Tentative Rulings for September 4, 2024
Department 503

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

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

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(35)

Tentative Ruling

Re: ***Gill v. Community Medical Centers, Inc. et al.***
Superior Court Case No. 23CECG05021

Hearing Date: September 4, 2024 (Dept. 503)

Motions: (1) By Defendant Nathaniel Holloway, M.D. for an Order Compelling Initial Responses to Form Interrogatories, Set One From Plaintiff Manpreet Gill, and Request for Sanctions
(2) By Defendant Nathaniel Holloway, M.D. for an Order Compelling Initial Responses to Special Interrogatories, Set One From Plaintiff Manpreet Gill, and Request for Sanctions
(3) By Defendant Nathaniel Holloway, M.D. for an Order Compelling Initial Responses to Request for Production of Documents, Set One From Plaintiff Manpreet Gill, and Request for Sanctions

If timely requested, oral argument will be entertained Wednesday, September 11, 2024.

Tentative Ruling:

To grant each of the motions to compel initial responses to form and special interrogatories, and demand for inspection of documents. Within ten (10) days of service of the order by the clerk, plaintiff Manpreet Gill shall serve verified responses, without objections, to Form Interrogatories, Set One; Special Interrogatories, Set One; and Request for Production, Set One, and produce all documents responsive to the Request for Production of Documents.

To impose monetary sanctions in the total amount of $510 against plaintiff Manpreet Gill, in favor of defendant Nathaniel Holloway, M.D. Within thirty (30) days of service of the order by the clerk, plaintiff Manpreet Gill shall pay sanctions to defendant Nathaniel Holloway, M.D.'s counsel.

Explanation:

On January 4, 2024, defendant Nathaniel Holloway, M.D. ("Defendant") served the discovery at issue on plaintiff Manpreet Gill ("Plaintiff"). (*E.g.*, Salinas Decl., ¶ 3, and Ex. A thereto.) As of the filing of the motions to compel, no responses have been served. (*Id.*, ¶ 5.) No opposition was filed.

Within 30 days of service of interrogatories, the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party. (Code Civ. Proc. § 2030.260.) Within 30 days of service of a demand for inspection, the party to whom the requests are propounded shall serve the original of the response to them on the propounding party. (Code Civ. Proc. § 2031.260.) To date, Defendant has received no response to interrogatories and demands for inspection. Accordingly, an order compelling Plaintiff to provide initial responses is warranted. (Code Civ. Proc. §

2030.290, subd. (b), 2031.300 subd. (b).) All objections are waived. (*Id.*, §§ 2030.290, subd. (a), 2031.300, subd. (a).)

Sanctions

Sanctions are mandatory unless the court finds that the party acted "with substantial justification" or other circumstances that would render sanctions "unjust." (*Id.*, §§ 2030.290, subd. (c), 2031.300, subd. (c).) As no opposition was filed, the court finds no circumstances that would render the mandatory sanctions unjust. The court finds counsel's rate of $220 per hour as reasonable, and imposes sanctions in $330 reflecting 1.5 hours of attorney time in preparation of the present motion and $180 in filing fees, in favor of Defendant, and against Plaintiff. The sanctions imposed total to $510.

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: jyh on 9/3/24.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re:	***Central Valley Fallen Heroes v. Lieb, et al.*** Superior Court Case No. 23CECG04281
Hearing Date:	September 4, 2024 (Dept. 503)
Motion:	(1) Defendants Ron Dupras and California Veterans & Fallen Heroes Demurrer and Motion to Strike the Second Amended Complaint (2) Defendants Matthew Lieb and Central Valley Fallen Heroes, LLC's Demurrer and Motion to Strike the Second Amended Complaint

If timely requested, oral argument will be entertained Wednesday, September 11, 2024.

Tentative Ruling:

To grant both moving parties' requests for judicial notice of the Second Amended Complaint.

To overrule Defendants Ron Dupras and California Veterans & Fallen Heroes special demurrers for uncertainty. (Code Civ. Proc. § 430.10, subd. (f).) To sustain Defendants' general demurrer to each cause of action with leave to amend. (Code Civ. Proc. § 430.10, subd. (e).) To grant, with leave to amend, the motion to strike the prayer for punitive damages and attorney fees. To deny the defendants Dupras and California Veterans & Fallen Heroes' motion to strike allegations identified in paragraphs 97, 98, 120, 121, 129, 131, 144, 147, 150, and 151.

To overrule Defendants Matthew Lieb and Central Valley Fallen Heroes, LLC's special demurrers for uncertainty. (Code Civ. Proc. § 430.10, subd. (f).) To sustain Defendants' general demurrer to each cause of action with leave to amend. (Code Civ. Proc. § 430.10, subd. (e). To grant, with leave to amend, the motion to strike the prayer for punitive damages and attorney fees. To deny defendants Lieb and Central Valley Fallen Heroes, LLC's motion to strike allegations specified in paragraphs 98, 121, 129, 131, 150, and 151.

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

Explanation:

Demurrer to Second Amended Complaint

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v Poag* (1984) 150 Cal.App.3d 541, 545) The truth of the facts alleged in the complaint are assumed true as well as the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 2 Cal.4th 876, 883; see also *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1168 [actual reliance in support of a fraud claim reasonably inferable from the plaintiff's complaint]; Code Civ. Proc., 452 ["In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties."].)

A general demurrer, "admits the truth of all material factual allegations in the complaint;" the plaintiff's "ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court …." (*Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496; *Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 190 ["We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken."].)

The California Supreme Court has consistently held that a plaintiff is required only to set forth the essential facts of his or her case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action. (*Ludgate Ins. Co. v. Lockheed Martin Corp*. (2000) 82 Cal. App. 4th 592, 608, quoting *Youngman v. Nevada Irr. Dist*. (1969) 70 Cal. 2d 240, 245; and *see Elder v. Pacific Bell Telephone Co.* (2012) 205 Cal. App. 4th 841, 858 ["Even as against a special demurrer, a plaintiff is required only to set forth in his complaint the essential facts of his case with reasonable precision and with particularity sufficiently specific to acquaint the defendant of the nature, source, and extent of his cause of action."].) Nothing more is required. (*Alch v. Superior Court* (2004) 122 Cal. App. 4th 339, 390.) Indeed, there is no need to require specificity in the pleadings because modern discovery procedures necessarily affect the amount of detail that should be required in a pleading. (*Doheny Park Terrace Homeowners Ass'n, Inc. v. Truck Ins. Exchange* (2005) 132 Cal. App. 4th 1076, 1099.) In addition, less particularity is required where the defendant may be assumed to have knowledge of the facts equal to that possessed by the plaintiff. (*Ludgate Ins. Co. v. Lockheed Martin Corp.*, supra, 82 Cal. App. 4th at p. 608.)

Defendants Ron Dupras and California Veterans & Fallen Heros and defendants Matthew Lieb and Central Valley Fallen Heroes, LLC generally demur to each cause of action of the Second Amended Complaint on substantially similar bases – at times verbatim. Each also raises a special demurrer for uncertainty as to each cause of action. For these reasons, the arguments made in the separate motions will be discussed together.

Uncertainty

Section 430.10, subdivision (f) authorizes a party against whom a complaint has been filed to object by special demurrer to the pleading on the ground that "[t]he pleading is uncertain. As used in this subdivision, 'uncertain' includes ambiguous and unintelligible." Demurrers for uncertainty are disfavored. (*Khoury v. Maly's of California, Inc*. (1993) 14 Cal.App.4th 612, 616.) A demurrer for uncertainty may be sustained when

the complaint is drafted in a manner that is so vague or uncertain that the defendant cannot reasonably respond, e.g., the defendant cannot determine what issues must be admitted or denied, or what causes of action are directed against the defendant. (*Ibid*.) Demurrers for uncertainty are appropriately overruled where "ambiguities can reasonably be clarified under modern rules of discovery." (*Ibid*.)

Defendants demur to each cause of action on the basis that the complaint is uncertain "as to these defendants." However, defendants failed to address what was uncertain. The memorandum is limited to a quotation from case law regarding the sufficiency of pleadings. Where a demurrer is based on uncertainty, defendant must distinctly specify exactly how or why the pleading is uncertain, and where such uncertainty appears, by reference to page and line numbers of the complaint. (*Fenton v. Groveland Community Services Dist.* (1982) 135 Cal.App.3d 797, 808, *disapproved of on other grounds by Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300.) The court does not intend to sustain the demurrer for uncertainty.

