

Tentative Rulings for September 23, 2026
Department 501

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

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

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

24CECG01486 *NICBYTE, LLC v. Community West Bank* is continued to Thursday, September 24, 2026 at 3:30 p.m. in Department 501.

24CECG02235 *Abid Malik v. Doe Manager* is continued to Thursday, September 24, 2026, at 3:30 p.m. in Department 501.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

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Tentative Ruling

Re: **Jorgensen & Sons, Inc. v. VL Management, Inc.**
Superior Court Case No. 23CECG02950

Hearing Date: September 23, 2026 (Dept. 501)

Motion: Default Prove-Up

Tentative Ruling:

To grant and sign the proposed judgment. No appearance necessary.

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 09/21/26.
(Judge's initials) (Date)

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Tentative Ruling

Re: **Laren Cyr Galpin v. Merced Hospice, Inc.**
Superior Court Case No. 24CECG04875

Hearing Date: September 23, 2026 (Dept. 501)

Motion: by Plaintiff to Quash the Subpoena for Production of Business
Records to Community Medical Center Health Management

Tentative Ruling:

To deny plaintiff's motion to the extent that she seeks to quash the business records subpoena issued to Community Medical Center Health Management in its entirety. To limit the subpoena to those medical records pertaining to plaintiff's July 14, 2024 knee injury and subsequent restrictions. To deny defendant's request for sanctions.

Explanation:

Plaintiff Laren Cyr Galpin ("plaintiff") seeks to quash defendant Merced Hospice Inc.'s ("defendant") subpoena seeking certain records from Community Medical Center Health Management. Plaintiff submits that these records are overbroad and irrelevant or otherwise subject to the right of privacy. Accordingly, plaintiff seeks to quash the subpoena in its entirety. Alternatively, plaintiff requests the court limit the subpoena to records pertaining to plaintiff's July 14, 2024 knee injury.

A party is entitled to discover the information as long as it is reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc., § 2017.010.) In accordance with the liberal policies underlying the discovery procedures, doubts as to relevance should generally be resolved in favor of permitting discovery. (*Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2 Cal.3d 161, 173.) While discovery is broad, the right to discovery is not absolute. The California Constitution protects the individual's reasonable expectation of privacy against a serious invasion. (*Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 370.) A reasonable expectation of privacy is an objective entitlement founded on broadly based and widely accepted community norms. (*Hill v. Nat'l Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 37.) The invasion of privacy must be serious in nature, scope, and actual or potential impact to constitute an egregious breach of social norms. (*Ibid.*) If the invasion is serious, the invasion must be measured against legitimate and important competing interests. (*Id.* at p. 38.)

Specifically, the patient-physician privilege creates a zone of privacy whose purpose are (1) to preclude the humiliation of the patient that might follow disclosure of ailments and (2) to encourage the patient's full disclosure to the physician all of the information necessary for effective diagnosis and treatment of the patient. (Evid. Code, § 990, et seq.; *Board of Medical Quality Assurance v. Gherardini* (1979) 93 Cal.App.3d 669, 678-679, overruled on other grounds by *Williams v. Superior Court* (2017) 3 Cal.5th 531.) Thus, medical records fall within the protected ambit of the state Constitution right to privacy. (*Board of Medical Quality Assurance v. Gherardini, supra* 93 Cal.App.3d at p.

679.) Even absent a statutory privilege, the constitutional privilege would be held to operate. (*Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1014.)

Where a party raises physical conditions as an issue in the case, he waives his right to claim that the relevant medical records are privileged. (*Vesco v. Superior Court* (2013) 221 Cal.App.4th 275, 279.) And, even if plaintiff has not waived the right to privacy, the court may still order production of the private information if defendant has made a showing that the information is directly relevant to the issues of the case, and the need to discover the information outweighs the plaintiff's right to keep the information private. (*Board of Medical Quality Assurance v. Gherardini, supra*, 93 Cal.App.3d at p. 680.) If discovery is allowed, however, it must be narrowly tailored to create the least intrusive invasion of privacy. (*Ibid.*)

Here, it appears that the subpoena at issue is overbroad and violates plaintiff's constitutional right to privacy. (Cal. Const., Art. I, § 1; *Britt v. Superior Court (San Diego Unified Port Dist.)* (1978) 20 Cal.3d 844, 855, 856.) The subpoena requests "All documents and records pertaining to the care, treatment, and examination of [plaintiff] ... from January 1, 2016 to the present." (Khosrovian Decl., ¶¶ 6, 7; Exh. B.) Defendant does not justify the broad 10-year range of medical records sought.

