Tentative Rulings for September 17, 2025
Department 502

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 502

Begin at the next page

(47) **Tentative Ruling**

Re: ***Matthew Lieb vs Elizabeth Flores***
Superior Court Case No. 24CECG02305

Hearing Date: September 17, 2025 (Dept. 502)

Motion: By Defendant to Compel Plaintiff to Sign Medical Authorization

Tentative Ruling:

To grant. Plaintiff shall sign a medical authorization agreeing to the release of his medical from the Veterans Affairs Medical Center located at 2615 E. Clinton Ave, Fresno, California, 93703.

Explanation:

Defendant, Elizabeth Flores, moves the Court for an order to compel the plaintiff to sign authorizations to allow the defense to obtain relevant records from Veterans Affairs Medical Center.

California Code of Civil Procedure section 2017.010 provides:

> "Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or to any other party to the action."

Where a medical provider cannot or will not provide records of a plaintiff's relevant medical treatment without signed authorization, and the plaintiff refuses to provide such authorization, a motion to compel is warranted. (*Miranda v. 21st Century Ins. Co.* (2004) 117 Cal.App.4th 913, 918-919.)

Plaintiff sustained injuries from a motor vehicle accident that occurred on June 17, 2022. One of plaintiff's medical providers is Veteran Affairs Medical Center. Defendant has attempted without success to obtain the signed authorizations in order to obtain relevant medical records from Veteran Affairs Medical Center. As such, the Court grants this 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: KCK on 09/15/25 .
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Wynn v. Baysal***
Case No. 24CECG05275

Hearing Date: September 17, 2025 (Dept. 502)

Motion: Defendant's Motion to Dismiss for Failure to Amend Complaint After Demurrer Was Sustained with Leave to Amend

Tentative Ruling:

To grant defendant's motion to dismiss the entire action for failure to file an amended complaint within 30 days as ordered by the court after it sustained the demurrer. Defendant shall submit a proposed judgment consistent with this order within 10 days of service of this order.

Explanation:

Under Code of Civil Procedure section 581, subdivision (f)(2), "The court may dismiss the complaint as to that defendant when: … after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal."

Here, the court sustained defendant's demurrer to the entire complaint for uncertainty. The court granted plaintiff 30 days' leave to amend. However, plaintiff has not filed an amended complaint within 30 days as he was ordered to do. Nor has plaintiff filed an opposition and explained his delay in amending the complaint. Therefore, the court intends to grant the motion to dismiss the action, with 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: KCK on 09/15/25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Irene Luque v. General Motors LLC***
Superior Court Case No. 23CECG02555

Hearing Date: September 17, 2025 (Dept. 502)

Motion: Defendant General Motors, LLC's Motion for Summary Judgment, or in the Alternative Summary Adjudication

Tentative Ruling:

To grant Defendant General Motors LLC's motion for summary judgment as to the entire complaint. (Code Civ. Proc. § 437c.) Defendant shall submit a judgment consistent with the terms of this ruling within 10 days of service of the order.

Explanation:

Defendant General Motors, LLC ("GM") moves for summary judgment as to plaintiff's entire complaint, or in the alternative summary adjudication of the plaintiff's three causes of action under the Song-Beverly Act. GM contends that, under the recent California Supreme Court decision of *Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189, a purchaser of a used motor vehicle with some portion of the manufacturer's warranty still in effect cannot sue the manufacturer for violation the express warranties under the Song-Beverly Act. (*Id*. at pp. 201-206.) Nor can plaintiff sue the manufacturer for violation of implied warranty, since only distributors and retail sellers are liable for breach of implied warranty. (*Nunez v. FCA US, LLC* (2021) 61 Cal.App.5th 385, 399.) Here, GM points out that plaintiff has admitted that she bought her vehicle used from Tranquility Chevrolet with about 23,000 miles on the odometer, so GM concludes that it cannot be held liable for breach of express or implied warranties under the SBA. Therefore, GM requests that the court grant summary judgment or adjudication in its favor.

In her opposition, plaintiff concedes that she purchased the vehicle used from Tranquility Chevrolet with 23,000 miles on the odometer. However, she contends that GM can still be held liable if it was involved in the sale of the vehicle to her and it was acting as a distributor of used vehicles at the time of the sale. (*Rodriguez, supra*, at p. 202; *Nunez, supra*, at p. 399.) Plaintiff claims that GM does in fact sell used vehicles and that it derives some of its profits from such used car sales. Therefore, plaintiff concludes that GM has failed to show that it cannot be held liable here, and summary judgment or adjudication should be denied. In the alternative, plaintiff requests a continuance to allow plaintiff to conduct more discovery into whether GM was acting as a distributor when the vehicle was sold to plaintiff, including the deposition of GM's person most knowledgeable.

