Tentative Rulings for August 27, 2025
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.

24CECG04878 ***Summer Mirza v. John Elghani*** **is continued to Wednesday, October 8, 2025, at 3:30 p.m. in Department 501.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(35)

Tentative Ruling

Re: ***Hedrington v. Woolman et al.***
Superior Court Case No. 25CECG01717/COMPLEX

Hearing Date: August 27, 2025 (Dept. 501)

Motion: by Plaintiff Orlonzo Hedrington for Summary Judgment

Tentative Ruling:

To deny without prejudice.

Explanation:

A party may move for summary judgment in an action or proceeding if it is contended that there is no defense to the action or proceeding. (Code Civ. Proc., § 473c, subd. (a)(1).) The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed. (*Ibid.*)

Here, plaintiff Orlonzo Hedrington ("plaintiff") filed the instant motion for summary judgment on June 3, 2025, against all of defendants Holt Lumber, Inc., Megan Dutra, William Woolman, and Barbara Anisel (collectively "defendants"). On the date of filing (June 3) there had been no general appearances by defendants. (Code Civ. Proc., § 410.50, subd. (a) [stating that the court has jurisdiction over a party only after summons is served, or where the party makes a general appearance].) The court reflects valid proofs of service of summons on only defendant William Woolman. Moreover, though plaintiff suggests otherwise, the only valid proof of service of summons on Woolman shows that service was effected June 4, 2025. 60 days have not yet elapsed since the date of effected service. Accordingly, the motion for summary judgment is premature, not only as to Woolman[1], but also as to defendants collectively who remain unserved or have not appeared in the action. The motion 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: DTT on 8/25/2025.
(Judge's initials) (Date)

[1] Even taking the service date suggested by plaintiff of May 14, 2025, the motion would be before 60 days had elapsed, and therefore premature.

(34)

Tentative Ruling

Re: ***Spencer v. DiFilippo***
Superior Court Case No. 25CECG00708

Hearing Date: August 27, 2025 (Dept. 501)

Motion: by Defendant Giovanna DiFilippo to Strike Complaint

Tentative Ruling:

To grant and strike the Complaint. (Code Civ. Proc., § 425.16.) Defendant is directed to submit to this court, within 5 days of service of the minute order, a proposed judgment consistent with the court's order

Explanation:

Plaintiff alleges causes of action for (1) defamation, (2) negligence, (3) intentional infliction of emotional distress, (4) violation of Education Code § 44031, (5) violation of Labor Code § 1050, (6) due process violations, (7) bias and discrimination, and (8) retaliation arising from an alleged false and defamatory report submitted to the Commission on Teacher Credentialing ("CTC") by defendant Giovanna DiFilippo, Assistant Superintendent for Human Resources and Labor Relations for Fresno Unified School District.

Defendant moves to strike the entire Complaint under Code of Civil Procedure section 425.16, contending that the Complaint is a strategic lawsuit against public participation ("SLAPP suit"), and thus it is subject to being stricken unless plaintiff can show by admissible evidence that he has a probability of prevailing on the merits of his claims.

A special motion to strike provides a procedural remedy to dismiss nonmeritorious litigation meant to chill the valid exercise of the constitutional rights to petition or engage in free speech. (Code Civ. Proc. §425.16(a); see *Martinez v. Metabolife Intern., Inc*. (2003) 113 Cal.App.4th 181, 186.)

The court engages in a two-step process in determining whether an action is subject to the anti-SLAPP statute: first, the court decides whether defendant has made a threshold showing that the challenged cause of action is one arising from protected activity, by demonstrating that the facts underlying plaintiff's complaint fit one of the categories set forth in section 425.16, subdivision (e); if the court finds that such a showing has been made, it then determines whether plaintiff has demonstrated a probability of prevailing on the claim. (Code Civ. Proc. §425.16; *Cross v. Facebook, Inc*. (2017) 14 Cal.App.5th 190, 198.) The anti-SLAPP statute is to be broadly construed. (Code Civ. Proc. §425.16(e); *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1120.)

