Tentative Rulings for September 17, 2026
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)

<u>Tentative Rulings for Department 502</u>

Begin at the next page

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

Re: ***Avila v. Nicholson, et al.***
Superior Court Case No. 25CECG05631

Hearing Date: September 17, 2026 (Dept. 502)

Motion: Defendant CSAA Insurance Exchange's Demurrer to Complaint

Tentative Ruling:

To sustain the demurrer as to defendants CSAA Insurance Exchange only, without leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

Explanation:

This action arises from an auto accident in which defendant George Nicholson allegedly negligently rammed plaintiff's vehicle, causing personal injuries. In addition to Nicholson, the sole cause of action for general negligence is asserted against CSAA Insurance Exchange ("CSAA," erroneously sued as AAA Insurance). Plaintiff alleges that "AAA WAS NEGELIGENT IN HANDLING MY CLAIM BECAUSE AFTER THE MANY ATTEMPTS OF ME CONTACTING JOANYS SANTIAGO ABOUT MY MEDICAL BILLS ITS BEEN TWO YEARS AND SHE HAS NOT ATTEMPT TO CONTACT ME BACK TO RESOLVE THE ISSUE." (Complaint GN-1, ¶ 4.) CSAA demurs to the Complaint.

The demurrer must be sustained because plaintiff cannot sue the defendant's insurer in her action against the alleged tortfeasor.

> A practice guide explains why an insured and insurer usually may not be sued in the same action. "Generally, an insurer may not be joined as a party-defendant in the underlying action against the insured by the injured third party. The fact that an insurer has agreed to indemnify the insured for any judgment rendered in the action does not make the insurer a proper party. Liability insurance is not a contract for the benefit of the injured party so as to allow it to sue the insurer directly." (Croskey et al., *Cal. Practice Guide: Insurance Litigation* (The Rutter Group 2001) ¶ 15.44, italics omitted.

(*Royal Surplus Lines Ins. Co., Inc. v. Ranger Ins. Co.* (2002) 100 Cal.App.4th 193, 199.)

Plaintiff's claims against CSAA are not appropriately raised in this action against the insured, Nicholson. (See *Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 576; *Cooper v. Equity General Ins. Co.* (1990) 219 Cal.App.3d 1252, 1258-1260.) Moreover, there is no cognizable cause of action for third-party bad faith against an insurer. (See *Moradi-Shalal v. Fireman's Fund Ins. Cos.* (1988) 46 Cal.3d 287.) Plaintiff has not filed any opposition to the demurrer.

The court intends to sustain the demurrer as to CSAA without leave to amend. "[A] a trial court does not abuse its discretion by sustaining a general demurrer without leave to amend if it appears from the complaint that under applicable substantive law there is no reasonable possibility that an amendment could cure the complaint's defect." (*Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481, 486.) The plaintiff has the burden to prove such "reasonable possibility." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Plaintiff has not filed any opposition or articulated any basis by which the Complaint could be effectively amended to state a cause of action against CSAA.

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: lmg on 9-16-26 .
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Moralez v. Fresno Community Hospital and Medical Center, et al.***
Superior Court Case No. 23CECG05231

Hearing Date: September 17, 2026 (Dept. 502)

Motion: Withdraw as Counsel

Tentative Ruling:

To deny.

Explanation:

The moving papers are ambiguous as to whom counsel moves to withdraw from representing. The client is identified as Kaelyn Moralez, the only party known to the court to be represented by Dawn Smith of Smith Clinesmith, LLP.

Counsel states that they must withdraw because while plaintiff agreed to a settlement, Thomas Sevilla did not, creating a conflict of interest. While Mr. Sevilla filed a declaration apparently indicating that he believes he is represented by Smith Clinesmith, he is in pro per as far as the court is aware. Smith Clinesmith is not identified as counsel for Mr. Sevilla. It is unclear why Mr. Sevilla not agreeing to a settlement should create a conflict of interest precluding representation of Ms. Moralez. Is Smith Clinesmith moving to withdraw from representing Mr. Sevilla or Ms. Moralez?

