Tentative Rulings for August 9, 2023
Department 503

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

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

**** THIS COURT IS PRESENTLY IN JURY TRIAL. IF YOU ARE REQUESTING ARGUMENT ON ONE OF THE BELOW TENTATIVES, YOU MUST REQUEST IT TIMELY PURSUANT TO THE CRC AND LOCAL RULES AS IF THE HEARING WAS BEING HELD ON THE ABOVE DATE; HOWEVER, ALL HEARINGS REQUESTED TODAY WILL BE HELD THURSDAY AUGUST 10th AT 3:30 P.M.**

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

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Tentative Rulings for Department 503

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Tentative Ruling

Re: ***Sharon Richardson v. Trail's End Mobile Home Park***
Superior Court Case No. 22CECG00280

Hearing Date: August 9, 2023 (Dept. 503)

Motion: (1) Defendant California Department of Housing and Community Development's demurrer to the complaint

(2) Defendant County of Fresno's demurrer to the complaint

Tentative Ruling:

To sustain both demurrers. (Code Civ. Proc., § 430.10, subd. (e).) Any amended pleading shall be filed within 20 days of the clerk's service of this order. New or different allegations in the second amended complaint are to be set in **boldface** type.

Explanation:

Mandatory Duty

"A plaintiff seeking to hold a public entity liable under Government Code section 815.6 must specifically identify the statute or regulation alleged to create a mandatory duty." (*In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 689.) In essence, "[t]o construe a statute as imposing a mandatory duty on a public entity, 'the mandatory nature of the duty must be phrased in explicit and forceful language.'" (*Ibid*.)

Accordingly, "*[a] 'general statement of public policy' cannot serve as the basis for a mandatory duty under section 815.6.*" (*Tuthill v. City of San Buenaventura* (2014) 223 Cal.App.4th 1081, 1090; see also *Peter W. v. San Francisco Unified Sch. Dist.* (1976) 60 Cal.App.3d 814, 819 ["to state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity."].)

In other words, general provisions do not create a mandatory duty under Government Code section 815.6 (*Groundwater Cases, supra,* 154 Cal.App.4th at p. 687), and the predicate enactment's use of "'shall' and like words will not alone support liability" if the predicate enactment confers the exercise of discretion on government officials. (*Sutherland v. City of Fort Bragg* (2000) 86 Cal.App.4th 13, 20.)

Plaintiffs' First Amended Complaint alleges that the subject mandatory duty does not arise from a specific statute but rather a "general" requirement of enforcement spread across Health and Safety Code sections 18400.1(a), 18400.1(b), 18400.3 and 18402 (FAC, at p. 2:21-24), culminating with the Legislature's finding that the "residents of mobilehome parks are entitled to live in conditions which assure their health, safety, general welfare, and a decent living environment, and which protect the investment of their manufactured homes and mobilehomes."

The alleged sections, however, do not provide any explicit or forceful language requiring notification or inquiry to other agencies, or when to do so. For section 815.6 to apply, "the enactment at issue be *obligatory*, rather than merely discretionary or permissive, in its directions to the public entity; it must *require*, rather than merely authorize or permit, that a particular action be taken or not taken." (*Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 498; see also *Tilton v. Reclamation Dist. No. 800* (2006) 142 Cal.App.4th 848, 862-863 [statutes and regulations requiring levee projects be *designed and constructed* in accordance with a federal manual did not create a mandatory duty in levee *maintenance*].) In essence, "the imposition of a 'mandatory duty' … 'must *require* ... that a particular action be taken or not taken.'" (*Id*. at p. 863, citation omitted.) The statutes identified in the first amended complaint do not include specific commands. (Cf. *Haggis, supra,* 22 Cal.4th at p. 502; *Guzman v. County of Monterey* (2009) 178 Cal.App.4th 983, 992 [the plaintiffs identified regulations which required the defendant county to review reports submitted by the park's owner, all of which showed contamination, ***report*** those the violations to the California Department of Health Services. (*Id*. at p. 992.)

Here, as mentioned in the rulings on the previous demurrers, unlike the specific reporting requirements in *Guzman, supra,* 178 Cal.App.4th at p. 992, Health and Safety Code section 18402 does not impose a time period in which the district attorney - or the other enumerated entities - are required to act. Similarly, subdivisions (a) and (b) of section 18400.1 refer only to mobilehome park inspections and section 18400.3 governs the convening of a mobilehome park maintenance task force. None of these statutes specifically impose a specific mandatory duty by one agency to notify another agency for nuisance abatement. Accordingly, the first amended complaint's conclusion that "Reading the various statutes of Defendant [California Department of Housing and Community ("HCD")]'s mandatory duties together creates the mandatory duty for Defendant HCD to give notice to Defendant [County of Fresno ("County")] when a mobile home park fails to abate a nuisance after five days, or longer if allowed by HCD, pursuant to Health & Safety Code Section 18402, so that County can fulfill its mandatory duty to bring an abatement action in the superior court against the mobile home park" (FAC, ¶ 17(d)) is unsupported by the asserted code sections.