In the case at bench, plaintiff's action arises out of defendant's protected activity of submitting a report to the Commission on Teacher Credentialing on behalf of FUSD. Defendant asserts the submission of the report is a written statement made before and in

connection with an official proceeding authorized by law. (Code Civ. Proc., § 425.16, subd. (e)(1)-(2).) The court finds defendant has met her burden with respect to the actions within the Complaint being considered a protected activity.

As defendant has met her burden, the burden shifts to plaintiff, who must show: (1) his claims are legally sufficient; and (2) the claims are supported by competent, admissible evidence. (See *DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 568.) Defendant contends that plaintiff cannot demonstrate minimal merit to his causes of action as the report itself is protected by absolute privilege as a communication initiating an official proceeding authorized by law. (*Morrow v. Los Angeles Unified School Dist.* (2007) 149 Cal.App.4th 1424, 1443 ["Because Romer's statements were protected by the executive officer privilege of Civil Code section 47, subdivision (a), we find Morrow failed to discharge his burden of demonstrating a probability of prevailing on his defamation claim."])

Civil Code section 47, subdivision (b) provides: "A privileged publication or broadcast is one made … (b) [i]n any … (3) … other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law [.]" This privilege is absolute. (*Cruey v. Gannett Co.* (1998) 64 Cal.App.4th 356, 367.) "Any doubt about whether the privilege applies is resolved in favor of applying it." (*Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 913.) Where the privilege applies, it bars any tort action, except malicious prosecution. (*Rubin v. Green* (1993) 4 Cal.4th 1187, 1193-1194.)

The report to the CTC squarely falls within the privilege as a statement made in the initiation of a proceeding with the CTC authorized by law. Given that the gravamen of each of plaintiff's causes of action against defendant was her submission of the report to the CTC, and plaintiff cannot rely upon the report as privileged communication to support his claims, plaintiff cannot present evidence necessary to establish his claims.

Plaintiff has not filed an opposition to rebut defendant's arguments or to present evidence to support his claims, and, thus, failed to meet his burden.

Therefore, defendant's special motion to strike plaintiff's Complaint is granted.

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 8/25/2025.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Proe v. Xtreme Manufacturing, LLC***
Case No. 24CECG00068

Hearing Date: August 27, 2025 (Dept. 501)

Motion: by Plaintiff for Preliminary Approval of Class Action Settlement

Tentative Ruling:

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

Explanation:

1. Class Certification

First, the court must determine whether the proposed class meets the requirements for certification before it can grant preliminary approval of the proposed settlement. An agreement of the parties is not sufficient to establish a class for settlement purposes. There must be an independent assessment by a neutral court of evidence showing that a class action is proper. (*Luckey v. Superior Court* (2014) 228 Cal. App. 4th 81 (rev. denied); see also Newberg, *Newberg on Class Actions* (T.R. Westlaw, 2017) Section 7:3: "The parties' representation of an uncontested motion for class certification does not relieve the Court of the duty of determining whether certification is appropriate.")

"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.)

a. 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 appears to be 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 336 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.

b. 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, it does appear that Mr. Proe's claims are typical of the rest of the class and that he worked for defendant as a non-exempt employee during the class period, and he seeks the same relief as the other class members. There is no evidence that he has any conflicts between his interests and the interests of the other class members that would make him unsuitable to represent their interests. Therefore, plaintiffs have shown that Mr. Proe has claims typical of the other class members.

Plaintiff's counsel has submitted a declaration that establishes that he and the other attorneys in his firm are experienced and qualified to represent the class. Counsel's declaration discusses his background, education, and experience in class action litigation, as well as the backgrounds of the other attorneys. Therefore, the declaration provides sufficient evidence to support counsel's assertion that he and the rest of his firm are experienced and qualified to represent plaintiff and the other class members here.

c. 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, it does appear that class certification is the superior means of resolving the plaintiff's claims.