If it is Ms. Moralez that counsel seeks to withdraw from representing, if the client is served by mail, her address must be verified within 30 days of filing the motion to be relieved. (Cal. Rules of Court, rule 3.162(d)(1).) Counsel's declaration states that the client's address (presumably Ms. Moralez) was verified by emailing tomesevilla@gmail.com, which the court presumes to be the email address for Mr. Sevilla. If counsel is seeking to withdraw from representation of Ms. Moralez, her mailing address should be confirmed with her, not someone else.

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: Img on 9-16-26.
(Judge's initials) (Date)

(41)

<u>Tentative Ruling</u>

Re:	***Christopher McIntosh v. Brandon Knight*** Superior Court Case No. 21CECG01109
Hearing Date:	September 17, 2026 (Dept. 502)
Motion:	By Defense Counsel to Withdraw

Tentative Ruling:

To take off calendar, as no moving papers have been filed.

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: <u>lmg</u> on <u>9-16-26</u>.
(Judge's initials) (Date)

(47)

<u>Tentative Ruling</u>

Re:	***Johan Legarda v. Madera Roofing, Inc.*** Superior Court Case No. 24CECG02472
Hearing Date:	September 17, 2026 (Dept. 502)
Motion:	Plaintiff, Johan Legarda's motion for an evidence sanction, for adverse-inference jury instruction under Evidence Code section 413 and CACI no. 204, for orders in limine, and for monetary sanctions

Tentative Ruling:

To deny plaintiff, Johan Legarda's motion for an evidence sanction, for adverse-inference jury instruction under Evidence Code section 413 and CACI no. 204, and for orders in limine.

To deny all requests for sanctions.

Explanation:

Plaintiff, Johan Legarda ("Legarda" or plaintiff") claims that on March 2, 2023, he was struck by a roll of roofing paper while working for Fire Sprinkler Systems at the Skye at River Island Ranch home site, Lot 207, which now bears the address of 3750 N. Clay Street, Visalia, California.

Defendant, Madera Roofing, Inc., ("Madera Roofing" or "defendant") did not secure that specific roll as evidence (Thordarson Decl., ¶9), nor did Madera Roofing create a report, take any photographs of the scene, or otherwise preserve any evidence. (Beedlove Decl., ¶4.)

As a result of Madera Roofing not preserving that specific roll of roofing paper, Legarda moves the court for a) evidentiary sanctions; b) adverse-inference jury instructions; c) orders in limine; and d) monetary sanctions.

Evidentiary Sanctions

Plaintiff requests an evidence sanction under Code of Civil Procedure sections 2023.010 and 2023.030, subdivision (c), precluding Madera Roofing from offering any testimony, evidence, or argument concerning the weight, dimensions, packaging, condition, or contents of the roll, or the cause or mechanism by which it left the roof.

Pursuant to Code of Civil Procedure section 2023.030, the Court may impose the types of sanctions requested depending on the misconduct that occurred. In general, a nonmonetary sanction is only appropriate after a party fails to obey an order compelling discovery. (*New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1426.) However, such relief may be imposed without a prior order compelling discovery if obtaining such an order would be futile or the misconduct in connection with the failure to produce evidence in discovery is "sufficiently egregious." (*Ibid*.)

Spoliation of evidence is the destruction or significant alteration of evidence or the failure to preserve evidence for another's use in pending or future litigation. (*Williams v. Russ* (2008)167 Cal.App.4th 1215, 1223 ("*Williams*").) The elements to establish spoliation of evidence are (1) destruction or alteration of relevant evidence, (2) a duty to preserve the evidence; (3) willful conduct by the spoilating party; and (4) relevance of the evidence to pending or anticipated litigation. (*Victor Valley Union High Sch. Dist. v. Superior Ct.* (2023) 91 Cal.App.5th 1121, 1139.)