Plaintiffs argue that the legislature does not need to give the agencies "every minutia on how to bring the action in order to impose a mandatory duty" and equates time restrictions as "silly details" like font and page size. (Opp. to County Dem. at p. 8:6-11.) Plaintiffs' proposition, however, appears inconsistent with the reasoning of *Guzman*, *supra*, 178 Cal.App.4th at p. 992 where reporting and reviewing formed the predicate events. (*Id*. at p. 994.)

Furthermore, *Thompson v. City of Lake Elsinore* (1993) 18 Cal.App.4th 49 and *Johnson v. Mead* (1987) 191 Cal.App.3d 156 are distinguishable because they involved mandatory duties within singular agencies – not, as here, where plaintiffs are alleging a mandatory duty involving interagency communication.

The Zone of Protected Interests, Causation, and Immunity

As discussed above, as currently plead, plaintiffs' complaint does not sufficiently assert a statute imposing a mandatory duty on the HCD and County to undertake a

specific action within a specific time period. Consequently, it is unclear from the current allegations whether plaintiffs' interests are within the zone of protected interests contemplated by the legislature or whether HCD and County's action or inaction were the cause of plaintiffs' injuries and whether governmental immunities apply.

Therefore, the demurrers by HCD and County are sustained.

Leave to Amend

It is possible that a mandatory duty might exist even if the plain language of statute does not "per se impose a duty on a public entity." (*Walt Rankin & Associates, Inc. v. City of Murrieta* (2000) 84 Cal.App.4th 605, 621.) Considering the liberality given to amendment, even after demurrer (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747), plaintiffs are allowed another opportunity 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: jyh on 8/7/23.
(Judge's initials) (Date)

(38)

Tentative Ruling

Re: ***Gonzalez v. The Estate of Patrick J. Boyle***
Superior Court Case No. 22CECG03542

Hearing Date: August 9, 2023 (Dept. 503)

Motions (x2): Petitions to Compromise Claim of a Minor

Tentative Ruling:

To deny the petitions without prejudice. Petitioner to file amended petitions, with appropriate supporting papers and proposed orders.

Explanation:

Proposed Settlement

First, while the petitions reflect that Defendant's policy limits have been tendered, they fail to explain why the settlement is limited to the policy. There is nothing addressing whether Defendant has other assets that may be a source of recovery for claimants' catastrophic loss of their father. Petitioner's counsel states that a request was made to Defendant's insurer, Geico, for "confirmation whether [Defendant] had a trust or estate." (Martinez decl., ¶ 8.) Notably, however, counsel does not provide any statement regarding Geico's response to the inquiry. Further, it is not clear that Geico would be in a position to provide such information, and counsel does not explain if any other modes of inquiry were pursued. Further justification is required before the Court can approve the compromise.

Attorney Fees

The declaration provided with both petitions does not address the factors set forth in California Rules of Court, rule 7.955(b). (See Cal. Rules of Court, rule 7.955(c).) As the fee agreement was not approved in advance, the court must use a reasonable fee standard when approving and allowing the amount of attorney fees that are payable from the minors' settlement monies. (Cal. Rules of Court, rule 7.955(a)(1).) "In any case in which a trial court approves a settlement involving the payment of funds to a minor, the court must make an order for the payment of reasonable attorney fees." (*Schulz v. Jeppesen Sanderson, Inc*. (2018) 27 Cal.App.5th 1167, 1174.) Here, the information provided is inadequate for the court to make such a determination.

Proposed Orders

The proposed Order Approving Compromise filed with both petitions fails to include several required items. First, the proposed gross amount or value of the settlement in favor of the claimant must be stated at item 6, which has been left blank. Second, the total amount of attorney's fees must be stated at item 8(a)(1), which has

been left blank. Last, the name, branch, and address of the bank where the claimant's settlement funds will be deposited into a blocked account must be specified at item 9(a), which has been left blank.

Signatures

Finally, the minors' guardian ad litem has signed each petition at item 21, which is for the claimant to sign and is "[r]equired if the claimant is an adult with a disability who has the capacity ... to consent to the order or judgment ..." which is not the case here.

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: jyh on 8/8/23.
(Judge's initials) (Date)