In *Rodriguez*, the California Supreme Court held that the Song-Beverly Act's provisions regarding the sale of "new motor vehicles" do not impose liability on manufacturers for breach of express warranty where the vehicle was sold used with only a portion of the manufacturer's warranty intact, unless the manufacturer issues a new warranty with the sale or plays a substantial role in the sale of the used vehicle. "For new

products, liability extends to the manufacturer; for used products, liability extends to the distributor or retail seller and not to the manufacturer, *at least where the manufacturer has not issued a new warranty or played a substantial role in the sale of a used good*." (*Id.* at p. 202, citations omitted, italics added.)

Also, in *Nunez v. FCA US LLC, supra*, 61 Cal.App.5th 385, the Court of Appeal held that the plaintiff could not state a claim for breach of implied warranty against the manufacturer of the defective vehicle, "because in the sale of used consumer goods, liability for breach of implied warranty lies with distributors and retailers, not the manufacturer, *where there is no evidence the manufacturer played any role in the sale of the used car to plaintiff*." (*Id.* at p. 398, italics added.)

"It is evident from these provisions that only distributors or sellers of *used* goods—not manufacturers of *new* goods—have implied warranty obligations in the sale of used goods. (See § 1795.5.) As one court has put it, the Song-Beverly Act provides similar remedies (to those available when a manufacturer sells new consumer goods) 'in the context of the sale of used goods, except that the manufacturer is generally off the hook.'" (*Id*. at p. 399, quoting *Kiluk v. Mercedes-Benz USA, LLC* (2019) 43 Cal.App.5th 334, 339, italics in original.)

"Of course, as *Kiluk* explains, 'the assumption baked into section 1795.5 is that the manufacturer and the distributor/retailer are distinct entities. Where the manufacturer sells directly to the public, however, it takes on the role of a retailer.' *Kiluk* involved a defendant manufacturer that 'issu[ed] an express warranty on the sale of a used vehicle' that 'would last for one year from the end of the new car warranty.' In *Kiluk*, the manufacturer 'partnered with a dealership to sell used vehicles directly to the public by offering an express warranty as part of the sales package,' and by doing so, 'stepped into the role of a retailer and was subject to the obligations of a retailer under section 1795.5.'" (*Nunez, supra,* at p. 399, quoting *Kiluk, supra*, at pp. 337, 340.) "This is not such a case. Here, plaintiff presented no evidence that defendant was 'a distributor or retail seller of used consumer goods' (§ 1795.5), or in any way acted as such." (*Nunez, supra,* at p. 399.)

In the present case, GM claims that it was not involved in the sale of the subject vehicle to plaintiff, and that plaintiff purchased the vehicle used from Tranquility Chevrolet with 23,000 miles on the odometer, so GM cannot be held liable under the SBA for breach of express or implied warranty. Plaintiff, on the other hand, contends that GM sells used vehicles and that GM has not shown that it was not acting as a distributor when the vehicle was sold to plaintiff. However, GM's representative, Bryan Jensen, has stated in his declaration that GM was not a party to the sale of vehicle to plaintiff. (Jensen decl., ¶ 5.) Thus, defendant has submitted enough evidence to meet its burden of showing that it was not acting as a dealer or distributor when the vehicle was sold to plaintiff, and thus it cannot be liable under the SBA for breach of express or implied warranties.

Plaintiff has not submitted any evidence showing that GM was involved in the sale of the subject vehicle to plaintiff. Plaintiff does cite to GM's annual report to the SEC from 2020, which plaintiff contends shows that GM sells used cars and profits from those sales. (Cao decl., Exhibit 2.) However, annual report only shows that GM sells some used vehicles, apparently primarily used rental fleet vehicles or vehicles that were used by GM employees. (Exhibit 2 to Cao decl., GM's SEC 2020 Annual Report, Form 10-K, p. 56.) The report says nothing about whether GM was acting as a dealer or distributor at the time

the subject vehicle was sold to plaintiff, or whether Tranquility Chevrolet is an authorized GM dealer and that GM was effectively acting as a distributor when Tranquility sold plaintiff the vehicle. Therefore, plaintiff's evidence does not raise a triable issue of material fact with regard to whether GM can be held liable under the SBA for breach of express or implied warranties related to the subject vehicle.

On July 2, 2025, the court granted plaintiff's request to continue the hearing on GM's motion to allow plaintiff to conduct additional discovery into whether GM was acting as a dealer or distributor. The supplemental opposition was due September 3, 2025. No supplemental opposition was filed. In the absence of evidence disputing that GM was not involved in the sale of the subject vehicle to plaintiff, plaintiff has not met her burden in opposing the motion for summary judgment.

Therefore, defendant GM's motion for summary judgment 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: KCK on 09/15/25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Tiffany Shoemaker v. Sonia Martinez***
Superior Court Case No. 24CECG00876

Hearing Date: September 17, 2025 (Dept. 502)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To deny, without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

Explanation:

As a matter of law, in addition to approval of the settlement itself, reasonable expenses to be paid from the minor's settlement must be approved by the court. (Prob. Code § 3601.)

The petition requests costs in the amount of $625.22 to be paid from the settlement. (Petn., Item 13b.) This total is comprised of charges for investigations, filings, service, and delivery. Item 14 requires that petitioner attach "proofs of the fees and expenses incurred and the payments made or obligations to pay incurred[.]" No proof of obligation to pay was provided.