"[A] party moving for discovery sanctions based on the spoliation of evidence must make an initial prima facie showing that the responding party in fact had destroyed evidence that had a substantial probability of damaging the moving party's ability to establish an essential element of his claim or defense." (*Williams, supra*, 167 Cal.App.4th at p. 1227.) Once the moving party meets that burden, the burden shifts to the responding party to prove the moving party did not suffer prejudice from the loss of the evidence. (*Williams, supra*, 167 Cal.App.4th at pp. 1226-27.) Discovery sanctions "should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery." (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 793.)

Legarda argues that evidentiary sanctions are warranted where Madera Roofing willfully disposed of the roll in question. Legarda first argues that Madera roofing purposely did not keep the roll in question where Sanchez, the Madera Roofing supervisor who fielded the incident call, admitted—testifying through a certified Spanish-language interpreter—that he made a conscious decision not to secure the roll as evidence, reasoning that "there was no need to keep any evidence if the person was refusing medical attention." (Thordarson Decl. ¶9, Ex. 7 [Sanchez Dep. at 23:11-24:2].)

The relevant quote in question states as follows:

> THE INTERPRETER: Counsel, just to clarify, secure as in put it in the office? I'm not sure how to --
> MR. THORDARSON: (Speaking Spanish.)
> THE SPANISH INTERPRETER: Okay. Keep it as evidence.
> THE WITNESS: No because the person said that was [sic] fine, had no injuries. Juan Lopez just said to be careful. Oscar Ramirez came down and asked the person several times if he was fine, if he needed medical attention, and based on that, there was no need to keep any evidence if the person was refusing medical attention.

(Thordarson Decl. ¶ 9, Ex. 7 [Sanchez Dep. at 23:15-24:2].)

Legarda further contends the fact that Madera Roofing disposed of the roll knowing that a fight had broken out on site, with the awareness that Plainitff was injured, and knew or should have known that litigation was contemplated, because the GC, Lennar's, incident report form is preprinted with "PREPARED AT DIRECTION OF COUNSEL." (Thordarson Decl. ¶ 18, Ex. 10.) However, Legarda has failed to demomstarte spoliation of evidence, because he has no evidence that Madera Roofing "willfully disposed" of "relevant evidence."

In *Williams*, the plaintiff stored all 36 boxes containing the original documents comprising his former counsel's files in a rented storage facility. The attorney only had copies of 11 boxes worth of material. The plaintiff eventually stopped paying the rental fees, despite being advised by the facility that failure to pay could result in the destruction of the stored items. The files were ultimately destroyed by the facility due to nonpayment. The plaintiff claimed he was never told the files were at risk of destruction. If he had known of the risk, he would have kept the account current. Nevertheless, the appellate court affirmed the trial court's award of terminating sanctions finding that the plaintiff understood litigation and his duties, and he was on notice that nonpayment would result in destruction of the file, yet he allowed it to happen. Based on those circumstances, the court found that the destruction was intentional and inferred that it was done to destroy evidence potentially favorable to Russ. (*Williams, supra*, 167 Cal.App.4th at. at pp. 1218-1221.)

In contrast, here Sanchez's testimony does not establish that Madera Roofing or its agents knew that litigation was imminent such that the use of the shingles in the ordinary course of business constituted "willful" destruction of evidence. Legarda refused medical assitance and stated he was uninjured. A scuffle on a construction site does not ordinarily result in litigation. Nor can the language of the general contractor's preprinted form establish Madera Roofing's state of mind as to the liklihood of litigation.

Furthermore, Legarda has not shown that the loss of the roll in question had a "substantial probability of damaging the moving party's ability to establish an essential element of his claim or defense." (*Williams, supra*, 167 Cal.App.4th at p. 1227.) The roll of roofing paper can easily be replicated because it is a product that is mass produced. (Hisa Decl., ¶ 6.) Defendant has exemplars and can make them available for Plaintiff's inspection if such a demand was made. (*Ibid*.) Furthermore, Legarda's himself took pictures of the pertinent roll, and one can approximate the size of the roll based on those pictures. (Thordarson Decl., ¶5, Ex. 3.) Additionally, the absence of the roll has no bearing with respect to the discussion pertaining to whether the roll, rolled off the roof or was thrown off the roof, or whether Madera Roofing had a rule against throwing rolls off the roof. (Legarda's Moving papers, pp.5:23-7:1.)