First Cause of Action: Fraud

Allegations of fraud must be pleaded "with specificity," requiring the following elements: misrepresentation (false representation, concealment or nondisclosure); knowledge of falsity ("scienter"); intent to defraud, i.e., to induce reliance; justifiable reliance; and resulting damage (*Philipson & Simon v. Gulsvig* (2007) 154 Cal.App4th 347, 363.) Every element of a cause of action for fraud must be alleged in full, factually and specifically. (*Hills Transp. Co. v. Southwest Forest Industries, Inc.* (1968) 266 Cal.App.2d 702, 707.) Accordingly, the policy of liberal construction of the pleadings "will not ordinarily be invoked to sustain a pleading defective in any material respect[;]" instead, this "particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered. (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73, internal citations and quotation marks omitted.)

Here, plaintiffs allege repeated fraudulent filings on behalf of plaintiff corporation with the Secretary of State and misrepresentations made by defendants as to their authority to act on behalf of the plaintiff corporation. Labelling the documents at issue or act of filing the documents as "fraudulent" is not sufficient to support plaintiffs' cause of action. The Second Amended Complaint does not allege defendants intended to deceive plaintiffs or that plaintiffs justifiably relied on these misrepresentations causing them damage. The misrepresentations alleged appear to have been made to third parties and relied upon by third parties in taking action that is alleged to harm plaintiffs. However, these allegations do not support a cause of action that defendants have defrauded plaintiffs, as opposed to the third parties.

Additionally, the damages alleged to have resulted from the fraud have been suffered by the corporate plaintiff. No damages have been alleged by plaintiff Beckley to support his individual standing to claim fraud against defendants.

Accordingly, the demurrer to the first cause of action is sustained with leave to amend.

Second Cause of Action: Violations of Business & Professions Code § 17200

The equitable doctrine of unfair competition protects against the inequitable pirating of the fruits of another's labor and then either "palming off" those fruits as one's own or simply gaining unearned commercial benefit from them. (*KGB, Inc.* v. *Giannoulas* (1980) 104 Cal.App.3d 844, 850; *Summit Mach. Tool Mfg.* v. *Victor CNC Systems* (9th Cir. 1993) 7 F.3d 1434, 1441 (applying California law); *Ball v. American Trial Lawyers Association* (1971) 14 Cal.App.3d 289, 303-304.) Primarily, it affords injunctive relief to enjoin the unfair or deceptive use of a title, trade name, or trade design or dress that is confusingly similar to one used by the person seeking relief. (*Academy of Motion Picture, etc.* v. *Benson* (1940) 15 Cal.2d 685, 688-692 [trade name]

Business & Professions Code section 17200 defines "unfair competition" to mean and include any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising (including any act prohibited by Bus. & Prof. Code § 17500 et seq.). (Bus. & Prof. Code § 17200.) The statute creates a right to sue for violations of other statutes even when those statutes do not themselves confer any standing for private actions or, perhaps, even when they create more limited standing for action. Business & Professions Code section 17204 grants standing in "actions for any relief pursuant to this chapter to any person acting for the interests of itself, its members or the general public." The remedies under Business & Professions Code section 17203 include injunctive relief, the appointment of a receiver, or such orders or judgments "as may be necessary to restore to any person in interest any money or property, real or personal, which may been acquired by means of such unfair competition." This provision does not create a private right of action for "damages," but it has been construed to allow for the remedy of "restitution." (*Committee on Children's Television, Inc.* v. *General Foods Corp.* (1983) 35 Cal.3d 197, 211.) When the action is brought for the "general public," restitution in favor of the general public is available. (*People* v. *Thomas Shelton Powers, M.D., Inc.* (1992) 2 Cal.App.43th 330, 339-344.)

Here, plaintiffs allege defendants have created substantially similar named business entities and obtained a trademark of plaintiff's corporate name, and using these similar names to misrepresent their authority to act on behalf of plaintiff corporation. Defendants are alleged to be using the trademark of "Central Valley Fallen Heroes" received by defendant Lieb for purposes of selling engravings to threaten businesses partnering with plaintiff corporation in its charitable activities although there is no connection to the sale of engravings. Defendants are also alleged to have demanded payments intended for plaintiff corporation be directed to defendants.

Defendants are also alleged to have repeatedly filed false statements of information with the Secretary of State on behalf of the plaintiff corporation as well as a fraudulent resignation of Paul Beckley as agent for the plaintiff corporation. The filing of these false documents with the Secretary of State as alleged may support finding a violation of the law and be considered an unlawful business practice. However, the Second Amended Complaint does not specifically plead what violations of law, if any, form the basis of their claim.

The actions alleged within the Second Amended Complaint fall under the umbrella of unlawful, unfair or fraudulent business practices however, facts supporting

each element of the alleged statutory violation must be pled with specificity. (*Khoury v. Maly's of California, Inc*. (1993) 14 Cal.App.4th 612, 619.).

Defendants argue Paul Beckley as an individual cannot maintain this cause of action and this is correct. The unfair competition law was intended to regulate business practices rather than disputes between private parties. Additionally, the damages sought appear monetary in nature rather than injunctive. (See, SAC, Prayer as to Second Cause of Action, page 28, 1-3.)

The court intends to sustain the demurrer with leave to amend.

Third Cause of Action: Tortious Interference with Contract

The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are: (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of the contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Farmers Insurance Exchange v. Zerin* (1997) 53 Cal.App.4th 445.)

Allegations to support a contractual relationship between the plaintiffs and the third parties 9-11 Memorial Foundation, Full Circle Brewing Co. and Mono Wind Casino are not alleged. (SAC, ¶¶ 125-127.) Although there may be a contractual relationship between the plaintiff corporation and its bank, Wells Fargo, the contract and disruption of that contract by defendants is not clearly alleged.

However, the allegations may also support cause of action for intentional interference with prospective economic advantage. The elements of a cause of action for intentional interference with prospective economic advantage are: (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant. (*LiMandri* v. *Judkins* (1997) 52 Cal.App.4th 326, 339.)

In order to recover for intentional interference with prospective economic advantage, plaintiffs must plead and prove as part of its case-in-chief that the defendants not only knowingly interfered with the plaintiffs' expectancy, but engaged in conduct that was wrongful by some legal measure other than the fact of interference itself. (*LiMandri* v. *Judkins, supra,* 52 Cal.App.4th at pp. 340-341; *Della Penna* v. *Toyota Motor Sales, U.S.A. Inc.* (1995) 11 Cal.4th 378, 393.)

Here, defendants are alleged to have misrepresented their authority to act on behalf of plaintiff corporation and have contacted persons or entities intending to disrupt plaintiff corporation's ability to organize its charitable fundraisers. These are consistent with a cause of action for intentional interference with prospective advantage. However, the allegations of harm support a cause of action for the corporate plaintiff only.

The court intends to sustain the demurrer with leave to amend.

Fourth Cause of Action: Intentional Infliction of Emotional Distress

The elements of a prima facie case of intentional infliction of emotional distress are: (1) outrageous conduct by the defendant; (2) intent to cause or reckless disregard of the probability of causing emotional distress; (3) severe emotional suffering; and (4) actual and proximate causation of emotional distress. "Outrageous conduct" denotes conduct which is so extreme as to exceed all bounds of decency and which is to be regarded as "atrocious and utterly intolerable in a civilized community." (*Bartling* v. *Glendale Adventist Medical Center* (1986) 184 Cal.App.3d 961, 969.)

Behavior may be considered outrageous if a defendant (1) abuses a relation or position that gives him or her power to damage the plaintiff's interest; (2) knows the plaintiff is susceptible to injuries through mental distress; or (3) acts intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress. (*Agarwal* v. *Johnson* (1979) 25 Cal.3d 932, 946; *Robinson* v. *Hewlett-Packard Corp.* (1986) 183 Cal.App.3d 1108, 1130.)

"Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized society." (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209.)

" '[I]t is generally held that there can be no recovery for mere profanity, obscenity, or abuse, without circumstances of aggravation, or for insults, indignities or threats which are considered to amount to nothing more than mere annoyances.'" (*Yurick v. Superior Court* (1989) 209 Cal.App.3d 1116, 1128.)

Whether any particular conduct is sufficiently outrageous to constitute the element of the tort is a mixed question of law and fact. It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous that recovery is permissible. (*Tollefson* v. *Roman Catholic Bishop* (1990) 219 Cal.App.3d 843, 858.) If reasonable persons might differ, it is for the jury to determine whether the conduct was, in fact, outrageous. (*Alcorn* v. *Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 499; *Cross* v. *Bonded Adjustment Bureau* (1996) 48 Cal.App.4th 266, 284.)

Damage to plaintiff that is solely economic is insufficient to support claim for emotional distress damages. (See *Smith v. Superior Court* (1992) 10 Cal. App. 4th 1033, 1040 [mere negligence does not support recovery for mental suffering when defendant's tortious conduct results in only economic injury.]) Unless the defendant has assumed a duty to plaintiff in which the emotional condition of the plaintiff is an object, recovery is available only if the emotional distress arises out of the defendant's breach of some other legal duty and the emotional distress is proximately caused by breach of the independent duty. Even then, with rare exceptions, a breach of the duty must threaten physical injury, not simply damage to property or financial interests. (*Erlich v. Menezes* (1999) 21 Cal. 4th 543, 555.)