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

2. Settlement

a. Legal Standards

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement . . . The courts are supposed to be the guardians of the class." (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal. App. 4th 116, 129.)

"[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished . . . [therefore] the factual record must be before the … court must be sufficiently developed." (*Id*. at p. 130.) The court must be leery of a situation where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Id*. at p. 129.)

b. 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 estimates that defendant faced a maximum potential liability of $148,710.32 for meal period violations, $883,063.06 for rest break violations, $1,344,000 for inaccurate wage statements, and waiting time penalties of $197,986.56. Thus, defendant's total maximum exposure, excluding PAGA penalties, was $1,498,559.94. The gross settlement is $193,580, which is approximately 12.9% of the maximum.

In addition, plaintiff acknowledges that the maximum potential PAGA penalties could be substantial. However, the PAGA claim also carried substantial risks. The parties agreed that it was reasonable to allocate $8,000 to the PAGA claims. This is within the range that courts regularly approve in wage and hour class/PAGA settlements. 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 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 appears to have a strong case and defendant's liability is potentially much higher than $193,580, there is always a chance that plaintiff would not prevail or that the court would substantially reduce any award he might obtain. As a result, the court intends to find that the settlement is fair, adequate and reasonable under the circumstances.

c. 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 representatives. As a result, the court intends to find that the proposed class notice is adequate and it will grant preliminary approval of the class notice.

d. Attorney's Fees and Costs

Plaintiff's counsel seeks attorney's fees of one-third of the gross settlement, or $64,526.67. Plaintiff's counsel has provided a declaration that describes his education, skill, and experience, as well as the background, education, and experience of the other attorneys in his firm. Counsel also provides information about his hourly rates and the rates of the other attorneys, which range from $675 per hour to $1,000 per hour depending on the experience of the attorney. (Naessing decl., ¶ 30.)

However, counsel has not provided any specific information about the number of hours worked or the tasks performed on the case. Thus, it is impossible for the court to make a determination of whether the requested fees are reasonable without more information. Therefore, the court will not grant preliminary approval of the requested fees at this time, and instead orders plaintiff's counsel to provide additional information about their lodestar fees. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 506 [trial court did not abuse its discretion in using percentage of common fund to calculate fees, and then also using lodestar method to double check reasonableness of fees].)

In addition, counsel seeks an award of up to $21,000 in costs. However, counsel has not provided any evidence about the costs actually incurred in the case, other than stating that costs incurred so far in the case are $14,000. (Naessing decl., ¶ 32.) Therefore, the court does not have enough information to determine that the requested amount of costs is reasonable here. As a result, the court will not approve the request for an award of up to $21,000 in costs.

e. Payment to Class Representative

Plaintiff seeks preliminary approval of a $10,000 service award to the named plaintiff/class representative, Mr. Proe. Mr. Proe has provided a declaration that supports the request for a service award, as he 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.

f. Payment to Class Administrator

Apex Class Action LLC will receive up to $8,000 to administer the settlement. However, there is no declaration from a representative of Apex to support the requested administration fee, nor has plaintiff presented any other evidence to show how much Apex will charge to administer the settlement. As a result, the court does not have enough information to grant preliminary approval of the payment to the administrator at this time.

g. PAGA Settlement

Plaintiff proposes to allocate $8,000 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 June 5, 2025. (Naessig decl., ¶ 36.) 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 he believes that paying $8,000 to settle the PAGA claim is fair, reasonable and adequate given 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: DTT on 8/25/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Aiden Kelly-Johnson v. City of Fresno, a public entity***
Superior Court Case No. 24CECG03458

Hearing Date: August 27, 2025 (Dept. 501)

Motion: Defendant State of California's Demurrer

Tentative Ruling:

To sustain the demurrer to the first, second and fourth causes of action, with leave to amend. Plaintiff is granted 10 days' leave to file a first amended complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

Explanation:

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 test is whether a plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of a plaintiff's possible difficulty or inability in proving the allegations of the complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc*. (1974) 12 Cal.3d 915, 918.)

