

Tentative Rulings for September 24, 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.

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Tentative Rulings for Department 501

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(20)

Tentative Ruling

Re: ***Narissa Melero v. City of Sanger***
Superior Court Case No. 26CECG00595
Sarah Watson v. City of Sanger
Superior Court Case No. 26CU00931

Hearing Date: September 24, 2026 (Dept. 501)

Motion: By Melero Plaintiffs to Consolidate Actions

Tentative Ruling:

To grant consolidation for pretrial purposes only, with 26CECG00595 designated as the lead case. The cases will be tried separately. (Code Civ. Proc., § 1048.)

Explanation:

Case No. 26CECG00595 was initiated on 2/3/2026 with the filing of the Complaint by The Wagner Law Group representing seven plaintiffs – Narissa Melero, Julie Taylor, Georgina Simmons, Kriss Viramontes, Erica Alcorn, Sarah Watson and Lisa Salas. Plaintiffs allege in the operative pleading, the First Amended Complaint, that they were victims of sexual assault perpetrated by defendant J. Dewhawn Torrence, a police officer for the Sanger Police Department. He allegedly committed the assaults while on duty as a police officer and under color of law. Torrence was convicted of kidnapping and sexually assaulting four women (including plaintiffs Watson and Salas) and is serving five life sentences. Plaintiffs sue Torrence, the City of Sanger, and the Sanger Police Department.

On 4/27/2026 Brian Whelan substituted as counsel for plaintiffs Watson and Salas ("Watson plaintiffs"). On 5/12/2026 they dismissed their claims without prejudice and filed a separate action, Case No. 26CU00931. The remaining five plaintiffs in Case No. 26CECG00595 ("Melero plaintiffs") move to consolidate the two actions for all purposes, including trial. The motion is opposed by Watson plaintiffs as well as by the City of Sanger and Sanger Police Department ("Sanger defendants").

The purpose of consolidation is to enhance trial court efficiency by avoiding unnecessary duplication of evidence and procedures, and to avoid the substantial danger of inconsistent adjudications. (*Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 978.)

The party moving for consolidation must file a notice of motion in each of the pending lawsuits, while supporting papers are filed only in the lead (lower numbered) case. (Cal. Rules of Court, Rule 3.350(a).) The requirements of Rule 3.350 have been met. All the moving party needs to show in its motion is that the issues in each case are basically the same, and that "economy and convenience" would be served by consolidation. (*Jud Whitehead Heater Co. v. Obler* (1952) 111 Cal.App.2d 861, 867.) The

court has broad discretion to grant or deny the motion. (*Fellner v. Steinbaum* (1955) 132 Cal.App.2d 509, 511.)

Melero plaintiffs move to consolidate the two actions for all purposes, contending that all plaintiffs' claims arise from sexual assaults by Torrence, and involve similar claims against the Sanger defendants.

However, each instance of assault for the plaintiffs was separate and distinct. The alleged assaults of the plaintiffs are temporally and factually distinct. Melero alleges conduct in approximately 2015; Taylor in 2016; Salas in 2017; Simmons from 2017 into 2018; Watson in March 2018; Viramontes in July 2019; and Alcorn in August 2020. (FAC ¶¶ 6, 9, 14, 17, 20.) In a joint trial the jury would have to separate seven separate incidents.

Watson and Salas are the only victims who were the subject of federal prosecution of Torrence, resulting in his conviction. Torrence was convicted and sentenced for felony crimes against Watson and Salas, as well as other victims not involved in these lawsuits. (Wagner Decl., Ex. 3.) No criminal count adjudicated Torrence's alleged conduct toward any Melero plaintiff, none of whom testified at the federal trial. (Watson Decl., ¶ 9; Salas Decl., ¶ 11.) The Melero plaintiffs' pleading invokes conviction-based tolling under Code of Civil Procedure section 340.3 for Watson and Salas, but not for the other plaintiffs. (FAC ¶¶ 350, 362, 374, 386, 398, 422.) This evidences differences in the claims and proof a trial of the two sets of plaintiffs.