The court is concerned with the heightened amount of attorney's fees requested. While counsel's declaration touches on a few of the reasonableness factors set out in California Rule of Court, rule 7.955, the content of the declaration is superficial. The court is not satisfied that this set of case facts and resulting recovery warrant an award of 40% in attorney's fees. With the amended petition, counsel's declaration in support of the fee award should more thoroughly address how the reasonableness factors apply in this case and warrant a heightened award of attorney's fees.

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: KCK on 09/15/25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Sarah Sanchez v. City of Fresno***
Superior Court Case No. 23CECG04266

Hearing Date: September 17, 2025 (Dept. 502)

Motion: By Plaintiff Sarah Sanchez for leave to file a Second Amended Complaint

Tentative Ruling:

To grant. Plaintiff is granted 10 days' leave to file the Second Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

Explanation:

Motions for leave to amend the pleadings are directed to the sound discretion of the court. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading . . . ." (Code Civ. Proc. § 473, subd. (a)(1); see also Code Civ. Proc. § 576.) Judicial policy favors resolution of cases on the merits, and thus the court's discretion as to allowing amendments will usually be exercised in favor of permitting amendments. This policy is so strong, that denial of a request to amend is rarely justified, particularly where "the motion to amend is timely made and the granting of the motion will not prejudice the opposing party." (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.) The validity of the proposed amended pleading is not considered in deciding whether to grant leave to amend. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.) Absent prejudice, it is an abuse of discretion to deny leave to amend. (*Higgins v. DelFaro* (1981) 123 Cal.App.3d 558, 564-65.)

Plaintiff Sarah Sanchez ("plaintiff") seeks leave to file a Second Amended Complaint ("SAC"). Plaintiff contends that the operative First Amended Complaint ("FAC") was inadvertently filed, and was in fact a rough draft of the original complaint. Specifically, the filed FAC removed plaintiff's reference to the use of a K-9 during the alleged underlying incident, and plaintiff seeks to have the factual allegations again reflect the use of a K-9. She also would like to correct the spelling of her name.

Defendant City of Fresno ("defendant" or "the City") opposes the motion. Defendant raises concerns of prejudice in that a trial date is already set, and a motion for summary judgment was filed. Defendant submits that plaintiff has not been diligent in resolving her "mistake" to such a degree as to constitute unwarranted delay.

Delay alone is not a grounds to deny leave to amend absent prejudice. (*Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 490.) Although the FAC was filed at the start of 2024, plaintiff contends that she first discovered the mistakenly filed pleading on August 14, 2025. This motion was immediately filed afterwards on August 18, 2025 to correct the mistake.

A date for trial has been set, but this does not preclude allowing amendment. In fact, discovery of the inadvertently filed draft of the complaint came about because the parties were still conducting depositions as recent as August 2025. Discovery and preparation for trial are ongoing, and would be regardless of any amendment to the complaint.

The proposed SAC does not seek to add any causes of action or requests for damages. The SAC would add in a reference to use of K-9 as a fact in support of the first and second causes of action. Defendant argues that adding facts about K-9 force become separate and distinct issues from being "knocked…to the ground." However, plaintiff contends that the claim is still for excessive force and the reference to use of K-9 supports that claim. The court is inclined to agree.

Judicial policy favors resolution of cases on the merits, resulting in a liberal policy of granting leave to amend. Not finding prejudice sufficient to warrant diverting from this policy, the court grants plaintiff leave to file her Second Amended Complaint.

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: KCK on 09/15/25.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Jimenez, et al. v. Marquez, M.D., et al.***
Superior Court Case No. 25CECG01250

Hearing Date: September 17, 2025 (Dept. 501)

Motion: by Saint Agnes Medical Center Demurring to the Complaint and to Strike Portions of the Complaint

Tentative Ruling:

To sustain the demurrer to the second cause of action, with leave to amend and to overrule the demurrer to the third cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

To grant the motion to strike without leave to amend. (Code Civ. Proc., §§ 435, 425.13, 425.14.) The portions of the complaint regarding plaintiffs' request for punitive damages, specifically, page 19, Prayer for Relief 3, and page 20, Prayer for Relief, 3. To the extent that plaintiffs seek to amend the complaint to include punitive damages, they must file a motion in compliance with Code of Civil Procedure sections 425.13 and 425.14.

Plaintiff is granted 20 days' leave to file the First Amended Complaint. The time to file the First Amended Complaint will run from service by the clerk of the minute order. All new allegations in the First Amended Complaint are to be set in **boldface** type.

Explanation:

Demurrer

As a preliminary matter, the court finds the moving party's meet and confer efforts to be sufficient to meet the requirements of the code section. Additionally, both parties have waived any notice defects by the filing of an opposition and reply on the merits. (*Alliance Bank v. Murray* (1984) 161 Cal.App.3d 1, 7 [the parties' appearance at the hearing and his opposition to the motion on its merits constituted a waiver of the defective notice of motion].)