As pled, both the corporate plaintiff and Paul Beckley as an individual are pursuing claims for emotional distress. The corporation cannot maintain such a claim. Defendants

argue Beckley also cannot maintain such a claim because defendants' actions have harmed the corporation and not Beckley personally. Defendants are alleged to have repeatedly filed false statements of information with the effect of removing Beckley from his position within the corporation. Once Beckley filed a corrected statement, defendants are alleged to file a superseding statement of information with the Secretary of State within minutes. Additionally, defendants are alleged to have filed a false resignation on behalf of Beckley removing him as the corporation's agent for service. These acts arguably targeted Beckley personally in addition to the corporation, however this is not clearly alleged in the Second Amended Complaint. The damages alleged include harming Beckley's ability to act in his role as CEO of plaintiff corporation and conclusory allegations that Beckley has experienced distress, anxiety, and physical pain.

The court intends to sustain the demurrer to the fourth cause of action with leave to amend.

Motion to Strike

Defendants move to strike the punitive damages allegations and the prayer for attorney fees. Defendants additionally identify multiple allegations they argue inappropriately lump together the four defendants in an agency relationship.

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

A motion to strike may be used to remove a claim for punitive damages that is not adequately supported by the facts alleged in the complaint. (*Cryolife, Inc. v. Superior Court* (2003) 110 CalApp.4th 1145; *Kaiser Foundation Health Plan, Inc. v. Superior Court* (2012) 203 Cal.App.4th 696.)

Civil Code section 3294, subdivision (a) provides:

> In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

Plaintiff seeks punitive damages in connection with all causes of action. Inasmuch as the general demurrer to each of the causes of action of the Second Amended Complaint was sustained, the claim for punitive damages are stricken as well. Leave to amend is granted.

Plaintiffs seek attorney fees in connection with this action but have not alleged the existence of a contract or statutory basis that would support a prayer for attorney fees. The motion to strike is granted with leave to amend.

Defendants also move to strike allegations that they contend are "not acceptable" agency allegations premised only on information and belief. Defendants acknowledge that a plaintiff may allege on information and belief. This criticism goes to the sufficiency of the allegations to support the relationship alleged. The court must assume that the allegations of the complaint are true for the purposes of ruling on a motion to strike, no matter how unlikely or difficult to prove the allegations may be. (*Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 53.) Defendants have not demonstrated how these allegations are irrelevant, false, or improper.

The court intends to deny defendants Lieb and Central Valley Fallen Heroes, LLC's motion to strike allegations specified in paragraphs 98, 121, 129, 131, 150, and 151. The court intends to deny the defendants Dupras and California Veterans & Fallen Heroes' motion to strike allegations identified in paragraphs 97, 98, 120, 121, 129, 131, 144, 147, 150, and 151.

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: jyh on 9/3/24.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Cabrera v. California Correctional Health Care Services, et al.***
Case No. 22CECG01012

Hearing Date: September 4, 2024 (Dept. 503)

Motion: Defendants' Motion for Summary Judgment, or in the Alternative Summary Adjudication

Plaintiff's Motion for Appointment of Counsel and Appointment of an Expert Witness

Tentative Ruling:

To deny defendants' motion for summary judgment and the alternative motion for summary adjudication.

To grant plaintiff's motion for appointment of counsel, contingent on the court locating an attorney who is available and willing to take plaintiff's case. Unfortunately, despite the court's best efforts to locate an attorney who is willing to take the case, at this time it does not appear that there are any attorneys who are willing to accept the representation of plaintiff. The court will continue to attempt to locate an attorney who is willing to take the case.

To deny plaintiff's motion for appointment of an expert. However, the court will continue to provide plaintiff with alternative means of access to the court, including allowing him to appear telephonically and by videoconference. The court will also allow plaintiff to appear in person for trial, if the trial goes forward.

Oral argument on this matter is set for Wednesday, September 25, 2024 at 3:30 p.m. in Department 503. Plaintiff may appear through CourtCall or other telephonic appearance service.

Explanation:

Defendants' Motion for Summary Judgment or Adjudication: First, while plaintiff has requested a continuance of the hearing on the defendants' motion so that he can complete discovery and investigation into his claims, a continuance is not necessary here. The issues raised by the defendants' motion rest primarily on the question of whether statutory immunity applies to defendant CCHCS and whether plaintiff provided Nurse Tveritina with enough information about his symptoms to trigger her duty to summon immediate medical care for him. These issues do not require further investigation or discovery in order for plaintiff to oppose the summary judgment motion. In fact, as discussed below, the court intends to find that defendants are not entitled to summary judgment because they have not met their burden of showing that they are immune and there are triable issues of material fact with regard to whether Nurse Tveritina

negligently failed to summon medical care for plaintiff. As a result, the court intends to deny plaintiff's request for a continuance of the motion hearing.

Next, to the extent that defendant California Correctional Health Care Services (CCHCS) moves for summary adjudication of the first cause of action for failure to summon medical care based on the theory that it is statutorily immune from liability for injuries to prisoners, the court intends to deny the motion. CCHCS relies on the immunity provided under Government Code Section 844.6, subdivision (d). That section states, "[n]otwithstanding any other provision of this part, *except as provided in this section and in Sections* 814, 814.2, 845.4, and *845.6*, … a public entity is not liable for: … An injury to any prisoner." (Gov. Code, § 844.6, subd. (a)(2), italics added.)

Thus, section 844.6 provides that a public entity is generally not liable for injuries to a prisoner, except as provided in section 845.6. In turn, section 845.6 provides that, "a public employee, *and the public entity where the employee is acting within the scope of his employment*, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care." (Gov. Code, § 845.6, italics added.)

As a result, "under Government Code section 845.6, both a public entity and its employees are immune from claims based on injuries to prisoners caused by a failure to provide medical care, except when an employee, acting within the scope of his employment, fails to provide medical care to a prisoner and has reason to know that need for medical care is immediate." (*Lawson v. Superior Court* (2010) 180 Cal.App.4th 1372, 1384, footnote omitted.) However, "'[l]iability under [Government Code] section 845.6 is limited to serious and obvious medical conditions requiring immediate care.'" (*Id.* at p. 1385, quoting *Watson v. State of California* (1993) 21 Cal.App.4th 836, 841.)

In the present case, plaintiff has sued both CCHCS and its employee, Nurse Tveritina, for failure to summon medical care under section 845.6. Plaintiff alleges that he told Nurse Tveritina that he was suffering from headaches, dizziness, high fever and weakness after he received the Covid-19 vaccine. (Defendants' Undisputed Material Facts Nos. 4-7, see also Cabrera decl., ¶¶ 3-6.) Nurse Tveritina then told him to return to his cell and wait until she could check on him. (Defendants' UMF No. 7, Cabrera decl., ¶ 6.) Plaintiff walked back to his cell, but he was so dizzy that he fell to the ground. (Cabrera decl., ¶ 7.) He managed to return to his cell and close the door, but then he passed out and became non-responsive. (*Id*. at ¶¶ 8, 9.) Nurse Tveritina failed to check on him for two hours, at which point he had passed out and had to be rushed to the Triage and Treatment Area (TTA) for treatment. (Defendants' UMF Nos. 10-14, Cabrera decl., ¶ 10.) He was suffering from a fever of 102.2, and had to be provided IV fluids, medications, and ice packs on his body to bring his fever down. (Cabrera decl., ¶ 10.) Plaintiff alleges that he continues to suffer from medical problems such as headaches and dizziness due to Nurse Tveritina's failure to summon medical care for him. (Cabrera decl., ¶ 11.)

Thus, CCHCS has not met its burden of showing that it is entitled to summary adjudication of the failure to summon medical care cause of action. CCHCS is not immune from liability for plaintiff's injuries here because plaintiff has sued CCHCS's employee, Nurse Tveritina, for failing to summon medical care for him after he complained of dizziness, weakness, headaches, and high fever and she waited two hours to summon medical aid. Section 845.6 provides for liability for both a public employee

and the public entity employee under these circumstances. As a result, the court intends to deny CCHCS's motion for summary adjudication of the first cause of action.

