**Tentative Rulings for September 21, 2022**
**Department 501**

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**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).)**

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**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 begin at the next page)**

# Tentative Rulings for Department 501

Begin at the next page

(36)

**Tentative Ruling**

Re: ***Zavalza v. Dollar Tree Stores, Inc., et al.***
Superior Court Case No. 21CECG00647

Hearing Date: September 21, 2022 (Dept. 501)

Motion: by Defendant Family Dollar, Inc., for Order Compelling Deposition of Plaintiff Marcelina Zavalza and Imposing Monetary Sanctions

**Tentative Ruling:**

To grant. (Code Civ. Proc., § 2025.450.) Plaintiff Marcelina Zavalza is ordered to appear at her deposition on a date, within two weeks from service of the order by the clerk, to be agreed upon by the parties as indicated below. (Code Civ. Proc., § 2025.450, subd. (c)(1).) To impose $2,865 in monetary sanctions, to be paid within 30 days to counsel for defendant.

**Explanation:**

The motion is brought pursuant to Code of Civil Procedure section 2025.450. subdivision (a), which provides:

> If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document, electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice.

The moving papers show that plaintiff's deposition was duly noticed and plaintiff failed to appear at the deposition. A motion to compel must therefore be granted under section 2025.450, subdivision (a). Defendant has diligently sought to obtain dates on which to take plaintiff's deposition, but plaintiff has not cooperated in actually appearing for the scheduled and subsequently rescheduled depositions. It is apparent that unilaterally noticing another reschedule deposition or engaging in any further attempts at rescheduling the deposition would have been a futile act. Plaintiff must comply with the Civil Discovery Act and promptly submit to a deposition. Plaintiff will be ordered to appear for her deposition on a date, time and location to be expeditiously agreed upon by the parties. In the event of no agreement, defendant's choices on a date, time and place (within reason) will control.

"If a motion under subdivision (a) [of Code of Civil Procedure, section 2025.450] is granted, the court shall impose a monetary sanction… in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2025.450, subd. (g)(1), emphases added.)

Although plaintiff provides evidence to indicate that she or her counsel was unable to attend the deposition(s) for varying reasons, insufficient justification is provided to explain why plaintiff was unable to attend the March 1 and March 8 deposition sessions. The court finds it reasonable to allow only three hours for the preparation of the instant motion at the hourly rate of $215, provided by counsel, and $60 for the cost of filing the motion. The court also allows only $2,160 in costs for the cancellation of the reporter and interpreter, since it has been shown that plaintiff's counsel has paid $300 for the cancellation cost of the interpreter for the February 1, 2022, deposition. Therefore, the total amount of sanctions awarded is $2,865.

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

**Tentative Ruling**
**Issued By: DTT on 9/19/2022.**
(Judge's initials) (Date)

(35)

**Tentative Ruling**

Re: ***Dawson v. Athenix Body Sculpting Institute et al.***
Superior Court Case No. 21CECG00570

Hearing Date: September 21, 2022 (Dept. 501)

Motion: by Defendants Kevin F. Ciresi, M.D., and Kevin F. Ciresi, M.D., Inc., on Demurrer to First Amended Complaint

**Tentative Ruling:**

To sustain the demurrer to the third cause of action (for battery) with leave to amend.

**Explanation:**

Plaintiff filed a First Amended Complaint ("FAC") alleging three causes of action: (1) negligence; (2) fraud; and (3) battery. Defendants Kevin F. Ciresi, M.D., and Kevin F. Ciresi, M.D., Inc. (together "Defendants") bring a general demurrer as to the third cause of action, for battery, for failure to state facts sufficient to constitute an action, and a specially demurrer to the third cause of action for uncertainty.

*Applicable Standards*

On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-114.) It is error to sustain a demurrer where plaintiff "has stated a cause of action under any possible legal theory. In assessing the sufficiency of a demurrer, all material facts pleaded in the complaint and those which arise by reasonable implication are deemed true." (*Bush v. California Conservation Corps* (1982) 136 Cal.App.3d 194, 200.)