Defendant Saint Agnes Medical Center ("Saint Agnes") demurs to the second and third causes of action for lack of informed consent and intentional infliction of emotional distress on the grounds that the complaint fails to state a claim.

Second Cause of Action – Informed Consent

Saint Agnes demurs on the ground that plaintiffs have failed to sufficient state a cause of action for lack of informed consent, as the alleges facts do not relate to the disclosure of a material information for a medical procedure. Plaintiff's claim is based upon the alleged failure to disclose the availability of alternative treatment and

diagnostic tests, such as an ultrasound, physician evaluation or emergent delivery, upon the discovery of an absent fetal heart rate. Plaintiff alleges that defendants failed to warn her that the absence of a detectable fetal heartbeat upon arrival in Labor and Delivery was a medical emergency and that epidural anesthesia should not be administered without confirming real-time fetal well-being.

"Like any plaintiff suing for negligence, a patient suing her physician for negligence must establish that (1) the physician owed her a duty, (2) he breached that duty, (3) there was 'a proximate causal connection between [his] negligent conduct and the resulting injury,' and (4) 'actual loss or damage resulting from the [physician's] negligence.' [Citations.]" (*Flores v. Liu* (2021) 60 Cal.App.5th 278, 290, citations omitted.)

" 'Civil Code section 1714, subdivision (a) "establishes the general duty of each person to exercise, in his or her activities, reasonable care for the safety of others." ' [Citations.]" (*Flores v. Liu, supra,* 60 Cal.App.5th at p. 290, citations omitted.) "When applied to physicians, this duty of care imposes a duty 'to use such skill, prudence and diligence as other members of his profession commonly possess and exercise.' [Citations.]" (*Ibid.*, citations omitted.)"As pertinent here, this duty of care applies not only to the physician's 'actual performance or administration of treatment,' but also to his "choice" of which courses of treatment to recommend (or not recommend) to a patient. [Citations.]" (*Ibid.*, citing *Rainer v. Community Memorial Hosp.* (1971) 18 Cal.App.3d 240, 260; *Vandi v. Permanente Medical Group, Inc.* (1992) 7 Cal.App.4th 1064, 1069-1071 ("*Vandi*") ["failure to recommend a procedure must be addressed under ordinary medical negligence standards"]; *Atkins v. Strayhorn* (1990) 223 Cal.App.3d 1380, 1388 [same]; *Jamison v. Lindsay* (1980) 108 Cal.App.3d 223, 231 [same]; *Schiff v. Prados* (2001) 92 Cal.App.4th 692, 701 [same].)

In *Vandi*, the plaintiff made the same argument that plaintiff here makes, that a physician has a duty of disclosure concerning procedures which he or she is not recommending. There the physician did not inform the patient of the availability of a diagnostic procedure known as a computerized tomography (C.T.) scan after the patient suffered a seizure. Instead, he followed the advice of a neurologic specialist, who indicated it would be appropriate to place plaintiff on an anti-seizure medication and arrange for an MRI. After plaintiff experienced additional difficulties, he was ultimately subjected to both a C.T. and MRI scan and two exploratory surgeries, which found that his medical difficulties were caused by two brain abscesses. Plaintiff's primary theory of liability to support the claimed duty to disclose was that the defendant-physicians were negligent in failing to perform a C.T. scan immediately after he had his first seizure. The court rejected the argument, "concluding that the duty of disclosure is predicated upon a recommended treatment or diagnostic procedure and that the failure to recommend a procedure must be addressed under ordinary medical negligence standards. [Citations.]" (*Vandi v. Permanente Medical Group, Inc.* (1992) 7 Cal.App.4th 1064, 1069–1070, citations omitted.)

The court in *Vandi* further explains, "[i]f the procedure is one which should have been proposed, then the failure to recommend it would be negligence under ordinary medical negligence principles and there is no need to consider an additional duty of disclosure. The duty suggested by plaintiff, to disclose information about nonrecommended procedures, could arise only where, as here, a physician does not

recommend a procedure and competent medical practice did not require that he or she recommend the procedure. . . . [I]t would be inappropriate to impose such an imprecise and unpredictable burden upon a physician. [Citation.]" (*Vandi*, *supra,* 7 Cal.App.4th at p. 1070, citations omitted.)

Accordingly, there does not appear to be a general duty of disclosure with respect to nonrecommended procedures. Nor do the cases relied upon by plaintiffs in the opposition, *Cobbs v. Grant* (1972) 8 Cal.3d 229, *Truman v. Thomas* (1980) 27 Cal.3d 285, and *Arato v. Avedon* (1993) 5 Cal.4th 1172, suggest otherwise.

Cobbs v. Grant (1972) 8 Cal.3d 229 involved a physician who proposed a duodenal ulcer surgery to his patient and did not inform him of the risks of such surgery. The patient consented to the ulcer surgery, which caused spleen injury. There, the court held "as an integral part of the physician's overall obligation to the patient there is a duty of reasonable disclosure of the available choices with respect to proposed therapy and of the dangers inherently and potentially involved in each." (*Id*., at p. 243, emphasis added.) Therefore, the duty of disclosure in *Cobbs* was premised on a proposed therapy and not a nonrecommended procedure.

