dead, and the plaintiff knows of no personal representative: (1) The plaintiff shall state these facts in an affidavit filed with the complaint. (2) Where it is stated in the affidvit [*sic*] that such person is dead, the plaintiff may join as defendants "the testate and intestate successors of __________ (naming the deceased person), deceased, and all persons claiming by, through, or under such decedent," naming them in that manner. (3) **Where it is stated in the affidavit that such person is believed to be dead, the plaintiff may join the person as a defendant, and may also join "the testate and intestate successors of __________ (naming the person) believed to be deceased, and all persons claiming by, through, or under such person," naming them in that manner.**

(Code Civ. Proc., § 762.030, subd. (b), emphasis added.)

On January 30, 2025, plaintiff filed the complaint naming Alicia Arenas as one of many defendants in this case. It is alleged that Alicia Arenas is one of the title holders of the subject property in this quiet title action. (First Amended Compl., ¶ 12.) On August 18, 2025, plaintiff filed an amended complaint that omitted Alicia Arenas, and instead joined the testate and intestate successors of Alicia Arenas deceased, and all persons claiming by, through, or under such decedent. An amended pleading making substantive changes supersedes the original. (*State Comp. Ins. Fund v. Sup.Ct. (Onvoi Business Solutions, Inc.*) (2010) 184 Cal.App.4th 1124, 1130-1131.) Therefore, a previously named defendant, not named in the new complaint is, effectively dismissed. (*Kuperman v. Great Republic Life Ins. Co.* (1987) 195 Cal.App.3d 943, 947 [the filing of plaintiffs' second amended complaint which omitted a defendant as a party effected a dismissal of that party from the action].)

Plaintiff asserts that after the original complaint was filed, the process server was informed that Alicia Arenas was deceased while attempting service of the summons. (Affidavit, ¶¶ 7-8.) However, plaintiff indicates that he cannot locate any evidence suggesting the passing of Alicia Arenas and that "[i]t would not surprise [him] to later learn that Alicia Arenas is in fact still alive." (Affidavit, ¶¶ 9-11.) Since it is unclear whether Alicia Arenas is deceased, plaintiff has not sufficiently named all adverse claimants to this action.

Additionally, Adrian Lopez appears to be a party to the lease agreement and purchase option agreement that are the subject of this action. However, plaintiff provides no explanation for why she is not a party to this action.

Breach of Contract Not Sufficiently Supported

"A cause of action for damages for breach of contract is comprised of the following elements: (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff. [Citation.]" (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1388.)

Here, it is alleged that plaintiff exercised an option to purchase the subject property from defendants. The purchase price and terms of the sale may be summarized as follows: plaintiff was to provide installment payments totaling $600,000 pursuant to a specified payment schedule set to end on September 1, 2027. Thus far, plaintiff indicates that he has paid $306,000 towards the purchase price.

Before plaintiff could fully perform his obligations toward the agreement, the property became subject to a public sale pursuant to an encumbrance previously unknown to plaintiff. Plaintiff attempted to immediately pay the full amount of the remaining balance owed towards the purchase price of the subject property through escrow, so that defendants could repay the third party lender. However, defendants refused to accept the funds unless plaintiff paid the amount outside of escrow. Plaintiff ultimately directly paid the third party lender the sum of $287,339.83, to prevent the public sale. The existence of a contract, defendant's breach, and plaintiff's resulting damages are undoubtedly pled.

The questions at issue are whether plaintiff has pled sufficient performance or an excuse for nonperformance, and whether the court has the power to deem plaintiff's performance as fulfilled so as to quiet title. Plaintiff is instructed to include briefing on these particular issues in any future application for default judgment.

Monetary Relief Sought Exceeds that Demanded in Complaint

The monetary judgment sought exceeds relief demanded in complaint. "In all default judgments the demand sets a ceiling on recovery." (*Greenup v. Rodman* (1986) 42 Cal.3d 822, 824 [including default judgments entered as discovery sanction]; *Reedy v.*

Bussell (2007) 148 Cal.App.4th 1272, 1294 [including default judgment entered as terminating sanction].) Relief that is not demanded in the complaint cannot be granted by default judgment, even if that relief otherwise would have been proper. (Code Civ. Proc., § 580, subd. (a); *Airs Aromatics, LLC v. CBL Data Recovery Technologies, Inc.* (2018) 23 Cal.App.5th 1013, 1018 [default judgment for sum in excess of that demanded in complaint is void].)

Here, the operative complaint fails to pray for any particular monetary amount in damages. Therefore, the monetary compensation sought in the proposed judgment cannot be granted.

Errors in Proposed Judgment

For reasons unexplained, defendant Rachel Arenas is not included in the proposed judgment. Also, while the proposed judgment includes an order appointing an elisor to execute any sign documents for the purchase and sale of the subject property, it does not contain any language quieting title and/or effectuating any purchase and sale of property. In fact, the proposed judgment fails to even describe the property as anything other than the "subject property."

Attorney Fees and Costs Not Supported

Despite conceding that the contract does not include a clause providing for attorney fees and costs to plaintiff, he seeks $2,009.34 in attorney fees and $3,773.40 in costs. Plaintiff does not otherwise provide any authority that would allow for an award of fees and costs. Instead, plaintiff argues that the contract lacks mutuality in that it includes a clause awarding fees and costs to defendants only, and therefore, the contract should be construed to apply this provision to both sides of the contract. Plaintiff does not provide any authority to suggest that this is the proper interpretation of a contractual clause lacking mutuality, as opposed to, for example, simply severing the clause from the contract. Without more, the court does not intend to grant the request for attorney fees and costs.