In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883.) The court may also consider matters subject to judicial notice. (*Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 29.) On demurrer, the court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.) The courts of this state have long since departed from holding a plaintiff strictly to the form of the action he has pleaded and instead have adopted the more flexible approach of examining the facts alleged to determine if a demurrer should be sustained. (*Ibid.*) Thus, a plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises defendant of the factual basis for plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

When a complaint is defective, great liberality should be exercised in permitting a plaintiff to amend the complaint if there is a reasonable possibility that the defect can be cured by amendment. (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549.)

*Failure to State Facts*

Where a doctor obtains consent of the patient to perform one type of treatment and subsequently performs a substantially different treatment for which consent was not obtained, there is a clear case of battery. (*Cobbs v. Grant* (1972) 8 Cal.3d 229, 239.) The battery theory is reserved for those circumstances where a doctor performs an operation to which the patient has not consented. (*Id.* at p. 240.) Thus, a medical battery occurs in either the absence of consent, or where consent was given to perform one type of treatment and subsequently the doctor performed a substantially different treatment for which consent was not obtained.

Here, the FAC states no allegations with regard to consent given, a lack of consent given, a deviation from consent given, or a vitiation of consent given. Rather, the FAC states, in conclusory fashion, that defendants "battered Plaintiff while performing the subject… surgery."

In the opposition, plaintiff argues that the allegations contained in the fraud cause of action voids any possible consent due to the nature of the alleged fraud. (*Rains v. Superior Court* (1984) 150 Cal.App.3d 933, 938-939.) Though plaintiff clarifies in opposition, that Defendants presented themselves as licensed, competent medical professionals and they were not, this argument is not clearly stated in the FAC. The FAC appears to state the opposite. The FAC alleges that, as to licensure, the suspension or revocation of the medical licensure was stayed while on probation. As alleged, the FAC does not contend that Defendants were unlicensed. As to the issue of competency, such allegations sound in negligence. (*See Cobbs*, *supra*, 8 Cal.3d at p. 241.)

For these reasons, the demurrer to the third cause of action, for battery, is sustained, with leave to amend.

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

**Tentative Ruling**
**Issued By: DTT on 9/19/2022.**
(Judge's initials) (Date)

(34)

**Tentative Ruling**

Re: ***Holmes v. Charles Matoian Enterprises, Inc.***
Superior Court Case No. 21CECG02070

Hearing Date: September 21, 2022 (Dept. 501)

Motion: Defendant's Demurrer to First Amended Complaint

**Tentative Ruling:**

To overrule defendant's demurrer to the First Amended Complaint. To order defendant to file and serve its Answer within ten days of the date of service of this order.

**Explanation:**

Defendant demurs to the entire First Amended Complaint on the ground that there is another action pending between the same parties on the same causes of action. (Code Civ. Proc. § 430.10, subd. (c).) It claims that plaintiffs in the present action are members of the putative class of an earlier filed action in Fresno Superior Court for the same wage and hour claims against the same defendant. (See Defendant's Request for Judicial Notice, Exhs. 1 and 2, Complaint and First Amended Complaint filed in *Gonzalez v. Charlie's Enterprises, Inc., et al*., Fresno Superior Court case no. 19CECG02085. The court intends to take judicial notice of the other action under Evidence Code section 452, subdivision (d).) Thus, it contends that the court should sustain the demurrer and abate the present action, as there is another action pending involving the same parties and causes of action. Defendant demurs to the entire Complaint for lack of jurisdiction based on the rule of concurrent exclusive jurisdiction of the court where the earlier-filed *Gonzalez* action is pending between similar parties based on similar allegations of Labor Code violations.

Under Code of Civil Procedure section 430.10, subdivision (c), "[t]he party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds: … (c) There is another action pending between the same parties on the same cause of action."