Accordingly, the Court denies the imposition of evidentiary sanctions.

Adverse-Inference Jury Instructions

Plaintiff seeks an adverse-inference instruction under Evidence Code section 413 and CACI No. 204.

As discussed above, Plaintiff has failed to demonstrate that Madera Roofing intentionaly destroyed relevant evidence. Nonetheless, Plaintiff can ask for a spoliation instruction under CACI 2024 at trial, should such evidence develop. (*New Albertsons, supra*, 168 Cal.App.4th at 1431.) CACI 204 provides, "You may consider whether one party intentionally concealed or destroyed evidence. If you decide that a party did so, you may decide that the evidence would have been unfavorable to that party."

Evidence Code section 413 provides, "In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case."

Orders In Limine

Legarda requests two in limine orders. First, the Fresno Superior Court perfers motions in limine be heard at the time of trial. (Fresno Local Rules, rule 2.6.2.) Second, the nature of an in limine motion on the admissibility of evidence and/or the inferences to be drawn from the evidence and various jury instructions to be given requires that they be issued by the trial judge at the time trial. In limine rulings are necessarily tentative and impermanent due to the fluid nature of taking evidence. (Rufo v. Simpson (2001) 86 Cal.App.4th 573, 608; People v. Turner (1990) 50 Cal.3d 668, 708.) In this Court, civil cases can be assigned to any available trial judge, which may or may not be the judge previously assigned for all purposes.

As such, Legarda's current request for in limine orders is denied

Sanctions

Legarda's seeks monetary sanctions in favor of Plaintiff and against Madera Roofing in the amount of $2,625.00 pursuant to Code of Civil Procedure sections 2023.010 and 2023.030. (Moving Papers, pg. 18:17-18.) Defendants also seek monetary sanctions in the amount of $3,385.00, pursuant to Code of Civil Procedure section 2023.010, subdivisions (b), (c) and (h).

Here, Legarda's request for sanctions are denied as he did not prevail in his motion. Furthermore, the Court denies Madera Roofing's request for sanctions. The Court finds that Legarda acted with substantial justification, and made reasonable arguments in support of his position. No sanctions are appropriate.

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: lmg on 9-16-26 .
(Judge's initials) (Date)

(49)

Tentative Ruling

Re: ***USA Nut Processing, Inc. v. Industrial Design & Construction, Inc. et al.***
Superior Court Case No. 26CU01481

Hearing Date: September 17, 2026 (Dept. 502)

Motion: By Defendants for Change of Venue

Tentative Ruling:

To grant defendants' motion for change venue to Kern County.

Explanation:

Defendants Industrial Design & Construction, Inc. and Robert Williams ("Williams", collectively "Defendants") move for change of venue to Kern County.

Code of Civil Procedure section 396b, subdivision (a) states in pertinent part, "Upon the hearing of the motion the court shall, if it appears that the action or proceeding was not commenced in the proper court, order the action or proceeding transferred to the proper court." "It is well established that a defendant is entitled to have an action tried in the county of his or her residence unless the actions falls within some exception to the general venue rule." (*Brown v. Superior Court* (1984) 37 Cal.3d 477, 483.) Code of Civil Procedure section 395, subdivision (a) states in pertinent part, "Except as otherwise provided by law…, the superior court in the county where the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action."

Defendants' argue that venue is improper as Kern County is the residence of both Defendants and valid exceptions to the general venue rule cannot be established by Plaintiff. Defendants point to the complaint itself which establishes that both Defendants reside and engage in business in the Kern County. (Complaint, ¶¶ 2-3.) Plaintiff argues exceptions based on a contract to perform an obligation, which does permit venue in the county where the obligation is to be carried out. (Code Civ. Proc., § 395, subd. (a).) Defendants have not presented enough evidence that a contract provision did not require delivery to Fresno County as reasonably inferred from Sharifov's Declaration. (Sharifov Declaration, ¶¶ 5-6.) Therefore, Fresno County is a proper venue for the contract claims. However, Plaintiff has not provided any valid exceptions for the fraud claims. "[F]raud is transitory and is triable in the county of defendant's residence." (*Quick v. Corsaro* (1960) 180 Cal.App.2d 831, 835.) Therefore, the proper venue, for the fraud claims, is Kern County.