The California Supreme Court in *Truman v. Thomas* (1980) 27 Cal.3d 285 extended the duty of reasonable disclosure to include situations in which the patient declines the recommended procedure as well. "There, a doctor recommended that his patient undergo a risk-free diagnostic procedure but failed to advise her of the risks involved in the failure to follow his recommendation. The Supreme Court concluded that for a patient to make an informed choice to decline a recommended procedure the patient must be adequately advised of the risks of refusing to undergo the procedure. [Citation.]" (*Vandi v. Permanente Medical Group, Inc.* (1992) 7 Cal.App.4th 1064, 1069 citing *Truman v. Thomas* (1980) 27 Cal.3d 285, 292.) Therefore, the duty to disclose in *Truman* was based on a recommended medical diagnostic procedure, and not a nonrecommended procedure.

Arato v. Avedon (1993) 5 Cal.4th 1172 involved the defendant-physicians' recommendation of a course of chemotherapy and radiation treatment to a patient suffering from a virulent form of cancer. The physicians did not disclose the high statistical mortality rate associated with the patient's cancer. Accordingly, in *Arato* as well, the discussion of the duty to disclose was predicated on a recommended medical treatment, and not a nonrecommended procedure.

In the instant case, there are no allegations that defendants made any recommendations whatsoever. In fact, plaintiff's claim is based upon the alleged failure to disclose the availability of alternative treatment and diagnostic tests, such as an ultrasound, physician evaluation or emergent delivery, upon the discovery of an absent fetal heart rate. Therefore, the demurrer to the second cause of action is sustained with leave to amend.

Third Cause of Action—Intentional Infliction of Emotional Distress

"A cause of action for intentional infliction of emotional distress exists when there is ' " ' "(1) extreme and outrageous conduct by the defendant with the intention of

causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." ' " ' [Citations.] A defendant's conduct is 'outrageous' when it is so ' " 'extreme as to exceed all bounds of that usually tolerated in a civilized community.' " ' [Citations.] And the defendant's conduct must be ' " 'intended to inflict injury or engaged in with the realization that injury will result.' " ' [Citation.]" (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050–1051, citations omitted.)

Saint Agnes contends that the complaint fails to allege any outrageous conduct. Here, plaintiffs allege that defendants failed to take action upon failing to detect a fetal heart rate, namely, that defendants dismissed the absence of a fetal heart rate as due to faulty machinery and then instructed the patient to wait until after her epidural to reassess the fetal heart rate. (Compl., ¶ 33.) Under any ordinary circumstance, failing to detect a heart rate would signal an emergency situation or at least, one that call for further evaluation. It is not alleged that there was any attempt to secure different machinery to reassess, alert a physician, or otherwise ensure the well-being of the unborn child. Given the extremity of the circumstances here, it could be determined that the alleged conduct is so outrageous to give rise to a claim for intentional infliction of emotional distress. Therefore, the demurrer to the third cause of action is overruled.

Motion to Strike

Saint Agnes moves to strike the punitive damages sought as plaintiffs have failed to plead compliance with the procedural requirements of Code of Civil Procedure section 425.13 and 425.14. Saint Agnes also argues because plaintiffs' claim for intentional infliction of emotional distress ("IIED") fails, the punitive damages should be stricken. As to the latter argument, the demurrer to the IIED claim is overruled as explained above.

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading, (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.)

Code of Civil Procedure section 425.13 provides:

> In any action for damages arising out of the professional negligence of a health care provider, no claim for punitive damages shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive damages to be filed. The court may allow the filing of an amended pleading claiming punitive damages on a motion by the party seeking the amended pleading and on the basis of the supporting and opposing affidavits presented that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294 of the Civil Code.

Also, Code of Civil Procedure section 425.14 provides:

> No claim for punitive or exemplary damages against a religious corporation or religious corporation sole shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive or exemplary damages to be filed. The court may allow the filing of an amended pleading claiming punitive or exemplary damages on a motion by the party seeking the amended pleading and upon a finding, on the basis of the supporting and opposing affidavits presented, that the plaintiff has established evidence which substantiates that plaintiff will meet the clear and convincing standard of proof under Section 3294 of the Civil Code.

Since an opposition to the motion to strike is not filed, plaintiffs impliedly concede that they have not complied with the requirements set forth in Code of Civil Procedure sections 425.13 and 425.14. Accordingly, the motion to strike the punitive damages 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: KCK on 09/15/25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Brandy Ferris v. Lee Investment Company et al.***
Superior Court Case No. 23CECG03425

Hearing Date: September 17, 2025 (Dept. 502)

Motion: (1) By Defendants Maria McAnally and GSF Properties, Inc. for Sanctions;
(2) By Defendants Lee Investment Company, Lee Finance LLC, and FML Management Corporation for Sanctions

Tentative Ruling:

To deny Defendants Maria McAnally and GSF Properties, Inc.'s motion as to terminating sanctions. To grant the motion as to monetary sanctions and impose monetary sanctions against plaintiffs and their counsel, Jacob Partiyeli, jointly and severally, in the amount of $2,060, payable no later than thirty (30) days from the date of service of the order by the clerk, to counsel for defendants Maria McAnally and GSF Properties, Inc.