"A plea in abatement pursuant to section 430.10, subdivision (c), may be made by demurrer or answer when there is another action pending between the same parties on the same cause of action. In determining whether the causes of action are the same for purposes of pleas in abatement, the rule is that such a plea may be maintained only where a judgment in the first action would be a complete bar to the second action. Where a demurrer is sustained on the ground of another action pending, the proper order is not a dismissal, but abatement of further proceedings pending termination of the first action." (*Plant Insulation Co. v. Fibreboard Corp*. (1990) 224 Cal.App.3d 781, 787–788, internal citations omitted.)

"The pendency of another earlier action growing out of the same transaction and between the same parties is a ground for abatement of the second action. The defendant may assert the pending action as a bar either by demurrer, or where fact issues must be resolved, by answer. In either case, where the court determines there is another action pending raising substantially the same issues between the same parties, it is to enter the interlocutory judgment specified in Code of Civil Procedure section 597. Under Code of Civil Procedure section 597, when such a judgment is entered, 'no trial of other issues shall be had until the final determination of that other action.' Abatement of the second action is a matter of right. A trial court has no discretion to allow the second action to proceed if it finds the first involves substantially the same controversy between the same parties." (*Leadford v. Leadford* (1992) 6 Cal.App.4th 571, 574, internal citations omitted.)

Defendants cite to *Plant Insulation Co. v. Fibreboard Corp., supra*, 224 Cal.App.3d 781, in support of their position that the present action should be abated in favor of the earlier-filed *Gonzalez* action. Defendant also demurs based on the lack of jurisdiction due to the exclusive concurrent jurisdiction rule. *Plant Insulation* explains that there are key differences between the doctrine of exclusive concurrent jurisdiction and the statutory plea in abatement set forth in Code of Civil Procedure section 430.10, subdivision (c).

"Under the rule of exclusive concurrent jurisdiction, 'when two superior courts have concurrent jurisdiction over the subject matter and all parties involved in litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matters have been resolved.' The rule is based upon the public policies of avoiding conflicts that might arise between courts if they were free to make contradictory decisions or awards relating to the same controversy, and preventing vexatious litigation and multiplicity of suits. The rule is established and enforced not 'so much to protect the rights of parties as to protect the rights of Courts of co-ordinate jurisdiction to avoid conflict of jurisdiction, confusion and delay in the administration of justice.' The rule of exclusive concurrent jurisdiction may constitute a ground for abatement of the subsequent action. 'An order of abatement issues as a matter of right not as a matter of discretion where the conditions for its issuance exist.' However, abatement is not appropriate where the first action cannot afford the relief sought in the second." (*Plant Insulation supra,* at pp. 786–787, internal citations omitted.)

"Although the rule of exclusive concurrent jurisdiction is similar in effect to the statutory plea in abatement, it has been interpreted and applied more expansively, and therefore may apply where the narrow grounds required for a statutory plea of abatement do not exist. *Unlike the statutory plea of abatement, the rule of exclusive concurrent jurisdiction does not require absolute identity of parties, causes of action or remedies sought in the initial and subsequent actions.* If the court exercising original jurisdiction has the power to bring before it all the necessary parties, the fact that the parties in the second action are not identical does not preclude application of the rule. Moreover, the remedies sought in the separate actions need not be precisely the same so long as the court exercising original jurisdiction has the power to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings." (*Id*. at p. 788, internal citations omitted, emphasis added.)

Here, defendant demurs *to the entire Complaint* on the ground of another action pending between the same parties on the same causes of action, which is a statutory plea in abatement, as well as the more expansive lack of jurisdiction under the rule of exclusive concurrent jurisdiction. The demurrer should be overruled on both grounds.

