Tentative Rulings for July 31, 2024
Department 501

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

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

---

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

_____

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(35)

Tentative Ruling

Re: ***Hall v. Fresno Unified School District Employee Health Care Plan***
Superior Court Case No. 20CECG00607

Hearing Date: July 31, 2024 (Dept. 501)

Motion: by Defendant Fresno Unified School District Health Care Plan to Compel Discovery Responses to Interrogatories; Requests for Production of Documents; and Requests for Admissions; and Requests for Sanctions

Tentative Ruling:

To order the motions off calendar owing to defendant Fresno Unified School District Health Care Plan's failure to comply with Fresno Superior Court Local Rules, Rule 2.1.17.

Explanation:

Fresno County Superior Court Local Rules, rule 2.1.17, requires among other things that before filing a motion under Code of Civil Procedure sections 2016.010 through 2036.050, inclusive, and except motions to compel initial responses, the party desiring to file a motion under these sections must first request an informal Pretrial Discovery Conference with the court, and wait until either the court denies that request and gives permission to file the motion, or the conference is held and the dispute is not resolved at the conference. Forms for requesting the conference and opposing the request are available on the court's website. The parties are referred to Rule 2.1.17 for further particulars.

Here, defendant Fresno Unified School District Employee Health Care Plan ("defendant") failed to obtain leave prior to filing the present motion. The moving papers clearly indicate that plaintiff Worldwide Aircraft Services, Inc., served verified responses to the discovery in question. (Patel Decl., ¶¶ 3-6, and Exs. B-E.) Accordingly, the motions to compel discovery responses are not for initial responses, as cited by defendant in its notice, but further responses, as conceded in the body of the memorandum of points and authorities, particularly where defendant discusses sanctions. This is most apparent where the notice cites to Code of Civil Procedure section 2033.280, which is for seeking an order deeming admissions as admitted, but which defendant does not seek at all. Defendant's motions therefore fall directly under Local Rule 2.1.17. Defendant was required to seek an informal Pretrial Discovery Conference on the issues and otherwise obtain leave to file the present motions.

As no prior leave to file the present motions was expressly granted by court order, the motions will not be heard, and are ordered off calendar.[1]

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

Tentative Ruling
Issued By: DTT on 7/29/2024.
(Judge's initials) (Date)

[1] On July 26, 2024, plaintiff filed an "Objection to Defendant's Reply." On July 29, 2024, defendant filed an "Opposition to Plaintiff's Objection to Reply." Neither of these filings are authorized by statute or by order from the court. Accordingly, the court disregards and does not consider these unauthorized, untimely filings. (Cal. Rules of Court, rule 3.1300(d).)

(35)

Tentative Ruling

Re: ***Correia v. The Board of Trustees of the California State University***
Superior Court Case No. 23CECG00658

Hearing Date: July 31, 2024 (Dept. 501)

Motion: by Plaintiff Calliope Correia for an order compelling initial responses from Defendant The Board of Trustees of the California State University to First Request for Production of Documents; and Request for Sanctions

Tentative Ruling:

To grant. Within ten (10) days of service of the order by the clerk, defendant The Board of Trustees of the California State University shall serve verified responses, without objections, to First Request for Production of Documents, and produce all documents responsive to the Request for Production.

To impose monetary sanctions in the total amount of $1,050.00 against defendant The Board of Trustees of the California State University, joint and several with counsel for defendant Brandon Fields, in favor of plaintiff Calliope Correia. (Code Civ. Proc. § 2023.030, subd. (a).) Within thirty (30) days of service of the order by the clerk, defendant The Board of Trustees of the California State University or Brandon Fields shall pay sanctions to plaintiff Calliope Correia's counsel.

Explanation:

On March 8, 2024, the subject discovery was served on defendant The Board of Trustees of the California State University ("defendant"). (Dimitre Decl., ¶ 5, and Ex. 1.) As of the filing of the motions, no responses had been served. (*See id.*, ¶ 9, and Ex. 6.) Plaintiff Calliope Correia ("plaintiff") now seeks an order compelling responses.

Defendant submits an untimely response, filed after 5:00 p.m. on Friday, July 26, 2024. The response is so untimely that no reply brief could be reasonably prepared. In spite of how untimely the response is, the court exercises discretion and considers the late filing. (Cal. Rules of Court, rule 3.1300(d).)