To deny Defendants Lee Investment Company, Lee Finance LLC, and FML Management Corporation's motion as to terminating sanctions. To grant the motion as to monetary sanctions and impose monetary sanctions against plaintiffs and their counsel, Jacob Partiyeli, jointly and severally, in the amount of $1,440, payable no later than thirty (30) days from the date of service of the order by the clerk, to counsel for defendants Lee Investment Company, Lee Finance LLC, and FML Management Corporation.

Explanation:

Plaintiffs Brandy Ferris, Mark Ferris Jr., Corey Barnett, Dana Rucker, James Hollis Jr., Heather Makely, William Makely, Stacey Towers, Courtney Simmons, Darrel Whittle Jr., Vanessa Garcia, Nikole Williams, Timiya Lowe, David Grayson, Wykeita Barnett, Clarence Pennywell, Karen Vir Deol, and Lilian Serato (together "Plaintiffs") filed an action against defendants Maria McAnally and GSF Properties, Inc. (together "GSF Defendants"), and Lee Investment Company, Lee Finance LLC, and FML Management Corporation (together "Lee Defendants") regarding certain conditions of premises. Discovery commenced, for which issues arose.

As to the GSF Defendants, on December 13, 2024, the court issued an order directing Plaintiffs to provide supplemental responses to requests for production and to interrogatories. On April 24, 2025, the GSF Defendants obtained an order imposing monetary sanctions in the amount of $6,429 against Plaintiffs and their counsel of record, Jacob Partiyeli. As to the Lee Defendants, on July 29, 2025, the court issued an order imposing monetary sanctions in the amount of $7,875 against Plaintiffs and their counsel of record, Jacob Partiyeli based on failures in communication regarding deposition notices issues by Plaintiffs. The GSF Defendants now seek an order of terminating

sanctions and further monetary sanctions. The Lee Defendants timely join in the motion based on personal service.

Code of Civil Procedure section 2023.010, subdivision (d) makes "[f]ailing to respond or to submit to an authorized method of discovery" a "misuse of the discovery process". Where there is a misuse of the discovery process, the court may impose, among other things, terminating sanctions. (Code Civ. Proc. § 2023.030, subd. (d).) Before imposing a terminating ("doomsday") sanction, trial courts should usually grant lesser sanctions first, such as orders staying the action until the plaintiff complies, or declaring the matters admitted if answers are not received by a specific date. (*E.g., Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796.) It is only when a party persists in disobeying the court's orders that sanctions such as dismissing an action are justified. The imposition of terminating sanctions is a drastic consequence, one that should not lightly be imposed, or requested. (*Ruvalcaba v. Government Employees Ins. Co*. (1990) 222 Cal.App.3d 1579, 1581.) However, where lesser sanctions have been ordered, such as an order compelling compliance with discovery requests, and the party persists in disobeying, the party does so "at his own risk, knowing that such a refusal provided the court with statutory authority to impose other sanctions" such as dismissing the action. (*Todd v. Thrifty Corp.* (1995) 34 Cal. App. 4th 986.)

As to the GSF Defendants, they submit that while Plaintiffs have served supplemental discovery following the court orders, the responses remain deficient. (Adelman Decl., ¶ 9.) The GSF Defendants contend that the supplemental responses fail to answer any of the questions posed, and as to certain individuals, the responses remain unverified. (*Id.*, ¶ 10.) Still other individuals, the GSF Defendants contend that the responses were identical to the defective responses initially complained of. (*Id.*, ¶ 11.) The GSF Defendants conclude that Plaintiffs have failed to comply with the court's order. (*Id.*, ¶ 12.)

The supplemental responses to which the GSF Defendants refer appear to be dated in May 2025. These responses postdate any responses for which the court has previously considered on motions to compel. Whether these supplemental responses are Code-complaint or are deficient in some regard, the court has not reviewed. Plaintiffs oppose, only arguing, without evidence, that no additional information exists and nothing else can be produced. Accordingly, it is not yet clear to the court that Plaintiffs "persists in disobeying" a court order.

In spite of the above, it is unrefuted that Plaintiffs have yet to pay monetary sanctions previously imposed. (Adelman Decl., ¶ 13.) The court finds that additional monetary sanctions are warranted in violation of the court's prior order. Counsel's rate of $250 per hour is reasonable, and the court approves it. The court approves 8 hours of time billed for the moving papers, consideration of the opposition papers, and preparation of a reply brief. The court imposes sanctions in the amount of $2,060, inclusive of costs, in favor of the GSF Defendants, and against Plaintiffs and their counsel of record, Jacob Partiyeli. If oral argument is requested, additional time will be considered.