Defendants must demonstrate that the two actions are to resolve substantially the same issues between the same parties and they have not done so. The case at bench is premised on COVID-19 workplace protocols and practices that are alleged to have resulted in unpaid time under the employer's control while undergoing screenings for illness. (FAC ¶ 17.) The plaintiff in the *Gonzale*z action alleged a practice of rounding time entries as the basis for the cause of action for failure to pay minimum wage. (RJN, Exh. 2, ¶ 11.) Because of the specific nature of the allegations related to COVID-19 protocols, defendant has not demonstrated that the violations alleged are substantially the same or that the two actions involved the same parties. The named plaintiff in the *Gonzale*z action was employed by defendant from September 2014 through April 2019, well before COVID protocols would have been put in place and could not have experienced these alleged violations. (Id. at ¶ 9.) Plaintiffs have demonstrated that they are seeking to remedy Labor Code violations unrelated to the rounding practices described in the *Gonzale*z action.

Defendant has not demonstrated that the failure to provide complete wage statements, waiting time penalties, Unfair Competition Law and Private Attorney General Act causes of action flowing from these COVID-19 protocol allegations are contemplated in the settlement preliminarily approved by the arbitrator in the *Gonzalez* action.

The allegations regarding unpaid overtime based on the alleged exclusion of non-discretionary bonuses in the two actions are near identical. (RJN, Exh. 2, ¶ 10; FAC ¶ 19.) However, the case at bench also includes an allegation that defendant failed to pay one and a half time the hourly rate and paid straight time in lieu of overtime. (FAC ¶ 18.) Further, the demurrer is to the Complaint in its entirety. A demurrer which attacks an entire pleading should be overruled if one of the counts therein is not vulnerable to the objection. (*Lord v. Garland* (1946) 27 Cal.2d 840, 850.)

Therefore, defendant has failed to demonstrate that *the entire Complaint* should be abated on the ground of another action pending between the parties or that the entire action fails for lack of jurisdiction. The court intends overrule the demurrer in its entirety.

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

**Tentative Ruling**
**Issued By: DTT on 9/20/2022.**
(Judge's initials) (Date)

(03)

**Tentative Ruling**

Re: ***Guevara v. Ibrahim***
Superior Court Case No. 17CECG00596

Hearing Date: September 21, 2022 (Dept. 501)

Motion: by Defendant Carolyn Young for Summary Judgment

**Tentative Ruling:**

To grant defendant Carolyn Young's motion for summary judgment as to all claims against her. (Code Civ. Proc. § 437c.) Defendant shall submit a proposed judgment consistent with this court's ruling dismissing the claims against her within 10 days of the date of this order.

**Explanation:**

Defendant Carolyn Young moves for summary judgment of the entire Complaint against her on the ground that she did not grant permission to the driver, defendant Ramzy Ibrahim, to drive her vehicle on the date of the accident, or on any other date. Therefore, she contends that plaintiff Felix Guevara, who was a passenger in the car and who was injured when Ibrahim allegedly drove the car in a negligent manner and caused it to roll over, cannot recover against her under a negligent entrustment theory or under the vehicle owner liability statute, Vehicle Code section 17150.

Under Vehicle Code section 17150, "Every owner of a motor vehicle is liable and responsible for death or injury to person or property resulting from a negligent or wrongful act or omission in the operation of the motor vehicle, in the business of the owner or otherwise, by any person using or operating the same *with the permission, express or implied, of the owner*." (Veh. Code, § 17150, italics added.) Thus, in order to recover against Young under section 17150, plaintiff must show that Young, the vehicle's owner, gave express or implied permission to Ibrahim to drive the vehicle before the accident.

Likewise, in order to prevail on his negligent entrustment cause of action, plaintiff must prove that Young gave permission to Ibrahim to drive her vehicle even though Young either knew or should have known that Ibrahim was an unfit or incompetent driver. (CACI 724.) The mere fact that the driver was driving a vehicle belonging to another is not enough, by itself, to establish that the owner gave permission to allow the drive to operate the vehicle. (*Di Rebaylio v. Herndon* (1935) 6 Cal.App.2d 567, 569.)