When two or more causes of action each are governed by different venue rules, the mixed action rules apply. (*Brown v. Superior Court, supra,* 37 Cal.3d at 488.) In the present case, the contract claims and the fraud claims are governed by different venue rules. Therefore, the mixed action rules apply. "In cases with mixed causes of action, a motion for change of venue must be granted on the entire complaint if the defendant is entitled to a change of venue on any one cause of action." (*Ibid.*; citing *Ah Fong v. Stearnes* (1889) 79 Cal. 30, 33, and *Morrison v. Superior Court* (1980) 100 Cal.App.3d 852, 855–856.) Defendant is entitled to a change of venue on the fraud causes of action. Accordingly, Defendants' motion for change of venue to Kern County 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: ______**lmg**______ **on** ______**9-16-26**______.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Nguyen v. Aguilar***
Superior Court Case No. 26CU02760

Hearing Date: September 17, 2026 (Dept. 502)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant the petition and sign the proposed order. No appearances necessary.

The court sets a status conference for Wednesday, December 16, 2026, in Department 502, for confirmation that the minor's funds have been invested as set forth in the petition. If petitioner files a declaration or documentation, at least five court days before the status conference, showing that the funds have been invested as ordered, the status conference will come off calendar.

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: lmg on 9-16-26.
(Judge's initials) (Date)

(03)

<u>Tentative Ruling</u>

Re:	***K.L. on behalf of the Estate of B.L. v. Twilight Haven*** Case No. 25CECG01424
Hearing Date:	September 17, 2026 (Dept. 502)
Motion:	Defendants' Demurrer and Motion to Strike Portions of First Amended Complaint

Tentative Ruling:

To sustain the demurrer to the first through fifth causes of action for failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) To deny leave to amend the first, second, and third causes of action. To grant leave to amend the fourth and fifth causes of action.

To deny the motion to strike the prayers for punitive damages with regard to the first through fifth causes of action. To grant the motion to strike the prayer for general damages, special damages, punitive damages, as well as the requests for statutory damages of $500 per violation from the sixth and seventh causes of action. (FAC, ¶¶ 207, 209, 225.d, Prayer for Relief Nos. 15 [to the extent it seeks statutory damages "for each willful and negligent violation of B.L.'s patient rights"], 16, 18, 19 [to the extent it seeks statutory damages "for each violation"], 20, and 22.) To deny leave to amend with regard to the sixth and seventh causes of action.

Plaintiff shall serve and file his second amended complaint within ten days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

Demurrer: The plaintiff's first, second, and third causes of action are barred by the applicable statutes of limitations. In the first and second causes of action, plaintiff has attempted to state claims for elder abuse based on physical abuse and sexual assault. Plaintiff alleges that decedent B.L. was sexually assaulted by an employee of defendants while she was a resident of the facility in late 2020 or early 2021, and again in July of 2022. (FAC, ¶¶ 20-23, 42-45.) Plaintiff uses the sexual assault as the basis for the first and second causes of action for elder abuse. (*Id*. at ¶¶ 116 - 117, 128 -131.)

Defendants point out that the statute of limitations for claims based on assault, battery, personal injury, or wrongful death is two years. (Code Civ. Proc., § 335.1.) Since plaintiff did not file the complaint until March 25, 2025, more than two years after the last incident of sexual assault, defendants conclude that the elder abuse claims based on the sexual assault are time-barred.

On the other hand, plaintiff argues that the applicable statute of limitation for sexual assault claims is ten years from the date of the last incident, or three years from the date on which the plaintiff discovered or reasonably should have discovered an injury or illness that resulted from the assault. (Code Civ. Proc., § 340.16.) Since plaintiff filed the complaint less than ten years from the last incident of assault, he argues that the complaint is timely and the demurrer should be overruled.