As to the Lee Defendants, the Lee Defendants submit mostly on the facts and circumstances argued by the GSF Defendants. The Lee Defendants add that the monetary sanctions imposed in their favor and against Plaintiffs and their counsel of

record also has not been paid. (Dickson Decl., ¶ 8.) The Lee Defendants add that counsel has had history with counsel for Plaintiffs, and in other matters not pending before this court, counsel for Plaintiffs has allegedly exhibited certain behavior that the Lee Defendants characterize as a pattern of willful misconduct. The Lee Defendants' Request for Judicial Notice is granted, only to the extent that such records exist. (*Steed v. Dept. of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120-121.) The truths of those findings are not subject to judicial notice. (*Ibid.*) The court acknowledges that it has discretion to consider actions by the parties in other matters. (*E.g., Deck v. Developers Investment Co., Inc.* (2023) 89 Cal.App.5th 808, 823-824.) At this time, the court does not exercise that discretion. What those outside findings were based on, how counsel conducted themselves in other proceedings, and many other factors suggested are not adopted by this court, based on the actions of the parties in this case, on the facts and circumstances unique to this matter.

As with the GSF Defendants however, it is unrefuted that Plaintiffs have yet to pay monetary sanctions previously imposed. Counsel's rate of $230 per hour is reasonable, and the court approves it. The court approves 6 hours of time billed for the moving papers. No opposition papers were filed, and therefore a reply brief was not warranted. The court imposes sanctions in the amount of $1,440, inclusive of costs, in favor of the Lee Defendants, and against Plaintiffs and their counsel of record, Jacob Partiyeli. If oral argument is requested, additional time will be considered.

The court is troubled by the representations from the parties on the conduct in this matter. Given prior orders of monetary sanctions, the court orders Plaintiffs and their counsel of record to pay the monetary sanctions imposed on this occasion, and the monetary sanctions imposed on April 24, 2025 and July 29, 2025 to the respective defendants to whom they are owed, within 30 days of this order. If Plaintiffs and their counsel of record, Jacob Partiyeli, fail to pay all presently imposed monetary sanctions within 30 days of this order, the court will consider Plaintiffs on notice for imposition of any further sanctions, up to and including terminating sanctions.

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: KCK on 09/15/25.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Jose Ruelas v. ROTOCO LLC***
Superior Court Case No. 24CECG02946

Hearing Date: September 17, 2025 (Dept. 502)

Motion: Defendant's Motion for Judgment on the Pleadings

Tentative Ruling:

To grant as to the first, second, third, seventh, and eighth causes of action, with leave to amend. To deny as to the fourth, fifth, sixth, ninth, tenth, eighteenth, and nineteenth causes of action. Plaintiff is granted 10 days' leave to file the Second Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

Explanation:

A motion for judgment on the pleadings has the same function as a demurrer, but is made after the time for demurrer has passed. (Code Civ. Proc., § 438; *Prickett v. Bonnier Corporation* (2020) 55 Cal.App.5th 891, 896.) The grounds for the motion must appear on the face of the challenged pleading or from facts judicially noticeable. (*Prickett v. Bonnier, supra,* 55 Cal.App.5th at p. 896.) The court is to treat all facts as properly pled. (*Aubry v. Tri-City Hospital Dist*. (1992) 2 Cal.4th 962, 967.) While leave to amend is routinely granted, a court may deny leave to amend where "there is no reasonable possibility that the defect can be cured by amendment." (*Von Batsch v. American Dist. Telegraph Co*. (1985) 175 Cal.App.3d 1111, 1117.)

First, Second, and Third Causes of Action

For the first three causes of action, Defendant argues that Plaintiff has not pled facts sufficient to constitute discrimination based on sexual orientation (first cause of action), age (second cause of action), or disability (third cause of action). In order to plead discrimination, a plaintiff must plead 1) membership in a protected class, 2) that he was qualified or performing competently, 3) an adverse employment action, and 4) a circumstance suggesting a discriminatory motive. (*Martin v. Board of Trustees of California State University* (2023) 97 Cal.App.5th 149, 162; *Sandell v. Taylor-Listug, Inc*. (2010) 188 Cal.App.4th 297, 321.)

Here, Defendant argues that Plaintiff has not alleged his status in protected class for age and disability. With regards to age discrimination, Plaintiff has not alleged his age. For disability, Plaintiff alleged he had back and shoulder injuries. (FAC, ¶ 59.) To the extent Defendant asserts Plaintiff's back and should injuries do not constitute a disability, these arguments go to the merits of Plaintiff's claims and are not the appropriate subject for demurrer. For the second cause of action for age discrimination, Plaintiff may amend the pleadings to allege his age.

Defendant also argues that Plaintiff has not alleged he was performing his job competently. Here, Plaintiff has alleged he was able to perform all essential functions of his job. (FAC, ¶ 84.) To the extent that Defendant argues that Plaintiff must allege how he was performing his job competently, Defendant has not provided any legal support for this position in the context of a motion for judgment on the pleadings, instead citing to cases involving motions for summary judgment.