Likewise, the court also intends to deny Nurse Tveritina's motion for summary adjudication of the first cause of action. Tveritina contends that plaintiff did not tell her that he was suffering from a serious medical problem and never asked for medical aid. She claims that plaintiff only complained of a headache, which was not enough to place her on notice that he was suffering from a serious medical problem. (Defendants' UMF No. 8, see also Tveritina decl., ¶ 2.) She claims that plaintiff did not appear to be in acute distress and he did not appear to need immediate medical care when she spoke to him. (Tveritina decl., ¶ 9.) However, she admits that plaintiff himself has alleged that he told her that he was suffering a high fever, dizziness, headaches, and weakness. (Defendants' UMF No. 7.) She claims that she followed the protocol for dealing with prisoners who had received the Covid vaccine and were experiencing side effects, which was to have them rest in their cell and then follow up with them at a later time. (Tveritina decl., ¶ 3-5.) She believes that she provided plaintiff with appropriate recommendations in response to his complaint, and then checked on him after she completed her duties in the pill-pass line. (*Id*. at ¶ 6.) She also alleges that plaintiff was able to walk up a flight of stairs to receive his medication, then to the second floor where his cell was located. (*Id*. at ¶ 7.) Furthermore, she claims that, after she summoned medical assistance for plaintiff, his vital signs (e.g. heart rate, blood pressure, temperature, etc.) were checked and that they were normal at that time. (*Id*. at ¶ 8.)[1]

Nurse Tveritina's supervisor, M. Grajeda, also provides a declaration in support of the summary judgment motion, in which Grajeda confirms that Nurse Tveritina followed the standard protocol for dealing with prisoners who were experiencing side effects from the Covid vaccine, which was to have them rest in their cell and then follow up with them later. (Grajeda decl., ¶¶ 6-8.)

Tveritina argues that she can only be held liable under section 845.6 for failing to summon medical care if she knew that the prisoner needed immediate medical care and she failed to summon such care. Here, she contends that plaintiff only told her that he was suffering from a headache and he did not appear to be in acute distress, so she had no duty to summon medical under section 845.6.

Tveritina cites to several cases holding that, where a prisoner does not clearly show symptoms indicating that he or she is in serious medical distress, the prison employee does not violate their duty under section 845.6 by failing to immediately summon medical assistance. For example, in *Kinney v. County of Contra Costa* (1970) 8 Cal.App.3d 761, the Court of Appeal refused to impose liability on the prison staff after an inmate complained of a "very bad headache" and stated that she was "ready to collapse." (*Id*. at p. 769.) The court held that the prisoner's request for medical attention for a bad headache was not enough to place the prison staff on notice that she was in need of immediate medical care. (*Id*. at p. 770.)

Likewise, in *Lucas v. City of Long Beach* (1976) 60 Cal.App.3d 341, the Court of Appeal held that jail employees were not liable under section 845.6 for failing to summon medical care for a juvenile who appeared to be intoxicated and later hanged himself.

[1] Plaintiff has objected to the declarations of Tveritina and Grajeda. The court intends to overrule all of plaintiff's objections.

(*Id*. at p. 350.) The court found that the juvenile's symptoms, including crying and emotional upset, were consistent with symptoms of a person intoxicated by drugs or alcohol. (*Id*. at pp. 349-350.) Since the juvenile had no other pathology than intoxication, jail staff were not liable for failing to summon medical care for him. (*Ibid*.) Also, there was no evidence that any medical care could have been provided that would have prevented his death, as he caused his own death by hanging himself. (*Id*. at p. 350.) Since he was not in need of medical care, the failure to provide medical care was not a cause of his death. (*Ibid*.)

However, the present case is distinguishable from *Kinney* and *Lucas*, since here the plaintiff complained about more than just a "bad headache" and was not simply crying and emotionally upset as an apparent result of intoxication. Plaintiff states in his opposition that he suffered from a high fever, dizziness, weakness, vomiting, and difficulty waking shortly after he received the Covid vaccine on April 7, 2021. (Cabrera decl., ¶¶ 3-5.) When he went to collect his medication on April 8, 2021, he was still suffering from the same symptoms. (*Id*. at ¶ 5.) He told Nurse Tveritina that he had a headache, dizziness, a high fever, and that he was feeling weak. (*Id*. at ¶ 6.) He told her that he needed medical attention because he was not feeling good and his pain was getting worse. (*Ibid*.) Nurse Tveritina then told him that she was going to get a temperature recorder and that she would be right back. (*Ibid*.)

When plaintiff walked back to his cell, he was feeling so dizzy that he fell to the ground. (*Id*. at ¶ 7.) He got up, went into his cell, and closed the door. (*Ibid*.) Nurse Tveritina did not come to check on him for about two hours, and in the meantime plaintiff got a sharp pain in his chest, felt like his chest was pounding very fast, had blurry vision, and then saw black and white spots and passed out. (*Id*. at ¶ 8.) When Nurse Tveritina checked on him at 6:30 p.m., he was unresponsive. (*Id*. at ¶ 9.) She then activated the alarm and a medical team arrived at his cell and checked his vitals. (*Id*. at ¶ 10.) He was still suffering from a high fever, headache, and dizziness at this time. (*Ibid*.) His temperature when he arrived at the TTA clinic was 102.2, and he received IV fluids, ice packs on his body, and other medications. (*Ibid*.) He continues to suffer from headaches and dizziness to this day. (*Id*. at ¶ 11.)

Plaintiff also testified in his deposition that he started to feel weak and nauseated after he received the Covid vaccine, and he vomited twice the night after he was vaccinated. (Exhibit 4 to Defendants' Index of Evidence, Cabrera depo., p. 35:2-14.) He was unable to sleep much, and just lay in his bunk with no energy. (*Id*. at p. 36:2-14.) He had to throw up again that morning. (*Ibid*.) When he went to pill call at 4:30 p.m., he was feeling weak, dizzy, and feverish. (*Id*. at pp. 37:22 – 38:3.) He told Nurse Tveritina that he wasn't feeling good, that he was dizzy, had a high fever, and was feeling weak. He asked for some medical help. He said that he was feeling "kind of sick" and "kind of like falling and everything." (*Id*. at p. 45:15-20.) She told him that she was going to get her temperature recorder because she didn't have one with her. (*Id*. at p. 52:1-3.)

Plaintiff then went back to his cell and waited for her, but she didn't show up until around 6:30. (*Id*. at p. 52:3-6.) At that point, he was non-responsive. (*Id*. at p. 52:6-8.) She then checked his temperature and activated the alarm. (*Id*. at p. 52:15-18.) Another nurse checked his vitals and tried to get him to drink some water, but he couldn't drink anything. (*Id*. at p. 52:19-24.) He was still dizzy. (*Id*. at p. 52:24-25.) They brought him to the infirmary, where they gave him an IV, gave him cold water to drink, and put ice packs on his body, including his back, head, and everywhere. (*Id*. at p. 54:2-7.) He was in the

infirmary for about an hour, and then they released him. At that time, he still had a headache and a little dizziness, but not too bad. He was feeling better after that, and they took him back to his cell. (*Id*. at p. 54:8-15.)

These facts are enough to raise a triable issue of fact, as a reasonable trier of fact could conclude that plaintiff gave Nurse Tveritina enough information to place her on notice that he was suffering from a medical emergency and needed immediate medical assistance. The facts here indicate that plaintiff was suffering from a serious medical condition, rather than simply a "really bad headache", as was the case in *Kinney*. Indeed, he had to be rushed to the infirmary after losing consciousness, and he was subsequently treated for a high fever with IV fluids, ice packs, and other medications.

Nor was plaintiff simply upset or intoxicated, like the decedent in *Lucas*. Also, unlike the decedent in *Lucas*, whose death was ultimately not caused by the denial of medical care but by the decedent's own actions in hanging himself, here plaintiff actually was suffering from a serious medical condition, so he can potentially show that the denial of immediate medical treatment caused him additional harm.

Also, to the extent that Tveritina argues that she cannot be held liable for any medical negligence by other healthcare providers after she summoned medical care (*Castaneda v. Dept. of Corrections & Rehabilitation* (2013) 212 Cal.App.4th 1051, 1071-1073), plaintiff has not alleged that he was given negligent medical care after Tveritina summoned help for him. Instead, his claim is based on the failure to summon medical care for him immediately after he notified Nurse Tveritina of his need for care. Since there is a triable issue of material fact with regard to whether plaintiff notified Tveritina of his serious medical condition, she is not entitled to summary adjudication of the first cause of action.

The court also intends to deny summary adjudication of the second cause of action for general negligence against Tveritina. "The elements of negligence are (1) a legal duty to use due care, (2) the breach of such legal duty, and (3) the breach was the proximate or legal cause of injury." (*Orey v. Superior Court* (2013) 213 Cal.App.4th 1241, 1255, internal citation omitted.) Also, when alleging a claim against a government entity or government employee based on a statute, plaintiff is required to allege specific, particularized facts showing that the defendant violated the statute. (Gov. Code § 951; *Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4th 1013, 1021.)

Here, Tveritina argues that plaintiff cannot show that she breached a duty of care owed to him, as she acted properly and according to the prison's protocol for treating prisoners who had adverse reactions to the Covid vaccine. The protocol was to direct the prisoner to go back to their cell to rest, and then follow up with the prisoner later. She contends that she followed this protocol, and therefore she did not breach her duty toward plaintiff.