Here, defendant State of California, by and through the Department of Forestry and Fire Protection, demurs as to each cause of action alleged against it. In plaintiff's Complaint, he alleges defendant had a duty to respond to a fire and make the location safe. (Complaint, ¶ 19.) Plaintiff further alleges that defendant was negligent in its response to the fire by allowing downed power lines to exist at the location. (Id. at ¶ 20.) Defendant argues that it has immunity pursuant to Government Code section 850.4.

Government Code section 850.4 articulates that a public entity and/or public employee acting in the scope of employment has immunity for injuries resulting from condition of fire protection or firefighting equipment or facilities. An exception exists pursuant to Vehicle Code section 17000. (Gov. Code, § 850.4; *Varshock v. Department of Forestry & Fire Protection* (2011) 194 Cal.App.4th 635, 642.) Such immunity is to be interpreted broadly. (*Varshock v. Department of Forestry & Fire Protection, supra*, 194 Cal.App.4th at p. 642.) The Court in *Varshock* concluded that "the Legislature intended immunity to apply to any claim based on death, personal injury, or property damage that results from an act or omission of a public entity or employee while responding to or combating an actual fire." (*Id*. at p. 643.)

Plaintiff cites *Lewis v. Mendocino Fire Protection District* (1983) 142 Cal.App.3d 345, 347 for the position that post-fire hazards are not meant to be included in the immunity. However, *Lewis* has been superseded by Health and Safety Code section 1799.107 which provides a qualified immunity for emergency rescue personnel providing emergency services. (*Ma v. City and County of San Francisco* (2002) 95 Cal.App.4th 488, 513.) Additionally, *Lewis* involved a situation where firefighters were responding to an emergency which did not involve a fire. (*Lewis v. Mendocino Fire Protection District, supra*, 142 Cal.App.3d at p. 347.) As such, plaintiff has not cited to relevant authority for a position that immunity does not apply here where it is alleged that the conduct was related to fighting a fire. (Complaint, ¶¶ 20, 30.)

As currently alleged, this immunity would apply to each cause of action asserted against the State of California. Each of the causes of action alleged against defendant State of California are predicated on the conduct of defendant's employees related to fighting a fire. (Complaint, ¶¶ 19-21, 30, 49.) Leave to amend is granted only insofar as plaintiff can allege a cause of action against the State of California which does not arise from its employees' conduct in fighting a fire, or other conduct protected by an immunity.

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 (Judge's initials) on 8/25/2025 (Date).

(37)

Tentative Ruling

Re: ***Michael Turner v. Wyndham Hotels & Resorts, Inc.***
Superior Court Case No. 23CECG00058

Hearing Date: August 27, 2025 (Dept. 501)

Motion: Applications of Chase A. Youngman, Logan M. Owens, and Robert L. Shannon, Jr. to Appear *Pro Hac Vice* on Behalf of Defendants Days Inn Worldwide, Inc. and Ghanshyam Enterprise LLC

Tentative Ruling:

To continue the matters to Wednesday, September 24, 2025, at 3:30 p.m. in Department 501, to allow the applicants to demonstrate proof of service on the State Bar with the application and all supporting moving papers. The proof of service must be submitted no later than September 10, 2025.

Explanation:

"A person desiring to appear as counsel pro hac vice in a superior court must file with the court a verified application together with proof of service by mail in accordance with Code of Civil Procedure section 1013a of a copy of the application and of the notice of hearing of the application on all parties who have appeared in the cause and on the State Bar of California at its San Francisco office. The notice of hearing must be given at the time prescribed in Code of Civil Procedure section 1005 unless the court has prescribed a shorter period." (Cal. Rules of Court, rule 9.40(c)(1).)