Defendant submits, among other things, that it has provided discovery responses. No evidence in support was provided. There are no indications in the response to the motion when defendant served verified responses to the subject discovery. Neither does defendant's counsel's declaration, submitted in support of the response, clearly state that discovery responses were served, when, and whether those responses were verified. Accordingly, an order compelling defendant to provide initial responses is still warranted. (Code Civ. Proc. § 2031.300 subd. (b).) All objections are waived. (*Id.* § 2031.300, subd. (a).)

Sanctions are mandatory unless the court finds that the party acted "with substantial justification" or other circumstances that would render sanctions "unjust." (Code Civ. Proc. § 2031.300, subd. (c).) The court finds no circumstances that would render the mandatory sanctions unjust. Defendant sought and received multiple extensions. (Dimitre Decl., ¶¶ 6-9, and Exs. 2-5.) To the extent counsel for defendant implies that the requests were irrelevant and unduly burdensome, defendant chose not to timely object or otherwise explain the situation until the fourth extension request.

Moreover, defendant's response seeks to excuse the lack of production under the semblance of honest mistake, a failure to secure an additional extension, and alternatively, that plaintiff was unreasonable in withholding a further fifth extension. Defendant sought to extend the initial deadline by two weeks on April 12, 2024; again for two weeks, on April 30, 2024; again for two on May 14, 2024; and again on June 10, 2024, seeking an extension to June 24, 2024. On June 11, 2024, counsel for Plaintiff indicated his intent to seek an order compelling responses. On June 20, 2024, counsel for Plaintiff agreed to the final extension to June 24, 2024. On June 24, 2024, counsel for Defendant did not even request an extension, instead stating that he cannot produce all of the documents, and expects to be able to in two more weeks.

Nothing in these emails supports counsel for defendant's conclusion that "[Defendant's] counsel mistakenly failed to request a timely extension and Plaintiff's counsel has denied reasonable requests for extensions, contributing to [Defendant's] failure to respond sooner to Plaintiff's discovery requests." (Fields Decl. in Support of Response, ¶ 4.) Moreover, this response, filed after business hours on the Friday before hearing on Wednesday, left no time for plaintiff to be able to prepare a response to the filing.

Plaintiff's request for monetary sanctions is granted against defendant, joint and several with counsel for defendant (Brandon Fields) in the amount of $1,050.00.[2] (Code Civ. Proc. § 2023.030, subd. (a).)

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: DTT on 7/29/2024.
(Judge's initials) (Date)

[2] In the event oral argument is requested, the court will consider plaintiff's request for additional sanctions to cover preparation for and attendance at the oral argument.

(35)

Tentative Ruling

Re: ***Correia v. The Board of Trustees of the California State University***
Superior Court Case No. 23CECG00658

Hearing Date: July 31, 2024 (Dept. 501)

Motion: by Defendant The Board of Trustees of the California State University for an Order Compelling Compliance

Tentative Ruling:

To deny.

Explanation:

On October 4, 2023, the subject deposition subpoena was served on non-party Erika Eagerton ("Eagerton"). (Fields Decl., ¶ 3, and Ex. A.) As of the filing of this motion, Eagerton has failed to respond to the deposition subpoena. (*Id.*, ¶¶ 4-5.) Moreover, on March 20, 2024, defendant obtained plaintiff Calliope Correia's consent to obtained the subject records from Eagerton. (*Id.*, ¶ 3, and Ex. B.) Defendant now seeks an order compel compliance with the subject deposition subpoena.

The motion is untimely. Any motion to compel compliance with a deposition subpoena *must* be made within 60 days of the completion of the deposition record. (Code Civ. Proc. § 2025.480, subd. (b).) This deadline applies to nonparty deposition subpoenas of business records. (*Bd. of Registered Nursing v. Superior Court* (2021) 59 Cal.App.5th 1011, 1030-1031.) The deposition record is deemed complete on the date set for production by the lack of response to the subpoena. As discussed in *Board of Registered Nursing v. Superior Court*:

> The nonparty discovery statutes establish a one-step process for a nonparty responding to a business records subpoena. Upon receipt of the subpoena, a nonparty must make the production on the date and in the manner specified, unless grounds exist to object or disregard the subpoena. The nonparty's compliance with the subpoena is clear on the date specified for production. It has either produced documents as requested in the subpoena, or not. On that date, the subpoenaing party has all the information it needs to meet and confer regarding the nonparty's compliance and, if unsatisfied, prepare a motion to compel.
>
> This one-step process minimizes the burden on the nonparty. It may comply (or not) with the subpoena, and it can be confident that its obligations under the subpoena will be swiftly addressed and adjudicated. The one-step process also

> reflects the reality that the discovery demanded from a nonparty will generally be more limited, and consequently less subject to lengthy dispute, than discovery demanded from a party. (*Id.* at p. 1033.)

Here, the deposition notice set November 6, 2023, as the date to comply. The instant motion was filed May 21, 2024. Accordingly, the motion is untimely, and therefore denied. (*Board of Registered Nursing v. Superior Court*, *supra*, 59 Cal.App.5th at pp. 1034-1035, and fn. 5.)

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: DTT on 7/29/2024.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Jane Doe v. Clovis Unified School District***
Superior Court Case No. 22CECG04057

Hearing Date: July 31, 2024 (Dept. 501)

Motion: By Defendant Clovis Unified School District for Stay

Tentative Ruling:

To deny.

Explanation:

Plaintiff Jane Doe ("plaintiff") filed the instant action regarding certain allegations of past conduct constituting childhood sexual abuse. Defendant Clovis Unified School District ("defendant") seeks a stay of the action pending resolution of two Court of Appeals cases presently before the First District Court of Appeals Case No. A16934, *West Contra Costa Unified School District v. Superior Court* ("*West Contra Costa*"), and the Second District Court of Appeals, Division 6, Case No. B334707, *Roe #2 v. Superior Court*. Both actions pending are petitions for writs of mandate.[3]

On notice, defendant moves solely under Code of Civil Procedure section 404.5 and California Rules of Court, rule 3.515. Both of these refer to matters subject to a coordination order, which is not present in this case. Accordingly, to the extent defendant seeks relief by way of stay pending the consideration of a coordination, the motion is denied.

In its points and authorities, defendant moves under the court's inherent authority to control its docket. (*E.g.*, *OTO, LLC v. Kho* (2019) 8 Cal.5th 111, 141 [considering a stay pending application to compel arbitration].) Trial courts generally have the inherent power to stay proceedings in the interest of justice and to promote judicial efficiency. (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 266-267.)

Defendant submits that a stay pending appeal is appropriate where another pending action will issue a ruling or determination of an issue that will be dispositive in the stayed action. (*See Caifa Prof. Law Corp. v. State Farm Fire & Casualty Co.* (1993) 15 Cal.App.4th 800, 803.) However, the case cited has the additional posture that the other pending action is between substantially identical parties affecting the same subject matter that was filed earlier in time. (*Ibid.*) In other words, the circumstances are more akin to a soft plea in abatement. (*E.g.*, *Lawyers Title Ins. Corp. v. Superior Court* (1984) 151

[3] Defendant's Request for Judicial Notice, and Plaintiff's Request for Judicial Notice are granted to the extent they demonstrate that such records exist, but not for the truths of any of the matters asserted therefrom. (*Steed v. Dept. of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120-121.)

Cal.App.3d 455, 458-459.)[4] Nevertheless, staying a matter until another party's appeal is decided may still be in the interests of justice. (*See Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489 [in the context of multiple parties].)

Here, defendant seeks the stay based on two writs of mandate. These writs of mandate challenge the constitutionality of legislation that allows plaintiff to state her present action based on allegations dating back to 2004. Plaintiff in opposition does not materially contest the applicability of the legislation in question, AB 218.

As both parties aptly demonstrate, lawsuits filed under the authority granted by AB 218 have been abundant. While the facts that each case presents differs, none of those cases may sit in perpetuity for want of guidance, and the lack of prosecution of these cases will prevent the requisite foundation for further review. The matters submitted for the premise as having potential to control the outcome of this litigation, however, are not full reviews, but writs of mandate to the Courts of Appeal. Writs of mandate are subject to the possible outcome of summary denial, resulting in no guidance, constituting unwarranted delay.[5] Courts must control the pace of litigation, reduce delay, and maintain a current docket as to enable the just, expeditious, and efficient resolution of cases. (Gov. Code § 68607; *In re Alpha Media Resort Inv. Cases* (2019) 39 Cal.App.5th 1121, 1132-1133.)