However, there are triable issues of fact with regard to whether Tveritina breached her duty of care toward plaintiff. Plaintiff claims that he told her that he was dizzy, weak and had a high fever when he went to collect his medication from her. (Cabrera decl., ¶ 6.) He was so weak and dizzy that he could barely walk, and he fell down on his way back to his cell. (*Id*. at ¶ 7.) Nevertheless, Nurse Tveritina did not come to check on him for two hours, by which time he had lost consciousness and become unresponsive. (*Id*. at ¶ 8.) He had to be rushed to the infirmary and given IV fluids, ice packs, and other

medications. (*Id*. at ¶ 10.) Thus, there is a triable issue of fact as to whether Nurse Tveritina was on notice that plaintiff was having a medical emergency and needed immediate medical care, and whether she breached her duty of care by failing to immediately summon medical assistance.

Also, plaintiff points out that the regulations for dealing with prisoners who have an acute medical problem state that the protocol for dealing with prisoners with emergency medical problems is: "(1) Evaluate the situation and initiate appropriate first aid or basic life support measures; (2) Immediately notify health care staff or a possible medical emergency and summon fine appropriate level of assistance; (3) Inform the health care staff of the nature of the emergency and the general status of the patient is conscious, breathing, bleeding, or other observable patient conditions and complaints (4) Immediately initiate cardiopulmonary resuscitation if appropriate; (5) Initiate Community Emergency Medical Services activation if necessary." (15 CCR § 3999.401(a)(1)-(5).) "The employee shall, in all instances, notify health care staff without delay." (15 CCR § 3999.400(c).)

Again, in the present case there is a triable issue of fact with regard to whether Nurse Tveritina followed the protocol for prisoners with emergency medical conditions, as she allegedly did not immediately summon medical aid for plaintiff after he notified her that he was feeling weak, dizzy, and feverish. Indeed, she admittedly did not summon medical care for him for about two hours, and in the meantime he passed out and then needed to be transported to the infirmary for emergency medical treatment. As a result, the court will not grant summary adjudication of the second cause of action in favor of Tveritina.

Plaintiff's Motion for Appointment of Counsel and an Expert: "An indigent prisoner who is a defendant in a bona fide civil action threatening his or her personal or property interests has a federal and state constitutional right, as a matter of due process and equal protection, of meaningful access to the courts in order to present a defense. A prisoner also has a statutory right under Penal Code section 2601, subdivision (e) to initiate civil actions. In the case of an indigent prisoner initiating a bona fide civil action, this statutory right carries with it a right of meaningful access to the courts to prosecute the action. A prisoner may not be deprived, by his or her inmate status, of meaningful access to the civil courts if the prisoner is both indigent and a party to a bona fide civil action threatening his or her personal or property interests." (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 792, citations omitted.)

"Meaningful access to the courts is the 'keystone' of an indigent prisoner's right to defend against and prosecute bona fide civil actions. Meaningful access to the courts by an indigent prisoner 'does not necessarily mandate a particular remedy' to secure access." (*Id.* at p. 792, citations omitted.)

"Remedies to secure access may include: (1) deferral of the action until the prisoner is released (2) appointment of counsel for the prisoner; (3) transfer of the prisoner to court (Pen. Code, §§ 1567, 2620); (4) utilization of depositions in lieu of personal appearances; (6) conduct of status and settlement conferences, hearings on motions and other pretrial proceedings by telephone; (7) propounding of written discovery; (8) use of closed circuit television or other modern electronic media; and (9) implementation

of other innovative, imaginative procedures." (*Id.* at pp. 792–793, citations and footnote omitted.)

"In determining the appropriate remedy to secure access, the trial court should consider the nature of the action, the potential effect on the prisoner's property, the necessity for the prisoner's presence, the prisoner's role in the action, the prisoner's literacy, intelligence and competence to represent himself or herself, the stage of the proceedings, the access of the prisoner to a law library and legal materials, the length of the sentence, the feasibility of transferring the prisoner to court and the cost and inconvenience to the prison and judicial systems." (*Id*. at p. 793, citations omitted.)

"A prisoner does not have the right to any particular remedy. A prisoner may not, for example, compel a trial court to appoint counsel. The right of an indigent prisoner to appointed counsel in a civil action arises only when there is a bona fide threat to his or her personal or property interests and no other feasible alternative exists. Nor may a prisoner ordinarily compel his or her appearance in court." (*Id.* at pp. 793–794, citations and footnote omitted.) "The trial court determines the appropriate remedy to secure access in the exercise of its sound discretion. The exercise of the trial court's discretion will not be overturned on appeal 'unless it appears that there has been a miscarriage of justice.'" (*Id.* at p. 794, citations omitted.)

"The exercise of a trial court's discretion is guided by a three-step inquiry established in published appellate decisions. First, the trial court determines whether the prisoner is indigent. Second, the court determines whether the lawsuit involves a bona fide threat to the inmate's personal or property interests. If both conditions are satisfied, the trial court must consider the measures available to protect appellant's right of meaningful access to the courts, including the appointment of counsel. Where the indigent prisoner's civil action is bona fide and his or her access to the court is being impeded, a trial court must provide a remedy; it may not choose to do nothing." (*Smith v. Ogbuehi* (2019) 38 Cal.App.5th 453, 458*,* citations omitted.)

On the other hand, the court is not required to appoint counsel just because the prisoner is indigent and has a bona fide case. "California decisions identify the appointment of counsel as one of the measures available to a trial court to assure an indigent prisoner is provided meaningful access to the courts. However, neither the California Constitution nor Penal Code section 2601, subdivision (d) have been interpreted to require the appointment of counsel for indigent plaintiff litigants *as a matter of right*. Instead, the choice of measures to safeguard a prisoner's right, as a plaintiff or defendant, to meaningful access to the courts to prosecute a civil action is committed to the trial court's discretion." (*Id*. at p. 468, internal citations omitted, italics in original.)

Still, "a trial court does not have discretion to choose *no remedy* in cases where the prisoner's civil action is bona fide and his or her access to the courts is being impeded. Indeed, the California Supreme Court has suggested that, in certain cases, appointment of counsel may be the *only remedy* available to protect a prisoner litigant's right of meaningful court access: 'In an appropriate case, and as a last alternative, appointment of counsel may be the only way to provide an incarcerated, indigent civil defendant with access to the courts for the protection of threatened personal and property rights.'" (*Apollo v. Gyaami* (2008) 167 Cal.App.4th 1468, 1484, internal citation omitted, italics in original.)

"In *Yarbrough*, where an indigent prisoner was a defendant in a civil action threatening his or her personal or property interests, the California Supreme Court sought 'to impress on the trial courts the need to exercise their discretion in as informed a manner as possible. At a minimum, then, the court is required to conduct the inquiry ... to consider the defendant's indigency, the feasibility of a continuance, whether defendant's interests are actually at stake, and whether counsel would be helpful under the circumstances of the case.' In *Wantuch*, the Court of Appeal held that the same inquiry is required in civil actions in which the indigent prisoner is a plaintiff faced with a threat to his or her personal or property interests." (*Id*. at p. 1485, citations omitted.)

The trial court must also consider the question of whether an inmate's access to the courts is being impeded after considering the totality of the circumstances. (*Smith, supra*, at p. 470.) "[T]he relevant circumstances include, without limitation, the factors listed in the federal decisions for determining whether exceptional circumstances exist in a particular case. Accordingly, trial courts should consider those factors when weighing the totality of the circumstances before deciding whether an inmate's access to the courts is being impeded." (*Ibid*, internal citations and footnote omitted.) "In determining the existence of exceptional circumstances, federal district courts consider '(1) the type and complexity of the case; (2) whether the indigent is capable of adequately presenting his case; (3) whether the indigent is in a position to investigate adequately the case; ... (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination' and (5) 'whether appointed counsel would aid in the efficient and equitable disposition of the case.'" (*Id*. at p. 469, internal citations and paragraph breaks omitted.)

In the present case, it does appear that plaintiff is indigent, as he states that he is incarcerated and has no income and no assets. (Cabrera decl., ¶ 7.) He also obtained a fee waiver from the court due to his indigent status. Thus, the court finds that the first factor has been satisfied.

The case also appears to be a genuine threat to plaintiff's personal or property interests, as plaintiff has alleged that defendants failed to provide him with immediate medical care when he was suffering from a severe reaction to the Covid vaccine, which resulted in him passing out and having to be rushed to the infirmary with a high fever. He also alleges that he continues to suffer from headaches and dizziness years after the incident. In other words, plaintiff has shown that he has a bona fide civil claim against defendants. Indeed, his claims have survived demurrers and a summary judgment motion, at least as to some of the defendants. Therefore, the court finds that the second factor has been met.