However, where a plaintiff seeks to state a claim for elder abuse or neglect based on a sexual assault incident, the applicable statute of limitations is two years under section 335.1. (*Samantha B. v. Aurora Vista Del Mar, LLC* (2022) 77 Cal.App.5th 85, 96-98.) The ten-year statute under section 340.16 only applies to claims for sexual assault, not elder abuse based on sexual assault. Therefore, since plaintiff failed to file the complaint within two years of the last act of sexual assault, and since the plaintiff seeks to allege elder abuse as opposed to sexual assault, the first two causes of action are time-barred.

Furthermore, there is no way for plaintiff to cure the defect in the first two causes of action, since the first amended complaint's allegations clearly show that the claims were brought more than two years after the last assault. Therefore, the court intends to deny leave to amend the first and second causes of action.

Next, the third cause of action for elder abuse and neglect is also time-barred. Plaintiff alleges that B.L. was hospitalized for a serious infection in January of 2023 and never returned to defendants' facility after that date. (FAC, ¶¶ 87-92.) She was eventually discharged from the hospital, but she was sent to another facility after her discharge and never returned to Twilight Haven. (*Id*. at ¶ 92.) She died on March 27, 2024. (*Id*. at ¶ 96.) Thus, she was no longer in defendants' care and custody after January 2023, and she cannot have been neglected or abused after that date. As a result, any cause of action for elder abuse or neglect needed to be filed by no later than January of 2025. (Code Civ. Proc., § 335.1.) Yet plaintiff did not file her complaint until March 25, 2025, about two months after the statute of limitation expired. Consequently, plaintiff's third cause of action is time-barred.

In opposition, plaintiff argues that B.L. remained in defendants' care and supervision even after she was hospitalized, and that defendants continued to financially abuse her by refusing to account for her money. However, there are no facts alleged in the first amended complaint that tend to show that B.L. remained in defendants' custody after she was hospitalized. Instead, the FAC indicates that she was in the hospital's custody after January 2023 until she was transferred to a different facility, and that she never returned to defendants' facility after she was hospitalized. (FAC, ¶¶ 87-92.) Therefore, defendants could not have engaged in any physical abuse or neglect of B.L. after she was hospitalized.

Also, to the extent that plaintiff claims that he is alleging a claim for financial elder abuse based on defendants' alleged misuse of her funds, the allegations in the third cause of action appear to be based on physical abuse or neglect, not financial neglect. (FAC, ¶¶ 140-147, 157.) In any event, plaintiff has already alleged a separate cause of action for financial elder abuse in the fourth cause of action, so the third cause of action would be duplicative of the fourth case of action if it also seeks to allege financial elder abuse. Therefore, the court intends to sustain the demurrer to the third cause of action, without leave to amend.

Next, the plaintiff's fourth cause of action for financial elder abuse fails to state facts sufficient to constitute a cause of action, as it fails to allege facts showing that defendants misused or failed to account for B.L.'s money.

"Under the Elder Abuse and Dependent Adult Civil Protection Act, elder financial abuse occurs when a person or entity '[t]akes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both." Cal. Wel. & Inst.Code § 15610.30(a)(1). Elder financial abuse also occurs when a person or entity assists another in such conduct. *Id.* § 15610.30(a)(2). A violation of the statute occurs if, among other things, the person or entity (1) 'takes, secretes, appropriates, obtains, or retains the property,' and that person or entity (2) 'knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.'" (*Quintero Family Trust v. OneWest Bank, F.S.B.* (S.D. Cal., Jan. 27, 2010, No. 09-CV-1561-IEG (WVG)) 2010 WL 392312, at *16.) However, since elder abuse is a statutory cause of action, plaintiff must allege the facts underlying the claim with particularity, including facts showing what each particular defendant did, when it was done, and how it was fraudulent. (*Ibid*, citing *Hougue v. City of Holtville* (S.D. Cal. Apr. 30, 2008) 2008 WL 1925249, at *6; and *Delaney v. Baker* (1999) 20 Cal.4th 23, 32.)