In its opposition, Defendant submits a limitation to the subpoena as follows:

All nonprivileged records concerning Plaintiff's July 14, 2024 injury as it relates to her knee; Plaintiff's knee condition; evaluation or treatment relating to that condition; medical and work restrictions relating to Plaintiff's knee; functional-capacity and work-status determinations; return-to-work or full-duty releases; and any modification, continuation, reduction, or removal of restrictions relating to Plaintiff's knee condition. (Opp., 7:5-11.)

The court is satisfied that this proposed limitation narrowly tailors the subpoena request to the medical condition at issue in the complaint. Plaintiff's argument that the request for these records relating to her knee condition remains overbroad and irrelevant is unconvincing. Plaintiff placed the condition of her knee at issue, as well as the physical restrictions resulting from her injury and condition. These limited records are relevant to the issues of the case.

Therefore, the court intends to deny the plaintiff's motion to the extent that she seeks to quash the medical records subpoena in its entirety, but the subpoena shall be limited as set forth above, to include only those records relating to plaintiff's knee injury and subsequent restrictions.

The court intends to deny defendant's request for sanctions against plaintiff. "[I]n making an order pursuant to motion made under subdivision (c) of Section 1987 or under Section 1987.1, the court may in its discretion award the amount of the reasonable expenses incurred in making or opposing the motion, including reasonable attorney's fees, if the court finds the motion was made or opposed in bad faith or without substantial justification or that one or more of the requirements of the subpoena was oppressive." (Code Civ. Proc., § 1987.2, subd. (a).)

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.

Issued By: KCK on 09/21/26
(Judge's initials) (Date)

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Tentative Ruling

Re: **Terry Ramos v. Sophia Fahrney**
Superior Court Case No. 26CECG00446

Hearing Date: September 23, 2026 (Dept. 501)

Motions (x2): by Defendants Selma First Hospitality, LLC, erroneously sued as Selma Hampton Inn, and FP Hospitality, LLC's Demurrer and Motion to Strike Portions of the Complaint

Tentative Ruling:

To overrule the demurrer to the first and second causes of action. (Code Civ. Proc., § 430.010, subd. (e).)

To grant the motion to strike, with leave to amend. (Code Civ. Proc., § 436; Civ. Code, § 3294.) The portions of the complaint regarding plaintiffs' request for punitive damages, specifically, page 6, paragraph 17, and page 7, paragraph 3 of the prayer for relief, are stricken.

Plaintiff is granted 20 days' leave to file the First Amended Complaint. The time in which the complaint can be amended 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

Defendants Selma First Hospitality, LLC, erroneously sued as Selma Hampton Inn, and FP Hospitality, LLC (hereinafter, "Defendants") demur to the first and second causes of action for wrongful death and survivor action, both of which are predicated on negligence.¹ Defendants argue that the facts alleged in the complaint do not give rise to the imposition of a duty.

"To establish a cause of action for negligence, the plaintiff must show that the 'defendant had a duty to use due care, that he breached that duty, and that the breach was the proximate or legal cause of the resulting injury.' [Citation.]" (*Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 213, citations omitted.) "Duty is not universal; not every defendant owes every plaintiff a duty of care. A duty exists only if ' "the plaintiff's interests are entitled to legal protection against the defendant's conduct." ' [Citations.] Whether a duty exists is a question of law to be resolved by the court. [Citation.]" (*Ibid.*, citations omitted.)