While the application indicates that a copy of the application was sent to the State Bar of California, this is not indicated in the proof of service. Rather than deny the application for faulty service, the matter will be continued to allow for additional notice. Notice must be made in accordance with Code of Civil Procedure section 1005. The applicants are directed to file a proof of service reflecting that the State Bar of California was served with notice of these applications and a copy of the application papers. If the moving party has already served the State Bar with a copy of the application and all supporting papers, it merely needs to provide proof of this (via a proof of service), rather than serve the Bar again.

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 8/25/2025.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Michael Reinke, individually and successor-in-interest to Rose Marie Reinke v. Leticia Rodriguez***
Superior Court Case No. 25CECG01207

Hearing Date: August 27, 2025 (Dept. 501)

Motion: Demurrer and Motion to Strike by Defendant Saint Agnes Medical Center

Tentative Ruling:

To sustain the demurrers to the first and fourth causes of action in the Complaint for failure to state facts sufficient to constitute a cause of action, with leave to amend. (Code Civ. Proc. § 430.10, subd. (e).) To overrule the special demurs for uncertainty.

To grant the motion to strike the prayers for damages associated with the first and fourth causes of action, with leave to amend. (Code Civ. Proc. §§ 435, 436.)

Plaintiff shall serve and file a first amended complaint within 10 days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

Defendant Saint Agnes Medical Center ("defendant") generally demurs to plaintiff Michael Reinke's ("plaintiff") first and fourth causes of action for elder abuse (by neglect and abandonment) and wrongful death (elder abuse by neglect), on the grounds that the Complaint fails to state facts sufficient to constitute these causes of action and that the Complaint is uncertain. (Code. Civ. Proc. § 430.10, subds. (e) and (f).)

Legal Standards for Demurrer

In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of Univ. of Cal.* (2008) 44 Cal.4th 876, 883.) On demurrer, the court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.) The demurrer does not admit mere contentions, deductions or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) On general demurrer, the court determines if the essential facts of any valid cause of action have been stated. (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572; Code Civ. Proc. § 430.10 subd. (e).)

On a demurrer, a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148

Cal.App.4th 97, 113-114.) It is error to sustain a demurrer where plaintiff "has stated a cause of action under any possible legal theory. In assessing the sufficiency of a demurrer, all material facts pleaded in the complaint and those which arise by reasonable implication are deemed true." (*Bush v. California Conservation Corps* (1982) 136 Cal.App.3d 194, 200.)

When the complaint is defective, great liberality should be exercised in permitting a plaintiff to amend the complaint if there is a reasonable possibility that the defect can be cured by amendment. (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549.) Leave to amend should be granted if there is a reasonable possibility that plaintiff could state a cause of action. (*Blank v. Kirwan*, supra, 39 Cal.3d at 318.)

Plaintiff Has Not Sufficiently Pled Elder Abuse

In order to state a claim for elder abuse, plaintiff must allege that defendant is guilty of more than negligence. He must show that defendants acted recklessly, oppressively, fraudulently, or maliciously. (Welfare & Institutions Code § 15657; *Delaney v. Baker* (1999) 20 Cal.4th 23, 31.) "'Recklessness' refers to a subjective state of culpability greater than simple negligence, which has been described as a 'deliberate disregard' of the 'high degree of probability' that an injury will occur. [Citations omitted.] Recklessness, unlike negligence, involves more than 'inadvertence, incompetence, unskillfulness, or a failure to take precautions' but rather rises to the level of a 'conscious choice of a course of action . . . with knowledge of the serious danger to others involved in it.' [Citation.]" (*Id*. at pp. 31-32.)

"Section 15657.2 can therefore be read as making clear that the acts proscribed by section 15657 do not include acts of simple professional negligence, but refer to forms of abuse or neglect performed with some state of culpability greater than mere negligence." (*Id*. at p. 32.)