Watson plaintiffs deliberately chose to leave the seven-plaintiff action after considering how they wanted their claims to proceed. (Watson Decl., ¶ 6; Salas Decl., ¶ 6.) Neither personally knows the five remaining Melero plaintiffs or has personal knowledge of their alleged encounters. Both state that they do not want their claims tried with the Melero plaintiffs. (Watson Decl., ¶¶ 7-9, 12, 14; Salas Decl., ¶¶ 7-9, 14, 16.) The opposition points out that the jury would hear that Torrence was convicted beyond a reasonable doubt of criminal conduct against Watson and Salas while simultaneously deciding five separate allegations that were never adjudicated in the criminal case. Watson and Salas state that they do not want the federal criminal convictions arising from Torrence's conduct toward them used to bolster claims concerning events they did not witness, nor do they want credibility disputes, evidentiary issues, or factual circumstances unique to the other plaintiffs to affect the jury's consideration of their own claims. (Watson Decl., ¶ 10; Salas Decl., ¶ 12.)

Additionally, the Watson plaintiffs have been granted trial preference that is not available to, but apparently desired by, the Melero plaintiffs.

Certainly there are some common issues, particularly as relates to the Sanger Defendants. These issues – Torrence's employment and the City's policies, training, and supervision – can be handled through coordinated discovery without combining seven plaintiff-specific trials. (Code Civ. Proc., § 1048.) And it is noteworthy that despite these common issues pertaining specifically to the Sanger defendants' liability, they oppose consolidation.

For these reasons the court declines to grant consolidation for all purposes. However, even the opposing parties appear to recognize that efficiencies may be

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 09/18/26
(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 24, 2026 (Dept. 501)

Motion: by Plaintiff to Quash the Subpoena for Production of Business Records to Sierra Pacific Orthopaedics and Zenith Insurance Company

Tentative Ruling:

To deny plaintiff's motions to the extent that she seeks to quash the business records subpoenas issued to Sierra Pacific Orthopaedics and Zenith Insurance Company in their entirety. To limit the subpoenas to those 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") subpoenas seeking certain records from Sierra Pacific Orthopaedics and Zenith Insurance Company. Plaintiff submits that these records are overbroad and irrelevant or otherwise subject to the right of privacy. Accordingly, plaintiff seeks to quash the subpoenas in their entirety. Alternatively, plaintiff requests the court limit the subpoenas 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 subpoenas at issue are overbroad and violate 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 subpoenas request "All documents and records pertaining to the care, treatment, and examination of [plaintiff] ... from January 1, 2016 to the present." (Khosrovian Decls., ¶¶ 6, 7; Exh. B.) Defendant does not justify the broad 10-year range of records sought.

In its opposition regarding the subpoena issued to Sierra Pacific Orthopaedics, 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., 6:28, 7:1-6.)

In its opposition regarding the subpoena issued to Zenith Insurance Company, Defendant submits a limitation to the subpoena as follows:

All nonprivileged records concerning Plaintiff's July 14, 2024 injury; Plaintiff's knee condition; any preexisting knee condition bearing upon the nature, extent, duration, or restrictions associated with the condition asserted in this action; Plaintiff's medical and work restrictions relating to her knee; temporary or permanent disability and work-status determinations; return-to-work or full-duty releases; factual or recorded statements concerning Plaintiff's knee-related physical limitations or capacity to work; and benefit, wage-loss, or settlement records to the extent they reflect Plaintiff's claimed disability, restrictions, work status, or knee condition. (Opp., 7:15-24, emphasis added.)

The court is satisfied that the proposed limitation to the subpoena to Sierra Pacific Orthopaedics is narrowly tailored to the medical condition at issue in the complaint. Plaintiff's argument that the request for these records relating to her knee condition

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Tentative Ruling

Re: ***Abid Malik v. Doe Manager***
Superior Court Case No. 24CECG02235

Hearing Date: September 24, 2026 (Dept. 501)

Motion: by Nonparty National Interstate Insurance Company for
Leave to Intervene

Tentative Ruling:

To grant. (Code Civ. Proc. § 387, subd. (d)(1)(A).) Nonparty National Interstate Insurance Company shall serve and file its proposed pleading in intervention within 10 days of service of the order by the clerk.

Explanation:

"The court may, upon timely application, permit a nonparty to intervene in the action or proceeding if the person has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both." (Code Civ. Proc., § 387, subd. (d)(2).)

Labor Code section 3853 provides that:

If either the employee or the employer brings an action against such third person, he shall forthwith give to the other a copy of the complaint by personal service or certified mail. ... If the action is brought by either the employer or employee, the other may, at any time before trial on the facts, join as party plaintiff or shall consolidate his action, if brought independently.