¹ The complaint inconsistently refers to the years 2024 and 2025 for the decedent's date of death. For the purposes of this ruling, the court assumes Plaintiffs intended the year 2025 for all dates referenced in the complaint.

"[A]s a general matter, there is no duty to act to protect others from the conduct of third parties. [Citation.]" (*Brown v. USA Taekwondo*, *supra*, 11 Cal.5th at p. 214, citations omitted.) "The no-duty-to-protect rule is not absolute, however; this court has recognized a number of exceptions." (*Brown v. USA Taekwondo*, *supra*, 11 Cal.5th at p. 214.) There are two exceptions to the general no-duty-to-protect rule that are at issue in the case at bench. First, where there is a special relationship between the defendant and the victim that " 'gives the victim a right to expect' protection from the defendant", and "[t]he existence of such a special relationship puts the defendant in a unique position to protect the plaintiff from injury. . .[.] [t]he law requires the defendant to use this position accordingly. [Citation.]" (*Id.*, at p. 216.) Second, "one who undertakes to aid another is under a duty to exercise due care in acting and is liable if the failure to do so increases the risk of harm or if the harm is suffered because the other relied on the undertaking." (*O'Malley v. Hospitality Staffing Solutions* (2018) 20 Cal.App.5th 21, 26–27 [describing the negligent undertaking theory of liability].)

Under the circumstance of an alleged nonfeasance, the California Supreme Court in *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204 has established a two-step analysis to determine whether a defendant owed a duty to protect. First, the court must determine whether there is an exception to the no-duty-to-protect rule, as described above. Second, if an exception is found, the court then weighs the *Rowland* factors enumerated in *Rowland v. Christian* (1968) 69 Cal.2d 108, to see if a duty should be limited. (*Brown*, *supra*, 11 Cal.5th at 217-222.)

Special Relationship

"Relationships between parents and children, colleges and students, employers and employees, common carriers and passengers, and innkeepers and guests, are all examples of special relationships that give rise to an affirmative duty to protect. [Citations.]" (*Brown v. USA Taekwondo*, *supra*, 11 Cal.5th at p. 216, citations omitted.)

Defendants argue in their moving papers that they do not owe a duty to Plaintiffs, because they do not have a special relationship with Plaintiffs, i.e., Plaintiffs, the decedent's parents, were not guests of the hotel. However, Defendants concede in the reply that in wrongful death cases, "the pertinent duty of care is the duty of care the defendant owed to the decedent. . ." (*Eriksson v. Nunnink* (2015) 233 Cal.App.4th 708, 726.) Similarly, the pertinent duty of care in a survivor cause of action is also that which is owed to the decedent, because it is a "cause of action which belonged to the decedent before death. . ." (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1264.) Since it is alleged that the decedent was a guest who had paid for her stay at Defendant's hotel (Compl., ¶ 13), the complaint sufficiently alleges the existence of a special relationship between Defendants and Plaintiff's decedent.

Negligent Undertaking

" '[A] negligent undertaking claim of liability to third parties requires evidence that: (1) the actor undertook, gratuitously or for consideration, to render services to another; (2) the services rendered were of a kind the actor should have recognized as necessary for the protection of third persons; (3) the actor failed to exercise reasonable care in the performance of the undertaking; (4) the actor's failure to exercise reasonable care

resulted in physical harm to the third persons; and (5) either (a) the actor's carelessness increased the risk of such harm, or (b) the actor undertook to perform a duty that the other owed to the third persons, or (c) the harm was suffered because either the other or the third persons relied on the actor's undertaking.' [Citation.]" (*O'Malley v. Hospitality Staffing Solutions, supra*, 20 Cal.App.5th at p. 27, citations omitted.)

Here, there is no allegation that any actor undertook to render services for Plaintiff's decedent. The complaint alleges that housekeeping staff attempted to enter the decedent's room while they "were attending to their usual and customary tasking" "for the purposes of turning [the room] over to the next guests. . ." (Compl., ¶¶ 12-13.) The complaint also alleges, "two maintenance employees in the course and scope of their employment were directed to mechanically enter the room. . ." (*Id.*, at ¶ 14.) There are no allegations indicating that an individual undertook the task of providing aid to the decedent.