Lastly, plaintiff should file the required "Request for Court Judgment" form (Judicial Council Form CIV-100) in any subsequent request for default judgment. This is a dual-purpose form, used for requesting both entry of default and court judgment. While plaintiff used this form when requesting default, this dual-purpose form must be used again when requesting judgment.

Accordingly, the application for default judgment is denied without prejudice.

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

Tentative Ruling
Issued By: SMC on 7/29/26 .
(Judge's initials) (Date)

(37)

<u>Tentative Ruling</u>

Re:	***Bellinger v. AMVA Corporation*** Superior Court Case No. 25CECG05670
Hearing Date:	July 30, 2026 (Dept. 403)
Motion:	Plaintiff's Demurrer and Motion to Strike

Tentative Ruling:

To sustain the demurrer as to the eleventh, twelfth, thirteenth, and fifteenth affirmative defenses, without leave to amend. To overrule the demurrer as to the eighth affirmative defense.

To grant the motion to strike as to the eleventh, twelfth, thirteenth, and fifteenth affirmative defenses. To deny the motion to strike as to the fifth, sixth, and eighth affirmative defenses.

Defendant AMVA Corporation is to file a Second Amended Answer consistent with this ruling within 10 days of service of the minute order by the clerk.

Explanation:

<u>Demurrer</u>

The grounds of a demurrer to answer may be a failure to state sufficient facts to constitute a defense, uncertainty, or where an answer pled a contract, that it cannot be ascertained whether the contract was written or oral. (Code Civ. Proc., § 430.20.) Failure to state facts sufficient to constitute a defense is not subject to waiver and may be raised at any time. (Code Civ. Proc., § 430.80.)

The general rule is that the same pleading of "ultimate facts" rather than evidentiary matter or legal conclusions is required in pleading an answer as in pleading a complaint. The answer must aver facts "as carefully and in as much detail as the facts which constitute the cause of action and which are alleged in the complaint." (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384, quoting Pomeroy, Code Remedies (5th ed. 1929) § 563, at p. 917.) Conclusions of law are not sufficient to state a valid defense, and will not withstand a general demurrer. (*FPI Development, Inc. v. Nakashima, supra,* 231 Cal.App.3d at 384.)

Plaintiff demurs as to the eighth, eleventh, twelfth, thirteenth, and fifteenth affirmative defenses. Defendant concedes as to the eleventh, twelfth, thirteenth, and fifteenth affirmative defenses. As such, only the eighth affirmative defense of unclean hands remains at issue.

The doctrine of unclean hands is a defense to an equitable action. (*Aguayo v. Amaro* (2013) 213 Cal.App.4th 1102, 1110.) It requires that a plaintiff come into the court with clean hands. (*Ibid*.) Conduct that could constitute unclean hands is that which "violates conscience, or good faith, or other equitable standards of conduct." (*Ibid*.) Here, defendant asserts that plaintiff has alleged he was injured "while engaged in his own conduct." (Amended Answer, Eighth Affirmative Defense.)

Defendant asserts that this is currently pled in order to avoid waiving it as a defense and that discovery may result in amending it. Defendant argues that it does not know all of the circumstances surrounding plaintiff's injury, such as any motives and intentions. As such, the court overrules the demurrer as to the eighth affirmative defense.

<u>Strike</u>

A motion to strike may be used to address defects in pleadings otherwise not challengeable by a demurrer. (See Code Civ. Proc., § 435.) Code of Civil Procedure section 436 provides that a court may strike irrelevant, false, or improper matters, or parts of pleadings not filed in conformity with the rules of court. A motion to strike can be used to attack either a portion or the entirety of a pleading. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 393.)

Plaintiff seeks to strike defendant AMVA's fifth, sixth, eighth, eleventh, twelfth, thirteenth, and fifteenth affirmative defenses. Defendant concedes as to the eleventh, twelfth, thirteenth, and fifteenth affirmative defenses. As such, only the fifth, sixth, and eighth affirmative defenses remain at issue.

For the fifth affirmative defense, plaintiff argues that the amended answer has falsely inserted matter. The fifth affirmative defense asserts assumption of the risk "as to Plaintiff's allegation that he was engaging in playing basketball in a gym when he was injured." (Amended Answer, Fifth Affirmative Defense.) The complaint does not allege an injury occurred while plaintiff was playing basketball. As such, the affirmative defense has added new information.

Defendants may introduce new matter not disclosed by the pleadings in a defense. (*Jetty v. Craco* (1954) 123 Cal.App.2d 876, 880.) Additionally, striking the entire affirmative defense where some language is challenged is not appropriate here. The court denies striking the fifth affirmative defense.

For the sixth affirmative defense of statute of limitations, plaintiff argues that the complaint was filed within the statute of limitations period. Defendant argues that this improperly relies on accepting the complaint as evidence. (*Wisner v. Dignity Health* (2022) 85 Cal.App.5th 35, 43.) Defendant again asserts that discovery is likely to resolve this defense. The court denies striking the sixth affirmative defense.

For the eighth affirmative defense, plaintiff argues the defense has falsely inserted matter. Again, defendant asserts that plaintiff's injury may have been a result of his own conduct and that it should have an opportunity to develop this defense through discovery. The court denies striking the eighth affirmative defense.

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: SMC on 7/29/26 .
(Judge's initials) (Date)