On the other hand, it is not clear that plaintiff's access to the courts has been impeded by his incarceration. Plaintiff has filed a complaint and first amended complaint, he has appeared telephonically at multiple hearings and status conferences, he has filed motions, case management statements, and oppositions to defendants' motions, and he has succeeded in partially defeating several of defendants' demurrers and motions. He has participated in discovery and given deposition testimony. His motions and opposition briefs have been well drafted and have cited to appropriate authorities and evidence. He has even submitted objections to defendants' evidence in support of their summary judgment motion, including a proposed order on the objections. While his incarceration no doubt makes it more difficult for him to appear

and participate in the action, nevertheless he has been able to effectively represent himself so far in the action.

Also, the issues of the case do not appear to be particularly complex, as the key issue is whether defendants failed to summon medical assistance for plaintiff when he was suffering a medical emergency, whether he was harmed as a result of the alleged delay in care, and the extent of his damages, if any. Some of these issues can be resolved fairly easily by testimony from plaintiff and Nurse Tveritina. It does not appear that the case will require the testimony of a large number of witnesses or extensive examination or cross-examination of the witnesses. Overall, the issues of the case do not appear to be overly complicated or difficult.

Still, plaintiff may have more difficulty representing himself once the case goes to trial, as he will need to either appear in person, which will require a court order to transport him to Fresno for the duration of the trial, or by phone or video conference, which is far from ideal. He may also struggle to present his case, rebut defendants' defenses, and cross-examine witnesses, as he is not an attorney and apparently has little or no legal education or training. Therefore, it does appear that plaintiff's access to the court is likely to be at least somewhat impeded by his incarceration and lack of legal counsel.

As a result, the court must consider which remedies to apply in order to safeguard plaintiff's right of meaningful access to the courts. Notably, the court is not required to automatically appoint counsel for plaintiff just because he is indigent and has a bona fide claim. (*Smith, supra*, at p. 468.) Appointment of counsel is only one of several options available to the court, and it has been described as the "last alternative" to consider by the courts. (*Apollo, supra,* at p. 1484.)

As discussed above, the court should consider several alternatives to provide a prisoner with meaningful access to the courts, including: "(1) deferral of the action until the prisoner is released; (2) appointment of counsel for the prisoner; (3) transfer of the prisoner to court; (4) utilization of depositions in lieu of personal appearances; (5) holding of trial in prison; (6) conduct of status and settlement conferences, hearings on motions and other pretrial proceedings by telephone; (7) propounding of written discovery; (8) use of closed circuit television or other modern electronic media; and (9) implementation of other innovative, imaginative procedures." (*Apollo, supra,* at p. 1483, citations omitted.)

In the present case, the parties have not provided the court with any information about the plaintiff's sentence or whether he is likely to be released from prison anytime in the foreseeable future. However, according to the California Department of Corrections and Rehabilitation's inmate locator website, plaintiff is not eligible for parole until April of 2035. (https://ciris.mt.cdcr.ca.gov/details?cdcrNumber=BC9461.) Therefore, the first option of delaying the action until plaintiff is released does not appear to be feasible.

Transferring the plaintiff to court for the trial is a feasible alternative, and it has the advantage of allowing plaintiff to present his case in person, examine and cross-examine witnesses, and interact with the court, opposing counsel, and the jury in a more natural way when compared to appearing by phone or videoconference. On the other hand, it will not alleviate the problems with plaintiff's inexperience and lack of legal training. Still, it may be necessary to transfer plaintiff to court in conjunction with other remedies in

order to allow him to better present his case and allow him meaningful access to the court proceedings.

The fourth option of using depositions in lieu of personal appearances does not seem likely to improve plaintiff's access here, since plaintiff will still need to appear personally in court in order to present his case effectively and there is no evidence that the other witnesses cannot appear in person.

Holding the trial in the prison does not appear to be feasible, as there is no evidence that the prison where plaintiff is being held has the space or facilities to conduct a full evidentiary trial. There would also be serious safety and security concerns for the jurors, witnesses, judge, and court staff if the trial were held at the prison.

With regard to the sixth alternative of holding hearings, settlement or status conferences, and other pretrial proceedings by phone or videoconference, the court has already allowed telephonic appearances for several prior hearings and status conferences, and it will continue to use this option for future hearings and conferences whenever possible. Plaintiff has been given adequate access to the court through phone appearances so far in the case, and there is every reason to believe that he can continue to appear and represent himself effectively for the remainder of the case. However, it seems unlikely that plaintiff would be able to represent himself effectively at trial by appearing by phone or video, so transportation to the court for trial is still likely to be necessary.

The parties have already used written discovery to investigate the plaintiff's claims and defendants' defenses, and such discovery has been effective and useful in fleshing out the issues of the case. Still, once the case goes to trial, plaintiff will need to be physically present in court in order to present the evidence to the jury and rebut any evidence presented by defendants. Therefore, simply allowing written discovery is not likely to improve his access to the court for the purpose of going to trial.

Using closed circuit television or video conference technology to conduct further proceedings may be helpful for pretrial hearings or conferences, but again it seems unlikely to be an effective way for plaintiff to appear for trial. Ultimately, he will probably have to appear in court in person to effectively present his case and respond to defendants' case. However, using videoconference technology may be an option for presenting witnesses who cannot appear at trial in person, such as other inmates who witnessed the incident.

With regard to the option of appointing counsel to represent plaintiff, it does appear that appointed counsel would increase his access to the court by allowing him to appear and argue his case more effectively, as well as examining and cross-examining witnesses and presenting closing arguments. Thus, appointment of counsel appears to be the best way to ensure meaningful access to the courts here. As a result, the court finds that appointment of counsel would be the best way to protect plaintiff's interest in accessing the courts and litigating his case effectively.

However, as a practical matter, the court has not been able to locate an attorney who is available and willing to take plaintiff's case. The court has previously put together a small panel of attorneys who are willing to represent prisoner litigants in civil cases, scheduling and other factors permitting. The court has attempted to locate an attorney who would be willing to represent plaintiff in the present matter. However, after several

attempts to locate counsel who would be willing to represent plaintiff, no attorney was willing to accept the representation. Therefore, while the court intends to grant the motion to appoint counsel, at this time no attorneys are willing to represent plaintiff in the case. The court will continue to reach out to the local Bar and attempt to locate representation for plaintiff.

In the meantime, as discussed above, the court intends to provide other alternative means of giving plaintiff access to the court, including permitting appearances by telephone and video conference and transporting him to Fresno to try his case if the matter goes to trial. The court will also leave open the possibility of appointing counsel if an attorney can be located who is willing to take the case.

Finally, plaintiff has moved to have the court appoint an expert to investigate his claims, render a report on his or her findings, and testify at trial. Plaintiff relies on Evidence Code section 730, which states that "[w]hen it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required. The court may fix the compensation for these services, if any, rendered by any person appointed under this section, in addition to any service as a witness, at the amount as seems reasonable to the court."[2]

Thus, section 730 gives the court discretion to appoint an expert if it believes that an expert would be helpful to resolve the issues of the case. "[T]he discretionary appointment of an expert pursuant to Evidence Code section 730 is among the measures available to trial courts to ensure indigent prisoner litigants are afforded meaningful access to the courts." (*Smith v. Ogbuehi*, *supra*, 38 Cal.App.5th at p. 459.)

In *Hulbert v. Cross* (2021) 65 Cal.App.5th 405, 414, the Third District Court of Appeal held that the trial court abused its discretion when it denied the indigent *pro per* prisoner's motion to appoint an expert and legal counsel in his medical malpractice case against the prison. "Hulbert's cause of action for medical malpractice requires proof regarding the standard of care. 'Both the standard of care and a defendant's breach must normally be established by expert testimony in a medical malpractice case.' By denying Hulbert's request for the appointment of a medical expert, the trial court effectively blocked Hulbert's access to the courts for his sole claim by requiring the very thing the trial court denied to him." (*Id.* at pp. 416–417, citations omitted.) The Court of Appeal also noted that Evidence Code section 730 gives the trial court discretion to appoint an expert when it appears that an expert is necessary. (*Id*. at p. 417.) "The problem in this case is that the trial court did not properly exercise its discretion to consider appointing a medical expert for Hulbert. Accordingly, the matter must be reversed and remanded to

[2] Plaintiff also cites to Evidence Code section 460, which states that "[w]here the advice of persons learned in the subject matter is required in order to enable the court to take judicial notice of a matter, the court on its own motion or on motion of any party may appoint one or more such persons to provide such advice." However, section 460 is located in Division 4 of the Evidence Code, which relates to requests for judicial notice, which are not at issue here. Therefore, section 460 is inapplicable and does not support plaintiff's motion to appoint an expert.

allow the trial court to exercise its discretion to appoint a medical expert in accordance with well-settled principles of access to the courts." (*Ibid*.)