Neither party sufficiently demonstrates an actual prejudice, either for a stay in the case of defendant as the moving party, or against a stay in the case of plaintiff as the opposing party. However, defendant, as the moving party bears the burden. Defendant does not suggest any prejudice it would suffer if the present matter were not allowed to wait until the writs of mandate are decided. At present, on the filings before the court based on existing, valid law, the Complaint is at issue. Trial is already scheduled, at just over 6 months away. Accordingly, the court finds that staying the matter pending outcome of the identified petitions for writs of mandate will not promote judicial efficiency. The motion is denied.

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

Tentative Ruling
Issued By: DTT on 7/29/2024.
(Judge's initials) (Date)

[4] Defendant also relies on *Farmland Irrigation Co. v. Dopplmaier*, which has the same inapposite facts of another action pending between the same parties on the same subject matter. (*Farmland Irr. Co. v. Dopplmaier* (1957) 48 Cal.2d 208, 215.)

[5] The court notes, as plaintiff submits, that at least as to the *West Contra Costa* matter, the First District Court of Appeals has issued a Tentative Opinion. (Plaintiff's Request for Judicial Notice, Ex. 1.)

(03)

Tentative Ruling

Re: ***Lopez v. Stine***
Case No. 23CECG02228

Hearing Date: July 31, 2024 (Dept. 501)

Motion: by Plaintiffs for Terminating Sanctions Against Defendant Eric Stine

Tentative Ruling:

To grant plaintiffs' motion for terminating sanctions against defendant Eric Stine. To strike defendant's Answer and enter his default. To deny the request for default judgment at this time, as plaintiffs need to file a default judgment application and prove up their damages before a judgment can be entered.

Explanation:

Code of Civil Procedure section 2023.010, subdivision (g), makes "[d]isobeying a court order to provide discovery" a "misuse of the discovery process," but sanctions are only authorized to the extent permitted by each discovery procedure. Once a motion to compel answers is granted, continued failure to respond or inadequate answers may result in more severe sanctions, including evidence, issue or terminating sanctions, or further monetary sanctions. (Code Civ. Proc. §§ 2030.290, subd. (c); 2031.300, subd. (c).)

Sanctions for failure to comply with a court order are allowed only where the failure was willful. (*R.S. Creative, Inc. v. Creative Cotton, Ltd*. (1999) 75 Cal.App.4th 486, 495; *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545; *Biles v. Exxon Mobil Corp*. (2004) 124 Cal.App.4th 1315, 1327.) If there has been a willful failure to comply with a discovery order, the court may strike out the offending party's pleadings or parts thereof, stay further proceedings by that party until the order is obeyed, dismiss that party's action, or render default judgment against that party. (Code Civ. Proc. § 2023.030(d).)

"Discovery sanctions 'should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery.'" (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, 487.) "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* (1961) 188 Cal.App.2d 300, 304.)

Appellate courts have generally held that, before imposing a terminating sanction, trial courts should usually grant lesser sanctions first. "The discovery statutes thus 'evince an incremental approach to discovery sanctions, *starting* with monetary sanctions and *ending* with the ultimate sanction of termination.' Although in extreme cases a court has the authority to order a terminating sanction as a first measure, a

terminating sanction should generally not be imposed until the court has attempted less severe alternatives and found them to be unsuccessful and/or the record clearly shows lesser sanctions would be ineffective." (*Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 604–605, citations omitted, italics in original.)

However, "'[t]he unsuccessful imposition of a lesser sanction is not an absolute prerequisite to the utilization of the ultimate sanction authorized by subdivision (d) of section 2034.' Indeed, there is no question of the power of the court to apply the ultimate sanction of default against a litigant who persists in an outright refusal to comply with his discovery obligations. [¶] Before any sanctions may be imposed under section 2034, subdivision (d), there must be an *express finding* that there has been a willful failure of the party or the attorney to serve the required answers." (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 787, citations omitted, italics in original.)

In determining whether to impose a terminating sanction, the trial court should consider "the totality of the circumstances: conduct of the party to determine if the actions were willful; the detriment to the propounding party; and the number of formal and informal attempts to obtain the discovery." (*Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1246.)