Accordingly, a cause of action under the negligent undertaking theory of liability is not sufficiently pled. Nonetheless, because Plaintiffs have alleged the existence of a special relationship, this court considers the *Rowland* factors below.

Rowland Factors

In determining whether policy considerations justify excusing or limiting a defendant's duty of care, we look to

the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

(*Brown v. USA Taekwondo* (2019) 40 Cal.App.5th 1077, 1096 quoting *Rowland v. Christian, supra*, 69 Cal.2d at p. 113.)

" 'The *Rowland* factors fall into two categories. The first group involves foreseeability and the related concepts of certainty and the connection between plaintiff and defendant. The second embraces the public policy concerns of moral blame, preventing future harm, burden, and insurance availability.' [Citations.] 'These factors must be "evaluated at a relatively broad level of factual generality." [Citation.] In considering them, we determine "not whether they support an exception to the general duty of reasonable care on the facts of the particular case before us, but whether carving out an entire category of cases from that general duty rule is justified by clear considerations of policy." ' [Citations.]" (*Brown v. USA Taekwondo, supra*, 40 Cal.App.5th at p. 1096, citations omitted.)

- *Foreseeability Factors*

"In determining whether to create an exception to the general duty to exercise ordinary care, the most important factor is whether the injury at issue was foreseeable. [Citation.]" (*Brown v. USA Taekwondo, supra*, 40 Cal.App.5th at p. 1096, citations omitted.) " 'In examining foreseeability, "the court's task ... 'is not to decide whether a particular plaintiff's injury was reasonably foreseeable in light of a particular defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed' " ' [Citations.]" (*Ibid.*, citations omitted.)

Here, the relevant question is whether reasonable hotel management could foresee that its alleged negligent failure to conduct a welfare check on a guest who had not departed at her scheduled check-out time could result in that guest's harm, particularly death and/or life-threatening medical distress. Since it is alleged that the latch chain was in use and the maintenance workers heard snoring (Compl., ¶¶ 13, 14), Plaintiffs sufficiently allege Defendants had knowledge or at least should have reasonably inferred that the decedent was still in the room. In addition, Plaintiffs allege that the decedent was unresponsive despite multiple staff members loudly calling out to announce their presence, and substantial noise resulting from the maintenance employees' mechanical detachment of the latch mechanism and ultimate entry into the room. (*Ibid.*)

Based on these allegations, it was foreseeable that a guest, who failed to depart at her scheduled check-out time and remained in the room, might be experiencing death and/or a life-threatening medical emergency.

The second factor, the degree of certainty of harm, is not at issue. Moreover, it is alleged that decedent passed away. Regarding the third factor, Plaintiffs allege that Defendants were negligent in failing to adopt policies and procedures to ensure the wellness of their guests. Defendants' alleged failure to adopt such procedures is closely connected to the decedent's injury, because Defendants' intervention on May 4, 2025, could have prevented decedent's death based on the allegations of the complaint.

Therefore, the foreseeability factors weigh in favor of imposing a duty to act.

- *Policy Factors*

" ' "A duty of care will not be held to exist even as to foreseeable injuries ... where the social utility of the activity concerned is so great, and avoidance of the injuries so burdensome to society, as to outweigh the compensatory and cost-internalization values of negligence liability." ' [Citation.]" (*Brown v. USA Taekwondo, supra*, 40 Cal.App.5th at p. 1099, citations omitted.) " '[I]f there were reasonable ameliorative steps the defendant could have taken, there can be *moral blame* "attached to the defendants' failure to take steps to avert the foreseeable harm." ' [Citation.]" (*Ibid.*, citations omitted.)