On the other hand, in *Collins v. Superior Court* (1977) 74 Cal.App.3d 47, the Court of Appeal held that the trial court did not abuse its discretion when it declined plaintiff's counsel's request for appointment of an expert for the purpose of evaluating information provided by the parents of an infant who had been taken from them and put into state custody due to alleged physical abuse. "Petitioners made no showing whatsoever, other than the bare assertion, that an expert was needed to evaluate information communicated from petitioners. The court could reasonably conclude no expert was needed for this purpose. This is not a case where a doctor is going to conduct an examination of the client. There has been no showing that petitioners' explanation to their counsel as to how the child was injured is one that requires technical expertise to understand, nor does that appear from the nature of the case. It is within the trial court's discretion under section 730 to determine whether an expert is needed. We find no abuse of discretion." (*Id.* at p. 52, citations omitted.)

Here, plaintiff claims that an expert is necessary because he needs expert testimony to establish whether CCHCS and Tveritina breached the duty that they owed to him by failing to provide him with immediate medical care after he complained of severe side effects from the Covid vaccine. He contends that the issues of the case are complex and therefore the court should appoint an expert to investigate his claim, render a report, and testify as an expert witness at trial. He also alleges that he is indigent and cannot afford to hire an expert.

First of all, although plaintiff's claims do involve medical issues, this is not a medical malpractice case. Plaintiff does not have to establish what the standard of care is in order to prove his claims, nor does he have to show that defendants breached the standard of care for medical professionals. He only has to show that defendants failed to summon medical assistance for him after he showed acute symptoms or made statements that demonstrated that he was in need of immediate medical care. (Gov. Code, § 845.6.) Expert testimony should not be necessary to establish the existence and nature of the duty owed by defendants, as the duty is clearly set forth in the statute. Nor is expert testimony necessary to establish a breach of duty, since even a layperson should be able to determine from the evidence whether plaintiff provided enough information to Nurse Tveritina to put her on notice that he was in immediate need of medical assistance, and whether she responded promptly and appropriately in response after she learned of his symptoms. Therefore, it does not appear that plaintiff will need an expert to establish the existence of a duty of care, or whether defendants breached their duty to him.

Nor does it appear that the issues of the case are so complex as to require appointment of an expert to investigate and report on them, since the only issue is whether defendants failed to summon medical care for plaintiff promptly after he notified them that he was suffering from acute medical symptoms.

Also, it does not appear that an expert is necessary in order to establish causation and damages. Plaintiff can offer his own testimony regarding his condition at the time of the incident, how his condition worsened after defendants failed to summon medical care for him, as well as any long-term effects that he continues to suffer after the incident. He can also present medical records and the testimony of other witnesses who saw his

condition during and after the incident. It is unclear at this time whether defendants intend to offer their own medical expert to testify about whether his injuries were actually caused by the alleged delay in summoning medical assistance for him, and whether his injuries were caused or aggravated by the delay. However, at this point it does not appear that plaintiff will need to have an expert testify as to causation or damages, since he can offer his own testimony as well as medical records and other witnesses' testimony about the harm he suffered from the alleged failure to summon medical care for him.

As a result, the court intends to deny plaintiff's motion to have an expert appointed to investigate, draft a report, and testify at trial.

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: jyh on 9/3/24.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Menagh v. Mennonite Brethren Homes, Inc.***
Case No. 23CECG02710

Hearing Date: September 4, 2024 (Dept. 503)

Motion: Defendant's Motion to Compel Compliance with Subpoena for Medical Records

If timely requested, oral argument will be entertained Wednesday, September 11, 2024.

Tentative Ruling:

To grant defendant's motion to compel compliance with subpoena for production of medical records from Dr. Bautista and Omni Family Health.

Explanation:

Defendant moves to compel compliance with the subpoena under Code of Civil Procedure sections 1987.1 and 2025,480. Under section 1987.1, "If a subpoena requires the attendance of a witness or the production of books, documents, electronically stored information, or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by any person described in subdivision (b), … may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders."

Here, defendant served plaintiff's former doctor, Dr. Luis Bautista, aka Omni Family Health, with a subpoena for the production of all of her medical records from November 21, 2013 to November 21, 2023, which is the date of her death. Plaintiff's counsel objected to the subpoena on grounds of relevance, invasion of the right to privacy, vagueness and ambiguity, and burden, harassment, and oppression. Plaintiff's counsel also objected that the subpoena was overbroad because it sought ten years of records, and proposed a five-year period instead. Defense counsel attempted to meet and confer with plaintiff's counsel about the dispute, but received no response.

To the extent that plaintiff has objected on the ground of lack of relevance, the subpoena seeks records that are either relevant to the subject matter of the action or likely to lead to admissible evidence, as plaintiff's former doctor is likely to have records related to her underlying medical condition of Parkinson's disease, which may have been a contributing cause of her skin ulcers and early death. He is also likely to have records related to her use of opiate medications and alleged methamphetamine use, which would also be potentially relevant to her reduced life expectancy and quality of life. Any evidence related to a serious preexisting medical condition and use of prescription opiates or other drugs would be potentially relevant to establish whether there were other contributing causes to plaintiff's pressure ulcers and ultimate death. Therefore, the court intends to overrule plaintiff's relevance objection.

Next, while plaintiff objects on the basis of violation of her right to privacy in her medical records, she has placed her medical condition at issue by filing suit for elder abuse and wrongful death. She has alleged that defendant neglected her and caused her premature death while she was a resident of its facility. Thus, plaintiff has largely waived her right to keep her medical records private, at least to the extent that they contain information that might relate to her current claims.

Also, to the extent that plaintiff has raised other objections such as vagueness, ambiguity, burden, or harassment, she has not attempted to support her objections with any opposition briefing, so the court intends to overrule the objections as unsupported.

Finally, while plaintiff has objected that the subpoena seeks records from a ten-year period, which she contends is overbroad, defendant alleges that plaintiff stopped seeing Dr. Bautista upon her admission to defendant's facility in 2017. Thus, defendant needs to obtain records from 2017 and earlier in order to determine whether Dr. Bautista has information about her Parkinson's disease and opiate use. If the subpoena is limited to a five-year period as plaintiff suggests, then defendant would not be able to obtain any records from Dr. Bautista at all. As a result, the court intends to overrule the overbreadth objection and allow defendant to obtain Dr. Bautista's records from November 21, 2013 to November 21, 2023.

In summary, the court intends to grant the motion to compel Dr. Bautista and Omni Family Health to comply with the subpoena and produce the plaintiff's medical records.

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: jyh on 9/3/24.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Arthur Boothes v. Robert Bayless***
Superior Court Case No. 22CECG02932

Hearing Date: September 4, 2024 (Dept. 503)

Motion: By Defendants PV Holding Corp. and Avis Budget Group, Inc. for Summary Judgment

If timely requested, oral argument will be entertained Wednesday, September 11, 2024.

Tentative Ruling:

To deny defendants' motion for summary judgment.

Explanation:

The plaintiff, Arthur Boothes (Plaintiff) was driving a Chevrolet Equinox (the Equinox) he had rented from the defendants, PV Holding Corp. (erroneously sued as PV Holdings Corp.) and Avis Budget Group, Inc. (Avis), across the country from Houston, Texas to Stockton, California. Plaintiff alleges his car had slowed to a near-stop in the number two lane on California State Route 99 when a mobile fuel truck driven by defendant Arturo Hernandez, an employee of defendant EFuel, LLC, collided with the rear of the Equinox, causing severe damage to both vehicles and causing the Equinox to rotate in its lane. After the first collision, a vehicle driven by defendant Robert Lee Bayless hit the Equinox again while it was disabled in the road. Plaintiff suffered substantial injuries.

Plaintiff alleges a single cause of action for negligence against all defendants. Plaintiff alleges the Equinox suffered from mechanical and other defects, and that PV Holding Corp. and Avis (together Defendants) knew or should have known that the Equinox was in poor operating condition. (Comp., ¶ 18.)

Defendants Fail to Meet Their Initial Burden of Persuasion and Production

Defendants move for summary judgment. In their notice, Defendants contend Plaintiff cannot "establish one or more essential elements" of his negligence cause of action, but do not identify any of the missing elements. In their moving memorandum, Defendants contend Plaintiff cannot establish the elements of breach of duty or damages. In their reply, Defendants contend Plaintiff cannot establish the element of causation.

A defendant moving for summary judgment has the initial burden of presenting evidence that a cause of action lacks merit because the plaintiff cannot establish an element of the cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 (*Aguilar*).) If the defendant satisfies the initial burden, the burden shifts to the plaintiff to present evidence demonstrating there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd.

(p)(2); *Aguilar*, at p. 850.) The trial court must "carefully scrutinize the moving party's papers and resolve all doubts regarding the existence of material, triable issues of fact in favor of the party opposing the motion." (*Connelly v. County of Fresno* (2006) 146 Cal.App.4th 29, 36.)