In the present case, defendant Stine was ordered to serve verified responses to the first set of discovery requests on January 24, 2024. He was also ordered to pay monetary sanctions to plaintiffs. However, he failed to serve verified responses as ordered, and in fact he has still failed to serve any responses to the discovery despite the passage of about six months since the court made its order. Plaintiffs' counsel has contacted defense counsel about defendant's failure to respond, and defense counsel has indicated that defendant is being uncooperative.

Defendant now admits in his opposition brief that he is refusing to respond to discovery on the advice of his criminal attorney, who has told him not to answer any civil discovery while his criminal case is pending. Defendant claims that he is about to enter into a no contest plea in his criminal case on July 31, 2024, and that he "may" provide responses after he changes his plea. He claims that it would violate his Fifth Amendment right against self-incrimination to force him to respond to civil discovery while the criminal case is pending. Therefore, he asks that the court deny the motion for terminating sanctions.

However, the Fifth Amendment right against self-incrimination does not automatically allow a party to a civil action to refuse to answer all discovery requests. "[Defendant's] argument seems to be based on the premise that the Fifth Amendment privilege protects him from being subject to civil penalties. While accommodation in this regard is sometimes made to a defendant in a civil action, it is done from the standpoint of fairness, not from any constitutional right. The self-incrimination privilege is not applicable to matters that will subject a witness to civil liability. '"There may be cases where the requirement that a criminal defendant participate in a civil action, at peril of being denied some portion of his worldly goods, violates concepts of elementary fairness in view of the defendant's position in an inter-related criminal prosecution. On the other hand, the fact that a man is indicted cannot give him a blank check to block all civil litigation on the same or related underlying subject matter. Justice is meted out in both

civil and criminal litigation.... The court, in its sound discretion, must assess and balance the nature and substantiality of the injustices claimed on either side."' [¶] Whereas the Fifth Amendment privilege may be invoked by a civil litigant, it does not provide for protection against civil penalties. '[W]hile the privilege of a criminal defendant is absolute, in a civil case a witness or party may be required either to waive the privilege or accept the civil consequences of silence if he or she does exercise it.'" (*Blackburn v. Superior Court* (1993) 21 Cal.App.4th 414, 425–426, citations and footnotes omitted.)

The Fifth Amendment privilege against self-incrimination is subject to being waived where a party fails to timely respond to a discovery request, just as any other objection may be waived. (*Brown v. Superior Court* (1986) 180 Cal.App.3d 701, 709.)

In the present case, defendant failed to raise an objection based on the Fifth Amendment in response to the first set of discovery requests. In fact, he failed to provide any responses at all. Thus, the court found that he had waived his right to raise any objections when it granted the motion to compel him to respond. As a result, defendant has now waived his right to object to the discovery based on the Fifth Amendment, and he cannot rely on the Fifth Amendment to justify his refusal to respond.

Therefore, it appears that defendant Stine is willfully and unjustifiably refusing to respond to discovery despite having previously been ordered to respond. Also, the court has already imposed monetary sanctions against Stine, and he has failed to pay the sanctions. It does not appear that imposing further monetary sanctions would be likely to persuade him to cooperate with the discovery process.

Also, while defendant has now stated that he "may provide" responses after he enters a no contest plea in his criminal case on July 31, 2024, he has not stated unequivocally that he will provide responses after he enters his plea bargain. He states that he "may provide" responses, which also implies that he might not. He also does not state whether his responses will be full, complete and without objections, as the court has already ordered. Providing evasive or incomplete responses, or responses with objections, would not comply with the court's order. Defendant has now avoided responding to plaintiffs' requests for about six months, and there is no guarantee that he will not continue to avoid responding if he is given more time to answer. Therefore, it appears that defendant is willfully abusing the discovery process.

As a result, the court intends to grant the motion for terminating sanctions against defendant. The court will strike defendant's answer and enter his default. However, it will not grant default judgment against him at this time, as plaintiffs still need to submit an application for a default judgment and prove up their damages.

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: DTT on 7/29/2024.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***5561 Sultana, LLC v. Central Valley Box Drop, LLC, et al.***
Superior Court Case No. 22CECG01269

Hearing Date: July 31, 2024 (Dept. 501)

Motion: Default Prove-Up Hearing

Tentative Ruling:

To grant and sign the Proposed Judgment. No appearance necessary.