"[P]ermission cannot be left to speculation or conjecture nor be assumed, but must be affirmatively proved, and the fact of permission is just as important to sustain the imposition of liability as is the fact of ownership. However, the question of whether there was such permission is one to be determined by the trial court upon the facts and circumstances in evidence and the inferences reasonably to be drawn therefrom, and its decision will not be disturbed upon appeal where the record furnishes substantial support therefor." (*Scheff v. Roberts* (1950) 35 Cal.2d 10, 12–13, internal citations

omitted.) "'The trier of fact, as the exclusive judge of the credibility of witnesses, is not required to believe the owner's denial of having given permission, if there is other evidence warranting the inference of permission.'" (*Taylor v. Roseville Toyota, Inc.* (2006) 138 Cal.App.4th 994, 1004–1005, internal citations omitted.)

Here, defendant Young has presented evidence that she never gave express or implied permission to Ibrahim to drive her vehicle. She states that she is the registered owner of the vehicle, a 1974 Toyota Land Cruiser, and that she gave permission for her son, Robert Young, to drive the vehicle. (Carolyn Young decl., ¶¶ 1-3.) However, she denies that she ever gave anyone else permission to drive the vehicle. (*Id*. at ¶ 4.) She had no knowledge that her son had taken the vehicle to Ramzy's Motorsports for auto work, or that the vehicle was in Ramzy Motorsports' possession. (*Id*. at ¶ 5.) She denies ever giving Ibrahim permission to drive the vehicle to Jimbo's bar in Clovis. (*Id*. at ¶ 6.) Ibrahim never asked her for permission to drive the vehicle. (*Id*. at ¶ 7.) She had no knowledge that the truck had been taken to Jimbo's bar on February 26, 2015. (*Id*. at ¶ 8.) She also denies giving anyone else at associated with Ramzy's Motorsports permission to drive the vehicle for any purpose. (*Id*. at ¶ 9.) She also denies any knowledge that Ibrahim was an unfit or incompetent driver. (*Id*. at ¶ 10.)

Robert Young has also provided his declaration, in which he states that he was the primary and permissive driver of the subject vehicle. (Robert Young decl., ¶ 2.) More than a month before the accident, he took the vehicle to Ramzy's Motorsports to have stereo equipment and LED lighting installed. (*Id*. at ¶ 3.) Ibrahim, the owner of Ramzy's, agreed to work on the vehicle when he had time. (*Id*. at ¶ 5.) Robert did not give permission to Ibrahim to operate the vehicle, other than what was necessary to move the vehicle at the business and allow for completion of the work on the stereo and LED lighting. (*Id*. at ¶ 6.) The scope of work did not require the vehicle to be driven off the premises. (*Id*. at ¶ 7.) Robert did not give permission for Ibrahim or any employee of Ramzy's to drive the vehicle off the premises of Ramzy's for any reason. (*Id*. at ¶ 8.) Ibrahim never asked for permission to drive the vehicle off Ramzy's property. (*Id*. at ¶ 9.) Robert never gave permission to Ibrahim to drive the vehicle to Jimbo's bar in Clovis on February 26, 2015, or any other date. (*Id*. at ¶ 10.) Robert had no knowledge that Ibrahim was an unfit or incompetent driver. (*Id*. at ¶ 11.)

Carolyn Young and Robert Young's deposition testimony also indicates that neither Carolyn nor Robert ever gave their permission to Ibrahim to allow him to drive the vehicle. Carolyn Young claims that she never met Ibrahim, that she did not give him permission to drive her vehicle, and that she did not even know how he came to be in possession of the vehicle. (Carolyn Young depo., p. 12:8-23.) Robert Young stated that he dropped the vehicle off at Ibrahim's shop to have stereo work done and to install LED lighting. (Robert Young depo., p. 13:4-7.) He denied giving permission to Ibrahim to use the vehicle, and stated that he expressly told him not to use the vehicle. (*Id*. at p. 14:20 - 15:1.) He learned of the accident when someone called him in the middle of the night and told him about it. (*Id*. at 19:15-17.)

Thus, Young has met her burden of showing that she did not give permission to Ibrahim to drive the vehicle on the day of the accident, or any other day. She has also presented evidence stating that she had no idea that Ibrahim was an unfit or incompetent driver. In fact, she claims that she never met him before the accident.