Defendant also argues that Plaintiff has insufficiently alleged he experienced an adverse employment action because of either his sexual orientation, age, or disability. Here, Plaintiff has alleged he was terminated. (FAC, ¶¶ 43, 63.) However, Plaintiff's allegations do not indicate he was terminated because of either his sexual orientation, age, or disability. Rather, Plaintiff has alleged he was instructed to sign off on an inaccurate timesheet, then suspended and ultimately terminated. (FAC, ¶¶ 27-29.) As such, Plaintiff has insufficiently pled that an adverse employment action occurred because of his sexual orientation, age, or disability. The Court grants the motion for judgment on the pleadings as to the first, second, and third causes of action, with leave to amend.

Fourth Cause of Action

Government Code section 12940 prohibits sexual harassment in the workplace. (Gov. Code, § 12940, subd. (j).) Here, Plaintiff has alleged beginning in November 2023, the branch manager started using Spanish slurs targeting gay individuals to address Plaintiff. (FAC, ¶ 12.) Defendant argues this was not sufficiently pervasive or severe because Plaintiff had to clarify the meaning of the terms in the pleadings and appears to allege isolated incidents. Claims of a hostile work environment are to be evaluated in light of the totality of circumstances. (*Bailey v. San Francisco Dist. Attorney's Office* (2024) 16 Cal.5th 611, 628.) Notably, the pleadings indicate that the branch manager began to use the slurs, which suggests it was not isolated. Also, the argument that Plaintiff had to explain what Spanish words meant is unpersuasive. Defendant appears to be arguing the merits of Plaintiff's claims here. This is not the appropriate subject of a motion for judgment on the pleadings. As such, the Court denies the motion as to the fourth cause of action.

Fifth and Sixth Causes of Action

To allege failure to accommodate, a plaintiff must allege 1) a disability, 2) that the plaintiff is qualified to perform the essential functions of the position, and 3) the employer failed to reasonably accommodate the disability. (*Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1010.) As discussed above, Plaintiff has alleged a disability and that he was qualified to perform. Plaintiff also alleges that Defendant failed to accommodate him, instead terminating his employment. (FAC, ¶ 85.) Plaintiff also alleges a failure to engage in the interactive process where he alleges Defendant refused to accept his doctor's note. (FAC, ¶ 94.) The Court denies the motion as to the fifth and sixth causes of action.

Seventh, Eighth, Ninth, and Tenth Causes of Action

To allege retaliation, a plaintiff must allege 1) he engaged in a protected activity, 2) was subject to an adverse employment action, and 3) a causal link between the protected activity and the adverse employment action. (*Yanowitz v. L'Oreal USA, Inc*. (2005) 36 Cal.4th 1028, 1042.) Here, Plaintiff has alleged he engaged in protected activities, including reporting an injury, complaining of discriminatory conduct, and requesting accommodations. Plaintiff has also alleged adverse employment action because he was terminated. For the seventh cause of action, for retaliation for reporting workplace safety hazards, Plaintiff has alleged the report occurred in August 2022, but he was not terminated until March 2024. As such, he has not alleged a causal link for this seventh cause of action. For the eighth cause of action for retaliation based on Government Code section 12940, as discussed above, Plaintiff has insufficiently alleged the adverse employment action was because of his sexual orientation, age, or disability. For the ninth and tenth causes of action, Plaintiff has alleged he was suspended and then terminated following complaints of Labor Code violations. As such, these are adequately pled. The Court grants the motion as to the seventh and eighth causes of action, with leave to amend. The Court denies the motion as to the ninth and tenth causes of action.

Eighteenth and Nineteenth Causes of Action

The Notice for this motion indicates that Defendant also takes issue with the eighteenth and nineteenth causes of action. The memorandum does not address these. In the Notice, for the eighteenth cause of action it states that Plaintiff failed to allege expenditures were necessary or in direct consequence of the discharge of his duties. Defendant cites to *Cochran v. Schwan's Home Service, Inc*. (2014) 228 Cal.App.4th 1137, 1144. Notably, this case stood for the position that an employer must reimburse for the reasonable expense of the mandatory use of a personal cell phone. (*Ibid*.) Plaintiff has alleged that he was required to use his personal cell phone and never reimbursed. (FAC, ¶ 199.) As such, the eighteenth cause of action is adequately pled.

In the Notice, for the nineteenth cause of action, it states that Plaintiff does not allege Defendant committed any business practice that was immoral, unethical, oppressive, or unscrupulous and caused injuries to consumers. Plaintiff alleges that Defendant's violations of California wage and hour laws were unlawful business practices in violation of Business and Professions Code section 17200 et seq. (FAC, ¶ 203.) Notably, Defendant has not challenged the eleventh through seventeenth causes of action, wherein several Labor Code violations are alleged. As such, the nineteenth cause of action is adequately pled.

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: KCK on 09/15/25.
(Judge's initials) (Date)