Here, plaintiff alleges that defendants owed legal and fiduciary duties to B.L. because they were representative payees, including duties to use her funds solely for her benefit and support, maintain accurate records for all receipts and disbursements, provide accountings to her and her representatives, not to commingle her funds with defendants' own funds, not to use her funds for any purpose other than her care and support, and to manage her funds with reasonable care and prudence. (FAC, ¶ 166.) Defendants allegedly breached these duties by taking B.L.'s property for wrongful use or with intent to defraud, thus violating section 15610.30. (*Id*. at ¶ 167.) "Specifically, Defendants: a. Refused to provide B.L.'s family with any information, records, or accountings regarding B.L.'s funds; b. Refused to disclose how much money B.L. had; c. Refused to disclose how B.L.'s funds were being spent; d. Upon information and belief, misappropriated or misused B.L.'s funds for purposes other than her benefit; e. Upon information and belief, failed to use B.L.'s funds to provide her with adequate care, supplies, services, and amenities; f. Upon information and belief, commingled B.L.'s funds with Defendants' operating funds; g. Upon information and belief, used B.L.'s funds to pay for care and services that were never actually provided to her, given the egregious neglect she suffered." (*Id*. at ¶ 168.) "Defendants took property belonging to B.L., an elder and dependent adult, for a wrongful use and with intent to defraud." (*Id*. at ¶ 169.)

However, plaintiff's allegations are nothing more than vague conclusions without any factual details. Plaintiff does not allege what defendants actually did to misuse or misappropriate B.L.'s money, who committed the financial abuse, when they did it, or how it was fraudulent. Therefore, plaintiff has not sufficiently alleged his claim for financial elder abuse. As a result, the court intends to sustain the demurrer to the fourth cause of action for failure to state facts sufficient to constitute a cause of action. On the other hand, the court will grant leave to amend the fourth cause of action, as it is possible that plaintiff could allege more facts if given an opportunity to do so.

Finally, the court also intends to sustain the demurrer to the fifth cause of action for sexual battery. First, to the extent that defendants demur to the fifth cause of action based on the running of the statute of limitations, the claim is not time-barred. As discussed above, the statute of limitations for sexual assault claims is ten years from the date of the last incident, or three years from the date that the plaintiff discovers or should have discovered an injury or illness caused by the assault. (Code Civ. Proc., § 340.16.) Here, plaintiff has alleged that B.L. was last assaulted in July of 2022. (FAC, ¶ 42.) Plaintiff filed the complaint on March 25, 2025, less than ten years after the last assault and less than three years after discovery of any injury caused by the assault. Therefore, the sexual assault claim is not time-barred.

On the other hand, plaintiff has failed to allege facts sufficient to state a claim for sexual assault under Civil Code section 1708.5. Under section 1708.5, "A person commits a sexual battery who does any of the following: (1) Acts with the intent to cause a harmful or offensive contact with an intimate part of another, and a sexually offensive contact with that person directly or indirectly results. (2) Acts with the intent to cause a harmful or offensive contact with another by use of the person's intimate part, and a sexually offensive contact with that person directly or indirectly results. (3) Acts to cause an imminent apprehension of the conduct described in paragraph (1) or (2), and a sexually offensive contact with that person directly or indirectly results." (Civ. Code, § 1708.5, subd. (a), para. breaks omitted.)

Here, plaintiff alleges that defendants' employee "Romeo" was caught "with his pants undone and down in front of B.L. in circumstances that made clear that he was engaged in sexually inappropriate and criminal conduct with B.L." (FAC, ¶ 21.) He was later caught again "in a sexually inappropriate and compromising position with B.L." (*Id*. at ¶ 43.) "Romeo intentionally touched B.L. in an offensive manner for purposes of sexual arousal, sexual gratification, or sexual abuse." (*Id*. at ¶ 182.) "B.L. did not consent to this touching." (*Id*. at ¶ 183.) The contact was against her will. (*Id*. at ¶ 184.) Thus, the contact constituted sexual battery. (*Id*. at ¶ 186.)