Here, there is "some measure of moral blame" that may be attributed to Defendants, because they failed to take action to prevent the decedent's death. Although it is not alleged that Defendants knew she was experiencing medical distress, Defendants failed to act despite allegedly knowing that she was in the room and did not respond to calls, substantial noise, and mechanical forced entry into the room. (Compl.,

¶¶ 13, 14.) These facts could raise an inference that someone was not merely deeply asleep, and rather, the individual either could not or refused to respond for some unknown reason.

Also, the policy of preventing future harm weighs in favor of imposing a duty on Defendants to implement and enforce policies to protect their guests. Defendants are in the best position to take steps to protect guests who are staying in their hotels. Understandably, as Defendants indicate, the guest's right to privacy is an important consideration. However, here, where it is alleged that maintenance employees have mechanically removed the chain latch from outside of the room in order to forcibly gain entry into the room and have stepped into the room (Compl., ¶ 14), it does not appear to be a significantly greater infringement on privacy for there to be a policy to also check on the welfare of the guest. Plaintiffs proffer a minimally burdensome policy that requires staff to inquire as to when the guest intends to vacate the room, and if there is not a response, to call 911 to inform the dispatcher of a suspicious medical occurrence. Accordingly, the burden of recognizing such a duty would be minimally burdensome on Defendants and the community.²

Thus, the policy factors weigh in favor of finding a duty of care.

In sum, on the facts alleged, the *Rowland* factors support recognition of Defendants' duty in the case at bench, and Plaintiffs have sufficiently alleged the existence of a special relationship. Therefore, the demurrer to both causes of action are overruled.

Motion to Strike

Defendants move to strike the portions of the complaint referencing punitive damages and the prayer for the same.

With respect to punitive damage allegations, mere legal conclusions of oppression, fraud or malice are insufficient (and hence improper) and therefore may be stricken. (*G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29-30.)

Punitive Damages

To support punitive damages, the complaint must allege ultimate facts of the defendant's oppression, fraud, or malice. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) Evidentiary facts are not required. "[A]bsent an intent to injure the plaintiff, 'malice' requires more than a willful and conscious disregard of the plaintiff's interests. The additional component of 'despicable conduct' must be found." (*College Hosp. Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725.) "Despicable" conduct is defined as "conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people." (*Ibid.*) Such conduct has been described as "having the character of outrage frequently associated

² The availability and cost of insurance of the risk involved is not challenged and therefore, not discussed.

A claim may be supported by showing “despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.” (Civ. Code, § 3294, subd. (c)(1).) To establish conscious disregard, “the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.” (*Taylor v. Superior Court* (1979) 24 Cal.3d 890, 908, italics omitted.)

Accordingly, the motion to strike is granted, with leave to amend.

Tentative Ruling

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Tentative Ruling

Re: **Carrington Mortgage Services, LLC v. Martina Ruiz**
Superior Court Case No. 25CECG04885

Hearing Date: September 23, 2026 (Dept. 501)

Motion: By Plaintiff Carrington Mortgage Services, LLC for Motion for Stay

Tentative Ruling:

To grant. To set a Status Conference for Tuesday, January 19, 2027 at 3:30 p.m. in Department 501.

Explanation:

Trial courts have inherent authority to stay malpractice suits, holding them in abeyance pending resolution of underlying litigation. (*Adams v. Paul* (1995) 11 Cal.4th 583, 593.)

At issue in this matter is a claim for judicial foreclosure. Plaintiff Carrington Mortgage Services, LLC ("Plaintiff") reports that it has placed an internal hold on proceeding in this matter to explore alternative options to foreclosure. (Nguyen Decl., ¶ 5.) Plaintiff further reports that the parties are in active negotiations to resolve the matter without further court intervention. (*Id.*, ¶ 7.) Plaintiff submits that the stay is sought in good faith. (*Id.*, ¶ 9.)

No opposition was filed by defendants Martina V. Ruiz nor the Secretary of Housing and Urban Development, nor has defendant Ruiz appeared.³ The motion 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** 09/22/26.
(Judge's initials) (Date)

³ Defendant Secretary of Housing and Urban Development, by and through the Office of the United States Attorney, has appeared and stipulated to entry of a consent judgment.