(Carolyn Young depo., p. 12:21-23.) As a result, she is entitled to summary judgment of the Vehicle Code section 17150 owner liability claim and negligent entrustment claim unless plaintiff comes forward with admissible evidence showing that there is a triable issue of material fact with regard to the issue of whether Young allowed Ibrahim to drive the vehicle.

In opposition to the motion, plaintiff has submitted the declaration of Ibrahim, who claims that Robert gave him permission to sell the subject vehicle and take it to car shows for the purpose of selling it. He claims that Robert would bring the vehicles in to his shop to have work done and to install upgrades. (Ibrahim decl., ¶ 3.) At first, Ibrahim believed that Robert owned the vehicles, but later he saw registration papers that indicated that the vehicles were actually owned by Carolyn Young. (*Id*. at ¶ 4.) He was not surprised, as he has done work on Carolyn Young's personal vehicle as well. (*Id*. at ¶ 5.) Robert would not pay for the work done on the vehicles, and instead he had an agreement with Ibrahim whereby Ibrahim would sell the vehicles on behalf of Robert, and Ibrahim would keep any money over a certain set price for himself. (*Id*. at ¶ 6.) Ibrahim also claims that Robert agreed to allow him to drive his vehicles, including driving cars to car shows, "as well as driving the vehicles around town for any purpose." (*Id*. at ¶ 7.)

Ibrahim claims that he was also allowed to post photos of Young's vehicles to social media. (*Ibid*.) The intent was to create interest in the cars in order to increase their sale value, as well as to market Ibrahim's business. (*Ibid*.) Ibrahim attaches copies of several Instagram posts he made showing photos of the subject Toyota Land Cruiser, as well as a 1967 Cadillac Coupe de Ville also owned by Carolyn Young. (*Id*. at ¶¶ 8-13, and Exhibits 1 – 5 thereto.) He claims that neither Robert nor Carolyn ever told him that he had to return the vehicles, that the vehicles were not for sale, or that he did not have permission to drive the vehicles at his discretion. (*Id*. at ¶¶ 8-13.)

However, none of plaintiff's evidence raises a triable issue of material fact with regard to the key question of whether Carolyn Young, the undisputed owner of the subject vehicle, gave permission to Ibrahim to drive the vehicle on the night of the accident. At most, plaintiff's evidence raises a potential issue as to whether Carolyn Young's son, Robert Young, gave permission to Ibrahim to drive the vehicle for the purpose of taking it to car shows, and allegedly also gave him permission to drive the vehicle for other purposes as well. (Ibrahim decl., ¶ 7.) Yet Robert was not the owner of the vehicle, so he could not have given valid permission for Ibrahim to drive it. Neither party disputes that Carolyn was the registered owner of the vehicle. (See Plaintiff's Response to Undisputed Fact No. 4.) While Robert had permission to drive the vehicle, there is no evidence indicating that he was authorized by his mother to sell the vehicle or allow anyone else to drive it, including Mr. Ibrahim.

Thus, even assuming that Robert gave his permission to allow Ibrahim to drive the vehicle for the purpose of taking it to car shows or for other purposes, Robert had no authority to give permission to Ibrahim or anyone else to drive the vehicle, as he was not the vehicle's owner. Indeed, Ibrahim admits that he knew that Robert was not the registered owner of the vehicle, as he states that he saw the registration paperwork that stated Carolyn Young was the actual owner. (Ibrahim decl., ¶ 4.)

Ibrahim claims that he did do some work on Carolyn's personal car as well "over the course of years." (Ibrahim decl., ¶ 5.) However, he does not allege that Carolyn ever spoke with him or gave him permission to drive any of her cars, much less that she permitted him to drive her vehicle to Jimbo's bar on the night of the accident. Thus, plaintiff has not raised a triable issue of fact with regard to Carolyn's statement that she never met Ibrahim or gave him permission to drive the subject vehicle.