"As used in the Act, neglect refers not to the substandard performance of medical services but, rather, to the 'failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing, to carry out their custodial obligations.' [Citation omitted.] Thus, the statutory definition of 'neglect' speaks not of the undertaking of medical services, but of the failure to provide medical care. [Citation.]" (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 783.)

"The plaintiff must prove 'by clear and convincing evidence' that 'the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of' the neglect. Oppression, fraud and malice 'involve "intentional," "willful," or "conscious" wrongdoing of a "despicable" or "injurious" nature.' Recklessness involves ' "deliberate disregard" of the "high degree of probability" that an injury will occur' and 'rises to the level of a 'conscious choice of a course of action ... with knowledge of the serious danger to others involved in it." ' Thus, the enhanced remedies are available only for ' "acts of egregious abuse" against elder and dependent adults.' In short, '[i]n order to obtain the Act's heightened remedies, a plaintiff must allege conduct essentially equivalent to conduct that would support recovery of punitive damages.'" (*Carter v. Prime*

Healthcare Paradise Valley LLC (2011) 198 Cal.App.4th 396, 405, internal citations omitted.)

"The plaintiff must allege (and ultimately prove by clear and convincing evidence) facts establishing that the defendant: (1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care; (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs; and (3) denied or withheld goods or services necessary to meet the elder or dependent adult's basic needs, either with knowledge that injury was substantially certain to befall the elder or dependent adult (if the plaintiff alleges oppression, fraud or malice) or with conscious disregard of the high probability of such injury (if the plaintiff alleges recklessness). The plaintiff must also allege (and ultimately prove by clear and convincing evidence) that the neglect caused the elder or dependent adult to suffer physical harm, pain or mental suffering. Finally, the facts constituting the neglect and establishing the causal link between the neglect and the injury 'must be pleaded with particularity,' in accordance with the pleading rules governing statutory claims." (*Id.* at pp. 406–407, internal citations omitted.)

First, the parties disagree whether Saint Agnes had a "custodial or caretaking relationship" with the decedent which would allow these Elder Abuse claims to be brought against it.

"The [Elder Abuse] Act does not apply unless the defendant health care provider had a substantial caretaking or custodial relationship, involving ongoing responsibility for one or more basic needs, with the elder patient. It is the nature of the elder or dependent adult's relationship with the defendant—not the defendant's professional standing—that makes the defendant potentially liable for neglect." (*Kruthanooch v. Glendale Adventist Medical Center* (2022) 83 Cal.App.5th 1109, 1124, citing *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 152.)

While plaintiff is correct that Saint Agnes is a "general acute care hospital" that falls into the statutory definition of "care custodians" (Welf. & Inst. Code, § 15610.17 subd. (a) and Health and Safety Code §1250 subd. (a)), a hospital does not necessarily assume "a robust caretaking or custodial relationship and ongoing responsibility for the basic needs of every person admitted." (*Kruthanooch, supra,* 83 Cal.App.5th at p. 1131.)

"What plaintiffs erroneously assume is that the Act's definition of care custodian in section 15610.17 will, as a matter of law, always satisfy the particular caretaking or custodial relationship required to show neglect […] While it may be the case that many of the " 'care custodian[s]' " defined under section 15610.17 could have "the care or custody of" an elder or a dependent adult as required under section 15610.57, plainly the statute requires a separate analysis to determine whether such a relationship exists." (*Winn, supra*, 63 Cal.4th at p. 164.)

Here, the Complaint[2] alleges that the decedent was admitted to Saint Agnes on April 1, 2024. (Compl., ¶ 34.) On April 3, 2024, Saint Agnes discharged decedent to Nina's House. (*Id*., ¶ 43.) The Complaint does not allege any of defendant's actions during the

[2] Defendant's Request for Judicial Notice is granted.

decedent's stay at the hospital, nor does the Complaint allege that Saint Agnes failed to provide the decedent with medical care and treatment after she was admitted into its care. As such, the Complaint has not alleged a substantial caretaking or custodial relationship between defendant Saint Agnes and the decedent whereby neglect can be found under this Act.