Here, National Interstate Insurance Company seeks leave to file its proposed complaint-in-intervention to seek recovery of worker's compensation benefits paid to plaintiff Abid Malik, which it was required to pay pursuant to the workers' compensation insurance issued to plaintiff's employer, Peoplease, LLC. There is no enlargement of issues because both plaintiff's as well as proposed intervenor's claims arise from the same incident and thus involve similar questions of law and fact. The original parties did not file an opposition, and thus, there is no claim that intervention is untimely or will interfere with the rights of the original parties to conduct the lawsuit.

Accordingly, the motion is granted.

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Tentative Ruling

Re: ***Terajee Hakim v. ASM Global, LLC***
Superior Court Case No. 25CECG03286

Hearing Date: September 24, 2026 (Dept. 501)

Motions: By Plaintiff for a Protective Order and Request for Sanctions
By Defendant SMG for an Order Compelling Deposition of Plaintiff and Request for Sanctions

Tentative Ruling:

To deny plaintiff Terajee Hakim's motion for a protective order. (Code Civ. Proc., § 425.420.) To deny each party's request for sanctions.

To grant defendant SMG's motion to compel plaintiff Terajee Hakim to appear at a deposition as noticed. (Code Civ. Proc. §§ 2025.450, subd. (a), 2025.280, subd. (a).)

To deny defendant SMG's request for monetary sanctions against plaintiff Terajee Hakim. (Code Civ. Proc., § 2025.450.)

Explanation:

Plaintiff Hakim's Motion for Protective Order

Plaintiff Terajee Hakim ("Plaintiff") seeks a protective order precluding her deposition by defendants ASM Global, LLC, ASM Global Fresno, LLC, and SMG (collectively "Defendants"). Plaintiff requests an order requiring that Plaintiff's deposition be scheduled on a mutually agreed upon date and an order for defendant's counsel to provide dates for deposition of the previously noticed defendants and witnesses employed by Defendant.

A protective order may be issued against the deposing party to protect a party deponent from "unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." (Code Civ. Proc., § 2025.420, subd. (b).) The moving party must show that the burdens involved in the deposition clearly outweigh the benefits sought to be obtained, that the information is unnecessarily cumulative, or that it is obtainable at less cost and inconvenience. (Code Civ. Proc., §§ 2017.020, 2019.030.) Upon motion and for good cause shown, the court may establish the sequence and timing of discovery for the convenience of parties and witnesses and in the interests of justice. (Code Civ. Proc., § 2019.020, subd. (b).)

Here, Plaintiff submits that Defendants have not provided dates for deposition of any of the requested defendants and witnesses employed by Defendants since Plaintiff's initial request on August 18, 2025. Plaintiff argues that she would suffer undue burden and oppression should her deposition proceed before any of defendants' depositions are

scheduled or completed. However, Plaintiff does not specify the harm that would result should Plaintiff be deposed before any of the defendants. As such, Plaintiff has failed to grounds for relief under Code of Civil Procedure section 2025.420, subd. (b).

For the above reasons, Plaintiff's motion for a protective order is denied.

Defendant SMG's Motion to Compel Deposition

Defendant SMG ("Defendant") seeks an order compelling the deposition of Plaintiff under Code of Civil Procedure sections 2025.450.

The service of a deposition notice under Code of Civil Procedure section 2025.240 is effective to require any deponent who is a party to the action to attend and to testify, as well as to produce any document, electronically stored information, or tangible thing for inspection and copying. (Code Civ. Proc., § 2025.280, subd. (a).) Code of Civil Procedure section 2025.450, subdivision (a), states in pertinent part:

If, after service of a deposition notice, a party to the action... without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it... the party giving the notice may move for an order compelling the deponent's attendance and testimony... .

Code of Civil Procedure section 2025.410 specifies that if the deponent challenges a defect in the deposition notice three days before the deposition by serving a written objection, and the court determines the objection is valid, the deponent's nonappearance at the deposition cannot be used against them. (Code Civ. Proc., § 2025.410, subd (b).)

Here, Plaintiff was served with notices of deposition of Plaintiff set for March 25, 2026, April 6, 2026, and April 24, 2026. Plaintiff objected to each deposition based on unavailability, a preference to conduct depositions of individual defendants or Defendants' employees before Plaintiff's deposition, or a preference to receive dates of Defendants' witness's availability for deposition. Plaintiff argues in opposition that the instant motion should be denied because Defendant has not provided dates that Defendants' witnesses are available for deposition and because deposition of Defendants' witnesses should occur before Plaintiff's deposition. Plaintiff fails to provide authority to support that these circumstances constitute a valid objection under section 2025.410. Also, Plaintiff does not challenge the validity of the notices for deposition of Plaintiff. As such, Plaintiff's nonattendance of the noticed depositions are subject to section 2025.450.