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: DTT on 7/29/2024.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Cardona v. County of Fresno, et al.***
Superior Court Case No. 23CECG01378

Hearing Date: July 31, 2024 (Dept. 501)

Motion: by Defendants Ashley Engen and Stephen Smith to Strike Portions of the Third Amended Complaint

Tentative Ruling:

To grant the motion to strike the prayer for punitive damages at Paragraph 14a(2) and the entire exemplary damages attachment. Leave to amend is denied.

Explanation:

Defendants Ashley Engen and Stephen Smith move to strike the prayer for punitive damages at Paragraph 14a (2) and the entire exemplary damages attachment from the Third Amended Complaint. Defendants argue the allegations of the Third Amended Complaint fail to allege "despicable conduct" necessary to support plaintiffs' prayer for punitive damages.

The claim for punitive damages against defendant Engen is premised on her allegedly driving her vehicle 21 miles per hour in excess of the speed limit through a heavily-travelled major thoroughfare creating an extremely high risk of causing serious harm, driving distracted, and ultimately running a stop sign. (TAC, "Exemplary Damages Attachment," EX-2.) Plaintiffs argue these allegations support finding defendant Engen acted both oppressively and maliciously, as evidenced by her operation of her vehicle in complete disregard for the safety of other drivers and their passengers. They additionally argue the allegations are sufficient to allege "willful misconduct" as her actions were unreasonable and done in disregard of the obvious risk of great harm, making it highly probable that harm will follow. (*Morgan v. Southern Pacific Transp. Co*. (1974) 37 Cal.App.3d 1006, 1011.)

As used in Civil Code section 3294, " '[m]alice' 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.) "'Oppression' means <u>despicable conduct</u> that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (*Id*. at § 3294, subd. (c)(2), emphasis added.)

There does not appear to be any dispute that he allegations of the complaint are sufficient to allege defendant Engen operated her vehicle in a manner constituting "willful misconduct" and demonstrating a conscious disregard for the safety of others. (*Morgan v. Southern Pacific Transportation Co*., *supra*, 37 Cal.App.3d at p. 1011.) Plaintiff also arguably sufficiently pleads that defendant acted in a "reckless" manner. (*Delaney*

v. Baker (1999) 20 Cal.4th 23, 31.) However, this is not the standard for punitive damages sought pursuant to Civil Code section 3294.

> As amended to include [despicable], 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. (Accord, BAJJ No. 14.72.1 (1992 Re-Rev.)); *Mock v. Michigan Miliers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 331.)

(*College Hospital, Inc., v. Superior Court of Orange County* (1994) 8 Cal.4th 704, 725.)

The addition of the criterial adjective "despicable" was a significant substantive limitation on the recovery of punitive damages (along with the elevation of the burden of proof), as it is a "powerful term." (*College Hospital, Inc. v. Superior Court*, *supra*, 8 Cal.4th at p. 725.) On the continuum of conduct, it is toward the extreme, eliciting adjectives such as vile or base and rousing the contempt or outrage of reasonable people. (*American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1050-1051.)

In *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1212, the court noted that an award of punitive damages in cases involving *unintentional* torts are rare, and there had not been any such California case involving a collision. "[O]rdinarily, routine negligent or even reckless disobedience of traffic laws would not justify an award of punitive damages." (*Tavlor v. Superior Court* (1979) 24 Cal.3d 890, 899-900.)

Plaintiffs have not pled facts to demonstrate defendant Engen's alleged violations of traffic laws rise to a level of despicable conduct to support the claim for punitive damages, despite the strong rhetoric of the Third Amended Complaint. Plaintiff's opposition does not argue how the conduct alleged rises above reckless disobedience of traffic laws and could be considered vile or base and rousing the contempt or outrage of reasonable people.

The court intends to grant the motion to strike the prayer for punitive damages at Paragraph 14a(2) and the entire exemplary damages attachment. Plaintiffs have not demonstrated they can allege facts that would support finding defendant Engen's actions constitute despicable conduct. As such, leave to amend is denied.

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

Tentative Ruling
Issued By: DTT on 7/29/2024.
(Judge's initials) (Date)