Nor has plaintiff offered any evidence indicating that Robert Young had the authority to give consent to let Ibrahim drive Carolyn Young's vehicle. Consequently, even if Robert did tell Ibrahim that he was allowed to drive the vehicle on the night of the accident, such consent would not have been sufficient to impose liability under section 17150 or a common law negligent entrustment theory, as Robert was not the owner of the vehicle and could not consent to allow someone else to drive it.

Ibrahim has claimed that he had the authority to post photos of Carolyn Young's cars on Instagram for the purpose of selling them, including a photo of the subject Land Cruiser. He also claims that neither Carolyn nor Robert Young ever objected to him posting the photos, or told him that he could not sell the cars or drive them at his discretion. Yet Ibrahim offers no evidence that Carolyn Young had any knowledge that photos of her cars were being posted on Instagram, or that her son had agreed to have Ibrahim sell the cars for him. There is no indication that Carolyn Young knew anything about the agreement, which was apparently entirely between Robert and Ibrahim. Nor is there any evidence that Carolyn Young knew that her son allegedly allowed Ibrahim to drive her cars, and thus she impliedly consented to allow him to drive her cars as well. Therefore, even if Robert and Ibrahim did have an agreement to sell the subject vehicle, the existence of the agreement does not raise a triable issue of fact with regard to whether Carolyn agreed to allow Ibrahim to drive her Land Cruiser on the night of the accident.

Ibrahim also mentions that he finds it "odd" that Carolyn and Robert Young are arguing that he did not have permission to drive their vehicles, yet they still allowed him to retain possession of the 1967 Cadillac Coupe de Ville even after the accident and until at least June 20, 2018. (Ibrahim decl., ¶ 14.) However, the fact that Young may have allowed Ibrahim to retain possession of a different car after the accident does not establish or even suggest an inference that he was allowed to drive the subject vehicle before the accident, other than for the purpose of moving the vehicle on his business premises so that repairs or upgrades could be completed.[1]

As a result, plaintiff has failed to raise any triable issues of material fact with regard to whether Carolyn Young gave permission for Ibrahim to drive the subject vehicle on the night of the accident. Therefore, the court intends to grant summary judgment in favor of Young as to all claims alleged against her.

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

[1] Defendant has raised objections to paragraphs 6 to 14 of Ibrahim's declaration on various grounds, including hearsay, relevance and lack of foundation. The court intends to overrule the objections. However, the rulings do not change the outcome of the motion.

adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**
**Issued By: DTT on 9/19/2022.**
(Judge's initials) (Date)

(38)

**Tentative Ruling**

Re: ***JHS Family Limited Partnership v. County of Fresno***
Superior Court Case No. 15CECG02007

Hearing Date: September 21, 2022 (Dept. 501)

Motion: by Plaintiffs for Leave to File Fourth Amended Complaint

**Tentative Ruling:**

To grant. Plaintiffs are granted 5 days' leave to file a Fourth Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

**Explanation:**

Under Code of Civil Procedure section 473, subdivision (a), "[t]he court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars..." (Code Civ. Proc., § 473, subd. (a).)

" 'Code of Civil Procedure section 473, which gives the courts power to permit amendments in furtherance of justice, has received a very liberal interpretation by the courts of this state.... In spite of this policy of liberality, a court may deny a good amendment in proper form where there is unwarranted delay in presenting it.... On the other hand, where there is no prejudice to the adverse party, it may be an abuse of discretion to deny leave to amend. In the furtherance of justice, trial courts may allow amendments to pleadings and if necessary, postpone trial.... Motions to amend are appropriately granted as late as the first day of trial ... or even during trial ... if the defendant is alerted to the charges by the factual allegations, no matter how framed ... and the defendant will not be prejudiced.' " (*Rickley v. Goodfriend* (2013) 212 Cal.App.4th 1136, 1159, citations omitted.)