As Defendants concede, they must show not only that Plaintiff has no evidence on an essential element, but they "must also show that the plaintiff *cannot reasonably obtain* needed evidence[.]" (*Gaggero v. Yura* (2003) 108 Cal.App.4th 884, 889, italics original [trial court erred in granting summary judgment in defendant's favor where moving defendant failed to present evidence to show plaintiff could not reasonably obtain the needed evidence].)

The first issue the court must determine is whether Defendants met their initial burden of production to show, as a matter of law, that Plaintiff cannot establish the essential elements of breach of duty or damages and cannot reasonably obtain the needed evidence. Defendants contend Plaintiff cannot establish breach of duty because his responses to Defendants' form interrogatories served on September 22, 2022, before Plaintiff's expert examined the Equinox, failed to identify any particular defect. This showing is not enough.

Defendants suggest a plausible explanation for how the accident occurred is "the possibility that Plaintiff fell asleep at the wheel and [truck driver] Arturo Hernandez was not paying attention just prior to the crash." (Memo., p. 1:23-24.) The court agrees this is a plausible explanation, but it is not the only explanation. The undisputed evidence shows that Plaintiff passed the truck driven by Hernandez on the left, then slowed down from 28 to 2 miles per hour by applying the brakes as he changed lanes from the fast lane to the slow lane, then pressed the gas pedal full throttle right before the first impact, but was unable to avoid the collision. (Fact Nos. 25-43.) One can infer from this evidence that Plaintiff was not asleep; rather he was actively controlling the vehicle to move to the right, although the evidence does not establish a reason for the action. Based on personal driving experiences, a jury might find the Plaintiff's actions to be consistent either with a driver facing an operational problem or almost falling asleep.

Under Evidence Code section 801, expert testimony on issues such as causation, driver safety and judgment, is admissible whenever it is sufficiently beyond common experience and it would assist the trier of fact:

> The admissibility of expert opinion is a question of degree. The jury need not be wholly ignorant of the subject matter of the opinion in order to justify its admission; if that were the test, little expert opinion testimony would ever be heard. Instead, the statute declares that even if the jury has some knowledge of the matter, expert opinion may be admitted whenever it would "assist" the jury.

(*Summers v. A.L. Gilbert Co.* (1999) 69 Cal.App.4th 1155, 1168–1169.)

Expert testimony generally is required on the issue of causation if the matter is beyond a lay person's experience. In *Visueta v. General Motors Corp.* (1991) 234 Cal.App.3d 1609 (*Visueta*), cited by Defendants, the court stated in dicta that the

testimony of an expert on automobile accident reconstruction is required to determine if a mechanical defect caused a car accident. But the expert testimony was irrelevant in *Visueta*. There the evidence on summary judgment brought by General Motors (GM) established that the owner of a truck had failed to maintain the parking brake to the extent that it was completely inoperable. In opposition to GM's motion, the owner submitted his own declaration suggesting the subsequent accident could have been caused by several factors other than inadequate maintenance, such as a design defect in the location of the parking brake. The court properly determined the defendant could not defeat the summary judgment motion by speculating that the collision was attributable to other factors, such as the alleged design defect. In *Visueta* the undisputed facts demonstrated a lack of causation between the claimed design defect and the accident. "Because the parking brake was inoperable due to the improper maintenance, it made no difference where the parking brake lever was located. (*Id.* at p. 1617.) The location of the parking brake was not a substantial factor in bringing about the collision. (*Ibid*.)

The court finds expert opinion testimony can be admissible in this case to assist the trier of fact. But "an expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based. [Citations.]" (*Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493, 510.) Under CACI No. 219, the trier of fact does not need to accept an expert's opinion in this case. Defendants submit the declaration of their accident reconstruction expert, Raymond Merala, and contend his testimony, based on scientific evidence as well as other evidence, confirms "that the Equinox was operational just prior to the collision and that there were no defects with the Equinox that caused or contributed to the accident." (Memo., p. 15:4-6.) In fact, Mr. Merala opined only that his review revealed no defects:

> My review of the pre-crash EDR [event data recorder] data, examination of the dash cam video, and inspection of the subject Chevrolet Equinox reveal no defects associated with the performance of the acceleration, braking and the lighting systems, demonstrating that the Chevrolet Equinox was operational at the time of the impact[.]

(Merala decl., ¶ 31, see Fact No. 44.)

A superficial examination of the Equinox would not necessarily reveal defects. The fact that Mr. Merala's examination revealed no performance defects does not conclusively demonstrate the Equinox was operational. It simply demonstrates that Mr. Merala found no defects, which might have been attributable to an incomplete or cursory examination.

Mr. Merala's declaration fails to provide a reasoned explanation of why the underlying facts lead to the ultimate conclusion that there were no defects. Mr. Merala fails to provide the court with information about the reliability of the scientific information he was able to download, what percentage of the available data he reviewed, whether the crash data retrieval (CDR) tools after the download generate impartial and infallible pre-crash and crash information, and whether the tools favor the manufacturer. Mr. Merala identified some of the limitations, which vary by vehicle manufacturer, for

example, explaining that there might be a time lag for the reported data, and the acceleration at the end of the crash might have been due in part to the impact. (Merala decl., ¶¶24-28.) In a supplemental declaration, Mr. Merala confirms some of the data limitations of the CDR report and concludes "one cannot reasonably make allegations of shortcomings in drive train performance from the EDR (event data recorder) data." (Merala supp. decl., p. 4:3-5.) Thus, Fact No. 44 does not conclusively negate Defendants' alleged breach. Mr. Merala does not tell the court how one can reasonably and scientifically assess shortcomings in a vehicle's mechanical performance after a crash.

Defendants also rely on Fact No. 45, that Plaintiff could not identify a mechanical defect on September 9, 2022 (before his expert examined the Equinox). But this does not satisfy Defendants' burden to show Plaintiff cannot reasonably obtain the needed evidence. (*Gaggero v. Yura, supra,* 108 Cal.App.4th at p. 889.) Defendants point out that Plaintiff could have obtained the fault codes if he wanted to complete a more detailed examination. But if Plaintiff could have obtained the fault codes, Defendants could have obtained the codes too. Defendants also could have provided maintenance records to show the Equinox had been regularly serviced and to show the presence or absence of any operational problems in the past.

Defendants fail to meet their burden to show conclusively that Plaintiff does not possess and cannot reasonably obtain the needed evidence. The facts presented by Defendants leave open the possibility that the Equinox suffered from a mechanical or other defect. When the court strictly construes Defendants' evidence and resolves all doubts in favor of Plaintiff, it concludes Defendants failed to show, as a matter of law, that Plaintiff cannot prove the essential element of breach of duty and Plaintiff does not possess and cannot reasonably obtain the needed evidence. Therefore, Defendants fail to meet their initial burden of persuasion and production on the negligence cause of action and burden does not shift to Plaintiff to raise a triable issue of material fact,

Triable Issues of Material Fact Exist

The court denies the motion for summary judgment for the additional reason that Plaintiff has raised a triable issue of material fact. Plaintiff's expert, Jon B. Landerville, provided evidence that a mechanical or operational problem cannot be ruled out without an analysis of a vehicle's fault codes, which Defendants' expert did not provide. (Fact No. 94; Landerville decl., ¶ 10.) He also opined, based on his review of the available evidence, and his credentials, that the movement of the Equinox was consistent with a driver detecting an operational problem with the vehicle, slowing while moving toward the right.

Graves Amendment

The Graves Amendment operates as a complete defense only to claims premised on ownership alone. The Graves Amendment does not apply here because Plaintiff contends Defendants are liable for their own negligence.

Cross-complaint

In light of the court's denial of Defendants' motion for summary judgment against Plaintiff, the court also denies the motion to enter summary judgment in Defendants' favor against cross-complainants EFuel, LLC and Hernandez.

Requests for Judicial Notice

The court grants Defendants' request for judicial notice of Plaintiff's complaint and the cross-complaint of EFuel, LLC and Hernandez. The court makes no ruling on Plaintiff's request for judicial notice of the distances between certain cities because the distances are unnecessary to the resolution of this motion for summary judgment.

Evidentiary Objections

The court declines to rule on the evidentiary objections because no proper evidentiary objections have been made by either side. Written objections must follow the format set forth in California Rules of Court, rule 3.1354. The trial court has discretion to overrule objections that fail to meet the standards set forth in the California Rules of Court. (*Schmidt v. Citibank, N.A.* (2018) 28 Cal.App.5th 1109, 1118.)

Conclusion

In conclusion, the court denies Defendants' motion for summary judgment for two reasons: (1) Defendants fail to meet their burden of production and persuasion; and (2) Plaintiff raises a triable issue of material fact.

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.

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