For the above reasons, Defendant's motion to compel deposition is granted.

Sanctions

Sanctions may be imposed against a party that engages in the misuse of the discovery process if there is proper notice to the affected party, person, or attorney and an opportunity for a hearing. (Code Civ. Proc., § 2023.030, subd. (a).) Failing to respond

Frankly, both parties have acted unprofessionally. If the court ordered sanctions, they would essentially cancel each other out. There is no reason for this behavior and both parties are admonished to act professionally and cooperatively in setting depositions. There is no basis to waste court time on scheduling issues. Therefore, sanctions are unwarranted because neither party has been cooperative in the participation of discovery.

Tentative Ruling

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Tentative Ruling

Re: ***In the Matter of Marilyn Caudillo***
Superior Court Case No. 26CU01981

Hearing Date: September 24, 2026 (Dept. 501)

Motion: Expedited Petition to Compromise Claim of Minor

Tentative Ruling:

To grant the petition. The court intends to sign the proposed orders. No appearances are necessary.

The court sets a ***Status Conference for Wednesday, December 16, 2026 at 3:30 p.m., in Department 501***, for confirmation of deposit of the minor's funds into a blocked account. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, 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: KCK **on** 09/22/26
(Judge's initials) (Date)

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Tentative Ruling

Re: **NICBYTE, LLC v. Community West Bank**
Superior Court Case No. 24CECG01486

Hearing Date: September 24, 2026 (Dept. 501)

Motion: By Defendant Community West Bank for Summary Judgment
or, in the Alternative, Summary Adjudication

Tentative Ruling:

To deny defendant's motion for summary judgment. (Code Civ. Proc., § 437c.) To deny defendant's motion for summary adjudication. (Code Civ. Proc., § 437c, subd. (t).)

Explanation:

Evidentiary Objections

The court overrules plaintiffs' objection as to the entire Declaration of Jake Soberal. The court overrules plaintiffs' objections to paragraphs 1 and 4 of the Soberal Declaration. The court sustains plaintiffs' objections to paragraphs 5, and 7-10 of the Soberal Declaration.

The court overrules plaintiffs' objection to the entire Declaration of Karen Smith. The court overrules plaintiffs' objections to paragraphs 8-9, 13-14, 17, 19, and 21 of the Smith Declaration. The court sustains plaintiffs' objections to paragraphs 15-16, 18, and 28 of the Smith Declaration.

The court overrules plaintiffs' objections to paragraphs 11 and 16 of the McWhorter Declaration.

The court overrules plaintiffs' objection to Exhibit 78.

The court declines to rule on defendants' evidentiary objections as these do not follow the format outlined in California Rules of Court, Rule 3.1354.

Judicial Notice

Both parties made a multitude of requests for judicial notice. None of the documents or information for which judicial notice was sought were necessary to evaluate the merits of this motion.

Procedural Matters

Defendant seeks summary judgment, or in the alternative, adjudication pursuant to Code of Civil Procedure section 437c, subdivision (t). Code of Civil Procedure section 437c, subdivision (t) has specific procedural requirements which defendant did not follow

prior to filing this motion. Where a party moves for summary adjudication of legal issues, other than for a claim for punitive damages, which does not completely dispose of a cause of action, affirmative defense, or issue of duty, then the parties must have a stipulation to do so. (Code Civ. Proc., § 437c, subd. (t).) Such must be filed prior to filing of the motion and would be subject to the court allowing the filing of such a motion for summary adjudication. (Code Civ. Proc., § 437c, subd. (t).)

Here, defendant's Notice of Motion seeks adjudication of issues pursuant to subdivision (t). However, defendant did not follow the procedures of seeking either a stipulation or court approval to do so. As such, the court will only consider whether summary judgment is warranted and whether adjudication is appropriate as to punitive damages.

Merits

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) In determining a motion for summary judgment, the court views the evidence "in the light most favorable to the plaintiff", liberally construing plaintiff's evidence and strictly scrutinizing the defendant's evidence. (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 254.) The court does not weigh evidence or inferences (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 856), nevertheless, the court shall consider all inferences reasonably deducible from the evidence unless it is controverted by other inferences or evidence. (Code Civ. Proc., § 437c, subd. (c).) Doubts as to whether there is a triable issue of fact are resolved in favor of the opposing party. (*Ingham v. Luxor Cab Co.*, *supra*, 93 Cal.App.4th 1045, 1049.)