Second, plaintiff must allege that defendant knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs. Here, the essence of plaintiff's argument is that Saint Agnes knowingly and inappropriately discharged the decedent to an unlicensed board and care facility that could not meet the decedent's care needs, constituting abandonment and neglect. The elder's "condition" relied on by plaintiff is the decedent's dementia. He argues that because the hospital knew of the decedent's dementia, there was a heightened importance in ensuring she was discharged to a care facility that could specially care for persons with dementia. While the hospital may have had knowledge of the decedent's dementia, defendant argues that the decedent had an appointed decision maker (i.e. her son and plaintiff) and the transfer of the decedent from the hospital to Nina's Home was "location approved by the family." (Opp., 7:1-2; 2:9-10.)

Plaintiff alleges in his Complaint that Saint Agnes had "advance knowledge that an unsafe discharge would certainly lead to injury and death for a woman of such advanced age and frail condition," (Compl., ¶ 43) but this is conclusory and not supported by facts in the Complaint. While for the purposes of demurrer the court assumes the facts alleged to be true, the demurrer does not admit mere contentions, deductions or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) It is conclusory to state that defendant acted "knowingly" without alleging facts demonstrating this knowledge.

Third, none of the allegations in the Complaint allege the type of particular facts needed to support a statutory elder abuse or neglect claim. Plaintiff claims "malicious, oppressive, intentional, and reckless conduct of Defendants," (Compl., ¶ 106) and points to defendant Saint Agnes's failures in management, training, and procedure as satisfying the elements of despicable reckless neglect (conscious disregard), malice and oppression. (*Id*., ¶ 38.) Plaintiff alleges that defendant was reckless in its discharge of the decedent, but not due to her current medical state but rather in regard to where she was discharged. Plaintiff alleges that decedent was old and frail (Compl., ¶ 43) but not that her medical conditions were not treated during her hospital stay. While plaintiff's allegations may support a claim for professional or general negligence, they do not show the type of reckless, malicious, fraudulent, or oppressive conduct needed to state a claim for elder abuse or neglect. (*Carter*, *supra*, at pp. 405-407.) The facts that have been alleged do not show the type of egregious abuse or neglect that would show elder abuse. Causes of action based on a healthcare provider's alleged professional negligence are specifically excluded from the Elder Abuse Act. (Welf. & Inst. Code § 15657.2.)

Therefore, the court intends to sustain the demurrers to the first and fourth causes of action for failure to state facts sufficient to constitute the causes of action. However, the court will grant leave to amend, as it is possible that plaintiff may be able to allege more facts showing abuse or neglect if given leave to do so.

The Special Demurs for Uncertainty Are Overruled

A party may object by demurrer to any pleading on the ground that it is uncertain. (Code Civ. Proc., § 430.10, subd. (f).) As used in this subdivision, 'uncertain' includes ambiguous and unintelligible." Demurrers for uncertainty are disfavored. (*Khoury v. Maly's of California, Inc*. (1993) 14 Cal.App.4th 612, 616.) A demurrer for uncertainty may be sustained when the complaint is drafted in a manner that is so vague or uncertain that the defendant cannot reasonably respond, e.g., the defendant cannot determine what issues must be admitted or denied, or what causes of action are directed against the defendant. (*Ibid*.) Demurrers for uncertainty are appropriately overruled where "ambiguities can reasonably be clarified under modern rules of discovery." (*Ibid*.)

Defendant demurred on the basis of uncertainty, but then did not argue uncertainty in support of its demurrers. Defendant had every opportunity to argue uncertainty in its demurrer and failed to do so. Therefore, the special demurrers for uncertainty as to the first and fourth causes of action are overruled.

Motion to Strike

The court will grant the motion to strike the prayers for damages corresponding with the first and fourth causes of action, with 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: DTT on 8/25/2025.
(Judge's initials) (Date)