Here, plaintiffs seek leave to file a Fourth Amended Complaint to add a third cause of action for declaratory relief, seeking a judicial determination that the County must reimburse plaintiffs for the ultimate amount they incur to clean up the contamination at the subject property and to obtain a final sign off for the cleanup from the California Regional Water Quality Control Board. Plaintiffs have met the formalities required of a motion to amend the complaint and has given due notice to defendant.

Defendant opposes the motion on the grounds that plaintiffs' request is untimely and prejudicial. Delay alone is insufficient to support denial of a motion to amend. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.) Defendant's assertion that plaintiffs' proposed amendment would prejudice defendant in its defense

of this case is also unavailing. What constitutes as prejudice to the opposing party is largely determined on a case-by-case basis. Prejudice exists where the amendment would result in a delay of trial, along with loss of critical evidence, added costs of preparation, increased burden of discovery, etc. (*Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488; *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345; *Fisher v. Larsen* (1982) 138 CA3d 627, 649.) As long as no prejudice to the defendant is shown, the liberal policy of amendment prevails and it is an abuse of discretion to refuse the amendment. (*Mesler v. Bragg Mgmt. Co.* (1985) 39 Cal.3d 290, 297 [no surprise to defendant because parties had conducted discovery on the issues sought to be raised by amendment]; *Higgins v. DelFaro* (1981) 123 Cal. App. 3d 558, 564-65.) Expansion of the litigation does not constitute prejudice sufficient to deny leave to amend. (*Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 490.) There are no factors amounting to prejudice cited here, such as loss of critical evidence, or not having the opportunity to conduct appropriate discovery. (*Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488.)

Defendant also opposes the motion on the grounds that plaintiffs have not stated a proper basis for a declaratory cause of action. Ordinarily, the court will not consider the validity of the proposed amended pleading in deciding whether to grant leave to amend. Grounds for demurrer or motion to strike are premature. After leave to amend is granted, the opposing party will have the opportunity to attack the validity of the amended pleading. (See *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.) The court has discretion to deny leave to amend where a proposed amendment fails to state a valid cause of action or defense. (See *California Casualty General Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 280-281 [disapproved on other grounds in *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390, 407, fn. 11].) Such denial is "most appropriate" where the pleading is deficient as a matter of law and the defect could not be cured by further appropriate amendment. (*California Casualty General Ins. Co.*, *supra*, 173 Cal.App.3d at 281; *Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 230.) That is not the case here.

Finally, defendant argues that plaintiffs' breach of contract cause of action precludes the declaratory relief they seek. The court disagrees. A declaratory judgment is a cumulative remedy and does not preclude additional relief based on the same facts. (*Syngenta Crop Protection, Inc. v. Helliker* (2006) 138 Cal.App.4th 1135, review denied.) A person who has rights flowing from a contract has an "interest" in that contract, and should, in the discretion of the trial court, be able to maintain an action to secure a declaration of the character and extent of those rights when an actual controversy exists. (*Gardiner v. Gaither* (1958) 162 Cal.App.2d 607.) Defendant's reliance on *Hood v. Superior Court* (1995) 33 Cal.App.4th 319 is misplaced. *Hood* addressed what type of claim could properly be the subject of a summary adjudication motion, not what claims could properly be the subject of a cause of action for declaratory relief: "[T]he plain lesson of *Hood* is that parties will not be allowed to misuse the declaratory relief cause of action in an attempt to subvert the requirement a summary adjudication must completely dispose of a cause of action." (*Southern Cal. Edison Co. v. Superior Court* (1995) 37 Cal.App.4th 839, 846.) *Hood* does not assist defendant.

In sum, the opposing party has failed to show it will be prejudiced if the amendment is allowed. Absent prejudice, it is an abuse of discretion to deny leave to

amend. (*Higgins v. DelFaro* (1981) 123 Cal. App. 3d 558, 564-65.) Therefore, plaintiffs' motion for leave to file a Fourth Amended Complaint is granted.

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

**Tentative Ruling**
**Issued By: DTT on 9/20/2022.**
(Judge's initials) (Date)