Summary adjudication is the proper mechanism for challenging a particular, "cause of action, an affirmative defense, a claim for punitive damages, or an issue of duty." (*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 242.) However, "[a] motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c, subd. (f)(1); see also *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 97 [piecemeal adjudication prohibited].)

A summary judgment motion must show that the "material facts" are undisputed. (Code Civ. Proc., § 437c, subd. (b)(1).) The pleadings serve as the "outer measure of materiality" in a summary judgment motion, and the motion may not be granted or denied on issues not raised by the pleadings. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74 [pleadings determine the scope of relevant issues on a summary judgment motion].)

Summary Judgment

Defendant identifies 18 material facts to support their motion for summary judgment. Plaintiffs have demonstrated triable issues of material fact as to Material Fact Numbers 7 and 8.

Material Fact Number 7 states, "The DACAs expressly authorized the Secured Parties to terminate the DACAs by written notice to the Bank and BWI, without requiring notice to or consent from any other person or entity." Plaintiffs argue that the bank did have an obligation to provide notice, regardless of who requested termination of the DACAs. Plaintiffs support this assertion citing to the DACA agreements, declarations, and deposition testimony. The DACA agreements state,

"Secured Party may terminate this Agreement by written notice to the Bank and Customer. Bank may terminate this Agreement (I) on 30 days' prior written notice to Secured Party and Customer and (II) if such termination is a result of Bank's closure of the account pursuant to its rights set for the in the Account Agreement governing the Account or in accordance with applicable law, in which case, notice to Customer as set forth in Section 1e. Customer may not terminate this Agreement except with written consent of Secured Party and with at least 30 days' prior written notice to Secured Party and Bank."

(Defendants' COE, Exh. 108, Sec. 8.)

Section 1e articulates that "Bank will not close the Account at the request of Customer or terminate this Agreement without providing at least 5 Business Days' advance notice to Customer and Secured Party." (Id. at Sec. 1e.) Plaintiffs have presented a triable issue as to the notice requirements.

Material Fact Number 8 states, "On November 18, 2022, the Secured Parties sent written notice to the Bank terminating the DACAs, through a letter signed by Jake Soberal as the 'Authorized Signatory for NIC Wise RE, LLC and the Bank believed in good faith that the instruction was genuine and from the appropriate party.'" Plaintiff presents two triable issues here. First, plaintiffs challenge that the notice came from the Secured Parties where Jake Soberal acted as an authorized signatory. Plaintiffs note that Soberal was not a Secured Party. Plaintiffs provide evidence of Soberal's role at Bitwise and documents and testimony regarding the plaintiffs being the Secured Parties. Plaintiffs assert that Soberal's authority to sign the DACAs themselves did not equate to authority to terminate them or otherwise be treated as a Secured Party. Further, plaintiffs challenge that the Bank had a good faith belief that Soberal had authority to terminate the DACAs. They provide evidence of the negotiations over the DACAs and that the Bank had a copy of the Operating Agreement for NIC Wise. The court would also note that defendant has not provided sufficient legal authority for the court to make a good faith belief determination as a matter of law.

As plaintiffs have identified triable issues of material fact, the motion for summary judgment is denied.

Punitive Damages

Code of Civil Procedure section 3294 provides for punitive damages, in actions not arising from contract, where a plaintiff proves by clear and convincing evidence that

Plaintiffs argue that defendant made false representations to plaintiffs regarding the existence, or lack thereof, of any other DACAs on the account at issue. Defendant argues that it checked its system and files and did not find the prior DACA. (UMF No. 132.) Thus, defendant articulates that any failure to disclose the existence of the other DACA was a mistake, not an intentional deception. Plaintiffs provide testimony evidence to challenge that the documents showing the prior DACA did not exist. (UMF No. 132, Micheli Dep. 24: 11-13.) Further, plaintiffs provide evidence that defendants had extensive history involving the prior DACA and recollection of such. (AMF Nos. 230-240.) Plaintiffs also assert that defendant was put on notice regarding falsified records regarding the account, but that defendant did not inform plaintiffs of such. (AMF Nos. 247-248.) Plaintiffs note that defendant acted to terminate their DACAs without providing notice to plaintiffs. (AMF Nos. 253-259.) Plaintiffs also identify an internal email directing a direct report to delete messages on the system regarding termination of the DACAs. (AMF No. 260.) A reasonable jury could find that plaintiffs' evidence is clear and convincing evidence of fraud.

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** **09/23/26**

(Judge's initials) (Date)