However, these allegations are insufficient to constitute a cause of action for sexual battery, as plaintiff has not alleged that Romeo intentionally engaged in physical contact with an intimate part of his own body or an intimate part of B.L.'s body, or attempted to engage in such contact. It is unclear from the allegations whether Romeo ever actually touched B.L. with an intimate body part or touched an intimate part of her body. Nor is it clear that he attempted to touch her. Based on the allegations of the FAC, It appears that he may not have actually engaged in any touching or attempted touching of an intimate body part.

Therefore, plaintiff has not sufficiently alleged a claim for sexual battery under section 1708.5. As a result, the court intends to sustain the demurrer to the fifth cause of action. However, it is possible that plaintiff might be able to allege more facts to support the cause of action, so the court will grant leave to amend.

Motion to Strike: First, defendants move to strike the prayers for punitive damages from the first amended complaint on the ground that plaintiff has not alleged that they had advance knowledge of the unfitness of their employee, Romeo, that they acted with conscious disregard for the rights and safety of B.L., or that they ratified or authorized Romeo's conduct. (Civil Code, § 3294.) They contend that the allegations of the FAC show that they suspended Romeo after learning that he had sexually assaulted B.L., investigated him, promised not to allow him to access B.L. again, and fired him after he sexually assaulted her for a second time. They claim that these allegations show that they did not authorize or ratify his conduct, and that they instead took appropriate measures to protect B.L. and discipline Romeo, so they cannot be liable for punitive damages.

However, the FAC alleges that defendants were aware of the fact that Romeo was likely to sexually assault B.L. because he had already committed a prior sexual assault on her. They were told not to allow him near her again, and they nevertheless retained him as an employee and allowed him to have access to her, which led to him committing another sexual assault on B.L. (FAC, ¶¶ 20-48.) While defendants did suspend and investigate Romeo after the first assault, defendants allegedly failed to properly investigate the first sexual assault, and failed to inform police or social services after the first assault. (*Id*. at ¶¶ 31-34.) Defendants also allegedly failed to implement any safeguards, supervision, or monitoring to ensure that Romeo could not have access to B.L. (*Id*. at ¶ 37.) Defendants did not terminate Romeo or transfer him to a different facility. (*Id*. at p 39.) After he was given unfettered access to B.L., Romeo committed a second sexual assault on her in July of 2022. (*Id*. at ¶¶ 41-42.)

Thus, plaintiff has sufficiently alleged facts showing that defendants had advance knowledge of Romeo's unfitness and the danger he posed to B.L., and that they acted with reckless disregard for the risk of harm to her when they failed to terminate Romeo, transfer him to another facility, supervise and monitor him, or take any other steps to ensure that he would not assault her again. As a result, plaintiff has alleged facts to support the prayer for punitive, and the court will not strike the punitive damages prayer.

On the other hand, the court intends to grant the motion to strike the prayer for general damages, special damages, and statutory damages for each violation of Health and Safety Code section 1430(b), as well as the request for punitive damages with regard to the sixth and seventh causes of action. The sixth and seventh causes of action both allege violations of Health and Safety Code section 1430(b), the Patients' Bill of Rights. The California Supreme Court has held that statutory damages for violations of section 1430(b) are limited to a maximum of $500 per lawsuit. (*Jarman v. HCR ManoCare, Inc.* (2020) 10 Cal.5th 375, 392.) Thus, to the extent that plaintiff seeks damages in connection with the sixth and seventh causes of action that exceed the $500 cap, the request is improper. Consequently, the court intends to grant the motion to strike the prayers for general damages, special damages, punitive damages, and statutory damages of $500 per violation of section 1430(b). Plaintiff may recover no more than a total of $500 for violation of the Patients' Bill of Rights. Furthermore, the court intends to deny leave to amend the prayers in the sixth and seventh causes of action, as there is no possibility that plaintiff can obtain damages of more than $500 under the sixth and seventh causes of action.

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: ____lmg____ on ____9-16-26____.
(Judge's initials) (Date)